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

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1430

RIN 0560–AH56

2005 Dairy Disaster Assistance Payment Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule; correction.

SUMMARY: This document corrects a change made by a final rule published October 31, 2006 amending the regulations for the 2005 Dairy Disaster Assistance Payment Program (DDAP–II). A correction is needed because the final rule of October 31 incorrectly numbered the sections of the new subpart E that was added to 7 CFR part 1430.

DATES: *Effective Date:* October 31, 2006.

FOR FURTHER INFORMATION CONTACT: Tom Witzig, Regulatory Review Group, Economic and Policy Analysis Staff, Farm Service Agency (FSA), United States Department of Agriculture (USDA), Stop 0572, 1400 Independence Ave., SW., Washington, DC 20250–0572. Telephone: (202) 205–5851; e-mail: *Tom.Witzig@wdc.usda.gov.* Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Background

This rule corrects the final rule published in the **Federal Register** on October 31, 2006 (71 FR 63668) that amended the regulations governing the 2005 Dairy Disaster Assistance Payment Program (DDAP–II) of the Commodity Credit Corporation (CCC). The final rule added a new subpart E, 2005 Dairy Disaster Assistance Program (DDAP–II). The sections of the new subpart were erroneously numbered as §§ 1430.300 through 1430.315. This document corrects the section numbers to be sections 1430.600 through 1430.615.

List of Subjects in 7 CFR Part 1430

Dairy, Disaster assistance, Reporting and recordkeeping requirements.

■ Accordingly, for this reason, 7 CFR part 1430 is amended as follows:

PART 1430—DAIRY PRODUCTS

■ 1. The authority citation for part 1430 continues to read as follows:

Authority: 7 U.S.C. 7981 and 7982; 15 U.S.C. 714b and 714c; Sec. 3014 of Pub. L. 109–234, 16 U.S.C. 3801 note, 120 Stat. 474.

■ 2. In subpart E, re-designate §§ 1430.300 through 1430.314 as §§ 1430.600 through 1430.614, respectively.

§ 1430.602 [Amended]

■ 3. In newly designated § 1430.602, in the definition of *base month*, revise the reference for ''§ 1430.304'' to read ''§ 1430.604''.

§ 1430.603 [Amended]

■ 4. In newly designated § 1430.603(b), revise the reference for ''§ 1430.302'' to read ''§ 1460.602''.

§ 1430.605 [Amended]

■ 5. In newly designated § 1430.605(a), revise the reference for ''§ 1430.306 to read ''§ 1430.606''.

§ 1430.606 [Amended]

■ 6. In newly designated § 1430.606:
■ A. In paragraph (a), revise the references to ''§ 1430.302'', ''1430.304(g)'' (two places), and ''§ 1430.305'' to read ''§ 1430.602'', ''§ 1430.604(g)'', and ''§ 1430.605'', respectively;
■ B. In paragraph (d), revise the reference to ''§ 1430.305'' to read ''§ 1430.605'';
■ C. In paragraph (e)(2), revise the reference to ''§ 1430.305'' to read ''§ 1430.605''; and
■ D. In paragraph (g), revise the reference to ''§ 1420.305'' to read ''§ 1430.605'';

§ 1430.607 [Amended]

■ 7. In newly designated § 1430.607:
■ A. In paragraph (a) introductory text, revise the reference to ''§ 1430.306'' to read ''§ 1430.606''; and
■ B. In paragraph (c), revise the reference to ''§ 1430.306'' to read ''§ 1430.606''.

§ 1430.609 [Amended]

■ 8. In newly designated § 1430.609, revise the references to ''§ 1430.307'' and ''§ 1430.308'' to read ''§ 1430.607'' and ''§ 1430.608'', respectively.

Signed in Washington, DC, on November 2, 2006.

Teresa C. Lasseter,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. E6–18800 Filed 11–8–06; 8:45 am]

BILLING CODE 3410–05–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 308

RIN 3064–AD06

Penalty for Failure To Timely Pay Assessments

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Federal Deposit Insurance Corporation (''FDIC'') is adopting its final rule amending its regulations concerning penalties for failure to timely pay assessments. The final rule adopts changes made by the Federal Deposit Insurance Reform Act of 2005 (''Reform Act''), which amended provisions of the Federal Deposit Insurance Act (''FDI Act''). The statute generally provides that an insured depository institution which fails or refuses to pay any assessment shall be subject to a penalty of not more than 1 percent of the assessment due for each day the violation continues. The statute includes an exception if the failure to pay results from a dispute with the FDIC over the amount of the assessment and the institution deposits satisfactory security with the FDIC. The statute includes a provision covering assessment amounts of less than $10,000, which authorizes penalties up to $100 per day. Finally, the statute accords the FDIC discretion to

compromise, modify or remit any penalty imposed on a finding that good cause prevented timely payment. The final rule amends the FDIC's former rule concerning late assessment penalties, in conformity with these provisions of the Reform Act.

DATES: This final rule will become effective on January 1, 2007.

FOR FURTHER INFORMATION CONTACT: Donna M. Saulnier, Senior Assessment Policy Specialist, DOF, (703) 562–6167; or William V. Farrell, Manager, Assessments Section, DOF, (703) 562–6168; or Christopher Bellotto, Counsel, Legal Division, (202) 898–3801; or Stephen T. Weisweaver, Attorney, Legal Division, (202) 898–6976.

SUPPLEMENTARY INFORMATION:

I. Background

Section 2104 (c) of the Reform Act amends section 18(h) of the FDI Act, 12 U.S.C. 1828(h) (2000).[1] As described in its proposal, 71 FR 40938 (July 19, 2006), the FDIC added the present rule concerning late assessment penalties when it amended 12 CFR 308.132 pursuant to the Debt Collection Improvement Act of 1996 (''DCIA'').[2] *See* 61 FR 57987 (Nov. 12, 1996).[3] Accordingly, the FDIC increased the late assessment penalty amount from a maximum of $100, as originally established in section 18(h) of the FDI Act, to a maximum of $110 for each day the violation continues. *Id.*[4] This final rule amends the FDIC's late assessment penalty rule, 12 CFR 308.132(c)(3)(v), to reflect the changes made by section 2104(c) of the Reform Act. Section 2104(c) of the Reform Act changes the late assessment penalty from not more than $100 per day to not more than 1 percent of any assessment owed, per day that the violation continues, if the amount owed is $10,000 or more at the time the institution fails or refuses to pay the assessment. If the institution owes less than $10,000 at the time the institution fails or refuses to pay the assessment, then the amendment authorizes penalties up to $100 for each day that the violation continues. The Reform Act also provides for an exception if the failure to pay results from a dispute with the FDIC over the amount of the assessment and the institution deposits satisfactory security with the FDIC.

II. Comments Received

On July 19, 2006, the FDIC published in the **Federal Register** a notice of proposed rulemaking and request for comment, which reflected the proposed amendments to the late assessment penalties rule, 12 CFR 308.132(c)(3)(v). *See* 71 FR 40938. The FDIC received one substantive comment, which was from a trade association. It acknowledged the former late assessment penalty provisions were outdated and supported the FDIC's proposal. Therefore, the FDIC is adopting the proposed amendments to 12 CFR 308.132(c)(3)(v) with no changes in its final rule.

The trade association specifically supported the statutory provision that allows the FDIC to compromise, modify, or remit any penalty upon a determination that good cause prevented the timely payment of an assessment. It noted that natural disasters, such as Hurricane Katrina that struck the Gulf Coast in August of 2005, can affect numerous institutions' ability to pay assessments in a timely manner. The FDIC recognizes that situations may arise where a depository institution's failure to pay may be due to matters outside the control of the institution therefore establishing good cause for a failure to pay in a timely manner. After according an affected institution an opportunity to request a good cause determination, and when applicable because the FDIC and the institution are unable to resolve the matter, the FDIC will impose the penalty in the same manner as civil money penalties issued pursuant to section 8(i) of the FDI Act, 12 U.S.C. 1818(i) (2000).

III. Description of the Final Rule

Section 132(c)(3)(v) of part 308 is being amended by conforming it to the changes made by section 2104(c) of the Reform Act. The late assessment penalty is changed from a maximum of $110 per day (as previously adjusted under the Inflation Adjustment Act, *supra* note 2) to not more than 1 percent of the assessment owed, if the institution owes an assessment of $10,000 or more at the time the institution refuses or fails to pay any assessment.[5] Additionally, if the amount the institution fails or refuses to pay is less than $10,000, the rule authorizes penalties of up to $100 for each day that the violation continues. Finally, section 132(c)(3)(v) incorporates the statutory exception when the failure to pay results from a dispute with the FDIC over the amount of the assessment and the institution deposits satisfactory security with the FDIC. Section 132(c)(3)(v) also recognizes the FDIC's discretion to compromise, modify, or remit any penalty that the FDIC may assess upon a finding that good cause prevented the timely payment of an assessment.

IV. Regulatory Analysis and Procedure

A. Solicitation of Comments on Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act, Public Law 106–102, 113 Stat. 1338, 1471 (Nov. 12, 1999), requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The proposed rule requested comments on how the rule might be changed to reflect the requirements of GLBA. No GLBA comments were received.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA'') requires that each Federal agency either certify that a proposed rule would not, if adopted in final form, have a significant economic impact on a substantial number of small entities or prepare an initial regulatory flexibility analysis of the proposal and publish the analysis for comment. *See* 5 U.S.C. 603, 604, 605 (2000). The proposed rule stated that the late assessment penalty rule adopts statutory language enacted by Congress in the Reform Act. Therefore the rule would not create any additional economic impact because the only economic impact would result from the language of the statute. No comments were received concerning the proposal's RFA certification.

Additional factual bases exist for certifying that this final rule will not have a significant economic impact on a substantial number of small depository institutions, which are defined as having $165 million or less in assets. This final rule will not have an economic impact on a substantial number of small depository institutions because the assessments for a number of these institutions will remain below the $10,000 threshold limiting penalties to not more than $100 per day. Thus, the statutory changes adopted by this rule

[1] *See* Federal Deposit Insurance Reform Act of 2005, section 2104(c), Public Law 109–171, 120 Stat. 9, 13.

[2] Public Law 104–134, 110 Stat. 1321–358, 373, amending section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990 (''Inflation Adjustment Act''), 28 U.S.C. 2461 (2000).

[3] The DCIA required the head of each Federal Agency to enact rules adjusting each Civil Money Penalty (''CMP''), under the agency's jurisdiction, by a rate of inflation prescribed in the DCIA.

[4] Section 2104(c) of the Reform Act effectively returns the late assessment penalty on assessments of less than $10,000 to the original amount of up to $100. The Inflation Adjustment Act, *supra* note 2, may require a readjustment of this amount in 2008.

[5] The FDIC can also initiate a termination of insurance proceeding, pursuant to section 8(a) of the FDI ACT, 12 U.S.C. 1818(a) (2000), when an institution withholds portions of its insurance assessments. *Doolin Security Savings Bank* v. *FDIC*, 53 F.3d 1395, 1408 (4th Cir. 1995).

will not change the penalty amount that can be imposed on these institutions. In cases where a small depository institution's assessment exceeds $10,000, the economic impact of this final rule is limited to 1% of the assessment amount for each day of delinquency. For example, a bank with $165 million in assets subject to a 5 basis point assessment would incur a daily penalty of less than $200 for every day that its quarterly assessment payment was late. Additionally, over the last two years, less than 1% of the approximately 5,521 small depository institutions invoiced for deposit insurance premiums and FICO assessments each year failed to timely pay their assessment. Therefore, this final rule will not have a significant economic impact on a substantial number of small depository institutions.

C. Paperwork Reduction Act

No collections of information pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) are contained in the final rule.

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

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

E. Small Business Regulatory Enforcement Fairness Act

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

List of Subjects in 12 CFR Part 308

Administrative practice and procedure, Bank deposit insurance, Banks, banking, Claims, Crime, Equal access to justice, Fraud, Investigations, Lawyers, Penalties.

■ For the reasons set forth in the preamble, the FDIC hereby amends subpart H of 12 CFR 308 as follows:

PART 308—RULES OF PRACTICE AND PROCEDURE

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

Authority: 5 U.S.C. 504, 554–557; 12 U.S.C. 93(b), 164, 505, 1815(e), 1817, 1818, 1820, 1828, 1829, 1829b, 1831i, 1831m(g)(4), 1831o, 1831p–1, 1832(c), 1884(b), 1972, 3102, 3108(a), 3349, 3909, 4717; 15 U.S.C. 78(h) and (i), 78o–4(c), 78o–5, 78q–1, 78s, 78u, 78u–2, 78u–3 and 78w, 6801(b), 6805(b)(1); 28 U.S.C. 2461 note; 31 U.S.C. 330, 5321; 42 U.S.C. 4012a; Sec. 3100(s), Pub. L. 104–134, 110 Stat. 1321–358.

■ 2. Revise paragraph (c)(3)(v) of section 308.132 as follows:

§ 308.132 Assessment of penalties.

* * * * *

(c) * * *

(3) * * *

(v) *Civil money penalties assessed pursuant to section 18(h) of the FDI Act for failure to timely pay assessment.*

(A) *In General.*—Subject to paragraph (c)(3)(v)(C) of this section, any insured depository institution which fails or refuses to pay any assessment shall be subject to a penalty in an amount of not more than 1 percent of the amount of the assessment due for each day that such violation continues.

(B) *Exception In Case Of Dispute.*—Paragraph (A) of this section shall not apply if—

(*1*) The failure to pay an assessment is due to a dispute between the insured depository institution and the Corporation over the amount of such assessment; and

(*2*) The insured depository institution deposits security satisfactory to the Corporation for payment upon final determination of the issue.

(C) *Special Rule For Small Assessment Amounts.*—If the amount of the assessment which an insured depository institution fails or refuses to pay is less than $10,000 at the time of such failure or refusal, the amount of any penalty to which such institution is subject under paragraph (A) of this section shall not exceed $100 for each day that such violation continues.

(D) *Authority To Modify Or Remit Penalty.*—The Corporation, in the sole discretion of the Corporation, may compromise, modify or remit any penalty which the Corporation may assess or has already assessed under paragraph (c)(3)(v)(A) of this section upon a finding that good cause prevented the timely payment of an assessment.

* * * * *

Dated at Washington, DC, this 2nd day of November 2006.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. E6–18804 Filed 11–8–06; 8:45 am]

BILLING CODE 6714–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 101 and 123

RIN 3245–AF42

Administration and Disaster Loan Program

AGENCY: U.S. Small Business Administration (SBA).

ACTION: Direct final rule; correction.

SUMMARY: On October 31, 2006, SBA published in the **Federal Register** a direct final rule to amend SBA regulations to reflect the new structure of the Office of Disaster Assistance following an office reorganization (71 FR 63674). In the preamble to the regulation, SBA stated in the **DATES** section that this rule is effective November 30, 2006 without further action, unless adverse comment is received on or before the effective date. If adverse comment is received, SBA will publish a timely withdrawal of the rule in the **Federal Register**. SBA is correcting the **DATES** caption for this direct final rule to clarify the timeframe for public comment, and to allow sufficient time for SBA to withdraw the rule if any significant adverse comments are received.

DATES: Effective November 9, 2006.

FOR FURTHER INFORMATION CONTACT: James E. Rivera, Deputy Associate Administrator for Disaster Assistance, 409 3rd Street, SW., Washington, DC 20416; (202) 205–6734; fax (202) 205–7728; or e-mail *James.Rivera@sba.gov*.

SUPPLEMENTARY INFORMATION: In FR Doc. E6–18246 appearing on page 63674 in the **Federal Register** on Tuesday, October 31, 2006, the following correction is made:

On page 63674, in the third column the **DATES** heading is corrected to read as follows:

DATES: This rule is effective December 15, 2006 without further action, unless significant adverse comment is received by November 30, 2006. If significant adverse comment is received, SBA will publish a timely withdrawal of the rule in the **Federal Register**.

(Authority: 15 U.S.C. 634)

Dated: November 1, 2006.

Roger B. Garland,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E6–18712 Filed 11–8–06; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–25668; Directorate Identifier 2006–CE–44–AD; Amendment 39–14815; AD 2006–23–03]

RIN 2120–AA64

Airworthiness Directives; B–N Group Ltd. BN–2, BN–2A, BN–2B, BN–2T, and BN–2T–4R Series (All Individual Models Included in Type Certificate Data Sheet (TCDS) A17EU, Revision 16, Dated December 9, 2002) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA adopts a new airworthiness directive (AD) for all B–N Group Ltd. BN–2, BN–2A, BN–2B, BN–2T, and BN–2T–4R series (all individual models included in Type Certificate Data Sheet (TCDS) A17EU, Revision 16, dated December 9, 2002) airplanes. This AD requires you to inspect the horizontal stabilizer attachment bolts and anchor nuts for damage and wear and replace damaged and/or worn parts with new, modified parts. If no damaged or worn parts are found during the inspection, this AD requires you to replace the horizontal stabilizer attachment bolts and anchor nuts at a specified time with new, modified parts. This AD results from mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for the United Kingdom. We are issuing this AD to detect and correct damaged and/or worn horizontal stabilizer attachment bolts and anchor nuts, which could result in failure of the horizontal stabilizer. This failure could result in loss of control.

DATES: This AD becomes effective on December 14, 2006.

As of December 14, 2006, the Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation.

ADDRESSES: To get the service information identified in this AD, contact B–N Group Ltd., Bembridge Airport, Isle of Wight, PO35 5PR, United Kingdom; telephone: +44 (0) 1983 872511; fax: +44 (0) 1983 873246.

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 20590–001 or on the Internet at *http://dms.dot.gov*. The docket number is FAA–2006–25668; Directorate Identifier 2006–CE–44–AD.

FOR FURTHER INFORMATION CONTACT: Albert J. Mercado, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri, 64106; telephone: (816) 329–4119; fax: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

On September 11, 2006, we issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all B–N Group Ltd. BN–2, BN–2A, BN–2B, BN–2T, and BN–2T–4R series (all individual models included in Type Certificate Data Sheet (TCDS) A17EU, Revision 16, dated December 9, 2002) airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on September 15, 2006 (71 FR 54438). The NPRM proposed to require you to inspect the horizontal stabilizer attachment bolts and anchor nuts for damage and wear and replace damaged and/or worn parts with new, modified parts. If no damaged or worn parts are found during the proposed inspection, the NPRM proposed to require you to replace the horizontal stabilizer attachment bolts and anchor nuts at a specified time with new, modified parts.

Comments

We provided the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal and FAA's response to each comment:

Comment Issue No. 1: Publish the Manufacturer Service Information

Jack Buster with the Modification and Replacement Parts Association (MARPA) provides comments on the MCAI AD process pertaining to how the FAA addresses publishing manufacturer service information as part of a proposed AD action. The commenter states that the proposed rule attempts to require compliance with a public law by reference to a private writing (as referenced in paragraph (e) of the proposed AD). The commenter would like the FAA to incorporate by reference (IBR) the B–N Group Ltd. service information.

We agree with Mr. Buster. However, we do not IBR any document in a proposed AD action, instead we IBR the document in the final rule. Since we are issuing the proposal as a final rule AD action, B–N Britten-Norman Aircraft Limited Service Bulletin number SB 302, Issue 2, dated April 12, 2005, and B–N Group Ltd. Modification Leaflet for Mod NB–M–1787, Issue 1, dated August 1, 2005, are incorporated by reference.

Comment Issue No. 2: Availability of IBR Documents in the Docket Management System (DMS)

Mr. Buster requests IBR documents be made available to the public by publication in the **Federal Register** or in the DMS.

We are currently reviewing issues surrounding the posting of service bulletins in the Department of Transportation's DMS as part of the AD docket. Once we have thoroughly examined all aspects of this issue and have made a final determination, we will consider whether our current practice needs to be revised.

Comment Issue No. 3: Allow Replacement With FAA-approved Equivalent Parts

Mr. Buster requests allowing the use of FAA-approved equivalent parts for replacing the horizontal stabilizer attachment bolts and anchor nuts with modified horizontal stabilizer attachment bolts.

We agree with Mr. Buster. We will allow the use of FAA-approved equivalent parts when installing the modified horizontal stabilizer attachment bolts.

We are adding the phrase ''or FAA-approved equivalent part'' in paragraphs (e)(2), (e)(3), and (e)(4) of this AD based on this comment.

Conclusion

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed except for minor editorial corrections. We have determined that these minor corrections:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Differences Between the Foreign Airworthiness Authority AD, the Service Bulletin, and This AD

The MCAI British AD No. G–2004–0014 R1, Effective Date: July 29, 2005, and B–N Britten-Norman Aircraft Limited Service Bulletin number SB 302, Issue 2, dated April 12, 2005, allow

1,000-hour repetitive inspections of the horizontal stabilizer attachment bolts and anchor nuts with the option of installing the new, modified horizontal stabilizer attachment bolts as a terminating action for the repetitive inspections. This AD does not allow continued repetitive inspections.

The actions required by this AD are consistent with the FAA's aging commuter aircraft policy, which briefly states that, when a modification exists that could eliminate or reduce the number of required critical inspections, the modification should be incorporated. This policy is based on the FAA's determination that reliance on critical repetitive inspections on airplanes utilized in commuter service carries an unnecessary safety risk when a design change exists that could eliminate or, in certain instances, reduce the number of those critical inspections. In determining what inspections are critical, the FAA considers (1) The safety consequences of the airplane if the known problem is not detected by the inspection; (2) the reliability of the inspection such as the probability of not detecting the known problem; (3) whether the inspection area is difficult to access; and (4) the possibility of damage to an adjacent structure as a result of the problem.

Costs of Compliance

We estimate that this AD will affect 91 airplanes in the U.S. registry.

We estimate the following costs to do the inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
1 work-hour × $80 per hour = $80	Not applicable	$80	$80 × 91 = $7,280.

We estimate the following costs to do the replacements:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
3 work-hours × $80 per hour = $240	$1,600	$240 + $1,600 = $1,840	$1,840 × 91 = $167,440.

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 AD.

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 this AD:

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 summary of the costs to comply with this AD (and other information as included in the Regulatory Evaluation) and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include ''Docket No. FAA–2006–25668; Directorate Identifier 2006–CE–44–AD'' in your request.

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 Federal Aviation Administration 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. FAA amends § 39.13 by adding a new AD to read as follows:

2006–23–03 B–N Group Ltd: Amendment 39–14815; Docket No. FAA–2006–25668; Directorate Identifier 2006–CE–44–AD.

Effective Date

(a) This AD becomes effective on December 14, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all BN–2, BN–2A, BN–2B, BN–2T, and BN–2T–4R series (all individual models included in Type Certificate Data Sheet (TCDS) A17EU, Revision 16, dated December 9, 2002) airplanes; that are certificated in any category.

Unsafe Condition

(d) This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for the United Kingdom. The actions specified in this AD are intended to detect and correct damaged and/or worn horizontal stabilizer attachment bolts and anchor nuts, which could result in failure of the horizontal stabilizer. This failure could result in loss of control.

Compliance

(e) To address this problem, you must do the following, unless already done:

Actions	Compliance	Procedures
(1) Inspect the horizontal stabilizer attachment bolts and anchor nuts for damage and wear.	Within the next 50 hours time-in-service (TIS) or 2 months, whichever occurs first, after December 14, 2006 (the effective date of this AD).	Follow B–N Britten-Norman Aircraft Limited Service Bulletin number SB 302, Issue 2, dated April 12, 2005.
(2) If you find any damaged or worn horizontal stabilizer attachment bolts and/or anchor nuts during the inspection required in paragraph (e)(1) of this AD, replace with new, modified horizontal stabilizer attachment bolts as specified in the service information (or FAA-approved equivalent part).	Before further flight after the inspection required in paragraph (e)(1) of this AD.	Follow B–N Britten-Norman Aircraft Limited Service Bulletin number SB 302, Issue 2, dated April 12, 2005. Do any necessary replacements following B–N Group Ltd. Modification Leaflet for Mod NB–M–1787, Issue 1, dated August 1, 2005.
(3) If you do not find damaged or worn horizontal stabilizer attachment bolts and/or anchor nuts during the inspection required in paragraph (e)(1) of this AD, replace the horizontal stabilizer attachment bolts and anchor nuts with new, modified horizontal stabilizer attachment bolts as specified in the service information (or FAA-approved equivalent part).	Upon accumulating 1,000 hours TIS after the inspection required in paragraph (e)(1) of this AD.	Follow B–N Group Ltd. Modification Leaflet for Mod NB–M–1787, Issue 1, dated August 1, 2005.
(4) You may replace the horizontal stabilizer attachment bolts and anchor nuts with the new, modified horizontal stabilizer attachment bolts as specified in the service information (or FAA-approved equivalent part) at any time, but no later than the applicable times specified in paragraphs (e)(2) and (e)(3) of this AD. After installing the new, modified horizontal stabilizer attachment bolts, no further action is required.	As of December 14, 2006 (the effective date of this AD).	Follow B–N Group Ltd. Modification Leaflet for Mod NB–M–1787, Issue 1, dated August 1, 2005.

Alternative Methods of Compliance (AMOCs)

(f) The Manager, Standards Staff, FAA, Small Airplane Directorate, ATTN: Albert J. Mercado, Aerospace Engineer, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4119; fax: (816) 329–4090, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

Related Information

(g) MCAI United Kingdom Civil Aviation Authority AD No. G–2004–0014 R1, Effective Date: July 29, 2005, also addresses the subject of this AD.

Material Incorporated by Reference

(h) You must use B–N Britten-Norman Aircraft Limited Service Bulletin number SB 302, Issue 2, dated April 12, 2005, and B–N Group Ltd. Modification Leaflet for Mod NB–M–1787, Issue 1, dated August 1, 2005, 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 B–N Group Ltd., Bembridge Airport, Isle of Wight, PO35 5PR, United Kingdom; telephone: +44 (0) 1983 872511; fax: +44 (0) 1983 873246.

(3) You may review copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, 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/code_of_federal_regulations/ibr_locations.html*.

Issued in Kansas City, Missouri, on October 30, 2006.

Kim Smith,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–18723 Filed 11–8–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–26220; Directorate Identifier 2006–NE–40–AD; Amendment 39–14822; AD 2006–23–10]

RIN 2120–AA64

Airworthiness Directives; Dowty Propellers R321/4–82–F/8; R324/4–82–F/9; R333/4–82–F/12; and R334/4–82–F/13 Propellers

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

ACTION: Final rule; request for comments.

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:

One propeller blade has recently been identified after delivery from Dowty Propellers where the blade counterweight capscrew holes have not been correctly drilled. If the capscrew holes are not machined to their required depth, it may appear that the capscrew has been correctly assembled, but the counterweight will not be properly retained. This condition, if not corrected, could result in failure (due to fatigue) of one or more capscrews, release of the counterweight during propeller operation and consequent risk of injury to aircraft occupants and persons on the ground. Dowty has concluded that the problem is associated only with blades manufactured between April and July 2006, identified by serial number in the applicability section of this directive.

This AD requires actions that are intended to address the unsafe condition described in the MCAI.

DATES: This AD becomes effective November 24, 2006.

The Director of the Federal Register approved the incorporation by reference of Dowty Propellers Alert Service Bulletin (ASB) No. 61–A1133, dated October 17, 2006, and ASB No. 61–A1134, dated October 17, 2006, listed in the AD, as of November 24, 2006.

We must receive comments on this AD by December 11, 2006.

ADDRESSES: You may send comments by any of the following methods:

- *DOT Docket Web Site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Fax:* (202) 493–2251.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- *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.

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 this AD, 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.

FOR FURTHER INFORMATION CONTACT: Frank Walsh, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; telephone (781) 238–7158; fax (781) 238–7170.

SUPPLEMENTARY INFORMATION:

Streamlined Issuance of AD

The FAA is implementing a new process for streamlining the issuance of ADs related to MCAI. This 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

The European Aviation Safety Agency (EASA), which is the aviation authority for the European community, has issued Emergency Airworthiness Directive No. 2006–0326–E, dated October 23, 2006 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states that:

> One propeller blade has recently been identified after delivery from Dowty Propellers where the blade counterweight capscrew holes have not been correctly drilled. If the capscrew holes are not machined to their required depth, it may appear that the capscrew has been correctly assembled, but the counterweight will not be properly retained. This condition, if not corrected, could result in failure (due to fatigue) of one or more capscrews, release of the counterweight during propeller operation and consequent risk of injury to aircraft occupants and persons on the ground. Dowty has concluded that the problem is associated only with blades manufactured between April and July 2006, identified by serial number in the applicability section of this directive.

You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Dowty Propellers has issued ASB No. 61–A1133, dated October 17, 2006, and ASB No. 61–A1134, dated October 17, 2006. The actions described in those ASBs are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with this State of Design Authority, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are issuing this AD because we evaluated all the information provided by the State of Design Authority and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between the 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. These requirements take precedence over the actions copied from the MCAI.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because propeller blades have not been adequately machined to properly retain counterweights. This condition, if not corrected, could result in failure (due to fatigue) of one or more capscrews, release of the counterweight during propeller operation, consequent risk of injury to aircraft occupants and persons on the ground, and loss of control of aircraft in flight.

We have concluded that due to the serious nature of this problem of the limited number of blades listed in the ASBs and in the applicability section of EASA Emergency AD No. 2006–0326–E, this AD must be a final rule; request for comments to require identification, inspection, and where necessary rework of the affected propeller blades. Therefore, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2006–26220; Directorate Identifier 2006–NE–40–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic,

environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because 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 about this AD.

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 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.

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:

2006–23–10 Dowty Propellers (formerly Dowty Rotol Ltd): Amendment 39–14822. Docket No. FAA–2006–26220; Directorate Identifier 2006–NE–40–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective November 24, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Dowty Propellers R321/4–82–F/8; R324/4–82–F/9; R333/4–82–F/12; and R334/4–82–F/13 propellers, if blades are installed with serial numbers (SNs) A156121 through A156132; A156137 through A156160; A156165 through A156168; A156177 through A156184; A156194; and A156196 through A156200. These propellers are known to be installed on, but not limited to CASA 212; M7 Aerospace (formerly Fairchild; Swearingen) SA227TT, SA227AT, and SA227AC; and BAE Systems (formerly British Aerospace) Jetstream 3100 and 3200 series airplanes.

Reason

(d) One propeller blade has recently been identified after delivery from Dowty Propellers where the blade counterweight capscrew holes have not been correctly drilled. If the capscrew holes are not machined to their required depth, it may appear that the capscrew has been correctly assembled, but the counterweight will not be properly retained. This condition, if not corrected, could result in failure (due to fatigue) of one or more capscrews, release of the counterweight during propeller operation, and consequent risk of injury to aircraft occupants and persons on the ground. Dowty has concluded that the problem is associated only with blades manufactured between April and July 2006, identified by SN in the applicability section of this directive.

Actions and Compliance

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

(1) Before next flight after the effective date of this directive, identify the propeller blades that have a SN listed in the applicability section of this directive and inspect the affected blades in accordance with the instructions contained in Dowty Propellers Alert Service Bulletin (ASB) No. 61–A1133, dated October 17, 2006, and ASB No. 61–A1134, dated October 17, 2006, as applicable.

(2) When discrepancies are found, before further flight the counterweight attachment hole must be re-machined. Contact Dowty Propellers for advice on re-machining the holes.

(3) After the effective date of this directive, no person may install one of the listed SN propeller blades on an aircraft unless the blade has been inspected and, if necessary, reworked in accordance with the requirements of this directive.

FAA AD Differences

(f) None.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Boston Aircraft Certification Office, 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, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

(h) *Special Flight Permits:* We are prohibiting special flight permits.

Related Information

(i) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Emergency Airworthiness Directive 2006–0326–E, dated October 23, 2006.

Material Incorporated by Reference

(j) You must use the Dowty Propellers service information specified in Table 1 of this AD 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 Dowty Propellers, Anson Business Park, Cheltenham Road East, Gloucester GL 29QN, UK; telephone 44 (0) 1452 716000; fax 44 (0) 1452 716001.

(3) You may review copies at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; 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 1.—MATERIAL INCORPORATED BY REFERENCE

Dowty Propellers Alert Service Bulletin No.	Page	Revision	Date
61–A1133	All	Original	October 17, 2006.
61–A1134	All	Original	October 17, 2006.

Issued in Burlington, Massachusetts, on November 1, 2006.

Peter A. White,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. E6–18840 Filed 11–8–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–20007; Directorate Identifier 2004–CE–50–AD; Amendment 39–14798; AD 2006–23–01]

RIN 2120–AA64

Airworthiness Directives; Air Tractor, Inc. Model AT–602 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA adopts a new airworthiness directive (AD) for all Air Tractor, Inc. (Air Tractor) Model AT–602 airplanes. This AD requires you to repetitively inspect (using the eddy current method) the wing center splice joint two outboard fastener holes on both of the wing main spar lower caps for fatigue cracking; repair or replace any wing main spar lower cap where fatigue cracking is found; and report any fatigue cracking found. This AD results from fatigue cracking at the wing center splice joint outboard fastener hole in one of the wing main spar lower caps. We are issuing this AD to detect and correct cracks in the wing main spar lower cap, which could result in failure of the spar cap and lead to wing separation and loss of control of the airplane.

DATES: This AD becomes effective on December 14, 2006.

As of December 14, 2006, the Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation.

ADDRESSES: To get the service information identified in this AD, contact Air Tractor, Inc. at P.O. Box 485, Olney, Texas 76374; telephone: (940) 564–5616; or fax: (940) 564–5612.

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 20590–0001 or on the Internet at *http://dms.dot.gov*. The docket number is FAA–2004–20007; Directorate Identifier 2004–CE–50–AD.

FOR FURTHER INFORMATION CONTACT: Andrew McAnaul, Aerospace Engineer, ASW–150 (c/o MIDO–43), 10100 Reunion Place, Suite 650, San Antonio, Texas 78216; telephone: (210) 308–3365; fax: (210) 308–3370.

SUPPLEMENTARY INFORMATION:

Discussion

On August 3, 2006, we issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all Air Tractor, Inc. (Air Tractor) Model AT–602 airplanes. This proposal was published in the **Federal Register** as a supplemental notice of proposed rulemaking (NPRM) on August 9, 2006 (71 FR 45467). The supplemental NPRM proposed to require you to repetitively inspect (using the eddy current method) the wing center splice joint two outboard fastener holes on both of the wing main spar lower caps for fatigue cracking; repair or replace any wing main spar lower cap where fatigue cracking is found; and report any fatigue cracking found.

The following table contains AD actions that address the wing spar safe life of the Air Tractor airplane fleet:

RELATED AD ACTIONS

AD No.	Affected air tractor model airplanes	Status
2000–14–51	AT–501, AT–502, and AT–502A	Superseded by AD 2001–10–04.
2001–10–04	AT–400, AT–500, and AT–800 Series	Revised by AD 2001–10–04 R1.
2001–10–04 R1	AT–400, AT–500, and AT–800 Series	Superseded by AD 2002–11–05.
2002–11–05	AT–400, AT–401, AT–401B, AT–402, AT–402A, AT–402B, AT–501, AT–802, and AT–802A.	Revised by AD 2002–11–05 R1.
2002–13–02	AT–300, AT–301, AT–302, AT–400, and AT–400A Airplanes.	Superseded by AD 2003–06–01.
2002–11–03	AT–502, AT–502A, AT–502B, and AT–503A	Superseded by AD 2002–26–05.
2002–26–05	AT–502, AT–502A, AT–502B, and AT–503A	Current.
2003–06–01	AT–300, AT–301, AT–302, AT–400, and AT–400A	Current.
2002–11–05 R1	AT–501	Current.
2006–08–08	AT–400, AT–401, AT–401B, AT–402, AT–402A, and AT–402B.	Current.
2006–08–09	AT–802 and AT–802A	Current.

You may view these ADs at the following Internet Web site addresses: *http://www.airweb.faa.gov/Regulatory_and_Guidance_Library/rgAD.nsf/MainFrame?OpenFrameSet* *www.gpoaccess.gov/fr/index.html*.

Comments

We provided the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal and FAA's response to each comment:

Comment Issue No. 1: Publish the Manufacturer Service Information

Jack Buster with the Modification and Replacement Parts Association (MARPA) provides comments on how the FAA addresses publishing

manufacturer service information as part of a proposed AD action. The commenter states that the proposed rule attempts to require compliance with a public law by reference to a private writing (as referenced in paragraph (e) of the proposed AD). The commenter would like the FAA to incorporate by reference (IBR) the Snow Engineering Company service information.

We agree with Mr. Buster. However, we do not IBR any document in a proposed AD action, instead we IBR the document in the final rule. Since we are issuing the proposal as a final rule AD action, the service information referenced in the NPRM is incorporated by reference.

Comment Issue No. 2: Availability of IBR Documents in the Docket Management System (DMS)

Mr. Buster requests IBR documents be made available to the public by publication in the **Federal Register** or in the Docket Management System (DMS).

We are currently reviewing issues surrounding the posting of service bulletins in the Department of Transportation's DMS as part of the AD docket. Once we have thoroughly examined all aspects of this issue and have made a final determination, we will consider whether our current practice needs to be revised.

Conclusion

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed except for minor editorial corrections. We have determined that these minor corrections:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Costs of Compliance

We estimate that this AD affects 107 airplanes in the U.S. registry.

We estimate the following costs to do the inspection:

Labor cost	Parts cost	Eddy current inspection	Total cost per airplane	Total cost on U.S. operators
Initial inspection and installation of access panels—24 work-hours × $80 = $1,920	$645	*$500	$3,065	$327,955
Repetitive Inspection (each)	60	*800	860	92,020

* Eddy current inspections are an estimated flat cost that includes labor and use of equipment.

We estimate the following costs to do any necessary repairs that would be required based on the results of the proposed inspection. We have no way of determining the number of airplanes that may need this repair:

Labor cost	Parts cost	Total cost per airplane
Install web plate, 8-bolt splice blocks, and cold work fastener holes: Air Tractor estimated a labor cost of $12,100. When broken down into work-hours, we estimated 151 work-hours to complete the task. 151 work-hours × $80 = $12,080	$6,900	$18,980
Cold work fastener holes following Snow Engineering Co. Service Letter #244, dated April 25, 2005: 19 work-hours × $80 = $1,520	1,350	2,870

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 AD.

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 this AD:

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 summary of the costs to comply with this AD (and other information as included in the Regulatory Evaluation) and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include ''Docket No. FAA–2004–20007; Directorate Identifier 2004–CE–50–AD'' in your request.

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 Federal Aviation Administration 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. FAA amends § 39.13 by adding a new AD to read as follows:

2006–23–01 Air Tractor, Inc.: Amendment 39–14798; Docket No. FAA–2004–20007; Directorate Identifier 2004–CE–50–AD.

Effective Date

(a) This AD becomes effective on December 14, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD affects Model AT–602 airplanes, all serial numbers beginning with 602–0337, that are certificated in any category.

Unsafe Condition

(d) This AD is the result of fatigue cracking of the wing main spar lower cap at the centerline splice joint outboard fastener hole. The actions specified in this AD are intended to detect and correct cracks in the wing main spar lower cap, which could result in failure of the spar cap and lead to wing separation and loss of control of the airplane.

Compliance

(e) To address the problem, do the following:

(1) Before doing the initial eddy current inspection required in paragraph (e)(2) of this AD, gain access for the inspection by cutting inspection holes, modifying the vent tube, and installing cover plates; unless already done. Follow Snow Engineering Co. Service Letter #204, revised March 26, 2001, Drawing titled ''602 Spar Inspection Holes and Vent Tube Mod.,'' dated November 13, 2003.

(2) Eddy current inspect the wing center splice joint outboard two fastener holes in both the right and left wing main spar lower caps for cracks. Follow Snow Engineering Co. Process Specification #197, Revised June 4, 2002. For the following airplanes, use the wing spar lower cap hours time-in-service (TIS) schedule below in Table 1 of this AD to do the initial and repetitive inspections:

TABLE 1.—COMPLIANCE TIMES FOR INSPECTION

Serial Nos.	Condition	Initially inspect	Repetitively inspect thereafter at the following intervals
(i) 602–0337 through 602–0584	As manufactured	Upon accumulating 2,000 hours TIS or within 50 hours TIS after December 14, 2006 (the effective date of this AD), whichever occurs later, unless already done.	1,000 hours TIS.
(ii) 602–0337 through 602–0584	Modified with cold-worked fastener holes following Snow Engineering Co. Service Letter #244, dated April 25, 2005.	If performing the cold-working procedure in Service Letter #244, it includes the eddy current inspection.	2,000 hours TIS.

(3) Do an eddy current inspection as part of the cold working procedure in Service Letter #244, dated April 25, 2005, even if the wing spar was previously inspected.

(4) One of the following must do the inspection:

(i) A level 2 or 3 inspector certified in eddy current inspection using the guidelines established by the American Society for Nondestructive Testing or NAS 410; or

(ii) A person authorized to perform AD maintenance work and who has completed and passed the Air Tractor, Inc. training course on Eddy Current Inspection on wing lower spar caps.

(f) For the airplanes listed in paragraph (e)(2) of this AD, as terminating action for the inspection requirements, you may modify your wing by installing part number (P/N) 20996–2 steel web plate and P/N 20985–1/2 8-bolt splice blocks following Snow Engineering Co. Drawing 20998, Revision B, dated September 28, 2004, and cold work the lower spar cap two outboard fastener holes at the wing center section splice connection following Snow Engineering Co. Service Letter #240, dated September 30, 2004.

(g) For all affected airplanes listed in paragraph (e)(2) of this AD, repair or replace any cracked spar cap before further flight. For repair or replacement, do one of the following:

(1) For cracks that can be removed by performing the terminating action listed in paragraph (f) of this AD above, perform the actions in paragraph (f) of this AD.

(2) For cracks that can not be removed by performing the terminating action in paragraph (f) of this AD, you must replace the lower spar caps and associated parts listed in paragraph (h) of this AD before continued flight.

(h) For all Model AT–602 airplanes, upon accumulating 6,500 hours TIS on the wing spar lower caps or within the next 50 hours TIS after December 14, 2006 (the effective date of this AD), whichever occurs later, replace the wing lower spar caps, splice blocks and hardware, wing attach angles and hardware, and install the steel web plate, P/N 20996–2, if not already installed, following Snow Engineering Co. Drawing 20776, Sheet 2, Revision A, dated August 30, 2004. Compliance with this paragraph terminates the inspection requirements of paragraph (e)(2) of this AD.

(i) Report any cracks you find within 10 days after the cracks are found or within 10 days after December 14, 2006 (the effective date of this AD), whichever occurs later. Include in your report the airplane serial number, airplane TIS, wing spar cap TIS, crack location and size, corrective action taken, and a point of contact name and phone number. Send your report to Andrew McAnaul, Aerospace Engineer, ASW–150 (c/o MIDO–43), 10100 Reunion Place, Suite 650, San Antonio, Texas 78216; telephone: (210) 308–3365; facsimile: (210) 308–3370. The Office of Management and Budget (OMB) approved the information collection requirements contained in this regulation under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 and those following sections) and assigned OMB Control Number 2120–0056.

Alternative Methods of Compliance (AMOCs)

(j) The Manager, Fort Worth Airplane Certification Office, FAA, ATTN: Andrew McAnaul, Aerospace Engineer, ASW–150 (c/o MIDO–43), 10100 Reunion Place, Suite 650, San Antonio, Texas 78216; telephone: (210) 308–3365; facsimile: (210) 308–3370, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

Related Information

(k) None.

Material Incorporated by Reference

(l) You must use the service information specified in Table 2 of this AD 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 Air Tractor, Inc. at address P.O. Box 485, Olney, Texas 76374; telephone: (940) 564–5616; or facsimile: (940) 564–5612.

(3) You may review copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, 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/code_of_federal_regulations/ibr_locations.html.*

TABLE 2.—MATERIAL INCORPORATED BY REFERENCE

Snow Engineering Co. service information	Date
Process Specification #197.	Revised June 4, 2002.
Drawing 20776, Sheet 2, Revision A.	August 30, 2004.
Service Letter #204 ...	Revised March 26, 2001.
Service Letter #240 ...	September 30, 2004.
Drawing 20998, Revision B.	September 28, 2004.
Service Letter #244 ...	April 25, 2005.

Issued in Kansas City, Missouri, on October 26, 2006.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–18688 Filed 11–8–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9296]

RIN 1545–BD60

Credit for Increasing Research Activities

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations relating to the computation and allocation of the credit for increasing research activities for members of a controlled group of corporations or a group of trades or businesses under common control. These final regulations reflect changes made to section 41 by the Revenue Reconciliation Act of 1989, which introduced the current computational regime for the credit, and the Small Business Job Protection Act of 1996, which introduced the alternative incremental research credit.

DATES: *Effective Date:* These regulations are effective November 9, 2006.

Applicability Dates: For dates of applicability see §§ 1.41–6(j) and 1.41–8(b)(5).

FOR FURTHER INFORMATION CONTACT: Nicole R. Cimino (202) 622–3120 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document amends 26 CFR part 1 to provide revised rules for the research credit under section 41, specifically section 41(f). On May 24, 2005, the Treasury Department and the IRS published in the **Federal Register** (70 FR 29662) proposed amendments to the regulations under section 41(f) by cross-reference to temporary regulations (REG–134030–04) and temporary regulations (70 FR 29596) (TD 9205) (collectively, the 2005 regulations) relating to the computation and allocation of the credit for increasing research activities (research credit) under section 41 for members of a controlled group of corporations or a group of trades or businesses under common control (controlled groups). The 2005 notice of proposed rulemaking withdrew the proposed regulations published in the **Federal Register** on July 29, 2003 (68 FR 44499) (REG–133791–02) (the 2003 proposed regulations). A public hearing was held on October 19, 2005. After considering the comments received and the statements made at the public hearing regarding the 2005 regulations, the 2005 regulations are adopted as revised by this Treasury decision. These final regulations generally retain the provisions of the 2005 regulations with the modifications discussed below.

Summary of Comments and Explanation of Provisions

Allocation of the Group Credit

The 2005 regulations required that the group credit that did not exceed the sum of the stand-alone entity credits of all the members of the group be allocated among the members of a controlled group in proportion to the relative amounts of each individual member's stand-alone entity credit, computed for each member using the method that would have yielded the largest stand-alone entity credit for that member. Any excess of the group credit over the sum of the stand-alone entity credits of all the members of the group was allocated among all the members of the group based on the ratio of an individual member's qualified research expenditures (QREs) to the sum of all the members' QREs.

Although commentators generally agreed that the 2005 regulations fixed the anomalous results (for example, none of the group credit would be allocated to the members of the controlled group if no member had stand-alone entity credits) created by the method in the 2003 proposed regulations, some commentators continued to disagree with the stand-alone entity credit method. Commentators again suggested that the members of a controlled group should be permitted to use any reasonable method to allocate the group credit as long as the group's members collectively do not claim more than 100 percent of the group credit, or that if one method must be prescribed for all situations, a method that allocates the group credit based on the relative amounts of each member's total QREs (gross QREs method) is more appropriate than any other method.

The Treasury Department and the IRS continue to believe that the allocation method under section 41(f) should be based on a group member's QREs in excess of a base amount, and that the stand-alone entity credit method reflects the incremental nature of the credit. The Treasury Department and the IRS believe that the stand-alone entity credit method of the 2005 regulations is consistent with the purpose of section 41(f) and its underlying legislative history. Further, a single, prescribed method is necessary to ensure the group's members collectively do not claim more than 100 percent of the group credit. For the reasons stated above and in the preamble to the 2005 regulations, the final regulations do not adopt the changes suggested by the commentators, and retain the allocation method contained in the 2005 regulations.

Special Allocation Rule for Consolidated Groups

The 2005 regulations provide that, for purposes of allocating the group credit among the members of a controlled group (first-tier allocation), a consolidated group (whose members are members of the controlled group) is treated as a single member of the controlled group, and a single stand-alone entity credit is computed for the consolidated group. If the consolidated group is the only member of the controlled group, the stand-alone entity credit computed for the consolidated group is equal to the group credit. The portion of the group credit allocated to a consolidated group must be allocated among the members of the consolidated group (second-tier allocation) in proportion to the stand-alone entity credits of the members of the consolidated group. Under the 2005 regulations, this rule applied only to taxable years ending on or after May 24, 2005.

One commentator argued that the treatment of a consolidated group as a single member of a controlled group is contrary to the statutory language of sections 41(f)(5) and 1563. The

Secretary is granted broad authority under section 1502 to provide rules regarding the determination of the tax liability of an affiliated group of corporations filing a consolidated return. The Treasury Department and the IRS believe that the treatment of a consolidated group as a single member of a controlled group of corporations for purposes of section 41(f) is within the broad authority of section 1502. Moreover, this treatment is consistent with the single entity treatment of a consolidated group under certain other provisions of the Code.

One commentator argued that treating a consolidated group as a single member of the controlled group adds unnecessary complexity and is administratively burdensome because it requires additional rounds of allocations of each consolidated group's credit among its members and additional computations of each consolidated group member's stand-alone entity credit. One commentator urged that, if the consolidated group rule is retained, then the final regulations should not provide specific rules for how the second-tier allocation is to be made.

The Treasury Department and the IRS continue to believe that computing a stand-alone entity credit for each member of a consolidated group does not impose a greater burden than computing a stand-alone entity credit for a corporation that is not a member of a consolidated group. The Treasury Department and the IRS also believe that specific allocation rules are necessary with respect to the second-tier allocation in order to prevent distortions and provide certainty concerning each consolidated group member's share of the credit, for example, if a member ceases to be a member of the consolidated group or if a member's share of credits becomes subject to section 383. Accordingly, the final regulations retain the rules contained in the 2005 regulations. The final regulations make clear, however, that the special allocation rule for consolidated groups applies prospectively only. Accordingly, the consolidated group rule contained in these final regulations applies only to taxable years ending on or after the date these final regulations are published in the **Federal Register**. For taxable years ending on or after May 24, 2005, and before the date these final regulations are published in the **Federal Register**, taxpayers must use the special allocation rule for consolidated groups contained in the 2005 regulations. However, taxpayers may choose to apply the rule retroactively to taxable years ending before May 24, 2005, provided that all the members of the controlled group treat the consolidated group as a single member of the controlled group.

One commentator stated that the 2005 regulations are unclear whether, for purposes of the second-tier allocation, each consolidated group member's stand-alone entity credit is to be computed in the same manner as a controlled group member's stand-alone entity credit is computed for purposes of a first-tier allocation (that is, using the method that would have yielded the largest stand-alone entity credit for that consolidated group member). The Treasury Department and the IRS believe that the final regulations are clear that this is the rule, as they provide that ''the principles of paragraph (c)'' (which contains the rule) apply for purposes of the second-tier allocation. In addition, this rule is illustrated in *Example 3* of § 1.41–6(e).

Start-Up Companies

For purposes of computing the group credit, § 1.41–6T(b)(2) of the 2005 regulations treated a controlled group as a start-up company if the first taxable year in which at least one member of the group had gross receipts and at least one member of the group had QREs begins after December 31, 1983; or there were fewer than 3 taxable years beginning after December 31, 1983, and before January 1, 1989, in which at least one member of the group had gross receipts and at least one member of the group had QREs. One commentator suggested that the rule was not clear in a situation in which one member of the group has both gross receipts and QREs in a taxable year beginning before January 1, 1984. Although the Treasury Department and IRS believe that the temporary regulations are clear that the start-up rules do not apply if the group had QREs and gross receipts in a year beginning before January 1, 1984, no matter which member(s) of the group had the QREs and gross receipts, the final regulations clarify the start-up company rule of § 1.41–6(b)(2) to make it explicit.

Alternative Incremental Research Credit

Section 41(c)(4) provides an election to determine the research credit using the alternative incremental research credit (AIRC) computation. Section 41(c)(4)(B) provides that the election to use the AIRC method applies to all succeeding taxable years unless revoked with the consent of the Secretary. The 2005 regulations generally provide that elections (or revocations) of the AIRC method are made by completing the portion of Form 6765, ''Credit for Increasing Research Activities,'' relating to the AIRC method (in the case of an election of the AIRC method) or to the regular method (in the case of a revocation of the AIRC method), and attaching the completed form to the taxpayer's timely filed original Federal income tax return for the year to which the election (or revocation) applies. Once an election (or revocation) is made for a taxable year, the taxpayer may not change the election (or revocation) on an amended return. The 2005 regulations provide that the provisions relating to AIRC elections and revocations apply to taxable years ending on or after May 24, 2005.

The 2005 regulations provide special rules for making (or revoking) an election for controlled groups under section 41(f)(1) (in which one or more of the members do not join in filing a consolidated return). In such cases, the designated member must make (or revoke) the AIRC election on behalf of the group's members. The election (or revocation) by the designated member is binding on all the members of the group for the taxable year to which the election (or revocation) relates. The 2005 regulations provide that the designated member is that member of the group that is allocated the greatest amount of the group credit. In the event the members of a group compute the group credit using different methods (either the regular method or the AIRC method) and at least two members of the group qualify as the designated member, the designated member is the member that computes the group credit using the method that yields the greater group credit. If all the members of a controlled group are members of a single consolidated group, the AIRC election (or revocation) is made by the agent of the consolidated group, determined pursuant to the rules of § 1.1502–77.

One commentator suggested that the language contained in § 1.41–8T(b)(4)(i) of the 2005 regulations be clarified to avoid any implication that additional requirements (other than completing the appropriate portion of Form 6765 and attaching the form to a timely filed original Federal income tax return) apply to a designated member seeking to elect (or revoke) the AIRC method. The final regulations clarify that a designated member must follow the same procedures for making (or revoking) an AIRC election that apply to other taxpayers.

A commentator also noted that the regulations do not address whether and how changes to a member's research credit information after the original Federal income tax return is timely filed may affect its status as the designated

member. The commentator suggested that the final regulations clarify what happens if the designated member at the time of filing subsequently is determined not to be the designated member. The Treasury Department and the IRS agree that clarification regarding this issue is needed. Accordingly, the final regulations are clarified to provide that the term *designated member* means the member of the group that is allocated the greatest amount of the group credit under paragraph (c) of § 1.41–6 based on the amount of credit reported on the original timely filed Federal income tax return.

A commentator questioned what happens if the designated member fails to timely file an original Federal income tax return. The Treasury Department and the IRS believe that the designated member must timely file a return in order for the group to elect (or revoke) the AIRC method. Accordingly, if the designated member fails to timely file for the current credit year (and thus, fails to elect (or revoke) the AIRC method for that year), then the method used by the group in the immediately preceding credit year remains the method in effect for the current credit year. The final regulations are amended to clarify this rule.

The commentator also suggested that the final regulations allow the members of a controlled group to decide which member of the group will be the designated member. The Treasury Department and the IRS believe that it is necessary to have a bright-line test, applicable to all controlled groups, to provide certainty as to the identity of the designated member, and that to allow the members of a controlled group to decide which member's election (or revocation) will bind all the members of the group would not provide certainty in all situations. Accordingly, this comment has not been adopted.

Another commentator urged the Treasury Department and the IRS to allow taxpayers to elect the AIRC method on an amended return. Alternatively, the commentator argued that if taxpayers cannot elect the AIRC method on an amended return, the final regulations should provide a special rule under which a taxpayer's research credit, computed by the taxpayer under the regular method, may not be adjusted on audit below the amount that would have been allowable under the AIRC method. The Treasury Department and the IRS believe that requiring an election to be made only on a timely filed original Federal income tax return is consistent with the statute and the doctrine of elections, and that the commentator's suggestion would inappropriately limit the authority of the IRS to conduct examinations. Thus, these final regulations retain the rules as contained in the 2005 regulations.

Finally, a commentator suggested that, with respect to the AIRC provisions, the effective date for the 2005 regulations should not be limited to taxable years ending on or after May 24, 2005, but should apply as well to any taxable year ending before that date, provided that the original Federal income tax return for that year has not yet been filed. The Treasury Department and the IRS believe that making this option available retroactively to taxpayers that have not yet filed their returns would treat similarly situated taxpayers differently. For example, taxpayers that already had filed their returns would have been required to request permission for a revocation, while taxpayers that had not filed their returns would be eligible for the automatic revocation procedures set forth in the 2005 regulations. Thus, the Treasury Department and the IRS believe that it is appropriate to limit the application of this rule to prospective use only. The final regulations are effective for taxable years ending on or after the date these final regulations are published in the **Federal Register**. For taxable years ending on or after May 24, 2005, and before the date these final regulations are published in the **Federal Register**, taxpayers must use the rules contained in the 2005 regulations.

Other

Several commentators mentioned that the definition of trade or business in the 2005 regulations was changed from the prior regulations. The change in the 2005 regulations was inadvertent, and the definition has been returned to the language from the regulations existing prior to the issuance of the 2005 regulations. For taxable years prior to the effective date of these final regulations, taxpayers may rely upon the definition of trade or business in these final regulations.

Another commentator requested that the regulations provide guidance as to whether the section 280C(c) election is made member by member or by the entire controlled group. This issue is beyond the scope of these final regulations, as guidance would have to be provided under the authority of section 280C rather than section 41. The Treasury Department and the IRS may consider addressing this issue in separate guidance.

Effective Date

The preamble to the 2005 regulations states that because the Treasury Department and the IRS decided to retain the general rules for the computation and allocation of the group credit contained in the 2003 proposed regulations, with certain modifications, the 2005 regulations were effective for taxable years ending on or after May 24, 2005. For taxable years prior to those covered by the 2005 regulations, a taxpayer generally may use any reasonable method of computing and allocating the group credit. As explained in the preamble to the 2005 regulations, paragraph (b) of the 2005 regulations, relating to the computation of the group credit, and paragraph (c) of the 2005 regulations, relating to the allocation of the group credit, apply to taxable years ending on or after December 29, 1999, if the members of a controlled group, as a whole, claimed more than 100 percent of the amount that would be allowable under paragraph (b). In the case of a controlled group whose members have different taxable years and whose members use inconsistent methods of allocation, the members of the controlled group are deemed to have, as a whole, claimed more than 100 percent of the amount that would be allowable under paragraph (b).

One commentator argued that the 2005 regulations should not be effective until final regulations are published in the **Federal Register**. The Treasury Department and the IRS continue to believe that the general May 24, 2005, effective date is appropriate, because these final regulations are substantially similar to the 2003 proposed regulations.

Another commentator objected to the use of the December 29, 1999, effective date for the portions of the 2005 regulations that are retroactive, because that is the date that the previous proposed regulations (2000 proposed regulations) were sent to the **Federal Register**, and not the date (January 4, 2000) on which they were published. The Treasury Department and the IRS continue to believe that the December 29, 1999, effective date is the appropriate date, because this is the date the 2000 proposed regulations were filed with the **Federal Register** and, thus, were made available to the public. Additionally, section 7805(b)(3) allows any regulation to take effect or apply retroactively to prevent abuse.

Another commentator criticized the retroactive application of the rule requiring that a member's stand-alone entity credit be computed using whichever method results in the greater stand-alone entity credit for that member, without regard to the method used to compute the group credit. The

commentator stated that the incentive effect sought can only be achieved prospectively, and that to allow use of the rule retroactively may cause abusive inconsistencies where some members of the group rely on the 2003 proposed regulations, while other members amend to follow the new rule. While the Treasury Department and the IRS do not want to encourage potentially abusive inconsistencies in years that taxpayers believe are settled, the Treasury Department and the IRS believe that one bright line is appropriate and do not want to treat similarly situated taxpayers differently.

Another commentator suggested that the final regulations make clear that the special rule for consolidated groups is to be applied prospectively only. The 2005 regulations required paragraph (b) of those regulations, relating to the computation of the group credit, and paragraph (c) of those regulations, relating to the allocation of the group credit, to be applied retroactively in certain instances of abuse. The 2005 regulations did not require paragraph (d), relating to the special rule for consolidated groups, to be applied retroactively. Thus, the Treasury Department and IRS did not intend that taxpayers be required to apply retroactively the special rule for consolidated groups. Accordingly, the final regulations clarify that the special rule for consolidated groups applies only to taxable years ending on or after the date these final regulations are published in the **Federal Register**. The 2005 regulations apply for taxable years ending on or after May 24, 2005, and before the date these final regulations are published in the **Federal Register**. However, a controlled group may choose to apply the rule in paragraph (d) retroactively if all the members of the group do so, so that the controlled group, as a whole, does not claim more than 100 percent of the group credit.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because these regulations do not impose on small entities a collection of information requirement, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these final regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Nicole R. Cimino, Office of Associate Chief Counsel (Passthroughs and Special Industries). However, personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

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

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by removing the entry for § 1.41–6T and adding an entry in numerical order to read, in part, as follows:

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

Section 1.41–6 also issued under 26 U.S.C. 1502. * * *

■ **Par. 2.** In § 1.41–0, the table of contents is amended by removing the entries for § 1.41–6T and § 1.41–8T and adding entries for § 1.41–6 and § 1.41–8 to read as follows:

§ 1.41–0 Table of contents.

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§ 1.41–6 Aggregation of expenditures.

(a) Controlled groups of corporations; trades or businesses under common control.
(1) In general.
(2) Consolidated groups.
(3) Definitions.
(b) Computation of the group credit.
(1) In general.
(2) Start-up companies.
(c) Allocation of the group credit.
(1) In general.
(2) Stand-alone entity credit.
(d) Special rules for consolidated groups.
(1) In general.
(2) Start-up company status.
(3) Special rule for allocation of group credit among consolidated group members.
(e) Examples.
(f) For taxable years beginning before January 1, 1990.
(g) Tax accounting periods used.
(1) In general.
(2) Special rule when timing of research is manipulated.
(h) Membership during taxable year in more than one group.
(i) Intra-group transactions.
(1) In general.
(2) In-house research expenses.
(3) Contract research expenses.
(4) Lease payments.
(5) Payment for supplies.
(j) Effective date.

* * * * *

§ 1.41–8 Special rules for taxable years ending on or after May 24, 2005.

(a) Alternative incremental credit.
(b) Election.
(1) In general.
(2) Time and manner of election.
(3) Revocation.
(4) Special rules for controlled groups.
(5) Effective date.

■ **Par. 3.** Section 1.41–6 is added to read as follows.

§ 1.41–6 Aggregation of expenditures.

(a) *Controlled group of corporations; trades or businesses under common control*—(1) *In general.* To determine the amount of research credit (if any) allowable to a trade or business that at the end of its taxable year is a member of a controlled group, a taxpayer must—

(i) Compute the group credit in the manner described in paragraph (b) of this section; and

(ii) Allocate the group credit among the members of the group in the manner described in paragraph (c) of this section.

(2) *Consolidated groups.* For special rules relating to consolidated groups, see paragraph (d) of this section.

(3) *Definitions.* For purposes of this section—

(i) *Consolidated group* has the meaning set forth in § 1.1502–1(h).

(ii) *Controlled group* and *group* mean a controlled group of corporations, as defined in section 41(f)(5), or a group of trades or businesses under common control. For rules for determining whether trades or businesses are under common control, see § 1.52–1 (b) through (g).

(iii) *Credit year* means the taxable year for which the member is computing the credit.

(iv) *Group credit* means the research credit (if any) allowable to a controlled group.

(v) *Trade or business* means a sole proprietorship, a partnership, a trust, an estate, or a corporation that is carrying on a trade or business (within the meaning of section 162). Any corporation that is a member of a commonly controlled group shall be deemed to be carrying on a trade or business if any other member of that group is carrying on any trade or business.

(b) *Computation of the group credit*—(1) *In general.* All members of a controlled group are treated as a single taxpayer for purposes of computing the research credit. The group credit is

computed by applying all of the section 41 computational rules on an aggregate basis. All members of a controlled group must use the same method of computation, either the method described in section 41(a) or the alternative incremental research credit (AIRC) method described in section 41(c)(4), in computing the group credit for a credit year.

(2) *Start-up companies*—(i) *In general.* For purposes of computing the group credit, a controlled group is treated as a start-up company for purposes of section 41(c)(3)(B)(i) if—

(A) There was no taxable year beginning before January 1, 1984, in which a member of the group had gross receipts and either the same member or another member also had qualified research expenditures (QREs); or

(B) There were fewer than three taxable years beginning after December 31, 1983, and before January 1, 1989, in which a member of the group had gross receipts and either the same member or another member also had QREs.

(ii) *Example.* The following example illustrates the principles of paragraph (b)(2)(i) of this section:

Example. A, B, and C, all of which are calendar year taxpayers, are members of a controlled group. During the 1983 taxable year, A had QREs, but no gross receipts; B had gross receipts, but no QREs; and C had no QREs or gross receipts. The 1984 taxable year was the first taxable year for which each of A, B, and C had both QREs and gross receipts. A, B, and C had both QREs and gross receipts in 1985, 1986, 1987, and 1988. Because the first taxable year for which each of A, B, and C had both QREs and gross receipts began after December 31, 1983, each of A, B, and C is a start-up company under section 41(c)(3)(B)(i) and each is a start-up company for purposes of computing the stand-alone entity credit. During the 1983 taxable year, at least one member of the group, A, had QREs and at least one member of the group, B, had gross receipts, thus, the group had both QREs and gross receipts in 1983. Therefore, the controlled group is not a start-up company because the first taxable year for which the group had both QREs and gross receipts did not begin after December 31, 1983, and there were not fewer than three taxable years beginning after December 31, 1983, and before January 1, 1989, in which a member of the group had gross receipts and QREs.

(iii) *First taxable year after December 31, 1993, for which the controlled group had QREs.* In the case of a controlled group that is treated as a start-up company under section 41(c)(3)(B)(i) and paragraph (b)(2)(i) of this section, for purposes of determining the group's fixed-base percentage under section 41(c)(3)(B)(ii), the first taxable year after December 31, 1993, for which the group has QREs is the first taxable year in which at least one member of the group has QREs.

(iv) *Example.* The following example illustrates the principles of paragraph (b)(2)(iii) of this section:

Example. D, E, and F, all of which are calendar year taxpayers, are members of a controlled group. The group is treated as a start-up company under section 41(c)(3)(B)(i) and paragraph (b)(2)(i) of this section. The first taxable year after December 31, 1993, for which D had QREs was 1994. The first taxable year after December 31, 1993, for which E had QREs was 1995. The first taxable year after December 31, 1993, for which F had QREs was 1996. Because the 1994 taxable year was the first taxable year after December 31, 1993, for which at least one member of the group, D, had QREs, for purposes of determining the group's fixed-based percentage under section 41(c)(3)(B)(ii), the 1994 taxable year was the first taxable year after December 31, 1993, for which the group had QREs.

(c) *Allocation of the group credit*—(1) *In general.* (i) To the extent the group credit (if any) computed under paragraph (b) of this section does not exceed the sum of the stand-alone entity credits of all of the members of a controlled group, computed under paragraph (c)(2) of this section, such group credit shall be allocated among the members of the controlled group in proportion to the stand-alone entity credits of the members of the controlled group, computed under paragraph (c)(2) of this section:

$$\text{group credit that does not exceed sum of all the members' stand-alone entity credits} \times \frac{\text{member's stand-alone entity credit}}{\text{sum of all the members' stand-alone entity credits.}}$$

(ii) To the extent that the group credit (if any) computed under paragraph (b) of this section exceeds the sum of the stand-alone entity credits of all of the members of the controlled group, computed under paragraph (c)(2) of this section, such excess shall be allocated among the members of a controlled group in proportion to the QREs of the members of the controlled group:

$$(\text{group credit} - \text{sum of all the members' stand-alone entity credits}) \times \frac{\text{member's QREs}}{\text{sum of all the members' QREs.}}$$

(2) *Stand-alone entity credit.* The term *stand-alone entity credit* means the research credit (if any) that would be allowable to a member of a controlled group if the credit were computed as if section 41(f)(1) did not apply, except that the member must apply the rules provided in paragraphs (d)(1) (relating to consolidated groups) and (i) (relating to intra-group transactions) of this section. Each member's stand-alone entity credit for any credit year must be computed under whichever method (the method described in section 41(a) or the method described in section 41(c)(4)) results in the greater stand-alone entity credit for that member, without regard to the method used to compute the group credit.

(d) *Special rules for consolidated groups*—(1) *In general.* For purposes of applying paragraph (c) of this section, a consolidated group whose members are members of a controlled group is treated as a single member of the controlled group and a single stand-alone entity credit is computed for the consolidated group.

(2) *Start-up company status.* A consolidated group's status as a start-up company and the first taxable year after December 31, 1993, for which a consolidated group has QREs are determined in accordance with the principles of paragraph (b)(2) of this section.

(3) *Special rule for allocation of group credit among consolidated group members.* The portion of the group credit that is allocated to a consolidated group is allocated to the members of the consolidated group in accordance with the principles of paragraph (c) of this section. However, for this purpose, the stand-alone entity credit of a member of a consolidated group is computed without regard to section 41(f)(1), but

with regard to paragraph (i) of this section.

(e) *Examples.* The following examples illustrate the provisions of this section. Unless otherwise stated, no members of a controlled group are members of a consolidated group, no member of the group made any basic research payments or paid or incurred any amounts to an energy research consortium, and except as provided in *Example 6,* the group has not made an AIRC election:

Example 1. Group credit is less than sum of members' stand-alone entity credits—(i) *Facts.* A, B, and C, all of which are calendar-year taxpayers, are members of a controlled group. For purposes of computing the group credit for the 2004 taxable year (the credit year), A, B, and C had the following:

	A	B	C	Group aggregate
Credit Year QREs	$200x	$20x	$110x	$330x
1984–1988 QREs	40x	10x	100x	150x
1984–1988 Gross Receipts	1,000x	350x	150x	1,500x
Average Annual Gross Receipts for 4 Years Preceding the Credit Year	1,200x	200x	300x	1,700x

(ii) *Computation of the group credit*—(A) *In general.* The research credit allowable to the group is computed as if A, B, and C were one taxpayer. The group credit is equal to 20 percent of the excess of the group's aggregate credit year QREs ($330x) over the group's base amount ($170x). The group credit is 0.20 × ($330x − $170x), which equals $32x.

(B) *Group's base amount—(1) Computation.* The group's base amount equals the greater of: The group's fixed-base percentage (10 percent) multiplied by the group's aggregate average annual gross receipts for the 4 taxable years preceding the credit year ($1,700x), or the group's minimum base amount ($165x). The group's base amount, therefore, is $170x, which is the greater of: 0.10 × $1,700x, which equals $170x, or $165x.

(2) Group's minimum base amount. The group's minimum base amount is 50 percent of the group's aggregate credit year QREs. The group's minimum base amount is 0.50 × $330x, which equals $165x.

(3) Group's fixed-base percentage. The group's fixed-base percentage is the lesser of: The ratio that the group's aggregate QREs for the taxable years beginning after December 31, 1983, and before January 1, 1989, bear to the group's aggregate gross receipts for the same period, or 16 percent (the statutory maximum). The group's fixed-base percentage, therefore, is 10 percent, which is the lesser of: $150x/$1,500x, which equals 10 percent, or 16 percent.

(iii) *Allocation of the group credit.* Under paragraph (c)(2) of this section, each member's stand-alone entity credit must be computed using the method that results in the greater stand-alone entity credit for that member. The stand-alone entity credit for each of A, B, and C is greater using the method described in section 41(a). Therefore, the stand-alone entity credit for each of A, B, and C must be computed using the method described in section 41(a). A's stand-alone entity credit is $20x. B's stand-alone entity credit is $2x. C's stand-alone entity credit is $11x. The sum of the members' stand-alone entity credits is $33x. Because the group credit of $32x is less than the sum of the stand-alone entity credits of all the members of the group ($33x), the group credit is allocated among the members of the group based on the ratio that each member's stand-alone entity credit bears to the sum of the stand-alone entity credits of all the members of the group. The $32x group credit is allocated as follows:

	A	B	C	Total
Stand-Alone Entity Credit	$20x	$2x	$11x	$33x
Allocation Ratio (Stand-Alone Entity Credit/Sum of Stand-Alone Entity Credits)	20/33	2/33	11/33	.....
Multiplied by: Group Credit	$32x	$32x	$32x	.....
Equals: Credit Allocated to Member	$19.39x	$1.94x	$10.67x	32x

Example 2. Group credit exceeds sum of members' stand-alone entity credits—(i) *Facts.* D, E, F, and G, all of which are calendar-year taxpayers, are members of a controlled group. For purposes of computing the group credit for the 2004 taxable year (the credit year), D, E, F, and G had the following:

	D	E	F	G	Group aggregate
Credit Year QREs	$580x	$10x	$70x	$15x	$675x
1984–1988 QREs	500x	25x	100x	25x	650x
1984–1988 Gross Receipts	4,000x	5,000x	2,000x	10,000x	21,000x
Average Annual Gross Receipts for 4 Years Preceding the Credit Year	5,000x	5,000x	2,000x	5,000x	17,000x

(ii) *Computation of the group credit*—(A) *In general.* The research credit allowable to the group is computed as if D, E, F, and G were one taxpayer. The group credit is equal to 20 percent of the excess of the group's aggregate credit year QREs ($675x) over the group's base amount ($527x). The group credit is 0.20 × ($675x − $527x), which equals $29.76x.

(B) *Group's base amount—(1) Computation.* The group's base amount equals the greater of: The group's fixed-base percentage (3.10 percent) multiplied by the group's aggregate average annual gross receipts for the 4 taxable years preceding the credit year ($17,000x), or the group's minimum

base amount ($337.50x). The group's base amount, therefore, is $527x, which is the greater of: 0.031 × $17,000x, which equals $527x, or $337.50x.

(2) Group's minimum base amount. The group's minimum base amount is 50 percent of the group's aggregate credit year QREs. The group's minimum base amount is 0.50 × $675x, which equals $337.50x.

(3) Group's fixed-base percentage. The group's fixed-base percentage is the lesser of: The ratio that the group's aggregate QREs for the taxable years beginning after December 31, 1983, and before January 1, 1989, bear to the group's aggregate gross receipts for the same period, or 16 percent (the statutory maximum). The group's fixed-base percentage, therefore, is 3.10 percent, which is the lesser of: $650x/$21,000x, which equals 3.10 percent, or 16 percent.

(iii) *Allocation of the group credit.* Under paragraph (c)(2) of this section, each member's stand-alone entity credit must be computed using the method that results in the greater stand-alone entity credit for that member. The stand-alone entity credits for D ($19.46x) and F ($1.71x) are greater using the AIRC method. Therefore, the stand-alone entity credits for D and F must be computed using the AIRC method. The stand-alone entity credit for G ($0.50x) is greater using the method described in section 41(a). Therefore, the stand-alone entity credit for G must be computed using the method described in section 41(a). E's stand-alone entity credit computed under either method is zero. The sum of the members' stand-alone entity credits is $21.67x. Because the group credit of $29.76x is greater than the sum of the stand-alone entity credits of all the members of the group ($21.67x), each member of the group is allocated an amount of the group credit equal to that member's stand-alone entity credit. The excess of the group credit over the sum of the members' stand alone entity credits ($8.09x) is allocated among the members of the group based on the ratio that each member's QREs bear to the sum of the QREs of all the members of the group. The $29.76x group credit is allocated as follows:

	D	E	F	G	Total
Group Credit					$29.76x
Minus: Sum of Stand-Alone Entity Credits	$19.46x	$0.00x	$1.71x	$0.50x	21.67x
Equals: Excess Group Credit					8.09x
Excess Group Credit	$8.09x	$8.09x	$8.09x	$8.09x	
Multiplied By Allocation Ratio: QREs/Sum of QREs	580/675	10/675	70/675	15/675	
Excess Group Credit Allocated	$6.95x	$0.12x	$0.84x	$0.18x	
Plus: Stand-Alone Entity Credit	$19.46x	$0.00x	$1.71x	$0.50x	
Equals: Credit Allocated to Member	$26.41x	$0.12x	$2.55x	$0.68x	$29.76x

Example 3. Consolidated group within a controlled group—(i) *Facts.* The facts are the same as in *Example 2*, except that D and E file a consolidated return.

(ii) *Allocation of the group credit*—(A) *In general.* For purposes of allocating the controlled group's research credit of $29.76x among the members of the controlled group, D and E are treated as a single member of the controlled group.

(B) *Computation of stand-alone entity credits.* The stand-alone entity credit for the consolidated group is computed by treating D and E as a single entity. Under paragraph (c)(2) of this section, the stand-alone entity credit for each member must be computed using the method that results in the greater stand-alone entity credit for that member. The stand-alone entity credit for each of the DE consolidated group ($17.55x) and F ($1.71x) is greater using the AIRC method. Therefore, the stand-alone entity credit for each of the DE consolidated group and F must be computed using the AIRC method. The stand-alone entity credit for G ($0.50x) is greater using the method described in section 41(a). Therefore, the stand-alone entity credit for G must be computed using the method described in section 41(a). The sum of the members' stand-alone entity credits is $19.76x.

(C) *Allocation of controlled group credit.* Because the group credit of $29.76x is greater than the sum of the stand-alone entity credits of all the members of the group ($19.76x), each member of the group is allocated an amount of the group credit equal to that member's stand-alone entity credit. The excess of the group credit over the sum of the members' stand-alone entity credits ($10.00x) is allocated among the members of the group based on the ratio that each member's QREs bear to the sum of the QREs of all the members of the group. The group credit of $29.76x is allocated as follows:

	DE	F	G	Total
Group Credit				$29.76x
Minus: Sum of Stand-Alone Entity Credits	$17.55x	$1.71x	$0.50x	19.76x
Equals: Excess Group Credit				$10.00x
Excess Group Credit	$10.00x	$10.00x	$10.00x	
Multiplied By Allocation Ratio: QREs/Sum of QREs	590/675	70/675	15/675	
Excess Group Credit Allocated	$8.74x	$1.04x	$0.22x	
Plus: Stand-Alone Entity Credit	$17.55x	$1.71x	$0.50x	
Equals: Credit Allocated to Member	$26.29x	$2.75x	$0.72x	29.76x

(iii) *Allocation of the group credit allocated to consolidated group*—(A) *In general.* The group credit that is allocated to a consolidated group is allocated among the members of the consolidated group in accordance with the principles of paragraph (c) of this section.

(B) *Computation of stand-alone entity credits.* Under paragraph (c)(2) of this section, the stand-alone entity credit for each member of the consolidated group must be computed using the method that results in the greater stand-alone entity credit for that member. The stand-alone entity credit for D ($19.46x) is

greater using the AIRC method. Therefore, the stand-alone entity credit for D must be computed using the AIRC method. The stand-alone entity credit for E is zero under either method. The sum of the stand-alone entity credits of the members of the consolidated group is $19.46x.

(C) *Allocation among members of consolidated group.* Because the amount of the group credit allocated to the consolidated group ($26.29x) is greater than $19.46x, the sum of the stand-alone entity credits of all the members of the consolidated group, each member of the consolidated group is allocated an amount of the group credit allocated to the consolidated group equal to that member's stand-alone entity credit The excess of the group credit allocated to the consolidated group over the sum of the consolidated group members' stand alone entity credits ($6.83x) is allocated among the members of the consolidated group based on the ratio that each member's QREs bear to the sum of the QREs of all the members of the consolidated group. The group credit of $26.29x allocated to the DE consolidated group is allocated between D and E as follows:

	D	E	Total
Group Credit			$26.29x
Minus: Sum of Stand-Alone Entity Credits	$19.46x	$0.00x	19.46x
Excess Group Credit			6.83x
Excess Group Credit	$6.83x	$6.83x	
Multiplied By Allocation Ratio: QREs/Sum of QREs	580/590	10/590	
Excess Group Credit Allocated	$6.71x	$0.12x	
Plus: Stand-Alone Entity Credit	$19.46x	$0.00x	
Equals: Credit Allocated to Member	$26.17x	$0.12x	26.29x

Example 4. Member is a start-up company—(i) *Facts.* H, I, and J, all of which are calendar-year taxpayers, are members of a controlled group. The first taxable year for which J has both QREs and gross receipts begins after December 31, 1983, therefore, J is a start-up company under section 41(c)(3)(B)(i). The first taxable year for which H and I had both QREs and gross receipts began before December 31, 1983, therefore, H and I are not start-up companies under section 41(c)(3)(B)(i). For purposes of computing the group credit for the 2004 taxable year (the credit year), H, I, and J had the following:

	H	I	J	Group aggregate
Credit Year QREs	$200x	$20x	$50x	$270x
1984–1988 QREs	55x	15x	0x	70x
1984–1988 Gross Receipts	1,000x	400x	0x	1,400x
Average Annual Gross Receipts for 4 Years Preceding the Credit Year	1,200x	200x	0x	1,400x

(ii) *Computation of the group credit*—(A) *In general.* The research credit allowable to the group is computed as if H, I, and J were one taxpayer. The group credit is equal to 20 percent of the excess of the group's aggregate credit year QREs ($270x) over the group's base amount ($135x). The group credit is 0.20 × ($270x—$135x), which equals $27x.

(B) *Group's base amount—(1) Computation.* The group's base amount equals the greater of: the group's fixed-base percentage (5 percent) multiplied by the group's aggregate average annual gross receipts for the 4 taxable years preceding the credit year ($1,400x), or the group's minimum base amount ($135x). The group's base amount, therefore, is $135x, which is the greater of: 0.05 × $1,400x, which equals $70x, or $135x.

(2) Group's minimum base amount. The group's minimum base amount is 50 percent of the group's aggregate credit year QREs. The group's minimum base amount is 0.50 × $270x, which equals $135x.

(3) Group's fixed-base percentage. Because the first taxable year in which at least one member of the group has QREs and at least one member of the group has gross receipts does not begin after December 31, 1983, the group is not a start-up company. Therefore, the group's fixed-base percentage is the lesser of: the ratio that the group's aggregate QREs for the taxable years beginning after December 31, 1983, and before January 1, 1989, bear to the group's aggregate gross receipts for the same period, or 16 percent (the statutory maximum). The group's fixed-base percentage, therefore, is 5 percent, which is the lesser of: $70x/$1,400x, which equals 5 percent, or 16 percent.

(iii) *Allocation of the group credit.* Under paragraph (c)(2) of this section, the stand-alone entity credit for each member of the group must be computed using the method that results in the greater stand-alone entity credit for that member. The stand-alone entity credits for H ($20x), I ($2x), and J ($5x) are greater using the method described in section 41(a). Therefore, the stand-alone entity credits for each of H, I, and J must be computed using the method described in section 41(a). The sum of the stand-alone entity credits of the members of the group is $27x. Because the group credit of $27x is equal to the sum of the stand-alone entity credits of all the members of the group ($27x), the group credit is allocated among the members of the group based on the ratio that each member's stand-alone entity credit bears to the sum of the stand-alone entity credits of all the members of the group. The group credit of $27x is allocated as follows:

	H	I	J	Total
Stand-Alone Entity Credit	$20x	$2x	$5x	$27x
Allocation Ratio (Stand-Alone Entity Credit/Sum of Stand-Alone Entity Credits)	20/27	2/27	5/27	
Multiplied by: Group Credit	$27x	$27x	$27x	
Equals: Credit Allocated to Member	$20x	$2x	$5x	27x

Example 5. Group is a start-up company—(i) Facts. K, L, and M, all of which are calendar-year taxpayers, are members of a controlled group. The taxable year ending on December 31, 1999, is the first taxable year in which a member of the group had QREs and either the same member or another member also had gross receipts. In that year, each of K, L, and M had both QREs and gross

receipts. The 2004 taxable year is the fifth taxable year beginning after December 31, 1993, for which at least one member of the group had QREs For purposes of computing the group credit for the 2004 taxable year (the credit year), K, L, and M had the following:

	K	L	M	Group aggregate
Credit Year QREs	$255x	$25x	$100x	$380x
1984–1988 QREs	0x	0x	0x	0x
1984–1988 Gross Receipts	0x	0x	0x	0x
Average Annual Gross Receipts for 4 Years Preceding the Credit Year	1,600x	340x	300x	2,240x

(ii) *Computation of the group credit*—(A) *In general.* The research credit allowable to the group is computed as if K, L, and M were one taxpayer. The group credit is equal to 20 percent of the excess of the group's aggregate credit year QREs ($380x) over the group's base amount ($190x). The group credit is 0.20 ($380x—$190x), which equals $38x.

(B) *Group's base amount—(1) Computation.* The group's base amount equals the greater of: the group's fixed-base percentage (3 percent) multiplied by the group's aggregate average annual gross receipts for the 4 taxable years preceding the credit year ($2,240x), or the group's minimum base amount ($190x). The group's base amount, therefore, is $190x, which is the greater of: 0.03 × $2,240x, which equals $67.20x, or $190x.

(2) Group's minimum base amount. The group's minimum base amount is 50 percent of the group's aggregate credit year QREs. The group's minimum base amount is 0.50 × $380x, which equals $190x.

(3) Group's fixed-base percentage. Because the first taxable year in which at least one member of the group has QREs and at least one member of the group has gross receipts begins after December 31, 1983, the group is treated as a start-up company under section 41(c)(3)(B)(i) and paragraph (b)(2)(i) of this section. Because the 2004 taxable year is the fifth taxable year beginning after December 31, 1993, for which at least one member of the group had QREs, under section 41(c)(3)(B)(ii)(I), the group's fixed-base percentage is 3 percent.

(iii) *Allocation of the group credit.* Under paragraph (c)(2) of this section, the stand-alone entity credit for each member of the group must be computed using the method that results in the greater stand-alone entity credit for that member. The stand-alone entity credit for each of K ($25.5x), L ($2.5x), and M ($10x) is greater using the method described in section 41(a). Therefore the stand-alone entity credits for each of K, L, and M must be computed using the method described in section 41(a). The sum of the stand-alone entity credits of all the members of the group is $38x. Because the group credit of $38x is equal to sum of the stand-alone entity credits of all the members of the group ($38x), the group credit is allocated among the members of the group based on the ratio that each member's stand-alone entity credit bears to the sum of the stand-alone entity credits of all the members of the group. The $38x group credit is allocated as follows:

	K	L	M	Total
Stand-Alone Entity Credit	$25.5x	$2.5x	$10x	$38x
Allocation Ratio (Stand-Alone Entity Credit/Sum of Stand-Alone Entity Credits)	25.5/38	2.5/38	10/38	.....
Multiplied by: Group Credit	$38x	$38x	$38x	.....
Equals: Credit Allocated to Member	$25.5x	$2.5x	$10x	38x

Example 6. Group alternative incremental research credit—(i) Facts. N, O, and P, all of which are calendar-year taxpayers, are members of a controlled group. The research credit under section 41(a) is not allowable to the group for the 2004 taxable year because the group's aggregate QREs for the 2004 taxable year are less than the group's base amount. The group credit is computed using the AIRC rules of section 41(c)(4). For purposes of computing the group credit for the 2004 taxable year (the credit year), N, O, and P had the following:

	N	O	P	Group aggregate
Credit Year QREs	$0x	$20x	$110x	$130x
Average Annual Gross Receipts for 4 Years Preceding the Credit Year	1,200x	200x	300x	1,700x

(ii) *Computation of the group credit.* The research credit allowable to the group is computed as if N, O, and P were one taxpayer. The group credit is equal to the sum of: 2.65 percent of so much of the group's aggregate QREs for the taxable year as exceeds 1 percent of the group's aggregate average annual gross receipts for the 4 taxable years preceding the credit year, but does not exceed 1.5 percent of such average; 3.2 percent of so much of the group's aggregate QREs as exceeds 1.5 percent of such average but does not exceed 2 percent of such average; and 3.75 percent of so much of such QREs as exceeds 2 percent of such average. The group credit is [0.0265 × [($1,700x × 0.015)—($1,700x × 0.01)]] + [0.032 × [($1,700x × 0.02)—($1,700x × 0.015)]] + [0.0375 × [$130x—($1,700x × 0.02)]], which equals $4.10x.

(iii) *Allocation of the group credit.* Under paragraph (c)(2) of this section, the stand-alone entity credit for each member of the group must be computed using the method that results in the greater stand-alone entity credit for that member. The stand-alone entity credit for N is zero under either method. The stand-alone entity credit for each of O ($0.66x) and P ($3.99x) is greater using the AIRC method. Therefore, the stand-alone entity credits for each of O and P must be computed using the AIRC method. The sum of the stand-alone entity credits of the members of the group is $4.65x. Because the group credit of $4.10x is less than the sum of the stand-alone entity credits of all the members of the group ($4.65x), the group credit is allocated among the members of the group based on the ratio that each member's stand-alone entity credit bears to the sum of the stand-alone entity credits of all the members of the group. The $4.10x group credit is allocated as follows:

	N	O	P	Total
Stand-Alone Entity Credit	$0.00x	$0.66x	$3.99x	$4.65x

	N	O	P	Total
Allocation Ratio (Stand-Alone Entity Credit/Sum of Stand-Alone Entity Credits)	0/4.65	0.66/4.65	3.99/4.65	
Multiplied by: Group Credit	$4.10x	$4.10x	$4.10x	
Equals: Credit Allocated to Member	$0.00x	$0.58x	$3.52x	4.10x

(f) *For taxable years beginning before January 1, 1990.* For taxable years beginning before January 1, 1990, see § 1.41–6 as contained in 26 CFR part 1, revised April 1, 2005.

(g) *Tax accounting periods used*—(1) *In general.* The credit allowable to a member of a controlled group is that member's share of the group credit computed as of the end of that member's taxable year. In computing the group credit for a group whose members have different taxable years, a member generally should treat the taxable year of another member that ends with or within the credit year of the computing member as the credit year of that other member. For example, Q, R, and S are members of a controlled group of corporations. Both Q and R are calendar year taxpayers. S files a return using a fiscal year ending June 30. For purposes of computing the group credit at the end of Q's and R's taxable year on December 31, S's fiscal year ending June 30, which ends within Q's and R's taxable year, is treated as S's credit year.

(2) *Special rule when timing of research is manipulated.* If the timing of research by members using different tax accounting periods is manipulated to generate a credit in excess of the amount that would be allowable if all members of the group used the same tax accounting period, then the appropriate Internal Revenue Service official in the operating division that has examination jurisdiction of the return may require each member of the group to calculate the credit in the current taxable year and all future years as if all members of the group had the same taxable year and base period as the computing member.

(h) *Membership during taxable year in more than one group.* A trade or business may be a member of only one group for a taxable year. If, without application of this paragraph, a business would be a member of more than one group at the end of its taxable year, the business shall be treated as a member of the group in which it was included for its preceding taxable year. If the business was not included for its preceding taxable year in any group in which it could be included as of the end of its taxable year, the business shall designate in its timely filed (including extensions) return the group in which it is being included. If the return for a taxable year is due before July 1, 1983, the business may designate its group membership through an amended return for that year filed on or before June 30, 1983. If the business does not so designate, then the appropriate Internal Revenue Service official in the operating division that has examination jurisdiction of the return will determine the group in which the business is to be included.

(i) *Intra-group transactions*—(1) *In general.* Because all members of a group under common control are treated as a single taxpayer for purposes of determining the research credit, transfers between members of the group are generally disregarded.

(2) *In-house research expenses.* If one member of a group performs qualified research on behalf of another member, the member performing the research shall include in its QREs any in-house research expenses for that work and shall not treat any amount received or accrued as funding the research. Conversely, the member for whom the research is performed shall not treat any part of any amount paid or incurred as a contract research expense. For purposes of determining whether the in-house research for that work is qualified research, the member performing the research shall be treated as carrying on any trade or business carried on by the member on whose behalf the research is performed.

(3) *Contract research expenses.* If a member of a group pays or incurs contract research expenses to a person outside the group in carrying on the member's trade or business, that member shall include those expenses as QREs. However, if the expenses are not paid or incurred in carrying on any trade or business of that member, those expenses may be taken into account as contract research expenses by another member of the group provided that the other member—

(i) Reimburses the member paying or incurring the expenses; and

(ii) Carries on a trade or business to which the research relates.

(4) *Lease Payments.* The amount paid or incurred to another member of the group for the lease of personal property owned by a member of the group is not taken into account for purposes of section 41. Amounts paid or incurred to another member of the group for the lease of personal property owned by a person outside the group shall be taken into account as in-house research expenses for purposes of section 41 only to the extent of the lesser of—

(i) The amount paid or incurred to the other member; or

(ii) The amount of the lease expenses paid to the person outside the group.

(5) *Payment for supplies.* Amounts paid or incurred to another member of the group for supplies shall be taken into account as in-house research expenses for purposes of section 41 only to the extent of the lesser of—

(i) The amount paid or incurred to the other member; or

(ii) The amount of the other member's basis in the supplies.

(j) *Effective date*—(1) *In general.* Except for paragraph (d) of this section, these regulations are applicable for taxable years ending on or after May 24, 2005. Generally, a taxpayer may use any reasonable method of computing and allocating the credit (including use of the consolidated group rule contained in paragraph (d) of this section) for taxable years ending before May 24, 2005. However, paragraph (b) of this section, relating to the computation of the group credit, and paragraph (c) of this section, relating to the allocation of the group credit, (applied without regard to paragraph (d) of this section) will apply to taxable years ending on or after December 29, 1999, if the members of a controlled group, as a whole, claimed more than 100 percent of the amount that would be allowable under paragraph (b) of this section. In the case of a controlled group whose members have different taxable years and whose members use inconsistent methods of allocation, the members of the controlled group shall be deemed to have, as a whole, claimed more than 100 percent of the amount that would be allowable under paragraph (b) of this section.

(2) *Consolidated group rule.* Paragraph (d) of this section is applicable for taxable years ending on or after November 9, 2006. For taxable years ending on or after May 24, 2005, and before November 9, 2006, see § 1.41–6(d) as contained in 26 CFR part 1, revised April 1, 2006.

§ 1.41–6T [Removed]

■ **Par. 4.** Section 1.41–6T is removed.

■ **Par. 5.** Section 1.41–8 is added to read as follows.

§ 1.41–8 Special rules for taxable years ending on or after November 9, 2006.

(a) *Alternative incremental credit.* At the election of the taxpayer, the credit determined under section 41(a)(1) equals the amount determined under section 41(c)(4).

(b) *Election*—(1) *In general.* A taxpayer may elect to apply the provisions of the alternative incremental research credit (AIRC) in section 41(c)(4) for any taxable year of the taxpayer beginning after June 30, 1996. If a taxpayer makes an election under section 41(c)(4), the election applies to the taxable year for which made and all subsequent taxable years unless revoked in the manner prescribed in paragraph (b)(3) of this section.

(2) *Time and manner of election.* An election under section 41(c)(4) is made by completing the portion of Form 6765, ''Credit for Increasing Research Activities,'' relating to the election of the AIRC, and attaching the completed form to the taxpayer's timely filed (including extensions) original return for the taxable year to which the election applies. An election under section 41(c)(4) may not be made on an amended return.

(3) *Revocation.* An election under this section may not be revoked except with the consent of the Commissioner. A taxpayer is deemed to have requested, and to have been granted, the consent of the Commissioner to revoke an election under section 41(c)(4) if the taxpayer completes the portion of Form 6765 relating to the regular credit and attaches the completed form to the taxpayer's timely filed (including extensions) original return for the year to which the revocation applies. An election under section 41(c)(4) may not be revoked on an amended return.

(4) *Special rules for controlled groups*—(i) *In general.* In the case of a controlled group of corporations, all the members of which are not included on a single consolidated return, an election (or revocation) must be made by the designated member by satisfying the requirements of paragraph (b)(2) or (b)(3) of this section (whichever applies), and such election (or revocation) by the designated member shall be binding on all the members of the group for the credit year to which the election (or revocation) relates. If the designated member fails to timely make (or revoke) an election, each member of the group must compute the group credit using the method used to compute the group credit for the immediately preceding credit year.

(ii) *Designated member.* For purposes of this paragraph (b)(4) of this section, for any credit year, the term *designated member* means that member of the group that is allocated the greatest amount of the group credit under paragraph (c) of this section based on the amount of credit reported on the original timely filed Federal income tax return (even if that member subsequently is determined not to be the designated member). If the members of a group compute the group credit using different methods (either the method described in section 41(a) or the AIRC method of section 41(c)(4)) and at least two members of the group qualify as the designated member, then the term *designated member* means that member that computes the group credit using the method that yields the greater group credit. For example, A, B, C, and D are members of a controlled group but are not members of a consolidated group. For the 2005 taxable year, the group credit using the method described in section 41(a) is $10x. Under this method, A would be allocated $5x of the group credit, which would be the largest share of the group credit under this method. For the 2005 taxable year, the group credit using the AIRC method is $15x. Under the AIRC method, C would be allocated $5x of the group credit, which is the largest share of the group credit computed using the AIRC method. Because the group credit is greater using the AIRC method and C is allocated the greatest amount of credit under that method, C is the designated member. Therefore, C's section 41(c)(4) election is binding on all the members of the group for the 2005 taxable year.

(5) *Effective date.* These regulations are applicable for taxable years ending on or after November 9, 2006. For taxable years ending on or after May 24, 2005, and before November 9, 2006, see § 1.41–6T(b)(5) as contained in 26 CFR part 1, revised April 1, 2006.

§ 1.41–8T [Removed]

■ **Par. 6.** Section 1.41–8T is removed.

Steven T. Miller,

Acting Deputy Commissioner for Services and Enforcement.

Approved: October 18, 2006.

Eric Solomon,

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. E6–18909 Filed 11–8–06; 8:45 am]

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POSTAL SERVICE

39 CFR Part 501

Requirements for Authority To Manufacture and Distribute Postage Evidencing Systems

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule revises the requirements for authority to manufacture and distribute postage evidencing systems. This final rule includes updating the regulations, removing obsolete text, and incorporating pertinent portions of the rules for postage meters (Postage Evidencing Systems) formerly contained in section P030 of the *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM) (Issue 58). This rule integrates the requirements that apply to the distribution and manufacture of PC Postage® products, a type of Postage Evidencing System. In addition, obsolete references to requirements for manually reset and mechanical meters are eliminated.

DATES: This rule is effective December 11, 2006.

FOR FURTHER INFORMATION CONTACT: Daniel J. Lord, Manager, Postage Technology Management, U.S. Postal Service, at 202–268–4281.

SUPPLEMENTARY INFORMATION: Postage Evidencing Systems are devices or systems of components that a customer uses to print evidence that the prepaid postage required for mailing has been paid. They include, but are not limited to, postage meters and PC Postage® systems. The Postal Service™ regulates these systems and their use in order to protect postal revenue. Only Postal Service-authorized product service providers may design, produce, and distribute Postage Evidencing Systems.

As a result of changes in technology, proposed revisions were published in the **Federal Register** on June 27, 2006 [Vol. 71, No. 123, Pages 36498–36506], with a request for submission of comments by July 27, 2006. We received three submissions from postage evidencing system providers in response to our solicitation for public comments. The Postal Service gave thorough consideration to the comments it received, modified the proposed rule as appropriate, determined that some comments were outside the scope of this rulemaking, and now announces the adoption of the final rule.

List of Subjects in 39 CFR Part 501

Postal Service.

■ For the reasons set out in the preamble, the Postal Service revises 39 CFR part 501 to read as set forth below:

PART 501—AUTHORIZATION TO MANUFACTURE AND DISTRIBUTE POSTAGE EVIDENCING SYSTEMS

Sec.

501.1 Definitions.
501.2 Postage Evidencing System provider authorization.
501.3 Postage Evidencing System provider qualification.
501.4 Changes in ownership or control, bankruptcy, or insolvency.
501.5 Burden of proof standard.
501.6 Suspension and revocation of authorization.
501.7 Postage Evidencing System requirements.
501.8 Postage Evidencing System test and approval.
501.9 Demonstration or test Postage Evidencing Systems.
501.10 Postage Evidencing System modifications.
501.11 Reporting Postage Evidencing System security weaknesses.
501.12 Administrative sanctions.
501.13 False representations of Postal Service actions.
501.14 Postage Evidencing System inventory control processes.
501.15 Computerized Meter Resetting System.
501.16 PC Postage payment methodology.
501.17 Decertified Postage Evidencing Systems.
501.18 Customer information and authorization.
501.19 Intellectual property.

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 410, 2601, 2605; Inspector General Act of 1978, as amended (Pub. L. 95–452, as amended); 5 U.S.C. App. 3.

§ 501.1 Definitions.

(a) *Postage Evidencing Systems* regulated by part 501 produce evidence of prepayment of postage by any method other than postage stamps and permit imprints. A Postage Evidencing System is a device or system of components that a customer uses to generate and print evidence that postage required for mailing has been paid. Postage Evidencing Systems print indicia, such as meter imprints or information-based indicia to indicate postage payment. They include but are not limited to postage meters and PC Postage systems.

(b) A *postage meter* is a Postal Service-approved Postage Evidencing System that uses a device to account for postage purchased and printed. The term *meter* as used in this part refers to a postage meter.

(c) *PC Postage products* are Postal Service-approved Postage Evidencing Systems that use a personal computer as an integral part of the system. PC Postage products may use the Internet to download postage to a mailer's computer from which the postage indicia may then be printed.

(d) A *provider* is a person or entity authorized under this section to manufacture and/or distribute Postage Evidencing Systems to customers.

(e) A *manufacturer* of postage meters produces postage meters.

(f) A *distributor* of postage meters may be a manufacturer who leases postage meters directly to end-user customers or may be an independent entity who leases postage meters to end-user customers on behalf of the manufacturer.

(g) A *customer* is a person or entity authorized by the Postal Service to use a Postage Evidencing System in accordance with *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM) 604 Postage Payment Methods, 4.0 Postage Meters and PC Postage Products (Postage Evidencing Systems).

§ 501.2 Postage Evidencing System provider authorization.

(a) The Postal Service considers Postage Evidencing Systems and their respective infrastructure to be essential to the exercise of its specific powers to prescribe postage and provide evidence of payment of postage under 39 U.S.C. 404(a)(2) and (4).

(b) Due to the potential for adverse impact upon Postal Service revenue, the following activities may not be engaged in by any person or entity without prior, written approval of the Postal Service:

(1) Producing or distributing any Postage Evidencing System that generates U.S. postage.

(2) Repairing, distributing, refurbishing, remanufacturing, modifying, or destroying any component of a Postage Evidencing System that accounts for or authorizes the printing of U.S. postage.

(3) Owning or operating an infrastructure that maintains operating data for the production of U.S. postage, or accounts for U.S. postage purchased for distribution through a Postage Evidencing System.

(4) Owning or operating an infrastructure that maintains operating data that is used to facilitate registration with the Postal Service of customers of a Postage Evidencing System.

(c) Any person or entity seeking authorization to perform any activity described in paragraph (b) of this section, or to materially modify any activity previously approved by the Postal Service, must submit a request to the Postal Service in person or in writing. Decisions of the Postal Service upon such requests are effective only if in writing (including electronic mail).

(d) Approval shall be based upon satisfactory evidence of the applicant's integrity and financial responsibility, commitment to the security of the Postage Evidencing System, and a determination that disclosure to the applicant of Postal Service customer, financial, or other data of a commercial nature necessary to perform the function for which approval is sought would be appropriate and consistent with good business practices within the meaning of 39 U.S.C. 410(c)(2). The Postal Service may condition its approval upon the applicant's agreement to undertakings that would give the Postal Service appropriate assurance of the applicant's ability to meet its obligations under this section, including but not limited to the method and manner of performing certain financial, security, and servicing functions and the need to maintain sufficient financial reserves to guarantee uninterrupted performance of not less than 3 months of operation.

(e) Qualification and approval may be based upon additional conditions agreed to by the Postal Service and the applicant. The applicant is approved in writing to engage in the function(s) for which authorization was sought and approved.

(f) To the extent that any provider manufactures and/or distributes any PC Postage product through any authorized Postage Evidencing System, such provider must adhere to the requirements of these regulations.

(g) The Postal Service office responsible for administration of this Part 501 is the office of Postage Technology Management (PTM) or successor organization. All submissions to the Postal Service required or invited by this Part 501 are to be made to this office in person or via mail to 475 L'Enfant Plaza SW, North Building Suite 4200, Washington, DC 20260–4200. Information updates may be found on the Postal Service Web site at *http://www.usps.com/postagesolutions/flash.htm*.

§ 501.3 Postage Evidencing System provider qualification.

Any person or entity seeking authorization to manufacture and/or distribute Postage Evidencing Systems must:

(a) Satisfy the Postal Service of its integrity and financial responsibility.

(b) Obtain Postal Service approval under this part of at least one Postage Evidencing System satisfying the requirements of Postal Service regulations.

(c) As a condition of obtaining authorization under this section, the Postage Evidencing System provider's facilities used for the manufacture, distribution, storage, resetting, or destruction of postage meters and all facilities housing infrastructure supporting Postage Evidencing Systems will be subject to unannounced inspection by representatives of the Postal Service. If such facilities are outside the continental United States, the provider will be responsible for all reasonable and necessary travel-related costs incurred by the Postal Service to conduct the inspections. Travel-related costs are determined in accordance with Postal Service Handbook F–15, *Travel and Relocation*. At its discretion, the Postal Service may continue to fund routine inspections outside the continental United States as it has in the past, provided the costs are not associated with particular security issues related to a provider's Postage Evidencing System or supporting infrastructure, or with the start-up or implementation of a new plant or of a new or substantially changed manufacturing process.

(1) When conducting an inspection outside the continental United States, the Postal Service will make every effort to combine the inspection with other inspections in the same general geographic area in order to enable affected providers to share the costs. The Postal Service team conducting such inspections will be limited to the minimum number necessary to conduct the inspection. All air travel will be contracted for at the rates for official government business, when available, under such rules respecting class of travel as apply to those Postal Service representatives inspecting the facility at the time the travel occurs.

(2) If political or other impediments prevent the Postal Service from conducting security evaluations of Postage Evidencing System facilities in foreign countries, Postal Service approval of the activities conducted in such facilities may be suspended until such time as satisfactory inspections may be conducted.

(d) Have, or establish, and keep under its active supervision and control adequate facilities for the control, distribution, and maintenance of Postage Evidencing Systems and their replacement or secure disposal or destruction when necessary and appropriate.

§ 501.4 Changes in ownership or control, bankruptcy, or insolvency.

(a) Any person or entity authorized under § 501.2 must promptly notify the Postal Service when it has a reasonable expectation that there may be a change in its ownership or control including changes in the ownership of an affiliate which exercises control over its Postage Evidencing System operations in the United States. A change of ownership or control within the meaning of this section includes entry into a strategic alliance or other agreement whereby a third party either has access to data related to the security of the system or is a competitor to the Postal Service. Any person or entity seeking to acquire ownership or control of a person or entity authorized under § 501.2 must provide the Postal Service satisfactory evidence that upon completion of the contemplated transaction, it will satisfy the conditions for approval stated in § 501.2. Early notification of a proposed change in ownership or control will facilitate expeditious review of an application to acquire ownership or control under this section.

(b) Any person or entity authorized under § 501.2 must promptly notify the Postal Service when it has a reasonable expectation that there may be a change in the status of its financial condition either through bankruptcy, insolvency, assignment for the benefit of creditors, or other similar financial action. Any person or entity authorized under § 501.2 who experiences a change in the status of its financial condition may, at the discretion of the Postal Service, have its authorization under § 501.2 modified or terminated.

§ 501.5 Burden of proof standard.

The burden of proof is on the Postal Service in administrative determinations of suspension and revocation under § 501.6 and administrative sanctions under § 501.12. Except as otherwise indicated in those sections, the standard of proof shall be the preponderance-of-evidence standard.

§ 501.6 Suspension and revocation of authorization.

(a) The Postal Service may suspend and/or revoke authorization to manufacture and/or distribute any or all of a provider's approved Postage Evidencing System(s) if the provider engages in any unlawful scheme or enterprise, fails to comply with any provision in this Part 501, fails to implement instructions issued in accordance with any final decision issued by the Postal Service within its authority over Postage Evidencing Systems or if the Postage Evidencing System or infrastructure of the provider is determined to constitute an unacceptable risk to Postal Service revenues.

(b) The decision to suspend or revoke pursuant to paragraph (a) of this section shall be based upon the nature and circumstances of the violation (*e.g.* whether the violation was willful, whether the provider voluntarily admitted to the violation, or cooperated with the Postal Service, whether the provider implemented successful remedial measures) and on the provider's performance history. Before determining that a provider's authorization to manufacture and/or distribute Postage Evidencing Systems should be suspended or revoked, the procedures in paragraph (c) of this section shall be followed.

(c) Suspension or revocation procedures:

(1) Upon determination by the Postal Service that a provider is in violation of provisions of this Part 501, or that its Postal Evidencing System poses an unreasonable risk to postal revenue, PTM, acting on behalf of the Postal Service shall issue a written notice of proposed suspension citing the specific conditions or deficiencies for which suspension of authorization to manufacture and/or distribute a specific Postage Evidencing System or class of Postage Evidencing Systems may be imposed. Except in cases of willful violation, the provider shall be given an opportunity to correct deficiencies and achieve compliance with all requirements within a time limit corresponding to the potential revenue risk to postal revenue.

(2) In cases of willful violation, or if the Postal Service determines that the provider has failed to correct cited deficiencies within the specified time limit, PTM shall issue a written notice of suspension setting forth the facts and reasons for the decision to suspend and the effective date if a written defense is not presented as provided in paragraph (d) of this section.

(3) The notice shall also advise the provider of its right to file a response under paragraph (d) of this section. If a written response is not presented in a timely manner the suspension may go into effect. The suspension shall remain in effect for ninety (90) calendar days unless revoked or modified by PTM.

(4) If, upon consideration of the defense as provided in paragraph (d) of this section, the Postal Service deems that the suspension is warranted, the suspension shall remain in effect for up to 90 days unless withdrawn by the Postal Service, as provided in paragraph (c)(5)(iii) of this section.

(5) At the end of the ninety (90) day suspension, the Postal Service may:

(i) Extend the suspension in order to allow more time for investigation or to allow the provider time to correct the problem.

(ii) Make a determination to revoke authorization to manufacture and/or distribute a Postage Evidencing System in part or in whole.

(iii) Withdraw the suspension based on identification and implementation of a satisfactory solution to the problem.

(d) The provider may present the Postal Service with a written defense to any suspension or revocation determination within thirty (30) calendar days of receiving the written notice (unless a shorter period is deemed necessary). The defense must include all supporting evidence and state with specificity the reasons why the order should not be imposed.

(e) After receipt and consideration of the defense, PTM shall advise the provider of its decision and the facts and reasons for it. The decision shall be effective on receipt unless provided otherwise. The decision shall also advise the provider that it may be appealed within thirty (30) calendar days of receipt (unless a shorter time frame is deemed necessary). If an appeal is not filed in a timely manner, the decision of PTM shall become a final decision of the Postal Service. The appeal may be filed with the Chief Marketing Officer of the Postal Service and must include all supporting evidence and state with specificity the reasons the provider believes that the decision is erroneous. The decision of the Chief Marketing Officer shall constitute a final decision of the Postal Service.

(f) An order or final decision under this section does not preclude any other criminal or civil statutory, common law, or administrative remedy that is available by law to the Postal Service, the United States, or any other person or entity.

§ 501.7 Postage Evidencing System requirements.

(a) A Postage Evidencing System submitted to the Postal Service for approval must meet the requirements of the Performance Criteria for Information-Based Indicia and Security Architecture for Open IBI Postage Evidencing Systems or Performance Criteria for Information-Based Indicia and Security Architecture for Closed IBI Postage Metering Systems published by PTM. The current versions of the Performance Criteria may be found on the Postal Service Web site at *http://www.usps.com/postagesolutions/programdoc.html* or requests for copies may be submitted via mail to the address in § 501.2(g).

(b) The provider must affix to all meters a cautionary message providing the meter user with basic reminders on leasing and meter movement.

(1) The cautionary message must be placed on all meters in a conspicuous and highly visible location. PROPERTY OF [NAME OF PROVIDER] as well as the provider's toll-free number must be emphasized by capitalized bold type and preferably printed in red. The minimum width of the message should be 3.25 inches, and the minimum height should be 1.75 inches. The message should read as follows:

RENTED POSTAGE METER-NOT FOR SALE
PROPERTY OF [NAME OF PROVIDER]
(800) ###–####

Use of this meter is permissible only under U.S. Postal Service authorization. Call [Name of Provider] at (800) ###–#### to relocate/return this meter.

WARNING! METER TAMPERING IS A FEDERAL OFFENSE.
IF YOU SUSPECT METER TAMPERING, CALL POSTAL INSPECTORS AT (800) 372–8347

REWARD UP TO $50,000 for information leading to the conviction of any person who misuses postage meters resulting in the Postal Service not receiving correct postage payments.

(2) Exceptions to the formatting of the required message are determined on a case-by-case basis. Any deviation from standardized meter message requirements must be approved in writing by the Postal Service.

(c) The provider must ensure that any matter printed by a postage evidencing system, whether within the boundaries of the indicia or outside the clear zone as defined in DMM 604.4.0 and the Performance Criteria for Information-Based Indicia and Security Architecture for Open IBI Postage Evidencing Systems or Performance Criteria for Information-Based Indicia and Security Architecture for Closed IBI Postage Metering Systems, is:

(1) Consistent with the Postal Service's intent to maintain neutrality on religious, social, political, legal, moral, or other public issues;

(2) Is not obscene, deceptive, or defamatory of any person, entity, or group, and does not advocate unlawful action;

(3) Does not emulate any form of valid postage, government, or other official indicia, or payment of postage; and

(4) Does not harm the public image, reputation, or good will of the Postal Service and is not otherwise derogatory or detrimental to the interests of the Postal Service.

(d) Providers must also ensure that customers acknowledge, agree, and warrant in writing that:

(1) The customer bears full responsibility and liability for obtaining authorization to reproduce and otherwise use the matter as proposed (including, without limitation, any trademarks, slogans, likenesses or copyrighted material contained in the image);

(2) The customer in fact has the legal authority to reproduce and otherwise use the matter as proposed; and

(3) The customer understands that images or other matter is not provided, approved, or endorsed in any way by the Postal Service.

§ 501.8 Postage Evidencing System test and approval.

(a) To receive Postal Service approval, each Postage Evidencing System must be submitted by the provider and evaluated by the Postal Service in accordance with the Postage Evidencing Product Submission Procedures published by PTM. The current version of the Product Submission Procedures may be found on the Postal Service Web site at *http://www.usps.com/postagesolutions/programdoc.html* or requests for copies may be submitted via mail to the address in 501.2(g). These procedures apply to all proposed Postage Evidencing Systems regardless of whether the provider is currently authorized by the Postal Service to distribute Postage Evidencing Systems. All testing required by the Postal Service will be an expense of the provider.

(b) As provided in § 501.11, the provider has a duty to report security weaknesses to the Postal Service to ensure that each approved Postage Evidencing System protects the Postal Service against loss of revenue at all times. A grant of approval of a system does not constitute an irrevocable determination that the Postal Service is satisfied with the revenue-protection capabilities of the system. After approval is granted to manufacture and/or distribute a Postage Evidencing System, no change affecting its basic features or safeguards may be made except as authorized or ordered by the Postal Service in writing.

§ 501.9 Demonstration or test Postage Evidencing Systems.

(a) A demonstration or test postage evidencing system is any system that produces an image that replicates a postage indicium for which the Postal Service has not received payment for postage. The following procedures must be followed to implement controls over

demonstration or test Postage Evidencing Systems:

(1) A demonstration or test Postage Evidencing System may print only specimen or test indicia. A specimen or test indicia must clearly indicate that the indicia does not represent valid postage.

(2) A demonstration or test Postage Evidencing System must be recorded as such on internal provider inventory records and must be tracked by model number, serial number, and physical location.

(3) A demonstration or test Postage Evidencing System must remain under the provider's direct control. A demonstration or test Postage Evidencing System may not be left in the possession of a customer under any circumstance.

(b) All indicia printed by a demonstration or test Postage Evidencing System must be collected and destroyed daily.

§ 501.10 Postage Evidencing System modifications.

(a) An authorized provider must receive prior written approval from the manager, PTM, of any and all changes made to a previously approved Postage Evidencing System. The notification must include a summary of all changes made and the provider's assessment as to the impact of those changes on the security of the Postage Evidencing System and postage funds. Upon receipt of the notification, PTM will review the summary of changes and make a decision regarding the need for the following:

(1) Additional documentation.

(2) Level of test and evaluation required.

(3) Necessity for evaluation by a laboratory accredited by the National Institutes of Standards and Technology (NIST) under the National Voluntary Laboratory Accreditation Program (NVLAP).

(b) Upon receipt and review of additional documentation and/or test results, PTM will issue a written acknowledgement and/or approval of the change to the provider.

§ 501.11 Reporting Postage Evidencing System security weaknesses.

(a) For purposes of this section, provider refers to the Postage Evidencing System provider authorized under § 501.2 and its foreign affiliates, if any, subsidiaries, assigns, dealers, independent dealers, employees, and parent corporations.

(b) Each authorized provider of a Postage Evidencing System must notify the Postal Service within twenty-four (24) hours, upon discovery of the following:

(1) All findings or results of any testing known to the provider concerning the security or revenue protection features, capabilities, or failings of any Postage Evidencing System sold, leased, or distributed by it that has been approved for sale, lease, or distribution by the Postal Service or any foreign postal administration; or has been submitted for approval by the provider to the Postal Service or other foreign postal administration(s).

(2) All potential security weaknesses or methods of tampering with the Postage Evidencing Systems that the provider distributes of which it knows or should know and the Postage Evidencing System model subject to each such method. Potential security weaknesses include but are not limited to suspected equipment defects, suspected abuse by a customer or provider employee, suspected security breaches of the Computerized Meter Resetting System (CMRS) or databases housing confidential customer data relating to the use of Postage Evidencing Systems, occurrences outside normal performance, or any repeatable deviation from normal Postage Evidencing System performance.

(c) Within a time limit corresponding to the potential revenue risk to postal revenue as determined by the Postal Service, the provider must submit a written report to the Postal Service. The report must include the circumstances, proposed investigative procedure, and the anticipated completion date of the investigation. The provider must also provide periodic status reports to the Postal Service during subsequent investigation and, on completion, must submit a summary of the investigative findings.

(d) The provider must establish and adhere to timely and efficient procedures for internal reporting of potential security weaknesses and shall provide a copy of such internal reporting procedures and instructions to the Postal Service for review.

(e) Failure to comply with this section may result in suspension of approval under § 501.6 or the imposition of sanctions under § 501.12.

§ 501.12 Administrative sanctions.

(a) An authorized Postage Evidencing System provider may be responsible to the Postal Service for revenue losses caused by failure to comply with § 501.11.

(b) The Postal Service shall determine all costs and revenue losses measured from the date that the provider knew, or should have known, of a potential security weakness, including, but not limited to, administrative and investigative costs and documented revenue losses that result from any Postage Evidencing System for which the provider failed to comply with any provision in § 501.11. The Postal Service issues a written demand for reimbursement of any and all such costs and losses (net of any amount collected by the Postal Service from the customers) with interest. The demand shall set forth the facts and reasons on which it is based.

(c) The provider may present the Postal Service with a written defense to the proposed action within thirty (30) calendar days of receipt. The defense must include all supporting evidence and state with specificity the reasons for which the sanction should not be imposed.

(d) After receipt and consideration of the defense, the Postal Service shall advise the provider of the decision and the facts and reasons for it; the decision shall be effective on receipt unless it provides otherwise. The decision shall also advise the provider that it may, within thirty (30) calendar days of receiving written notice, appeal that determination to the Chief Marketing Officer of the Postal Service who shall issue a written decision upon the appeal which will constitute the final Postal Service decision.

(e) The imposition of an administrative sanction under this section does not preclude any other criminal or civil statutory, common law, or administrative remedy that is available by law to the Postal Service, the United States, or any other person or entity.

(f) An authorized Postage Evidencing System provider, who without just cause fails to follow any Postal Service approved procedures, perform adequately any of the Postal Service approved controls, or fails to obtain approval of a required process in § 501.14 in a timely fashion, is subject to an administrative sanction under this provision § 501.12.

§ 501.13 False representations of Postal Service actions.

Providers, their agents, and employees must not intentionally misrepresent to customers of the Postal Service decisions, actions, or proposed actions of the Postal Service respecting its regulation of Postage Evidencing Systems. The Postal Service reserves the right to suspend and/or revoke the authorization to manufacture or distribute Postage Evidencing Systems throughout the United States or any part thereof pursuant to § 501.6 when it

determines that the provider, its agents, or employees failed to comply with this section.

§ 501.14 Postage Evidencing System inventory control processes.

(a) Each authorized provider of Postage Evidencing Systems must permanently hold title to all Postage Evidencing Systems which it manufactures or distributes except those purchased by the Postal Service or distributed outside the United States.

(b) An authorized provider must maintain sufficient facilities for and records of the distribution, control, storage, maintenance, repair, replacement, and destruction or disposal of all Postage Evidencing Systems and their components to enable accurate accounting and location thereof throughout the entire life cycle of each Postage Evidencing System. A complete record shall entail a list by serial number of all Postage Evidencing Systems manufactured or distributed showing all movements of each system from the time that it is produced until it is scrapped, and the reading of the ascending register each time the system is checked into or out of service. These records must be available for inspection by Postal Service officials at any time during business hours.

(c) To ensure adequate control over Postage Evidencing Systems, plans for the following processes must be submitted for prior approval, in writing, to PTM:

(1) Check in to service procedures for all Postage Evidencing Systems—the procedures are to address the process to be used for new Postage Evidencing Systems as well as those previously leased to another customer.

(2) Transportation and storage of meters—procedures that provide reasonable precautions to prevent use by unauthorized individuals. Providers must ship all meters by Postal Service Registered Mail unless given written permission by the Postal Service to use another carrier. The provider must demonstrate that the alternative delivery carrier employs security procedures equivalent to those for Registered Mail.

(3) Postage meter examination/inspection procedures and schedule—The provider is required to perform postage meter examinations or inspections based on an approved schedule. Failure to complete the meter examination or inspections by the due date may result in the Postal Service requiring the provider to disable the meter's resetting capability. If necessary, the Postal Service shall notify the customer that the meter is to be removed from service and the authorization to use a meter revoked, following the procedures for revocation specified by regulation. The Postal Service shall notify the provider to remove the meter from the customer's location.

(4) Check out of service procedures for a non-faulty Postage Evidencing System when the system is to be removed from service for any reason.

(5) Postage meter repair process—any physical or electronic access to the internal components of a postage meter, as well as any access to software or security parameters, must be conducted within an approved facility under the provider's direct control and active supervision. To prevent unauthorized use, the provider or any third party acting on its behalf must keep secure any equipment or other component that can be used to open or access the internal, electronic, or secure components of a meter.

(6) Faulty meter handling procedures, including those that are inoperable, mis-registering, have unreadable registers, inaccurately reflect their current status, show any evidence of possible tampering or abuse, and those for which there is any indication that the meter has some mechanical or electrical malfunction of any critical security component, such as any component the improper operation of which could adversely affect Postal Service revenues, or of any memory component, or that affects the accuracy of the registers or the accuracy of the value printed.

(7) Lost or stolen meter procedures—the provider must promptly report to the Postal Service the loss or theft of any meter or the recovery of any lost or stolen meter. Such notification to the Postal Service will be made by completing and filing a standardized lost and stolen meter incident report within ten (10) calendar days of the provider's determination of a meter loss, theft, or recovery.

(8) Postage meter destruction, when required-the postage meter must be rendered completely inoperable by the destruction process and associated postage—printing dies and components must be destroyed. Manufacturers/distributors of meters must submit the proposed destruction method; a schedule listing the postage meters to be destroyed, by serial number and model; and the proposed time and place of destruction to PTM for approval prior to any meter destruction. Providers must record and retain the serial numbers of the meters to be destroyed and provide a list of such serial numbers in electronic form in accordance with Postal Service requirements for meter accounting and tracking systems. Providers must give sufficient advance notice of the destruction to allow PTM to schedule observation by its designated representative who shall verify that the destruction is performed in accordance with a Postal Service—approved method or process. To the extent that the Postal Service elects not to observe a particular destruction, the provider must submit a certification of destruction, including the serial number(s) to the Postal Service within five (5) calendar days of destruction. These requirements for meter destruction apply to all postage meters, Postage Evidencing Systems, and postal security devices included as a component of a Postage Evidencing System.

(d) If the provider uses a third party to perform functions that may affect Postage Evidencing System security, including, but not limited to repair, maintenance, and disposal of Postage Evidencing Systems, PTM must be advised in advance of all aspects of the relationship, as they relate to the custody and control of Postage Evidencing Systems, and must specifically authorize in writing the proposed arrangement between the parties.

(1) Postal Service authorization of a third party relationship to perform specific functions applies only to the functions stated in the written authorization but may be amended to embrace additional functions.

(2) No third-party relationship shall compromise the security of the Postage Evidencing System, or its components, including, but not limited to, the hardware, software, communications, and security components, or of any security-related system with which it interfaces, including, but not limited to, the resetting system, reporting systems, and Postal Service support systems. The functions of the third party with respect to a Postage Evidencing System, its components, and the systems with which it interfaces are subject to the same scrutiny as the equivalent functions of the provider.

(3) Any authorized third party must keep adequate facilities for and records of Postage Evidencing Systems and their components in accordance with paragraph (b) of this section. All such facilities and records are subject to inspection by Postal Service representatives, insofar as they are used to distribute, control, store, maintain, repair, replace, destroy, or dispose of Postage Evidencing Systems.

(4) The provider must ensure that any party acting on its behalf in any of the functions described in paragraph (b) of this section maintains adequate

facilities, records, and procedures for the security of the Postage Evidencing Systems. Deficiencies in the operations of a third party relating to the custody and control of Postage Evidencing Systems, unless corrected in a timely manner, can place at risk a provider's approval to manufacture and/or distribute Postage Evidencing Systems.

(5) The Postal Service reserves the right to review all aspects of any third party relationship if it appears that the relationship poses a threat to Postage Evidencing System security and may require the provider to take appropriate corrective action.

§ 501.15 Computerized Meter Resetting System.

(a) *Description.* The Computerized Meter Resetting System (CMRS) permits customers to reset their postage meters at their places of business. Authorized providers, who operate CMRS services, are known as resetting companies (RCs).

(b) A customer is required to have funds available on deposit with the Postal Service before resetting a Postage Evidencing System or the provider may opt to provide a funds advance in accordance with paragraph (c) of this section.

(c) If the RC chooses to offer advancement of funds to customers, the RC is required to maintain a deposit with the Postal Service equal to at least one (1) day's average funds advanced. The total amount of funds advanced to customers on any given day shall not exceed the amount the provider has on deposit with the Postal Service. The Postal Service shall not be liable for any payment made by the RC on behalf of a customer that is not reimbursed by the customer, since the RC is solely responsible for the collection of advances made by the RC.

(d) The CMRS customer is permitted to make deposits in one of three ways: check, electronic funds transfer (or wire transfer), or automated clearinghouse (ACH) transfer. These deposits must be remitted to the Postal Service's designated bank account.

(e) The RC must require each CMRS customer that requests a meter resetting to provide the meter serial number, the CMRS account number, and the meter's ascending and descending register readings. The RC must verify that there are sufficient funds in the customer's CMRS account to cover the postage setting requested before proceeding with the setting transaction (unless the RC opts to provide the customer a funds advance).

(f) The Postal Service requires that the RC publicize to all CMRS customers the following payment options (listed in order of preference):

(1) Automated clearinghouse (ACH) debits/credits.

(2) Electronic funds transfers (wire transfers).

(3) Checks.

(g) Returned checks and ACH debits are the responsibility of the Postal Service. Upon notice from the Postal Service's designated bank, the provider will be required to immediately lock the customer account to prevent a meter reset until the Postal Service receives payment for the returned check or the provider is provided with valid ACH credit or wire information.

(h) *Refunds.* The Postal Service will issue a refund in the amount remaining in a customer's Computerized Meter Resetting System account, after such time as the customer provides a written request to the provider, as long as the request meets the Postal Service approved minimum and time frame.

(i) *Security and Revenue Protection.* To receive Postal Service approval to continue to operate systems in the CMRS environment, the RC must submit to a periodic audit of its system, to be conducted by an independent systems auditor, the frequency and scope of which shall be determined by the Postal Service. The provider will be responsible for all reasonable costs to conduct these audits.

(j) *Inspection of records and facilities.* The RC must make its facilities that handle the operation of the computerized resetting system and all records about the operation of the system available for inspection by representatives of the Postal Service at all reasonable times. At its discretion, the Postal Service may continue to fund inspections as it has in the past, provided the costs are not associated with a particular security issue related to the provider's CMRS or supporting infrastructure.

(k) The RC is required to incorporate the following language into its meter rental agreements:

Acknowledgment of Deposit Requirement—Meters

By signing this meter rental agreement, you the customer represent that you have read the *Acknowledgment of Deposit Requirement—Meters* and are familiar with its terms. You agree that, upon execution of this agreement with the RC, you will also be bound by all terms and conditions of the Acknowledgment of Deposit Requirement—Meters, as it may be amended from time to time.

§ 501.16 PC Postage payment methodology.

(a) The PC Postage customer is permitted to make payments for postage in one of two ways: automated clearinghouse (ACH) transfer or credit card.

(b) The provider must make payments on behalf of the customer to the Postal Service in accordance with contractual and/or regulatory responsibilities.

(c) The Postal Service requires that the provider publicize to all PC Postage customers the following payment options (listed in order of preference):

(1) Automated clearinghouse (ACH) debits/credits.

(2) Credit cards.

(d) Returned ACH debits and credit card returns are the responsibility of the Postal Service. The RC must lock the customer account immediately so that the customer is unable to reset the account until the Postal Service receives payment in full.

(e) *Refunds.* The provider issues a refund to a customer for any unused postage in a Postage Evidencing System. After verification by the Postal Service, the provider will be reimbursed by the Postal Service for the individual refunds provided to customers by the provider, as long as the individual customer requests meet the Postal Service approved minimum and time frame.

(f) *Security and revenue protection.* To receive Postal Service approval to continue to operate PC Postage systems, the provider must submit to a periodic audit of its system, to be conducted by an independent systems auditor, the frequency and scope of which shall be determined by the Postal Service. The provider will be responsible for all reasonable costs to conduct these audits.

(g) *Inspection of records and facilities.* The provider must make its facilities, which handle the operation of the PC Postage system and all records about the operation of the system, available for inspection by representatives of the Postal Service at all reasonable times. At its discretion, the Postal Service may continue to fund inspections as it has in the past, provided the costs are not associated with a particular security issue related to the provider's CMRS or supporting infrastructure.

(h) To the extent that the customer maintains funds on deposit for the payment of postage, the provider is required to incorporate the following language into its agreements with PC Postage customers:

Acknowledgment of Deposit Requirement—PC Postage

By signing this agreement with the provider, you represent that you have read the *Acknowledgment of Deposit Requirement—PC Postage* and are familiar with its terms. You agree that, upon execution of this agreement with the provider, you will also be bound by all terms

and conditions of the Acknowledgment of Deposit Requirement—PC Postage, as it may be amended from time to time.

§ 501.17 Decertified Postage Evidencing Systems.

(a) A Decertified Postage Evidencing System is a device for which the provider's authority to distribute has been withdrawn by the Postal Service as a result of any retirement plan for a given class of meters published by the Postal Service in the **Federal Register**; a suspension or revocation under § 501.6; or a voluntary withdrawal undertaken by the provider.

(b) A Decertified Postage Evidencing System must be withdrawn from service by the date agreed to by the Postal Service and provider.

(c) To the extent postage meters are involved, the provider must utilize the approved procedures for lost and stolen meters under § 501.14(c)(7) to locate the meter and remove it from service by the agreed upon date.

(d) Decertified Postage Evidencing Systems that are not submitted to the Postal Service for refund within one hundred and eighty (180) days of the agreed upon withdrawal from service date will not be eligible for refund of unused postage.

(e) Postage indicia printed by Decertified Postage Evidencing Systems may no longer be considered valid postage one hundred and eighty (180) days from the agreed upon withdrawal from service date.

§ 501.18 Customer information and authorization.

(a) Authorized providers must electronically transmit the necessary customer information to the designated Postal Service central data processing facility, in Postal Service-specified format, in order for the Postal Service to authorize a customer to use a Postage Evidencing System. Postal Service receipt and acceptance of the customer information provides the customer with the authorization to possess or use a Postage Evidencing System in accordance with DMM 604 Postage Payment Methods, 4.0 Postage Meters and PC Postage Products (Postage Evidencing Systems).

(b) The Postal Service may refuse to issue a customer authorization to use a Postage Evidencing System for the following reasons:

(1) The customer submitted false or fictitious information.

(2) Within five years preceding submission of the information, the customer violated any standard for the care or use of the Postage Evidencing System that resulted in revocation of that customer's authorization.

(3) Or there is sufficient reason to believe that the Postage Evidencing System is to be used in violation of the applicable standards.

(c) The Postal Service will notify the provider of the revocation of a customer's authorization to use a Postage Evidencing System. Within ten (10) days of receipt of the notice of revocation, the provider must cancel any lease or other agreement and remove the Postage Evidencing System from service. A customer's authorization to use a Postage Evidencing system is subject to revocation for any of the following reasons:

(1) A Postage Evidencing System is used for any illegal scheme or enterprise.

(2) The customer's Postage Evidencing System is not used for twelve (12) consecutive months.

(3) Sufficient control of a Postage Evidencing System is not exercised or the standards for its care or use are not followed.

(4) The Postage Evidencing System is kept or used outside the customs territory of the United States or those U.S. territories and possessions where the Postal Service operates.

(5) The customer is in possession of a Decertified Postage Evidencing System.

(d) The provider must electronically transmit any updates to the necessary customer information to the designated Postal Service central data processing facility, in Postal Service-specified format.

(e) No one other than an authorized provider may possess a Postage Evidencing System without a valid rental or other agreement with the provider. Other parties in possession of a Postage Evidencing System must immediately surrender it to the provider or the Postal Service.

(f) The Postal Service may use customer information consistent with the Privacy Act and the Postal Service's privacy policies posted on *http://www.usps.com.* Examples include the following:

(1) Communication with customers who may no longer be visiting a traditional Postal Service retail outlet or communication with customers through any new retail channels.

(2) Issuance (including re-authorization, renewal, transfer, revocation or denial, as applicable) of authorization to use a Postage Evidencing System to a postal patron that uses a Postage Evidencing System, and communications with respect to the status of such authorization.

(3) Disclosure to a meter provider of the identity of any meter required to be removed from service by that meter provider, and any related customer data, as the result of revocation of an authorization to use a Postage Evidencing System, questioned accurate registration of that meter, or de-certification by the Postal Service of any particular class or model of postage meter.

(4) Tracking the movement of meters between a meter provider and its customers and communications to a meter provider (but not to any third party other than the customer) concerning such movement. The term meter provider includes a meter provider's dealers and agents.

(5) To transmit general information to all Postage Evidencing System customers concerning rate and rate category changes implemented or proposed for implementation by the Postal Service.

(6) To advertise Postal Service services relating to the acceptance, processing, and delivery of, or postage payment for, metered mail.

(7) To allow the Postal Service to communicate with Postal Service customers on products, services, and other information otherwise available to Postal Service customers through traditional retail outlets.

(8) Any internal use by Postal Service personnel, including identification and monitoring activities relating to Postage Evidencing Systems, provided that such use does not result in the disclosure of applicant information to any third party or will not enable any third party to use applicant information for its own purposes; except that the applicant information may be disclosed to other governmental agencies for law enforcement purposes as provided by law.

(9) Identification of authorized Postage Evidencing System providers or announcement of the de-authorization of an authorized provider, or provision of currently available public information, where an authorized provider is identified.

(10) To promote and encourage the use of Postage Evidencing Systems as a form of postage payment, provided that the same information is provided to all Postage Evidencing System customers and no particular Postage Evidencing System provider will be recommended by the Postal Service.

(11) To contact customers in cases of revenue fraud or revenue security.

(12) Disclosure to a Postage Evidencing System provider of applicant information pertaining to that provider's customers that the Postal Service views as necessary to enable the

Postal Service to carry out its duties and purposes.

(13) To transmit to a Postage Evidencing System provider all applicant and system information pertaining to that provider's customers and systems that may be necessary to permit such provider to synchronize its computer databases with information contained in the computer files of the Postal Service.

(14) Subject to the conditions stated herein, to communicate in oral or written form with any or all applicants any information that the Postal Service views as necessary to enable the Postal Service to carry out its duties and purposes under part 501.

§ 501.19 Intellectual property.

Providers submitting Postage Evidencing Systems to the Postal Service for approval are responsible for obtaining all intellectual property licenses that may be required to distribute their product in commerce and to allow the Postal Service to process mail bearing the indicia produced by the Postage Evidencing System. To the extent approval is granted and the Postage Evidencing System is capable of being used in commerce, the provider shall indemnify the Postal Service for use of such intellectual property in both the use of the Postage Evidencing System and the processing of mail bearing indicia produced by the Postage Evidencing System.

Neva R. Watson,

Attorney, Legislative.

[FR Doc. E6–18949 Filed 11–8–06; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2006–0829, FRL–8234–9]

Revisions to the California State Implementation Plan, Lake County Air Quality Management District, Monterey Bay Unified Air Pollution Control District, San Joaquin Valley Unified Air Pollution Control District, and Ventura County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Lake County Air Quality Management District (LCAQMD), Monterey Bay Unified Air Pollution Control District (MBUAPCD), San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD), and Ventura County Air Pollution Control District (VCAPCD) portions of the California State Implementation Plan (SIP). Under authority of the Clean Air Act as amended in 1990 (CAA or the Act), we are approving local rules that address particulate matter (PM–10) emissions from open burning, general area sources, cotton gins, incinerators, and fuel burning equipment.

DATES: This rule is effective on January 8, 2007, without further notice, unless EPA receives adverse comments by December 11, 2006. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2006–0829, by one of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the on-line instructions.
2. *E-mail: steckel.andrew@epa.gov.*
3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

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

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

FOR FURTHER INFORMATION CONTACT: Al Petersen, EPA Region IX, (415) 947–4118, *petersen.alfred@epa.gov.*

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

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I. The State's Submittal

A. What rules did the State submit?

Table 1 lists the rules we are approving with the date that they were adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES FOR FULL APPROVAL

Local agency	Rule #	Rule title	Amended, tevised, or adopted	Submitted
LCAQMD	Chapter VIII Section 1002	Agencies Authorized to Issue Burning Permits	08/09/05 Amended	03/10/06
LCAQMD	Chapter VIII Table 8	Agencies Designated to Issue Burning Permits	08/09/05 Amended	03/10/06

TABLE 1.—SUBMITTED RULES FOR FULL APPROVAL—Continued

Local agency	Rule #	Rule title	Amended, tevised, or adopted	Submitted
MBUAPCD	403	Particulate Matter	02/16/05 Revised	07/15/05
SJVUAPCD	4204	Cotton Gins	02/17/05 Adopted	07/15/05
VCAPCD	57	Incinerators	01/11/05 Revised	07/15/05
VCAPCD	57.1	Particulate Matter Emissions form Fuel Burning Equipment.	01/11/05 Adopted	07/15/05

On August 18, 2005, the submittal of March 10, 2006 was found to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review. On August 18, 2005, the submittal of July 15, 2005 was found to meet the completeness criteria.

B. Are there other versions of these rules?

We approved a version of LCAQMD Section 1002 and Table 8 into the SIP on May 18, 1999 (64 FR 26876). We approved a version of MBUAPCD Rule 403 into the SIP on July 11, 2001 (66 FR 36170) and approved a version of VCAPCD Rule 57 into the SIP on August 6, 2001 (66 FR 40898).

C. What is the purpose of the submitted rules?

Section 110(a) of the CAA requires states to submit regulations that control volatile organic compounds, oxides of nitrogen, particulate matter, and other air pollutants which harm human health and the environment. These rules were developed as part of the local agency's program to control these pollutants.

The purposes of the LCAQMD Section 1002 and Table 8 revisions relative to the SIP are as follows:

- Section 1002: The rule adds authority for agencies designated to issue burn permits in Table 8 to collect and retain burn permit fees.
- Table 8 is revised to clarify which agencies are designated to issue burn permits. The purposes of new SJVUAPCD Rule 4204 are as follows:
- 4204.4.1: The rule exempts cotton ginning facilities used for research purposes and for throughputs to 4,000 pounds of seed cotton per day.
- 4204.5.0: The rule requires the control of all emission points in cotton ginning with 1D3D cyclones or rotary drum filters on compliance dates ranging between 07/01/06 and 07/01/08.
- 4204.5.2: The rule requires air velocity entering 1D3D cyclones to be 2,800 to 3,600 feet per minute.
- 4204.5.3: The rule requires new cyclones or replacement parts of existing cyclones 1D3D cyclones to have the dimensional characteristics of the enhanced 1D3D cyclone (figure 1) or the 1D3D cyclone with expansion chamber (figure 2).
- 4204.5.6: The rule provides requirements for preventing fugitive dust emission during load-out into hoppers or trailers.
- 4204.5.7: The rule provides requirements for preventing fugitive dust emission during load-out onto a pile.
- 4204.6.0: The rule provides requirements for recordkeeping, source testing, and test methods.

The purpose of new VCAPCD Rule 57.1 is as follows:

- 57.1: This new rule acquires the section regulating fuel burning equipment being moved from Rule 57.

The purposes of revisions of MBUAPCD Rule 403 relative to the SIP rule are as follows:

- 403.1.3.4: The rule deletes the exemption for agricultural operations necessary for the growing of crops or raising of fowl or animals.
- 403: The rule is reformatted.

The purposes of revisions to VCAPCD Rule 57 relative to the SIP Rule 57, Combustion Contaminants–Specific, are as follows:

- 57.A: This section on incinerators is retained in Rule 57, Incinerators, except that the requirements are changed from numerical standards limiting particulate matter emissions and requiring minimums of temperature of combustion and contact time in the SIP rule to a new non-numerical standard of requiring a multiple-combustion-chamber incinerator with at least three chambers and no numerical temperature of combustion or time of contact standard.
- 57.B: This section on fuel burning equipment is removed from Rule 57 and put into new Rule 57.1, Particulate Matter Emissions from Fuel Burning Equipment, except that the requirement for limiting particulate matter emissions is changed from 0.1 grains/dry standard cubic foot (gr/dscf) at 12% carbon dioxide to a new standard of 0.12 pounds/million BTU at 12% carbon dioxide.

The TSD has more information about these rules.

II. EPA's Evaluation and Action

A. How is EPA evaluating the rules?

Generally, SIP rules must be enforceable (see section 110(a) of the CAA) and must not relax existing requirements (see sections 110(l) and 193).

SIP rules must require for major sources reasonably available control measures (RACM), including RACT in moderate PM–10 nonattainment areas (see section 189(a)) or must require for major sources best available control measures (BACM), including best available control technology (BACT) in serious PM–10 nonattainment areas (see section 189(b). LCAQMD, MBUAPCD and VCAPCD regulate PM–10 attainment areas, so need not fulfill the requirements of RACM/RACT or BACM/BACT. SJVUAPCD regulates a serious PM–10 nonattainment area (see 40 CFR part 81), so SJVUAPCD Rule 4204 must fulfill the requirements of BACM/BACT.

Guidance and policy documents that we use to help evaluate the rules include the following:

- *Requirements for Preparation, Adoption, and Submittal of Implementation Plans*, U.S. EPA, 40 CFR part 51.
- *PM–10 Guideline Document* (EPA–452/R–93–008).

B. Do the rules meet the evaluation criteria?

We believe that LCAQMD Section 1002 and Table 8, MBUAPCD Rule 403, SJVUAPCD Rule 4204, and VCAPCD Rules 57 and 57.1 are consistent with the relevant policy and guidance regarding enforceability, SIP relaxations, and fulfilling the requirements of RACM/RACT or BACM/BACT.

The TSD has more information on our evaluation.

C. EPA Recommendation to Further Improve a Rule

The TSD describes an additional revision to SJVUAPCD Rule 4204 that does not affect EPA's current action but is recommended for the next time the local agency modifies the rule.

D. Public Comment and Final Action

As authorized in section 110(k)(3) of the CAA, EPA is fully approving the submitted rules because we believe they fulfill all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by December 11, 2006, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on January 8, 2007. This will incorporate these rules into the federally enforceable SIP.

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.

III. 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 (Public Law 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. 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 January 8, 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 in 40 CFR Part 52

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

Dated: October 12, 2006.

Alexis Strauss,

Acting Regional Administrator, Region IX.

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

PART 52—[AMENDED]

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

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

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraphs (c)(337)(i)(A)(*3*), (c)(337)(i)(B)(*2*), (c)(337)(i)(D), and (c)(344)(i)(B) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(337) * * *

(i) * * *

(A) * * *

(*3*) Rule 4204, adopted on February 17, 2005.

(B) * * *

(*2*) Rule 57, adopted on July 2, 1968 and revised on January 11, 2005 and Rule 57.1, adopted on January 11, 2005.

* * * * *

(D) Monterey Bay Unified Air Pollution Control District.

(*1*) Rule 403, adopted on September 1, 1974 and revised on February 16, 2005.

* * * * *

(344) * * *

(i) * * *

(B) Lake County Air Quality Management District.

(*1*) Chapter VIII, Section 1002 and Table 8, adopted on March 19, 1996 and amended on August 9, 2005.

[FR Doc. E6–18874 Filed 11–8–06; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 36, 51, 52, 53, 54, 63, 64 and 69

[WC Docket No. 02–313; FCC 06–86]

Biennial Regulatory Review of Regulations Administered by the Wireline Competition Bureau

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission or FCC) reviews rules that apply to the operations and activities of providers of telecommunications services and repeals or modifies previous regulations no longer necessary in the public interest, obsolete, outdated, expired of their terms, or containing drafting or typographical errors.

DATES: Effective December 11, 2006.

FOR FURTHER INFORMATION CONTACT: Carrie-Lee Early, Wireline Competition Bureau, (202) 418–2776 or *carrielee.early@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order in WC Docket No. 02–313, adopted June 20, 2006 and released August 21, 2006. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals H, 445 12th Street, SW., Room CY–A257, Washington DC 20554. This document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (800) 378–3160 or (202) 863–2893, facsimile (202) 863–2989, or via e-mail at *FCC@BIWEB.com.* It is also available on the Commission's Web site at *http://www.fcc.gov.* The Notice of Proposed Rule Making which initiated the rule changes set forth in the Report and Order was published at 69 FR 12814, March 18, 2004. The rule changes do not cause any new information collection requirements subject to the PRA of 1995, Public Law 104–13. They also do not create any new or modified ''information collection burden for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Synopsis of the Report and Order

1. *Background.* Section 11 of the Communications Act of 1934, as amended (Act), requires the Commission to review biennially its regulations that apply to the operations and activities of providers of telecommunications service and to determine whether the regulations are ''no longer necessary as the result of meaningful economic competition between providers of such service.'' *See* 47 U.S.C. 161(a).

2. *Discussion.* In this Order, we impose no new rules; rather, we repeal or modify regulations that are no longer necessary in the public interest, obsolete, outdated, have expired of their terms, or contain drafting or typographical errors. The revisions reduce regulatory compliance burdens by eliminating the requirements and uncertainties described below.

3. *Part 36—Jurisdictional Separations Procedures:* With respect to the fundamental principles underlying jurisdictional separations procedures, the Commission clarifies in § 36.2(b)(3)(ii) that holding-time-minutes is the measurement unit for apportioning both local and toll switching plant. The Commission also clarifies, in § 36.2(b)(3)(iv), that subscriber plant is to be apportioned using the 25 percent Gross Allocator.

4. The Commission clarifies, in § 36.125(f), application of the weighting factor in apportioning to interstate jurisdiction certain Category 3 telecommunication property investments for study areas with fewer than 50,000 access lines. The Commission also repeals §§ 36.154(d) through (f) because those sections are no longer in effect, and deletes references to those provisions. Because their termination dates have passed, the Commission also repeals §§ 36.631(a) and (b) and 36.641. The Commission also clarifies the application of § 36.631(d) to apply only non-rural telephone companies serving study areas reporting more than 200,000 working loops. With respect to the universal service fund rules, the Commission clarifies that § 36.631(d) applies only to non-rural telephone companies serving study areas reporting more than 200,000 working loops.

5. In addition, because they reference payphone services that are no longer regulated, the Commission eliminates the last sentence of § 36.142(a) addressing coinless pay telephone equipment and the last sentence of § 36.377(a)(7) addressing expenses related to coin collection and administration.

6. The Commission also corrects three instances of transposed wording in § 36.377(a)(5): in subparagraphs (i) and (v), ''interstate'' is corrected to ''State,'' and in subparagraph (vi), ''State'' is changed to ''Interstate.'' Similarly, the Commission eliminates, as obsolete, all references to Teletypwriter Exchange Service (TWX) in part 36 because no carrier has reported data through the Automated Reporting Management System (ARMIS) system since it was established in 1988.

7. *Part 42—Preservation of Records of Communications Carriers:* The United States Telecom Association (USTA) filed comments recommending the elimination of §§ 42.1 through 42.9 asserting that these regulations are outdated and unnecessary. USTA, however, did not offer any support for its assertions, nor did USTA make proposals regarding less costly and more efficient ways to collect, preserve and maintain carrier records and reports. Neither USTA's brief comment nor its incorporation of arguments from previous Biennial Review dockets, convince us that elimination or modification of part 42 is warranted at this time. Accordingly, we conclude that current part 42 record retention requirements assist the Commission to carry out its regulatory responsibilities and therefore continue to be necessary in the public interest at this time.

8. *Part 51—Interconnection:* The Commission eliminates §§ 51.211(a)–(f), 51.213(c)–(d), which imposed deadlines on Local Exchange Carriers (LECs) and Bell Operating Companies to implement toll dialing parity or to notify the Commission of their failure to do so. The provisions no longer are relevant as the compliance deadlines have expired. Similarly, because their effective dates have expired, the Commission eliminates §§ 51.515(b) and (c) which permitted incumbent LECs to assess certain interstate access charges and intrastate access charges on purchasers of unbundled elements until June 30, 1997.

9. The Commission also eliminates, as no longer necessary in the public interest, § 51.329(c)(3) which required incumbent LECs to send paper and diskette copies of network change public notices or certifications to the Chief of the Wireline Competition Bureau.

10. *Part 52—Numbering:* With respect to the scope and authority of the

numbering rules, the Commission updates part 52 to reflect two developments: it revises the § 52.5 list of United States territories taking part in the North American Numbering Plan (NANP) to reflect American Samoa's participation and changes a reference to the ''Common Carrier Bureau'' to the ''Wireline Competition Bureau.''

11. In addition, regarding numbering administration, because the North American Numbering Council is no longer responsible for recommending to the Commission the entity to serve as the North American Numbering Plan Administrator, the Commission repeals § 52.11(d).

12. Further, because the North American Numbering Plan Administrator, rather than telecommunications carriers, now performs central office code administration, the Commission repeals § 52.15(c), portions of § 52.15(d), and § 52.15(e) in its entirety.

13. The Commission also modifies the introductory paragraph and subsection (3) of § 52.13(b), which governs the duties of the North American Numbering Plan Administrator (NANPA) to reflect the existing role of the Commission in setting numbering policy. The Commission also modifies §§ 52.13(c)(4) and 52.15(b)(3) to reflect that the Numbering Resource Utilization Forecast has replaced the Central Office Code Utilization Survey (COCUS).

14. In the number portability context, the Commission eliminates §§ 52.27 and 52.29 which provided rules applicable to transitional number portability measures because long-term database methods have been developed.

15. Because the timeframe identified in the rule has expired, the Commission also eliminates § 52.31(c) which provided Local Number Portability (LNP) deployment deadlines.

16. *Part 53—Special Provisions Concerning Bell Operating Companies:* The Commission eliminates § 53.101 because the expiration date of the prohibition against Bell Operating Company joint marketing of local and interLATA services has passed.

17. *Part 54—Universal Service:* With regard to the rules governing carriers eligible for universal service support, the Commission eliminates § 54.201(a)(2) because the waiver mechanism it provided to state commissions to request retroactive support and eligible telecommunications carrier (ETC) status for certain carriers is no longer necessary in the public interest.

18. With respect to universal service support for high cost areas, the Commission eliminates § 54.313(d)(1) and (2) as the Universal Service Program certification deadlines associated with long term support for non-rural carriers have expired.

19. In the context of universal service support for schools and libraries, the Commission removes obsolete parts of § 54.507(b) which addressed the length of the 1998–1999 funding year, the first year of the Universal Service Schools and Library Program.

20. With respect to universal service support for health care providers, the Commission eliminates expired sections § 54.604(a)(2) and (d) which pertained to specified exemptions to the Universal Service Program competitive bid requirements applicable to eligible health care provider contracts with telecommunications service providers during 1998 and 1999.

21. The Commission eliminates §§ 54.623(c)(2) and (3) as their provisions are redundant or unnecessary. The Commission modifies § 54.623(b) to eliminate an outdated reference to the already-passed initiation of the rural health care mechanism. The Commission also modifies § 54.623(c)(4) to clarify that all applications filed by rural health care providers within the filing window, as determined by the Administrator, will be treated as simultaneously received.

22. *Part 63—Extension of Lines, New Lines, and Discontinuance, Reduction, Outage and Impairment of Service by Common Carriers; and Grants of Recognized Private Operating Agency Status:* The Commission clarifies, in § 63.61, that non-dominant carriers which seek to discontinue, reduce, or impair service, must file for and receive authority from the Commission in order to take such action. This change was mistakenly omitted when § 63.71 was adopted. The Commission also modifies §§ 63.61 and 63.71 to clarify that the procedures, such as filing deadlines, for the discontinuance, reduction or impairment of international services are governed by § 63.19.

23. In §§ 63.71(a)(5)(i) and (ii) the Commission clarifies descriptions of notice periods and procedures set forth in exemplar language which carriers use to advise affected customers of proposed discontinuances, reductions, or impairments of service, and of their rights to comment to the Commission.

24. *Part 64—Miscellaneous Rules Relating to Common Carriers:* The Commission repeals the expired September 20, 1998 deadline in § 64.1330(c) to eliminate confusion about the on-going nature of the requirements under section 276 and under §§ 64.1330(a) and (c) regarding public interest payphones.

25. The Commission eliminates § 64.1903(c) which provided certain incumbent independent local exchange carriers a now expired deadline in which to comply with specified obligations to provide services through a separate affiliate. The Commission also deletes the cross reference to § 64.1903(c) set forth in § 64.1903(a).

26. *Part 69—Access Charges:* The Commission deletes rules with effective dates which have passed or which are no longer relevant to the carriers to which they had applied: § 69.116 which set forth a computation formula applicable to an access charge which was to fund the Universal Service Fund during the August 1, 1988 through December 31, 1997 time period; § 69.117 which set forth a computation formula applicable to an access charge which was to fund the Lifeline Assistance during the August 1, 1988 through December 31, 1997 time period; § 69.126 which provided a time frame for specified nonrecurring charges by incumbent local exchange carriers which is no longer relevant; § 69.127 which set forth a Transitional Equal Charge Rule which has been superceded by subsequent tariffs; and § 69.612 which defined the computation methods for the Long Term and Transitional Support payment obligations but has also expired.

27. *Paperwork Reduction Act Analysis:* According to the terms of the Paperwork Reduction Act of 1995, Pub. L. 104–13, the modifications engendered by the rules changes do not contain new or modified information collections subject to Office of Management and Budget review.

28. *Final Regulatory Flexibility Certification:* The Commission provides a Final Regulatory Flexibility Certification that the requirements of the Report and Order will not have a significant economic effect on a substantial number of small entities.

29. *Report to Congress:* The Commission will send a copy of the Order, including its Final Regulatory Flexibility Certification, in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the Order including its Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of this present summarized Order and Final Regulatory Flexibility Certification is also hereby published in the **Federal Register**.

Ordering Clauses

30. Accordingly, *it is ordered* that, pursuant to sections 1, 3, 4(i), 4(j), 201, 205, and 403, of the Communications Act of 1934, as amended, 47 U.S.C. 151, 153, 154, 201–205, and 403, the Report and Order is *adopted.*

31. *It is further ordered*, pursuant to sections 4(i), 4(j), 201, 205, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i)–(j), 201–205, 303(r), 403, and section 553 of Title 5, United States Code, that revisions to parts 36, 51, 52, 53, 54, 63, 64, and 69 of the Commission's rules *are adopted.*

32. *It is further ordered*, that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Report and Order, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

33. *It is further ordered*, that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

34. *It is further ordered*, that the provisions of the Report and Order will be effective December 11, 2006.

List of Subjects

47 CFR Part 36

Communications common carriers, Reporting and recordkeeping requirements, Telephone, Uniform system of Accounts.

47 CFR Part 51

Communications common carriers, Telecommunications.

47 CFR Part 52

Communications common carriers, Telecommunications, Telephone.

47 CFR Part 53

Communications common carriers, Telephone.

47 CFR Part 54

Communications common carriers, Health facilities, Infants and Children, Libraries, Reporting and recordkeeping requirements, Telecommunications, Telephone.

47 CFR Part 63

Communications common carriers, Reporting and recordkeeping requirements, Telephone, Telegraph.

47 CFR Part 64

Telecommunications, Telephone.

47 CFR Part 69

Communications common carriers, Reporting and recordkeeping requirements, Telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 36, 51, 52, 53, 54, 63, 64 and 69 as follows:

PART 36—JURISDICTIONAL SEPARATIONS PROCEDURES; STANDARD PROCEDURES FOR SEPARATING TELECOMMUNICATIONS PROPERTY COSTS, REVENUES, EXPENSES, TAXES AND RESERVES FOR TELECOMMUNICATIONS COMPANIES

■ 1. The authority citation for part 36 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i) and (j), 205, 221(c), 254, 403, and 410.

■ 2. Amend § 36.2 by revising paragraphs (b)(3)(ii) and (b)(3)(iv) to read as follows:

§ 36.2 Fundamental principles underlying procedures.

* * * * *

(b) * * *

(3) * * *

(ii) Holding-time-minutes is the basis for measuring the use of local and toll switching plant.

* * * * *

(iv) Message telecommunications subscriber plant shall be apportioned on the basis of a Gross Allocator which assigns 25 percent to the interstate jurisdiction and 75 percent to the state jurisdiction.

* * * * *

■ 3. Amend § 36.125 by revising paragraph (f) to read as follows:

§ 36.125 Local switching equipment—Category 3.

* * * * *

(f) Beginning January 1, 1998, for study areas with fewer than 50,000 access lines, Category 3 investment is apportioned to the interstate jurisdiction by the application of an interstate allocation factor that is the lesser of either .85 or the sum of the interstate DEM factor specified in paragraph (a)(5) of this section, and the difference between the 1996 interstate DEM factor and the 1996 interstate DEM factor multiplied by a weighting factor as determined by the table below. The Category 3 investment that is not assigned to the interstate jurisdiction pursuant to this paragraph is assigned to the state jurisdiction.

Number of access lines in service in study area	Weighting factor
0–10,000	3.0
10,001–20,000	2.5
20,001–50,000	2.0
50,001–or above	1.0

* * * * *

■ 4. Amend § 36.126 by revising paragraphs (e)(2), (e)(3) introductory text, (e)(3)(i) and (iii), and by removing and reserving paragraph (e)(3)(ii) to read as follows:

§ 36.126 Circuit equipment–Category 4.

* * * * *

(e) * * *

(2) Interexchange Circuit Equipment Used for Wideband Service—Category 4.22—This category includes the circuit equipment portion of interexchange channels used for wideband services. The cost of interexchange circuit equipment in this category is determined separately for each wideband channel and is segregated between message and private line services on the basis of the use of the channels provided. The respective costs are allocated to the appropriate operation in the same manner as the related interexchange cable and wire facilities described in § 36.156.

(3) All Other Interexchange Circuit Equipment—Category 4.23—This category includes the cost of all interexchange circuit equipment not assigned to Categories 4.21 and 4.22. The cost of interexchange basic circuit equipment used for the following classes of circuits is included in this category: Jointly used message circuits, *i.e.*, message switching plant circuits carrying messages from the state and interstate operations; circuits used for state private line service; and circuits used for state private line services.

(i) An average interexchange circuit equipment cost per equivalent interexchange telephone termination for all circuits is determined and applied to the equivalent interexchange telephone termination counts of each of the following classes of circuits: Private Line, State Private Line, Message. The cost of interstate private line circuits is assigned directly to the interstate operation. The cost of state private line circuits is assigned directly to the state operation. The cost of message circuits is apportioned between the state and

interstate operations on the basis of the relative number of study area conversation-minutes applicable to such facilities.

* * * * *

(iii) The cost of special circuit equipment is segregated among telegraph grade private line services and other private line services based on an analysis of the use of the equipment and in accordance with § 36.126(b)(4). The special circuit equipment cost assigned to telegraph grade and other private line services is directly assigned to the appropriate operations.

* * * * *

■ 5. Amend § 36.142 by revising paragraph (a) to read as follows:

§ 36.142 Categories and apportionment procedures.

(a) *Other Information Origination/Termination Equipment—Category 1.* This category includes the cost of other information origination/termination equipment not assigned to Category 2. The costs of other information origination/termination equipment are allocated pursuant to the factor that is used to allocate subcategory 1.3 Exchange Line C&WF.

* * * * *

■ 6. Amend § 36.152 by revising paragraphs (a)(1) and (a)(2) to read as follows:

§ 36.152 Categories of Cable and Wire Facilities (C&WF).

(a) * * *

(1) Exchange Line C&WF *Excluding Wideband*—Category 1—This category includes C&W facilities between local central offices and subscriber premises used for message telephone, private line, local channels, and for circuits between control terminals and radio stations providing very high frequency maritime service or urban or highway mobile service.

(2) *Wideband and* Exchange Trunk C&WF—Category 2—This category includes all wideband, including Exchange Line Wideband and C&WF between local central offices and Wideband facilities. It also includes C&WF between central offices or other switching points used by any common carrier for interlocal trunks wholly within an exchange or metropolitan service area, interlocal trunks with one or both terminals outside a metropolitan service area carrying some exchange traffic, toll connecting trunks, tandem trunks principally carrying exchange traffic, the exchange trunk portion of WATS access lines, the exchange trunk portion of private line local channels, and the exchange trunk portion of circuits between control terminals and radio stations providing very high frequency maritime service or urban or highway mobile service.

* * * * *

■ 7. Amend § 36.154 by revising paragraph (c) and by removing and reserving paragraphs (d), (e) and (f) to read as follows:

§ 36.154 Exchange Line Cable and Wire Facilities (C&WF)—Category 1—apportionment procedures.

* * * * *

(c) Effective January 1, 1986, 25 percent of the costs assigned to subcategory 1.3 shall be allocated to the interstate jurisdiction.

* * * * *

■ 8. Amend § 36.156 by revising paragraph (b) to read as follows:

§ 36.156 Interexchange Cable and Wire Facilities (C&WF)—Category 3—apportionment procedures.

* * * * *

(b) The cost of C&WF applicable to this category shall be directly assigned where feasible. If direct assignment is not feasible, cost shall be apportioned between the state and interstate jurisdiction on the basis of conversation-minute kilometers as applied to toll message circuits, etc.

* * * * *

■ 9. Amend § 36.212 by revising paragraph (c) to read as follows:

§ 36.212 Basic local services revenue—Account 5000.

* * * * *

(c) Wideband Message Service revenues from monthly and miscellaneous charges, service connections, move and change charges, are apportioned between state and interstate operations on the basis of the relative number of minutes-of-use in the study area. Effective July 1, 2001, through June 30, 2006, all study areas shall apportion Wideband Message Service revenues among the jurisdictions using the relative number of minutes of use for the twelve-month period ending December 31, 2000.

* * * * *

■ 10. Amend § 36.214 by revising paragraph (a) to read as follows:

§ 36.214 Long distance message revenue—Account 5100.

(a) Wideband message service revenues from monthly and miscellaneous charges, service connections, move and change charges, are apportioned between state and interstate operations on the basis of the relative number of minutes-of-use in the study area. Effective July 1, 2001 through June 30, 2006, all study areas shall apportion Wideband Message Service revenues among the jurisdictions using the relative number of minutes of use for the twelve-month period ending December 31, 2000.

* * * * *

§ 36.375 [Amended].

■ 11. Amend § 36.375 by removing paragraph (b)(2) and redesignating paragraphs (b)(3) through (b)(6) as (b)(2) through (b)(5).

■ 12. Amend § 36.377 by removing and reserving paragraphs (a)(1)(viii), (a)(2)(vi), (a)(3)(v), and (a)(7) and by revising paragraphs (a)(1) introductory text, (a)(2) introductory text, (a)(2)(vii), (a)(3) introductory text , (a)(3)(vii), (a)(5)(i), (a)(5)(v), and (a)(5)(vi) to read as follows:

§ 36.377 Category 1—Local business office expense.

(a) * * *

(1) End-user service order processing includes expenses related to the receipt and processing of end users' orders for service and inquiries concerning service. This subcategory does not include any service order processing expenses for services provided to the interexchange carriers. End user service order processing expenses are first segregated into the following subcategories based on the relative number of actual contacts which are weighted, if appropriate, to reflect differences in the average work time per contact: Local service order processing; presubscription; directory advertising; State private line and special access; interstate private line and special access; other State message toll including WATS; other interstate message toll including WATS.

* * * * *

(2) End user payment and collection includes expenses incurred in relation to the payment and collection of amounts billed to end users. It also includes commissions paid to payment agencies (which receive payment on customer accounts) and collection agencies. This category does not include any payment or collection expenses for services provided to interexchange carriers. End user payment and collection expenses are first segregated into the following subcategories based on relative total state and interstate billed revenues (excluding revenues billed to interexchange carriers and/or revenues deposited in coin boxes) for services for which end user payment and collection is provided: State private line and special access; interstate private line and special access; State

message toll including WATS; interstate message toll including WATS, and interstate subscriber line charge; local, including directory advertising.

* * * * *

(vii) Effective July 1, 2001, through June 30, 2006, study areas subject to price cap regulation, pursuant to § 61.41 of this chapter, shall assign the balance of Account 6620—Services to the subcategories, as specified in §§ 36.377(a)(2)(i) through 36.377(a)(2)(vi), based on the relative percentage assignment of the balance of Account 6620 to these categories/subcategories during the twelve month period ending December 31, 2000. All other subcategories of End User payment and collection expense, as specified in §§ 36.377(a)(2)(i) through 36.377(a)(2)(v), shall be directly assigned.

* * * * *

(3) End user billing inquiry includes expenses related to handling end users' inquiries concerning their bills. This category does not include expenses related to the inquiries of interexchange carriers concerning their bills. End user billing inquiry costs are first segregated into the following subcategories based on the relative number of actual contracts, weighted if appropriate, to reflect differences in the average work time per contact: State private line and special access; interstate private line and special access; State message toll including WATS, interstate message toll including WATS, interstate subscriber line charge; and other.

* * * * *

(vii) Effective July 1, 2001 through June 30, 2006 study areas subject to price cap regulation, pursuant to § 61.41 of this chapter, shall assign the balance of Account 6620—Services to the subcategories, as specified in §§ 36.377(a)(3)(i) through 36.377(a)(3)(vi), based on the relative percentage assignment of the balance of Account 6620 to these subcategories during the twelve month period ending December 31, 2000. All other subcategories of End user billing inquiry expense, as specified in §§ 36.377(a)(3)(i) through 36.377(a)(3)(vi), shall be directly assigned.

* * * * *

(5) * * *

(i) State special access and private line payment and collection expense is directly assigned to the State jurisdiction.

* * * * *

(v) State billing and collection payment and collection expense is directly assigned to the State jurisdiction.

(vi) Interstate billing and collection payment and collection expense is directly assigned to the interstate jurisdiction.

* * * * *

■ 13. Amend § 36.631 by removing and reserving paragraphs (a) and (b) and by revising paragraph (d) introductory text to read as follows:

§ 36.631 Expense adjustment.

* * * * *

(d) Beginning January 1, 1998, for study areas reporting more than 200,000 working loops pursuant to § 36.611(h), the expense adjustment (additional interstate expense allocation) is equal to the sum of paragraphs (d)(1) through (4) of this section. After January 1, 2000, the expense adjustment (additional interstate expense allocation) for non-rural telephone companies serving study areas reporting more than 200,000 working loops pursuant to § 36.611(h) shall be calculated pursuant to § 54.309 of this chapter or § 54.311 of this chapter (which relies on this part), whichever is applicable.

* * * * *

§ 36.641 [Removed].

■ 14. Remove § 36.641.

■ 15. Revise Appendix to Part 36—Glossary to read as follows:

Appendix to Part 36—Glossary

The descriptions of terms in this glossary are broad and have been prepared to assist in understanding the use of such terms in the separation procedures. Terms which are defined in the text of this part are not included in this glossary.

Access Line

A communications facility extending from a customer's premises to a serving central office comprising a subscriber line and, if necessary, a trunk facility, e.g., a WATS access line.

Book Cost

The cost of property as recorded on the books of a company.

Cable Fill Factor

The ratio of cable conductor or cable pair kilometers in use to total cable conductor or cable pair kilometers available in the plant, e.g., the ratio of revenue producing cable pair kilometers in use to total cable pair kilometers in plant.

Category

A grouping of items of property or expense to facilitate the apportionment of their costs among the operations and to which, ordinarily, a common measure of use is applicable.

Central Office

A switching unit, in a telephone system which provides service to the general public, having the necessary equipment and operations arrangements for terminating and interconnecting subscriber lines and trunks or trunks only. There may be more than one central office in a building.

Channel

An electrical path suitable for the transmission of communications between two or more points, ordinarily between two or more stations or between channel terminations in Telecommunication Company central offices. A channel may be furnished by wire, fiberoptics, radio or a combination thereof.

Circuit

A fully operative communications path established in the normal circuit layout and currently used for message, WATS access, or private line services.

Circuit Kilometers

The route kilometers or revenue producing circuits in service, determined by measuring the length in terms of kilometers, of the actual path followed by the transmission medium.

Common Channel Network Signaling

Channels between switching offices used to transmit signaling information independent of the subscribers' communication paths or transmission channels.

Complement (of cable)

A group of conductors of the same general type (e.g., quadded, paired) within a single cable sheath.

Complex

All groups of operator positions, wherever located, associated with the same call distribution and/or stored program control unit.

Concentration Equipment

Central office equipment whose function is to concentrate traffic from subscriber lines onto a lesser number of circuits between the remotely located concentration equipment and the serving central office concentration equipment. This concentration equipment is connected to the serving central office line equipment.

Connection—Minute

The product of (a) the number of messages and, (b) the average minutes of connection per message.

Conversation—Minute

The product of (a) the number of messages and, (b) the average minutes of conversation per message.

Conversation—Minute—Kilometers

The product of (a) the number of messages, (b) the average minutes of conversation per message and (c) the average route kilometers of circuits involved.

Cost

The cost of property owned by the Telephone Company whose property is to be apportioned among the operations. This term applies either to property costs recorded on the books of the company or property costs determined by other evaluation methods.

Current Billing

The combined amount of charges billed, excluding arrears.

Customer Dialed Charge Traffic

Traffic which is both (a) handled to completion through pulses generated by the customer and (b) for which either a message unit change, bulk charge or message toll charge is except for that traffic recorded by means of message registers.

Customer Premises Equipment

Items of telecommunications terminal equipment in Accounts 2310 referred to as CPE in § 64.702 of the Federal Communication Commission's Rules adopted in the *Second Computer Inquiry* such as telephone instruments, data sets, dialers and other supplemental equipment, and PBX's which are provided by common carriers and located on customer premises and inventory included in these accounts to be used for such purposes. Excluded from this classification are similar items of equipment located on telephone company premises and used by the company in the normal course of business as well as over voltage protection equipment, customer premises wiring, coin operated public or pay telephones, multiplexing equipment to deliver multiple channels to the customer, mobile radio equipment and transmit earth stations.

Customer Premises Wire

The segment of wiring from the customer's side of the protector to the customer premises equipment.

DSA Board

A local dial office switchboard at which are handled assistance calls, intercepted calls and calls from miscellaneous lines and trunks. It may also be employed for handling certain toll calls.

DSB Board

A switchboard of a dial system for completing incoming calls received from manual offices.

Data Processing Equipment

Office equipment such as that using punched cards, punched tape, magnetic or other comparable storage media as an operating vehicle for recording and processing information. Includes machines for transcribing raw data into punched cards, etc., but does not include such items as key-operated, manually or electrically driven adding, calculating, bookkeeping or billing machines, typewriters or similar equipment.

Dial Switching Equipment

Switching equipment actuated by electrical impulses generated by a dial or key pulsing arrangement.

Equal Access Costs

Include only initial incremental presubscription costs and initial incremental expenditures for hardware and software related directly to the provision of equal access which would not be required to upgrade the switching capabilities of the office involved absent the provisions of equal access.

Equivalent Gauge

A standard cross section of cable conductors for use in equating the metallic content of cable conductors of all gauge to a common base.

Equivalent Kilometers of 104 Wire

The basic units employed in the allocation of pole lines costs for determining the relative use made of poles by aerial cables and by aerial wire conductors of various sizes. This unit reflects the relative loads of such cable and wire carried on poles.

Equivalent Pair Kilometers

The product of sheath Kilometers and the number of equivalent gauge pairs of conductors in a cable.

Equivalent Sheath Kilometers

The product of (a) the length of a section of cable in kilometers (sheath kilometers) and (b) the ratio of the metallic content applicable to a particular group of conductors in the cable (e.g., conductors assigned to a category) to the metallic content of all conductors in the cable.

Exchange Transmission Plant

This is a combination of (a) exchange cable and wire facilities (b) exchange central office circuit equipment, including associated land and buildings and (c) information origination/termination equipment which forms a complete channel.

Holding Time

The time in which an item of telephone plant is in actual use either by a customer or an operator. For example, on a completed telephone call, holding time includes conversation time as well as other time in use. At local dial offices any measured minutes which result from other than customer attempts to place calls (as evidenced by the dialing of at least one digit) are not treated as holding time.

Host Central Office

An electronic analog or digital base switching unit containing the central call processing functions which service the host office and its remote locations.

Information Origination/Termination Equipment

Equipment used to input into or receive output from the telecommunications network.

Interexchange Channel

A circuit which is included in the interexchange transmission equipment.

Interexchange Transmission Equipment

The combination of (a) interexchange cable and wire facilities, (b) interexchange circuit equipment and, (c) associated land and buildings.

Interlocal Trunk

A circuit between two local central office units, either manual or dial. Interlocal trunks may be used for either exchange or toll traffic or both.

Intertoll Circuits

Circuits between toll centers and circuits between a toll center and a tandem system in a different toll center area.

Local Channel

The portion of a private line circuit which is included in the exchange transmission plant. However, common usage of this term usually excludes information origination/termination equipment.

Local Office

A central office serving primarily as a place of termination for subscriber lines and for providing telephone service to the subscribers on these lines.

Loop

A pair of wires, or its equivalent, between a customer's station and the central office from which the station is served.

Message

A completed call, i.e., a communication in which a conversation or exchange of information took place between the calling and called parties.

Message Service or Message Toll Service

Switched service furnished to the general public (as distinguished from private line service). Except as otherwise provided, this includes exchange switched services and all switched services provided by interexchange carriers and completed by a local telephone company's access services, e.g., MTS, WATS, Execunet, open-end FX and CCSA/ONALs.

Message Units

Unit of measurement used for charging for measured message telephone exchange traffic within a specified area.

Metropolitan Service Area

The area around and including a relatively large city and in which substantially all of the message telephone traffic between the city and the suburban points within the area is classified as exchange in one or both directions.

Minutes-of-Use

A unit of measurement expressed as either holding time or conversation time.

Minutes-of-Use-Kilometers

The product of (a) the number of minutes-of-use and (b) the average route kilometers of circuits involved.

Multi-Center Exchange

An exchange area in which are located two or more local central office buildings or wire centers.

Operations

The term denoting the general classifications of services rendered to the

public for which separate tariffs are filed, namely exchange, state toll and interstate toll.

Operator Trunks

A general term, ordinarily applied to trunks between manually operated switchboard positions and local dial central offices in the same wire center.

Private Line Service

A service for communications between specified locations for a continuous period or for regularly recurring periods at stated hours.

Remote Access Line

An access line (e.g., for WATS service) between a subscriber's premises in one toll rate center and a serving central office located in a different toll rate center.

Remote Line Location

A remotely located subscriber line access unit which is normally dependent upon the central processor of the host office for call processing functions.

Remote Trunk Arrangement (RTA)

Arrangement that permits the extension of TSPS functions to remote locations.

Reservation

That amount or quantity of property kept or set apart for a specific use.

Reserved

Kept or set apart for a specific use.

Separations

The process by which telecommunication property costs, revenues, expenses, taxes and reserves are apportioned among the operations.

Service Observing Unit

A unit of work measurement which is used as the common denominator to express the relative time required for handling the various work functions at service observing boards.

Sheath Kilometers

The actual length of cable in route kilometers.

Special Services

All services other than message telephones, e.g., private line services.

Station-to-Station Basis

The term applied to the basis of toll rate making which contemplates that the message toll service charge (telephone) covers the use made of all facilities between the originating station and the terminating station, including the stations, and the services rendered in connection therewith.

Study Area

Study area boundaries shall be frozen as they are on November 15, 1984.

Subscriber Line or Exchange Line

A communication channel between a telephone station or PBX station and the central office which serves it.

Subtributary Office

A class of tributary office which does not have direct access to its toll center, but which is connected to its toll center office by means of circuits which are switched through to the toll center at another tributary office.

Tandem Area

The general areas served by the local offices having direct trunks to or from the tandem office. This area may consist of one or more communities or may include only a portion of a relatively large city.

Tandem Circuit or Trunk

A general classification of circuits or trunks between a tandem central office unit and any other central office or switchboard.

Tandem Connection

A call switched at a tandem office.

Tandem Office

A central office unit used primarily as an intermediate switching point for traffic between local central offices within the tandem area. Where qualified by a modifying expression, or other explanation, this term may be applied to an office employed for both the interconnection of local central offices within the tandem area and for the interconnection of these local offices with other central offices, e.g., long haul tandem office.

Toll Center

An office (or group of offices) within a city which generally handles the originating and incoming toll traffic for that city to or from other toll center areas and which handles through switched traffic. The toll center normally handles the inward toll traffic for its tributary exchanges and, in general, either handles the outward traffic originating at its tributaries or serves as the outlet to interexchange circuits for outward traffic ticketed and timed at its tributaries. Toll centers are listed as such in the Toll Rate and Route Guide.

Toll Center Area

The areas served by a toll center, including the toll center city and the communities served by tributaries of the toll center.

Toll Center Toll Office

A toll office (as contrasted to a local office) in a toll center city.

Toll Circuit

A general term applied to interexchange trunks used primarily for toll traffic.

Toll Connecting Trunk

A general classification of trunks carrying toll traffic and ordinarily extending between a local office and a toll office, except trunks classified as tributary circuits. Examples of toll connecting trunks include toll switching trunks, recording trunks and recording-completing trunks.

Toll Office

A central office used primarily for supervising and switching toll traffic.

Traffic Over First Routes

A term applied to the routing of traffic and denoting routing via principal route for traffic between any two points as distinguished from alternate routes for such traffic.

Operator System

A stored program electronic system associated with one or more toll switching systems which provides centralized traffic service position functions for several local offices at one location.

Tributary Circuit

A circuit between a tributary office and a toll switchboard or intertoll dialing equipment in a toll center city.

Tributary Office

A local office which is located outside the exchange in which a toll center is located, which has a different rate center from its toll center and which usually tickets and times only a part of its originating toll traffic, but which may ticket or time all or none, of such traffic. The toll center handles all outward traffic not ticketed and timed at the tributary and normally switches all inward toll traffic from outside the tributary's toll center to the tributary. Tributary offices are indicated as such in the Toll Rate and Route Guide.

Trunks

Circuit between switchboards or other switching equipment, as distinguished from circuits which extend between central office switching equipment and information origination/termination equipment.

TSPS Complex

All groups of operator positions, wherever located, associated with the same TSPS stored program control units.

Weighted Standard Work Second

A measurement of traffic operating work which is used to express the relative time required to handle the various kinds of calls or work functions, and which is weighted to reflect appropriate degrees of waiting to serve time.

Wide Area Telephone Service WATS

A toll service offering for customer dial type telecommunications between a given customer station and stations within specified geographic rate areas employing a single access line between the customer location and the serving central office. Each access line may be arranged for either outward (OUT–WATS) or inward (IN–WATS) service or both.

Wideband Channel

A communication channel of a bandwidth equivalent to twelve or more voice grade channels.

Working Loop

A revenue producing pair of wires, or its equivalent, between a customer's station and the central office from which the station is served.

PART 51—INTERCONNECTION

■ 16. The authority citation for part 51 continues to read as follows:

Authority: Sections 1–5, 7, 201–05, 207–09, 218, 225–27, 251–54, 256, 271, 303(r), 332, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 151–55, 157, 201–05, 207–09, 218, 225–27, 251–54, 256, 271, 303(r), 332, 47 U.S.C. 157 *note*, unless otherwise noted.

§ 51.211 [Removed].

■ 17. Remove § 51.211.

§ 51.213 [Amended].

■ 18. Amend § 51.213 by removing paragraphs (c) and (d).

§ 51.329 [Amended].

■ 19. Amend § 51.329 by removing paragraph (c)(3).

§ 51.515 [Amended].

■ 20. Amend § 51.515 by removing and reserving paragraphs (a) and (b).

PART 52—NUMBERING

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

Authority: Sec. 1, 2, 4, 5, 48 Stat. 1066, as amended; 47 U.S.C. 151, 152, 154, 155 unless otherwise noted. Interpret or apply secs. 3, 4, 201–05, 207–09, 218, 225–7, 251–2, 271 and 332, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 153, 154, 201–05, 207–09, 218, 225–7, 251–2, 271 and 332 unless otherwise noted.

■ 22. Amend § 52.5 by revising paragraph (c) to read as follows:

§ 52.5 Definitions.

* * * * *

(c) *North American Numbering Plan* (NANP). The ''North American Numbering Plan'' is the basic numbering scheme for the telecommunications networks located in American Samoa, Anguilla, Antigua, Bahamas, Barbados, Bermuda, British Virgin Islands, Canada, Cayman Islands, Dominica, Dominican Republic, Grenada, Jamaica, Montserrat, St. Kitts & Nevis, St. Lucia, St. Vincent, Turks & Caicos Islands, Trinidad & Tobago, and the United States (including Puerto Rico, the U.S. Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands).

* * * * *

§ 52.11 [Amended].

■ 23. Amend § 52.11 by removing and reserving paragraph (d).

■ 24. Amend § 52.13 by revising paragraphs (b) introductory text, (b)(3) and (c)(4) to read as follows:

§ 52.13 North American Numbering Plan Administrator.

* * * * *

(b) The NANPA shall administer the numbering resources identified in paragraph (d) of this section. It shall assign and administer NANP resources in an efficient, effective, fair, unbiased, and non-discriminatory manner consistent with industry-developed guidelines and Commission regulations. It shall support the Commission's efforts to accommodate current and future numbering needs. It shall perform additional functions, including but not limited to:

* * * * *

(3) Complying with guidelines of the North American Industry Numbering Committee (INC) or its successor, related industry documentation, Commission regulations and orders, and the guidelines of other appropriate policy-making authorities;

* * * * *

(c) * * *

(4) Manage projects such as Numbering Plan Area (NPA) relief (area code relief) planning, Numbering Resource Utilization and Forecast (NRUF) data collection, and NPA and NANP exhaust projection;

* * * * *

■ 25. Amend § 52.15 by removing and reserving paragraphs (c) and (e) and by revising paragraphs (b)(3) and (d) to read as follows:

§ 52.15 Central office code administration.

* * * * *

(b) * * *

(3) Conducting the Numbering Resource Utilization and Forecast (NRUF) data collection;

* * * * *

(d) *Central Office (CO) Code Administration functional requirements.* The NANPA shall manage the United States CO code numbering resource, including CO code request processing, NPA code relief and jeopardy planning, and industry notification functions. The NANPA shall perform its CO Code administration functions in accordance with the published industry numbering resource administration guidelines and Commission orders and regulations of 47 CFR chapter I.

* * * * *

§ 52.27 [Removed].

■ 26. Remove § 52.27.

§ 52.29 [Removed].

■ 27. Remove § 52.29.

§ 52.31 [Amended].

■ 28. Amend § 52.31 by removing and reserving paragraph (c).

PART 53—SPECIAL PROVISIONS CONCERNING BELL OPERATING COMPANIES

■ 29. The authority citation for part 53 continues to read as follows:

Authority: Sections 1–5, 7, 201–05, 218, 251, 253, 271–75, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 151–55, 157, 201–05, 218, 251, 253, 271–75, unless otherwise noted.

§ 53.101 [Removed].

■ 30. Remove § 53.101.

PART 54—UNIVERSAL SERVICE

■ 31. The authority citation for part 54 continues to read as follows:

Authority: 47 U.S.C. 1, 4(i), 201, 205, 214, and 254 unless otherwise noted.

§ 54.201 [Amended].

■ 32. Amend § 54.201 by removing and reserving paragraph (a)(2).

§ 54.313 [Amended].

■ 33. Amend § 54.313 by removing and reserving paragraphs (d)(1) and (d)(2).

■ 34. Amend § 54.507 by revising paragraph (b) to read as follows:

§ 54.507 Cap.

* * * * *

(b) A funding year for purposes of the schools and libraries cap shall be the period July 1 through June 30.

* * * * *

■ 35. Amend § 54.604 by revising paragraph (a)(1), removing and reserving (a)(2), and removing paragraph (d) to read as follows:

§ 54.604 Existing contracts.

(a) * * *

(1) A contract signed on or before July 10, 1997 is exempt from the competitive bid requirement for the life of the contract.

* * * * *

■ 36. Amend § 54.623 by removing and reserving paragraphs (c)(2) and (c)(3) and by revising paragraph (c)(4) to read as follows:

§ 54.623 Cap.

* * * * *

(c) * * *

(4) The Administrator shall implement a filing period that treats all rural health care providers filing within the period as if their applications were simultaneously received.

* * * * *

PART 63—EXTENSION OF LINES, NEW LINES, AND DISCONTINUANCE, REDUCTION, OUTAGE AND IMPAIRMENT OF SERVICE BY COMMON CARRIERS; AND GRANTS OF RECOGNIZED PRIVATE OPERATING AGENCY STATUS

■ 37. The authority citation for part 63 continues to read as follows:

Authority: Sections 1, 4(i), 4(j), 10, 11, 201–205, 214, 218, 403 and 651 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 160, 201–205, 214, 218, 403, and 571, unless otherwise noted.

■ 38. Revise § 63.61 to read as follows:

§ 63.61 Applicability.

Any carrier subject to the provisions of section 214 of the Communications Act of 1934, as amended, proposing to discontinue, reduce or impair interstate or foreign telephone or telegraph service to a community, or a part of a community, shall request authority therefor by formal application or informal request as specified in the pertinent sections of this part:

(a) *Provided, however,* that where service is expanded on an experimental basis for a temporary period of not more than 6 months, no application shall be required to reduce service to its status prior to such expansion but a written notice shall be filed with the Commission within 10 days of the reduction showing:

(1) The date on which, places at which, and extent to which service was expanded; and,

(2) The date on which, places at which, and extent to which such expansion of service was discontinued.

(b) And provided further that a licensee of a radio station who has filed an application for authority to discontinue service provided by such station shall during the period that such application is pending before the Commission, continue to file appropriate applications as may be necessary for extension or renewal of station license in order to provide legal authorization for such station to continue in operation pending final action on the application for discontinuance of service. Procedures for discontinuance, reduction or impairment of service by dominant and non-dominant, domestic carriers are in § 63.71. Procedures for discontinuance, reduction or impairment of international services are in § 63.19.

■ 39. Amend § 63.71 by revising paragraphs (a)(5)(i), (a)(5)(ii) and add new paragraph (d) to read as follows:

§ 63.71 Procedures for discontinuance, reduction or impairment of service for domestic carriers.

* * * * *

(a) * * *

(5) * * *

(i) If the carrier is non-dominant with respect to the service being discontinued, reduced or impaired, the notice shall state: The FCC will normally authorize this proposed discontinuance of service (or reduction or impairment) unless it is shown that customers would be unable to receive service or a reasonable substitute from another carrier or that the public convenience and necessity is otherwise adversely affected. If you wish to object, you should file your comments as soon as possible, but no later than 15 days after the Commission releases public notice of the proposed discontinuance. Address them to the Federal Communications Commission, Wireline Competition Bureau, Competition Policy Division, Washington, DC 20054, and include in your comments a reference to the § 63.71 Application of (carrier's name). Comments should include specific information about the impact of this proposed discontinuance (or reduction or impairment) upon you or your company, including any inability to acquire reasonable substitute service.

(ii) If the carrier is dominant with respect to the service being discontinued, reduced or impaired, the notice shall state: The FCC will normally authorize this proposed discontinuance of service (or reduction or impairment) unless it is shown that customers would be unable to receive service or a reasonable substitute from another carrier or that the public convenience and necessity is otherwise adversely affected. If you wish to object, you should file your comments as soon as possible, but no later than 30 days after the Commission releases public notice of the proposed discontinuance. Address them to the Federal Communications Commission, Wireline Competition Bureau, Competition Policy Division, Washington, DC 20054, and include in your comments a reference to the § 63.71 Application of (carrier's name). Comments should include specific information about the impact of this proposed discontinuance (or reduction or impairment) upon you or your company, including any inability to acquire reasonable substitute service.

* * * * *

(d) Procedures for discontinuance, reduction or impairment of international services are in § 63.19.

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

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

Authority: 47 U.S.C. 154, 254(k); secs. 403(b)(2)(B),(c), Pub. L. 104–104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 222, 225, 226, 228, and 254 (k) unless otherwise noted.

■ 41. Amend § 64.1330 by revising paragraph (c) to read as follows:

§ 64.1330 State review of payphone entry and exit regulations and public interest payphones.

* * * * *

(c) Each state must review its rules and policies to determine whether it has provided for public interest payphones consistent with applicable Commission guidelines, evaluate whether it needs to take measures to ensure that such payphones will continue to exist in light of the Commission's implementation of Section 276 of the Communications Act, and administer and fund such programs so that such payphones are supported fairly and equitably.

■ 42. Amend § 64.1903 by revising paragraph (a) introductory text and by removing paragraph (c) to read as follows:

§ 64.1903 Obligations of all incumbent independent local exchange carriers.

(a) An incumbent independent LEC providing in-region, interstate, interexchange services or in-region international interexchange services shall provide such services through an affiliate that satisfies the following requirements:

* * * * *

PART 69—ACCESS CHARGES

■ 43. The authority citation for part 69 continues to read as follows:

Authority: 47 U.S.C. 154, 201, 202, 203, 205, 218, 220, 254, 403.

§§ 69.116 and 69.117 [Removed].

■ 44. Remove §§ 69.116 and 69.117.

§§ 69.126 and 69.127 [Removed].

■ 45. Remove §§ 69.126 and 69.127.

§ 69.612 [Removed].

■ 46. Remove § 69.612.

[FR Doc. E6–18842 Filed 11–8–06; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 225 and 252

RIN 0750–AF29

Defense Federal Acquisition Regulation Supplement; Trade Agreements Thresholds and Morocco Free Trade Agreement (DFARS Case 2005–D017)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has adopted as final, with changes, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to update policy relating to trade agreements. The rule incorporates increased dollar thresholds for application of the World Trade Organization Government Procurement Agreement and the Free Trade Agreements, implements a new Free Trade Agreement with Morocco, and amends the list of end products subject to trade agreements.

DATES: *Effective Date:* November 9, 2006.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0328; facsimile (703) 602–0350. Please cite DFARS Case 2005–D017.

SUPPLEMENTARY INFORMATION:

A. Background

DoD published an interim rule at 71 FR 9269 on February 23, 2006, to reflect increased dollar thresholds for application of the trade agreements, as determined by the United States Trade Representative; to implement a new Free Trade Agreement with Morocco; and to update the list of end products subject to trade agreements. DoD received no comments on the interim rule and has adopted the interim rule as a final rule, with an additional change at 252.225–7021 to reflect that the definition of ''designated country end products'' includes Caribbean Basin and Free Trade Agreement country end products.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD certifies that this final rule will not 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 dollar threshold changes are designed to keep pace with inflation and thus maintain the status quo. Although the rule opens up DoD procurement to the products of Morocco, DoD does not believe there will be a significant economic impact on U.S. small businesses. DoD applies the trade agreements to only those non-defense items listed at DFARS 225.401–70, and procurements that are set aside for small businesses are exempt from application of the trade agreements.

C. Paperwork Reduction Act

This rule affects the certification and information collection requirements in the provisions at DFARS 252.225–7020 and 252.225–7035, currently approved under Office of Management and Budget Control Number 0704–0229 for use through May 31, 2007. However, there is no impact on the estimated burden hours. The dollar threshold changes are in line with inflation and maintain the status quo. Reporting of products from Morocco as Free Trade Agreement end products rather than other foreign end products has no impact on paperwork burden.

List of Subjects in 48 CFR Parts 225 and 252

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Accordingly, the interim rule amending 48 CFR parts 225 and 252, which was published at 71 FR 9269 on February 23, 2006, is adopted as a final rule with the following changes:

■ 1. The authority citation for 48 CFR parts 225 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.212–7001 [Amended]

■ 2. Section 252.212–7001 is amended as follows:

■ a. By revising the clause date to read ''(NOV 2006)''; and

■ b. In paragraph (b)(9), by removing ''(OCT 2006)'' and adding in its place ''(NOV 2006)''.

■ 3. Section 252.225–7021 is amended by revising the clause date and paragraph (c)(2)(i) to read as follows:

252.225–7021 Trade Agreements.

* * * * *

Trade Agreements (Nov 2006)

* * * * *

(c) * * *

(2)(i) Offers of U.S.-made, qualifying country, or designated country end products from responsive, responsible offerors are either not received or are insufficient to fill the Government's requirements; or

* * * * *

[FR Doc. E6–19032 Filed 11–8–06; 8:45 am]

BILLING CODE 5001–08–P

Proposed Rules

Federal Register
Vol. 71, No. 217
Thursday, November 9, 2006

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

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 210 and 220

RIN 0584–AD58

Fluid Milk Substitutions in the School Nutrition Programs

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule reflects amendments made by section 102 of the Child Nutrition and WIC Reauthorization Act of 2004 to the Richard B. Russell National School Lunch Act regarding substitutes for fluid milk in the National School Lunch Program. This rule would implement a legislative provision on milk substitutes that follows current regulations on menu exceptions for students with disabilities and would add new requirements for substitutions for fluid milk for children with medical or other special dietary needs.

Specifically, this proposed rule would establish nutritional standards for nondairy beverage alternatives to fluid milk, as well as requirements for substitutions for fluid milk for non-disabled students with medical or special dietary needs. It would allow the parent or legal guardian of a child with medical or special dietary needs to request a fluid milk substitute. In addition, it would allow schools to select acceptable fluid milk substitutes that meet the nutritional standards established in this proposed rule, and would continue to make school food authorities responsible for substitution expenses that exceed the Federal reimbursement.

This rule, as proposed, would ensure consistency among milk substitutes offered in the school lunch and breakfast programs, and would make certain that students who consume nondairy beverage alternates receive important nutrients found in fluid milk.

DATES: To be assured of consideration, written comments must be postmarked on or before January 8, 2007.

ADDRESSES: The Food and Nutrition Service invites interested persons to submit comments on this interim rule. Comments may be submitted by any of the following methods:

- *E-Mail:* Send comments to *CNDPROPOSAL@FNS.USDA.GOV*. The subject line must include the words ''Fluid Milk Substitutions''.
- *Fax:* Submit comments by facsimile transmission to: (703) 305–2879, attention Robert Eadie.
- *Mail:* Comments should be addressed to Mr. Robert Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, Department of Agriculture, 3101 Park Center Drive, Room 634, Alexandria, Virginia 22302–1594. All written submissions will be available for public inspection at this location Monday through Friday, 8:30 a.m.–5 p.m.
- *Hand Delivery or Courier:* Deliver comments to 3101 Park Center Drive, Room 634, Alexandria, Virginia 22302–1594, during normal business hours of 8:30 a.m.–5 p.m.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT: William Wagoner or Marisol Benesch, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service at (703) 305–2590.

SUPPLEMENTARY INFORMATION:

I. Background

National School Lunch Program (NSLP) regulations under 7 CFR 210.10(g)(1) require schools to make food substitutions for children whose disabilities restrict their diet, and give schools discretion to make substitutions for students with medical or other special dietary needs. The need for substitutions must be supported by a statement signed by a physician in the case of a student with a disability, or by a recognized medical authority in the case of a student who is not disabled. The substitution rules in the NSLP also apply to the School Breakfast Program (SBP), pursuant to regulations at 7 CFR 220.8(g).

Section 102 of the Child Nutrition and WIC Reauthorization Act of 2004 (Pub. L. 108–265; June 30, 2004) amended section 9(a)(2) of the Richard B. Russell National School Lunch Act (NSLA), 42 U.S.C. 1758(a)(2), to include the above regulatory provisions and added the following requirements for substitutions for milk:

- Allows schools to make substitutions for students who have medical or dietary needs, other than a disability, and accept a statement from a parent or guardian in lieu of the statement from a recognized medical authority;
- Adds the requirement, except in the case of a student with a disability, that nondairy beverages offered for substitution must be ''nutritionally equivalent to fluid milk'' and meet the nutritional standards set by the Secretary of Agriculture;
- Grants schools discretion to select acceptable substitutes that meet the nutritional standards established by the Secretary;
- Requires schools to inform the State agency if they choose to offer substitutes for fluid milk other than for students with a disability; and
- Requires school food authorities (SFAs) to pay for substitution expenses that exceed Federal reimbursements.

The Food and Nutrition Service (FNS) has issued separate guidance for accommodating children with special dietary needs in the school meal programs. The publication ''Accommodating Children with Special Dietary Needs in the School Nutrition Programs'' is available at the FNS Web site (*http://www.fns.usda.gov/cnd/Guidance/special_dietary_needs.pdf*).

This proposed rule also makes a non-substantive change to the heading of 7 CFR 210.10 and 7 CFR 220.8 by converting each from a question to a statement. This change is intended to conform the headings to the same style as all other section headings in 7 CFR Parts 210 and 220. These non-substantive changes will not change the basic meaning of the headings, nor affect the meaning of any of the subsections.

II. Fluid Milk Requirement

Schools participating in the school meals programs are required to offer fluid milk as part of a reimbursable meal pursuant to section 9(a)(2) of the NSLA, 42 U.S.C. 1758(a)(2) and 7 CFR 210.10(m)(1)(ii) and 7 CFR 220.8(i)(1). This requirement is in place because

research shows that milk consumption is especially important to bone health during childhood and adolescence. Section 102 of Public Law 108–265 expands section 9(a)(2) and continues the current milk requirement, and gives schools the option to offer an acceptable nondairy substitute to non-disabled children who cannot drink fluid milk for medical or other special dietary reasons.

III. Substitutions for Disability Reasons

Current regulations governing the NSLP and SBP require schools to make substitutions for children who cannot consume the regular lunch, afterschool snack or breakfast due to their disability, when that need is certified by a physician and the substitution needed for any food item (including fluid milk) is specified with a diet order or diet prescription. The regulations at 7 CFR 210.10(g)(1) already contain these requirements. This proposed rule retains the requirements as currently stated, but reorganizes them for clarity to distinguish between the requirements for substitutions for disabled and non-disabled students.

IV. Substitutions for Non-Disability Reasons

Over the years, Federal, State, and local program officials have received requests from parents and caregivers for alternatives to fluid milk for children who have milk intolerances or allergies that restrict their diet but do not meet the definition of disability. Under the current regulations, schools may offer non-disabled students substitutes for fluid milk when supported by a statement from a recognized medical authority. This proposed regulation would require that milk substitutions for non-disabled students meet the nutritional standards established in this rule and would allow schools the discretion to offer acceptable substitutes. This proposed rule would also permit schools to accept a written request from a parent or legal guardian in lieu of a statement from a medical authority. These and other statutory provisions are discussed in more detail in the following sections.

Nutritional Standards for Milk Substitutes

The NSLA now allows schools the option to offer a nondairy beverage that is nutritionally equivalent to fluid milk for non-disabled children with medical or special dietary needs. To ensure that children receive adequate substitutes, section 9(a)(2)(B) of the NSLA, 42 U.S.C. 1758(a)(2)(B), requires the Secretary to establish nutritional standards for nondairy beverages to assure that they are nutritionally equivalent to milk. That section also requires that milk substitutes be fortified with calcium, protein, vitamin A, and vitamin D to levels found in fluid milk.

The NSLA also authorizes the Secretary to specify other nutrients in addition to the ones required by the statute. Existing research indicates that fluid milk is a major source of a number of other nutrients. According to the Food and Drug Administration (FDA), an ''excellent source'' (as found in 21 CFR 101.54(b)(1)) is a food item that contributes at least 20 percent of the daily need of a specified nutrient per serving. One serving (1 cup) of milk fulfills the FDA's nutrient content claim of ''excellent source'' for calcium, riboflavin and phosphorus. In addition, data from the Continuing Survey of Food Intakes by Individuals (*see* table below) shows that milk is the primary food source for children for the following vitamins and minerals: Vitamin A, riboflavin, vitamin B–12, calcium, magnesium, phosphorus, and potassium. Given the special role of milk in providing these nutrients to children, the Department is proposing to extend the requirements for nondairy milk substitutes to also include minimum nutrient levels for riboflavin, vitamin B–12, magnesium, phosphorus, potassium.

SUMMARY OF MILK CONTRIBUTIONS TO TOTAL NUTRIENT INTAKES AMONG U.S. CHILDREN, 2–18 YEARS OF AGE, 1994–96, 1998

Nutrient	Rank	Percent of total
Energy	1	9.0
Carbohydrate	5	6.0
Protein	1	16.4
Total fat	1	10.4
Saturated fat	1	17.8
Polyunsaturated fat	10	2.2
Monosaturated fat	4	7.8
Cholesterol	3	13.5

SUMMARY OF MILK CONTRIBUTIONS TO TOTAL NUTRIENT INTAKES AMONG U.S. CHILDREN, 2–18 YEARS OF AGE, 1994–96, 1998—Continued

Nutrient	Rank	Percent of total
Fiber		<1
Vitamin C	7	3.5
Vitamin E	11	3.7
Vitamin A (RE)	1	20.2
Carotene	6	2.3
Folate	4	6.4
Thiamin	3	8.1
Riboflavin	1	27.2
Niacin		<1
Vitamin B–6	2	8.5
Vitamin B–12	1	31.5
Calcium	1	45.7
Phosphorus	1	27.3
Sodium	4	5.4
Potassium	1	22.4
Iron		<1
Zinc	3	12.4
Magnesium	1	18.9
Copper	12	3.1
Selenium	3	8.7
Caffeine		<1
Theobromine		<1

Derived from: 1994–96, 1998 Continuing Survey of Food Intakes by Individuals. Dietary Source Nutrient Database for USDA Survey Food Codes.

In setting minimum nutritional standards for milk substitutes, we examined the nutrient levels found in various types of milk using USDA's *Nutrient Database for Dietary Studies 1.0.*[1] Among the varieties of fluid milk, whole milk typically provides the lowest levels of several important nutrients; therefore, we used whole milk (3.25% milkfat, the lowest fat level allowable for whole milk) as a benchmark for all nutrients except vitamins A and D. The chosen levels of vitamins A and D were based upon FDA's definition of ''excellent source'' and the milk fortification levels required by the FDA.

Based on the above, this rule proposes that allowable fluid milk substitutes provide, at a minimum, the nutrients listed on the following table. The following table also shows the Recommended Daily Intake (RDI) for each of these nutrients and the percentage of the RDI provided by a cup of whole milk (values are RDI unless specified as Daily Reference Value (DRV)).

Nutrient	Per cup	RDI	Percentage
Calcium	276 mg	1000 mg	27.6

[1] USDA Food and Nutrient Database for Dietary Studies 1.0. 2004. Beltsville, MD: Agricultural Research Service, Food Surveys Research Group.

Nutrient	Per cup	RDI	Percentage
Protein	8 g	50 g (DRV).	16.0
Vitamin A	500 IU	5000 IU	10.0
Vitamin D	100 IU	400 IU	25.0
Magnesium	24 mg	400 mg	6.00
Phosphorus	222 mg	1000 mg	22.2
Potassium	349 mg	3500 mg (DRV).	10.0
Riboflavin	0.44 mg	1.7 mg	25.9
Vitamin B 12	1.1 mcg	6.0 mcg	18.3

Sources: USDA National Nutrient Database for Standard Reference, Release 17 (2004). FDA Consumer Special Issue: Focus on Food Labeling, ''Daily Values Encourage Healthy Diet'', May 1993.

Fortification of nondairy milk substitutes used in the school nutrition programs must follow FDA guidelines, particularly those outlined in 21 CFR 101.9. In addition, Appendix O of the publication entitled ''Grade 'A' Pasteurized Milk Ordinance'', issued by the FDA's Center for Food Safety and Applied Nutrition, provides guidance on upper bounds of vitamin A and vitamin D fortification.

In light of the recommendations of the ''2005 Dietary Guidelines for Americans'' on fats and added sugars, and current trends in childhood overweight, the Department considered establishing maximum levels for nondairy milk substitutes for additional energy-bearing nutrients available on the Nutrition Facts Panel—either total calories (energy) or total fat, saturated fat, trans fat and total sugars—to limit their contribution toward the total calories. We refrained from doing so for the following reasons.

First, we examined the levels of energy, total fats, saturated fats, and sugars generally available in regular and chocolate-flavored fluid whole milk. Chocolate-flavored whole milk typically has the highest levels of calories and total sugar among all fluid milk varieties. When we compared the nutrient levels in chocolate-flavored whole milk and in a typical chocolate-flavored soy-based beverage alternative (*see* following table), we concluded that the commercial marketplace already provides a level of energy, total fat, saturated fat, and total sugars in milk substitutes that is below the levels contained in milks currently allowable in the NSLP and SBP, and further special regulatory restriction for milk substitutes does not seem warranted.

Milk type (1 cup)	Energy (kcal)	Total fat (g)	Saturated fat (g)	Sugars (total)
Milk, chocolate, commercial, whole	208 kcals per cup	8.48 g per cup	5.260 g per cup	23.85 g per cup.
Milk, soy, ready-to-drink, not-baby's, chocolate.	118 kcals per cup	4.58 g per cup	0.514 g per cup	10.8 g per cup.

Source: USDA Food and Nutrient Database for Dietary Studies, 2.0. 2006. Beltsville, MD: Agricultural Research Service, Food Surveys Research Group.

Second, FNS believes that it is important to be consistent in our definition of allowable milk substitutes across our Federal nutrition programs. Currently, the Supplemental Program for Women Infants and Children (WIC) has proposed a definition for allowable soy-based beverages (71 FR 44801) that reflects the minimum nutrient and energy levels proposed by this rule. Establishing maximum nutrition standards for energy or total fat, saturated fat, trans fat and sugar levels for milk substitutes in the school meals program would, therefore, generate inconsistency in our nutrition programs.

Third, in regard to sugar levels and total diet quality, the ''Report of the Dietary Guidelines Advisory Committee on the Dietary Guidelines for Americans, 2005,'' notes that sugars can improve the palatability of foods and beverages that otherwise might not be consumed. Additionally, not all foods that contain added sugars are poor sources of nutrients. The Report also notes that, on average, the quality of children's and adolescents' total diet is positively affected by the consumption of sweetened dairy foods and beverages. The Department recognizes that the ''2005 Dietary Guidelines for Americans'' recommends choosing foods and beverages with little added sugars or caloric sweeteners, and is interested in encouraging reasonably low levels of added sugars in milk substitutes. However, we do not believe that it is necessary to establish a regulatory maximum level for sugars in milk substitutes when one is not established for fluid milk.

Fourth, the Department also considered the potential impact of limiting total and saturated fats in milk substitutes. While fats are a significant contributor of calories, the Department recognizes that they are part of a healthful diet and facilitate the absorption of important nutrients found in fluid milk such as vitamins A and D. Current commercially available milk substitutes do not exceed the fat or saturated fat levels of flavored whole milk, as seen in the table above.

For the reasons stated above, the Department decided not to propose maximum standards for calories or total fat, saturated fat, trans fat and sugars for milk substitutes. However, since the intent is to provide products that are reasonable substitutes for fluid milk, the Department will recommend that when made available, schools use the profile of unflavored milk with respect to calories, fats, and sugars as the guide for evaluating fluid nondairy milk substitutes. We further recommend that schools do not offer fluid nondairy milk substitutes that exceed maximum levels for these nutrients based on the nutrient profile of chocolate-flavored whole milk. Guidance and technical assistance from the Department would emphasize the importance of offering nondairy milk substitutes that meet the proposed minimum requirements but do not exceed the levels of calories, total fat, saturated fat, and sugars commonly found in the milks offered locally in school meals. Milk substitutes offered for non-medical reasons will be

included in the nutrient analyses required under existing regulations.

Selection of Nondairy Beverages by Schools

While the NSLA requires the Secretary to identify the nutritional requirements for an equivalent beverage, a school wishing to offer fluid milk substitutes for non-disabled children would be responsible for choosing nondairy beverages that would meet the nutritional standards identified in this proposed rule. This would require that a school review documentation of the nutrients in nondairy beverages to determine if the beverages comply with the regulatory nutritional standards for milk substitutes. This proposed rule would allow a school to offer the nondairy beverage(s) that it has identified and selected as acceptable fluid milk substitute(s) based on the nutritional standards established by the Secretary. To the extent practicable, unless otherwise specified by a physician, the alternate nondairy beverages for disabled students should meet the same nutritional standards that apply to milk substitutes for non-disabled students.

Written Statement From Student's Parent or Legal Guardian

We intend to allow schools to fulfill the requests for fluid milk substitutes for children with medical and special dietary needs without creating additional paperwork or administrative burdens for parents or schools. Therefore, this proposed rule would allow a student's parent or legal guardian to submit a written request for a nondairy substitute by attaching it to the application form for free and reduced price meals or by submitting the request separately in writing at any time, provided that it identifies the student's medical or other special dietary needs. The request for substitutions would remain in effect until the student's parent or legal guardian revokes such request in writing, or until the school discontinues this option.

State Agency Notification

Section 9(a)(2)(B)(ii) of the NSLA requires that schools inform the State agency (SA) if they choose to offer substitutes for fluid milk other than for children with a disability. Recognizing the State/local administrative structure, this rule would require each SFA to report to the State agency on behalf of its schools. According to this proposed rule, the SA would be able to specify how SFAs must notify it of this decision. FNS would expect the SA to have information on file regarding schools that offer this option for review upon request.

Documentation for Substitutions

Section 9(a)(2)(B)(ii) of the NSLA also requires that a request for milk substitution be in writing and identify the student's medical or special dietary need. This proposed rule would require schools to retain documentation such as the written statement from a medical authority or the student's parent or guardian, and product information certifying the nutritional content of the milk substitute.

Expenses Related to Milk Substitutions

In accordance with section 9(a)(2)(B)(iii) of the NSLA, schools would cover expenses incurred in providing allowable fluid milk substitutions that are in excess of expenses covered by program reimbursements. Because milk substitutions are granted on a case by case basis and a school selects the acceptable nondairy beverage(s), we anticipate that in most cases the substitution could be accommodated without undue financial hardship. These substitutions would be allowable costs and chargeable to the nonprofit school food service account.

V. Procedural Matters

Executive Order 12866

This proposed rule has been determined to be significant and was reviewed by the Office Management and Budget in conformance with Executive Order 12866.

Regulatory Impact Analysis

Need for Action

This action is needed to implement the provisions of Public Law 108–265 regarding the substitution of fluid milk in the NSLP and SBP. In accordance with the NSLA, this proposed rule would establish nutritional standards for milk substitutes, set minimum requirements for the substitution of milk for students with medical or special dietary needs, allow schools to identify acceptable substitutes that meet the nutritional standards established by the Secretary, and make school food authorities responsible for substitution expenses that exceed Federal reimbursement.

Cost-Benefit Assessment

Previous analyses by FNS and the Congressional Budget Office of the provision being implemented in this rule estimated a cost of less than $500,000 annually. Little cost is anticipated because it is expected that few students will request a non-dairy alternative to fluid milk; schools are not required to provide a substitution; and the Federal government will not reimburse any additional cost for non-dairy alternatives. This rule is not expected to significantly increase administrative burdens at the national, state, or local level. The benefits of this rule include nutritional consistency among milk substitutes offered in the school meal programs and reduced barriers for students who cannot consume fluid milk.

Regulatory Flexibility Act

This proposed rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). Nancy Montanez Johner, Under Secretary of Food, Nutrition, and Consumer Services has certified that this proposed rule will not have a significant economic impact on a substantial number of small entities participating in the NSLP and SBP. The requirement to provide substitutes for students with disabilities is not new, and the requirement concerning milk substitutes for non-disability reasons is only triggered if a school chooses to offer milk substitutes for non-disabled students with medical or special dietary needs.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under Section 202 of the UMRA, the Department generally must prepare a written statement, including a cost/benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule. This proposed rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) that impose costs on State, local, or tribal governments or to the private sector of $100 million or more in any one year. This proposed rule is, therefore, not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12372

The NSLP is listed in the Catalog of Federal Domestic Assistance under No. 10.555 and the SBP is listed under No. 10.553. For the reasons set forth in the final rule in 7 CFR part 3015, Subpart V and related Notice (48 FR 29115, June 24, 1983), these Programs are included in the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Since the NSLP and SBP are State-administered, federally funded programs, our national headquarters staff and regional offices have formal and informal discussions with State and local officials on an ongoing basis regarding program implementation and policy issues. This arrangement allows State and local agencies to provide feedback that forms the basis for any discretionary decisions made in this and other rules.

Federalism Summary Impact Statement

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement, for inclusion in the preamble to the regulations, describing the agency's considerations in terms of the three categories called for under section (6)(b)(2)(B) of Executive Order 13132. FNS has considered the impact of this rule on State and local governments and has determined that this rule does not have Federalism implications. This rule would not impose substantial or direct compliance costs on State and local governments. Therefore, under Section 6(b) of the Executive Order, a federalism summary impact statement is not required.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This proposed rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This proposed rule is not intended to have retroactive effect. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted.

Civil Rights Impact Analysis

FNS has reviewed this proposed rule in accordance with the Department Regulation 4300–4, ''Civil Rights Impact Analysis,'' to identify and address any major civil rights impacts the rule might have on children on the basis of age, race, color, national origin, sex or disability. After careful review of the rule's intent and provisions, FNS has determined that it would not have a deleterious effect on the participation of protected individuals in the NSLP and SBP. The rule's sole effect is to facilitate nutritionally adequate nondairy beverages for participants that have a disability or medical condition that precludes their consumption of fluid milk.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; *see* 5 CFR 1320) requires that the Office of Management and Budget (OMB) approve all collections of information by a Federal agency before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number. The recordkeeping and reporting burden contained in this rule is approved under OMB No. 0584–0006. This proposed rule does not contain any new information collection requirements subject to approval by OMB under the Paperwork Reduction Act of 1995.

E-Government Act Compliance

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

List of Subjects

7 CFR Part 210

Grant programs—education, Grant programs—health, Infants and children, Nutrition, Penalties, Reporting and recordkeeping requirements, School breakfast and lunch programs, Surplus agricultural commodities.

7 CFR Part 220

Grant programs—education, Grant programs—health, Infants and children, Nutrition, Reporting and recordkeeping requirements, School breakfast and lunch programs.

Accordingly, 7 CFR parts 210 and 220 are proposed to be amended as follows:

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

1. The authority citation for 7 CFR part 210 continues to read as follows:

Authority: 42 U.S.C. 1751–1760, 1779.

2. In § 210.10:

a. Revise the section heading;

b. Revise paragraph (g)(1);

c. Redesignate paragraphs (g)(2) and (g)(3) as paragraphs (g)(3) and (g)(4), respectively, and add a new paragraph (g)(2); and

d. Redesignate paragraph (m)(3) as paragraph (m)(4) and add a new paragraph (m)(3).

The revisions and additions read as follows:

§ 210.10 Nutrition standards and menu planning approaches for lunches and requirements for afterschool snacks.

* * * * *

(g) * * *

(1) *Exceptions for disability reasons.* Schools must make substitutions in lunches and afterschool snacks for students who are considered to have a disability under 7 CFR part 15b and whose disability restricts their diet. Substitutions must be made on a case by case basis only when supported by a written statement of the need for substitutions that includes the student's disability, an explanation of why the disability restricts the student's diet, the major life activity affected by the disability, the food(s) to be omitted from the student's diet, and the recommended alternative foods. Such statement must be signed by a licensed physician.

(2) *Exceptions for non-disability reasons.* Schools may make substitutions for students without disabilities who cannot consume the regular lunch or afterschool snack because of medical or other special dietary needs. Substitutions must be made on a case by case basis only when supported by a written statement of the need for substitutions that identifies the medical or special dietary need that restricts the student's diet, the foods to be omitted from the student's diet and, except for fluid milk, recommended alternative foods. Such statement must be signed by a recognized medical authority.

(i) *Milk substitutions for non-disability reasons.* Schools may make substitutions for fluid milk for non-disabled students who cannot consume fluid milk due to medical or special dietary needs. A school that selects this option may offer the nondairy beverage(s) of its choice, provided the beverage(s) meet the nutritional standards established under paragraph (m) of this section. Expenses incurred in providing substitutions for fluid milk that exceed program reimbursements must be paid by the school food authority.

(ii) *Requisites for milk substitutions.*

(A) A school food authority must inform the State agency if any of its schools choose to offer fluid milk substitutes other than for students with disabilities; and

(B) A medical authority or the student's parent or legal guardian must submit a written request for a fluid milk substitute identifying the medical or other special dietary need that restricts the student's diet.

(iii) *Substitution approval.* The approval for fluid milk substitution shall remain in effect until the medical authority or the student's parent or legal guardian revokes such request in writing, or until such time as the school changes its substitution policy for non-disabled students.

* * * * *

(m) * * *

(3) *Milk substitutes.* If a school chooses to offer one or more substitutes for fluid milk for non-disabled students with medical or special dietary needs, all substitute beverages offered must be fortified to meet 276 milligrams calcium per cup, 8 grams protein per cup, 500 International Units vitamin A per cup, 100 International Units vitamin D per cup, 24 milligrams magnesium per cup, 222 milligrams phosphorus per cup, 349 milligrams potassium per cup, 0.44 milligrams riboflavin per cup, and 1.1 micrograms vitamin B12 per cup, in accordance with fortification guidelines issued by the Food and Drug Administration. A school need only offer the nondairy beverage(s) that it has identified as allowable milk substitutes according to this paragraph (m)(3).

* * * * *

PART 220—SCHOOL BREAKFAST PROGRAM

1. The authority citation for 7 CFR part 220 continues to read as follows:

Authority: 42 U.S.C. 1773, 1779, unless otherwise noted.

2. In § 220.8:

a. Revise the section heading;

b. Revise paragraph (d)(1);

c. Redesignate paragraphs (d)(2) and (d)(3) as paragraphs (d)(3) and (d)(4), respectively, and add a new paragraph (d)(2); and

d. Add a new paragraph (i)(3).

The revisions and additions read as follows:

§ 220.8 Nutrition standards and menu planning approaches for breakfasts.

* * * * *

(d) * * *

(1) *Exceptions for disability reasons.* Schools must make substitutions in breakfasts for students who are considered to have a disability under 7 CFR part 15b of this title and whose disability restricts their diet. Substitutions must be made on a case by case basis only when supported by a written statement of the need for substitutions that includes the student's disability, an explanation of why the disability restricts the student's diet, the major life activity affected by the disability, the food(s) to be omitted from the student's diet, and the recommended alternative foods. Such statement must be signed by a licensed physician.

(2) *Exceptions for non-disability reasons.* Schools may make substitutions for students without disabilities who cannot consume the breakfast because of medical or other special dietary needs. Substitutions must be made on a case by case basis only when supported by a written statement of the need for substitutions that identifies the medical or special dietary need that restricts the student's diet, the foods to be omitted from the student's diet and, except for milk, recommended alternative foods. Such statement must be signed by a recognized medical authority.

(i) *Milk substitutions for non-disability reasons.* Schools may make substitutions for fluid milk for non-disabled students who cannot consume fluid milk due to medical or special dietary needs. A school that selects this option may offer the nondairy beverage(s) of its choice, provided the beverage(s) meet the nutritional standards established in Part 210 of this chapter. Expenses incurred in providing substitutions for fluid milk that exceed program reimbursements must be paid by the school food authority.

(ii) *Requisites for milk substitutions.*

(A) A school food authority must inform the State agency if any of its schools choose to offer fluid milk substitutes other than for students with disabilities; and

(B) A medical authority or the student's parent or legal guardian must submit a written request for a fluid milk substitute identifying the medical or other special dietary need that restricts the student's diet.

(iii) *Substitution approval.* The approval for fluid milk substitution shall remain in effect until the medical authority or the student's parent or legal guardian revokes such request in writing, or until such time as the school changes its substitution policy for non-disabled students.

* * * * *

(i) * * *

(3) *Milk substitutes.* If a school chooses to offer one or more substitutes for fluid milk for non-disabled students with medical or special dietary needs, all substitute beverages offered must be fortified to meet 276 milligrams calcium per cup, 8 grams protein per cup, 500 International Units vitamin A per cup, 100 International Units vitamin D per cup, 24 milligrams magnesium per cup, 222 milligrams phosphorus per cup, 349 milligrams potassium per cup, 0.44 milligrams riboflavin per cup, and 1.1 micrograms vitamin B12 per cup, in accordance with fortification guidelines issued by the Food and Drug Administration. A school need only offer the nondairy beverages that it has selected as allowable milk substitutes according to this paragraph (i)(3).

* * * * *

Dated: November 1, 2006.

Nancy Montanez Johner,

Under Secretary, Food, Nutrition, and Consumer Services.

[FR Doc. 06–9136 Filed 11–8–06; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 93, 94, and 95

[Docket No. APHIS–2006–0026]

Bovine Spongiform Encephalopathy; Minimal-Risk Regions, Identification of Ruminants and Processing and Importation of Commodities

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: We are reopening the comment period for our proposed rule that would remove several restrictions regarding the identification of animals and the processing of ruminant materials from BSE minimal-risk regions, as well as BSE-based restrictions on gelatin derived from bovine hides. This action will allow interested persons additional time to prepare and submit comments.

DATES: We will consider all comments that we receive on or before November 24, 2006.

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

- Federal eRulemaking Portal: Go to *http://www.regulations.gov,* select ''Animal and Plant Health Inspection Service'' from the agency drop-down menu, then click ''Submit.'' In the Docket ID column, select APHIS–2006–0026 to submit or view public

comments and to view supporting and related materials available electronically. Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''User Tips'' link.

• Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. APHIS–2006–0026, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2006–0026.

Reading Room: You may read any comments that we receive on Docket No. APHIS–2006–0026 in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

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

FOR FURTHER INFORMATION CONTACT: For information regarding ruminant products, contact Dr. Karen James-Preston, Director, Technical Trade Services, Animal Products, National Center for Import and Export, VS, APHIS, 4700 River Road, Unit 38, Riverdale, MD 20737–1231; (301) 734–4356.

For information concerning live ruminants, contact Dr. Lee Ann Thomas, Director, Technical Trade Services, Animals, Organisms and Vectors, and Select Agents, National Center for Import and Export, VS, APHIS, 4700 River Road, Unit 38, Riverdale, MD 20737–1231; (301) 734–4356.

SUPPLEMENTARY INFORMATION: On August 9, 2006, we published in the **Federal Register** (71 FR 45439–45444, Docket No. APHIS–2006–0026) a proposal to remove several restrictions regarding the identification of animals and the processing of ruminant materials from BSE minimal-risk regions, as well as BSE-based restrictions on gelatin derived from bovine hides.

Comments on the proposed rule were required to be received on or before October 10, 2006. We are reopening the comment period on Docket No. APHIS–2006–0026 for an additional 14 days. This action will allow interested persons additional time to prepare and submit comments. We will also consider all comments received between October 11, 2006, and the date of this notice.

Authority: 7 U.S.C. 450, 1622, 7701–7772, 7781–7786, and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

Done in Washington, DC, this 3rd of November 2006.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E6–19042 Filed 11–8–06; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM359; Notice No. 25–06–13–SC]

Special Conditions: Boeing Model 737 Series Airplanes; Seats With Non-Traditional, Large, Non-Metallic Panels

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This action proposes special conditions for Boeing Model 737 series airplanes. These airplanes will have a novel or unusual design feature(s) associated with seats that include non-traditional, large, non-metallic panels that would affect survivability during a post-crash fire event. 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.

DATES: We must receive your comments by November 29, 2006.

ADDRESSES: You must mail two copies of your comments to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM–113), Docket No. NM359, 1601 Lind Avenue SW., Renton, Washington, 98057–3356. You may deliver two copies to the Transport Airplane Directorate at the above address. You must mark your comments: Docket No. NM359. You can inspect comments in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: John A. Shelden, FAA, Airframe/Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–2785; facsimile (425) 227–1232; electronic mail *john.shelden@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. You can inspect the docket before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions based on the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Future Requests for Installation of Seats With Non-Traditional, Large, Non-Metallic Panels

We anticipate that seats with non-traditional, large, non-metallic panels will be installed in other makes and models of airplanes. We have made the determination to require special conditions for all applications requesting the installation of seats with non-traditional, large, non-metallic panels until the airworthiness requirements can be revised to address this issue. Having the same standards across the range of airplane makes and models will ensure a level playing field for the aviation industry.

Background

On August 8, 2005, Boeing Commercial Airplanes, P.O. Box 3707,

Seattle, Washington 98124, applied for a design change to Type Certificate No. A16WE for installation of seats that include non-traditional, large, non-metallic panels in Boeing Model 737–700 series airplanes. The Boeing Model 737 series airplanes, currently approved under Type Certificate No. A16WE, are swept-wing, conventional-tail, twin-engine, turbofan-powered, single aisle, medium sized transport category airplanes.

The applicable regulations to airplanes currently approved under Type Certificate No. A16WE do not require seats to meet the more stringent flammability standards required of large, non-metallic panels in the cabin interior. At the time the applicable rules were written, seats were designed with a metal frame covered by fabric, not with large, non-metallic panels. Seats also met the then recently adopted standards for flammability of seat cushions. With the seat design being mostly fabric and metal, the contribution to a fire in the cabin had been minimized and was not considered a threat. For these reasons, seats did not need to be tested to heat release and smoke emission requirements.

Seat designs have now evolved to occasionally include non-traditional, large, non-metallic panels. Taken in total, the surface area of these panels is on the same order as the sidewall and overhead stowage bin interior panels. To provide the level of passenger protection intended by the airworthiness standards, these non-traditional, large, non-metallic panels in the cabin must meet the standards of Title 14 Code of Federal Regulations (CFR), part 25, Appendix F, parts IV and V, heat release and smoke emission requirements.

Type Certification Basis

Under the provisions of 14 CFR 21.101, Boeing must show that the Model 737 series airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A16WE, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' The regulations incorporated by reference in Type Certificate No. A16WE are as follows: Title 14 CFR part 25, as amended by Amendment 25–1 through Amendment 25–15, for the Models 737–200, –200C, –300, –400, –500, and –600. Title 14 CFR part 25, as amended by Amendment 25–1 through Amendment 25–91, for the Models 737–700, –700C, –800, –900, and –900ER, with the exceptions listed: Section 25.853(d)(3), Compartment interiors, at Amendment 25–72; and equivalent safety findings, § 25.853(f) Compartment interiors.

In addition, the certification basis includes certain special conditions, exemptions, or later amended sections of the applicable part that are not relevant to these proposed special conditions.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, 14 CFR part 25) do not contain adequate or appropriate safety standards for the Boeing Model 737 series airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Boeing Model 737 series airplanes must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in § 11.19 and they become part of the type certification basis under § 21.101.

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 or similar novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same or similar novel or unusual design feature, the special conditions would also apply to the other model under § 21.101.

Novel or Unusual Design Features

The Boeing Model 737 series airplanes will incorporate the following novel or unusual design features:

These models offer interior arrangements that include passenger seats that incorporate non-traditional, large, non-metallic panels in lieu of the traditional metal frame covered by fabric. The flammability properties of these panels have been shown to significantly affect the survivability of the cabin in the case of fire. These seats are considered a novel design for transport category airplanes that include Amendment 25–61 and Amendment 25–66 in the certification basis, and were not considered when those airworthiness standards were established.

The existing regulations do not provide adequate or appropriate safety standards for seat designs that incorporate non-traditional, large, non-metallic panels in their designs. In order to provide a level of safety that is equivalent to that afforded to the balance of the cabin, additional airworthiness standards, in the form of special conditions, are necessary. These special conditions supplement § 25.853. The requirements contained in these special conditions consist of applying the identical test conditions required of all other large panels in the cabin, to seats with non-traditional, large, non-metallic panels.

Discussion

In the early 1980s the FAA conducted extensive research on the effects of post-crash flammability in the passenger cabin. As a result of this research and service experience, we adopted new standards for interior surfaces associated with large surface area parts. Specifically, the rules require measurement of heat release and smoke emission (part 25, Appendix F, parts IV and V) for the affected parts. Heat release has been shown to have a direct correlation with post-crash fire survival time. Materials that comply with the standards (i.e., § 25.853 entitled ''Compartment interiors'' as amended by Amendment 25–61 and Amendment 25–66) extend survival time by approximately 2 minutes, over materials that do not comply.

At the time these standards were written the potential application of the requirements of heat release and smoke emission to seats was explored. The seat frame itself was not a concern because it was primarily made of aluminum and there were only small amounts of non-metallic materials. It was determined that the overall effect on survivability was negligible, whether or not the food trays met the heat release and smoke requirements. The requirements therefore did not address seats. The preambles to both the Notice of Proposed Rule Making (NPRM), Notice No. 85–10 (50 FR 15038, April 16, 1985) and the Final Rule at Amendment 25–61 (51 FR 26206, July 21, 1986), specifically note that seats were excluded ''because the recently adopted standards for flammability of seat cushions will greatly inhibit involvement of the seats.''

Subsequently, the Final Rule at Amendment 25–83 (60 FR 6615, March 6, 1995) clarified the definition of minimum panel size: ''It is not possible to cite a specific size that will apply in all installations; however, as a general rule, components with exposed-surface areas of one square foot or less may be considered small enough that they do

not have to meet the new standards. Components with exposed-surface areas greater than two square feet may be considered large enough that they do have to meet the new standards. Those with exposed-surface areas greater than one square foot, but less than two square feet, must be considered in conjunction with the areas of the cabin in which they are installed before a determination could be made.''

In the late 1990s, the FAA issued Policy Memorandum 97–112–39, ''Guidance for Flammability Testing of Seat/Console Installations,'' October 17, 1997 (*http://www.airweb.faa.gov/Regulatory_and_Guidance_Library/rgPolicy.nsf/0/180fc146e245add486256d49006d29bd/$FILE/Oct1797.pdf).* That memo was issued when it became clear that seat designs were evolving to include large non-metallic panels with surface areas that would impact survivability during a cabin fire event, comparable to partitions or galleys. The memo noted that large surface area panels must comply with heat release and smoke emission requirements, even if they were attached to a seat. If the FAA had not issued such policy, seat designs could have been viewed as a loophole to the airworthiness standards that would result in an unacceptable decrease in survivability during a cabin fire event.

In October of 2004, an issue was raised regarding the appropriate flammability standards for passenger seats that incorporated non-traditional, large, non-metallic panels in lieu of the traditional metal covered by fabric. The Seattle Aircraft Certification Office and Transport Standards Staff reviewed this design and determined that it represented the kind and quantity of material that should be required to pass the heat release and smoke emissions requirements. We have determined that special conditions would be promulgated to apply the standards defined in 14 CFR 25.853(d) to seats with large non-metallic panels in their design.

Definition of ''Non-Traditional, Large, Non-Metallic Panel''

A non-traditional, large, non-metallic panel, in this case, is defined as a panel with exposed-surface areas greater than 1.5 square feet installed per seat place. The panel may consist of either a single component or multiple components in a concentrated area. Examples of non-traditional areas include, but are not limited to: seat backs, bottoms and leg/foot rests, kick panels, back shells and associated furniture. Examples of traditional exempted areas include: arm caps, armrest close-outs such as end bays and center consoles, food trays, video monitors and shrouds.

Clarification of ''Exposed''

Exposed is considered to include those panels directly exposed to the passenger cabin in the traditional sense, plus those panels enveloped such as by a dress cover. Traditional fabrics or leathers currently used on seats are excluded from these special conditions. These materials must still comply with § 25.853(a) and § 25.853(c) if used as a covering for a seat cushion, or § 25.853(a) if installed elsewhere on the seat. Non-traditional, large, non-metallic panels covered with traditional fabrics or leathers will be tested without their coverings.

Applicability

As discussed above, these special conditions are applicable to Boeing Model 737 series airplanes. Although the heat release and smoke testing requirements of § 25.853 per Appendix F, parts IV and V, are not part of the part 25 certification basis for the Model 737–200, –200C, –300, –400, –500, and –600, these special conditions are applicable if the airplanes are in 14 CFR part 121 service. Part 121 requires applicable interior panels to comply with § 25.853, Appendix F, parts IV and V, regardless of the certification basis. It is not our intent to require seats with large non-metallic panels to meet § 25.853, Appendix F, parts IV and V, if they are installed in cabins of airplanes that otherwise are not required to meet these standards. Should Boeing 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.

Certification of the Boeing Model 737–900ER is currently scheduled for February 2007. Because a delay would significantly affect the applicant's installation of the affected seats and certification of the airplane, the public comment period is shortened to 20 days.

Conclusion

This action affects only certain novel or unusual design features on one model series of airplanes. It is not a rule of general applicability.

Based on the above reasoning, we find that the intent of the [heat release and smoke emission] standards is to include minimum panel sizes on the order of one to two square feet. This panel size sets the acceptable level of safety in the cabin. The intent of these special conditions is to maintain this accepted level of safety and be consistent with the average minimum panel size in the balance of the cabin interior. Therefore, we are allowing up to 1.5 square feet of non-traditional, non-metallic, panel material per seat place in total to be excluded from the heat release and smoke emission standards. However, this exclusion [from heat release and smoke emission] does not provide the excluded material additional relief from the other standards such as Title 14 CFR part 25, Appendix F, parts I and II. However, non-traditional, large, non-metallic panels covered with traditional fabrics or leathers will be tested without their coverings. These coverings must still comply with § 25.853(a) and § 25.853(c) if used as a covering for a seat cushion, or § 25.853(a) if installed elsewhere on the seat.

We recognize different manufacturing techniques have associated cost differences and therefore are allowing the applicant to designate which non-traditional, non-metallic panels comprise the 1.5 square foot exclusion. This determination will allow for flexibility in design and a manufacturing cost savings.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for Boeing Model 737 series airplanes.

1. Except as provided in paragraph 3 of these special conditions, compliance with Title 14 CFR part 25, Appendix F, parts IV and V, heat release and smoke emission, is required for seats that incorporate non-traditional, large, non-metallic panels that may either be a single component or multiple components in a concentrated area in their design.

2. The applicant may designate up to and including 1.5 square feet of non-traditional, non-metallic panel material per seat place that does not have to comply with special condition Number 1, above. A triple seat assembly may have a total of 4.5 square feet excluded on any portion of the assembly (*e.g.*, outboard seat place 1 square foot, middle 1 square foot, and inboard 2.5 square feet).

3. Seats do not have to meet the test requirements of Title 14 CFR part 25, Appendix F, parts IV and V, when

installed in compartments that are not otherwise required to meet these requirements. Examples include:

a. Airplanes with passenger capacities of 19 or less,

b. Airplanes that do not have smoke and heat release in their certification basis and do not need to comply with the requirements per 14 CFR 121.312, and

c. Airplanes exempted from smoke and heat release requirements.

Issued in Renton, Washington, on October 27, 2006.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–18906 Filed 11–8–06; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 310

RIN 3084–0098

Telemarketing Sales Rule

AGENCY: Federal Trade Commission.

ACTION: Extension of period to submit comments in response to proposed amendments to the Telemarketing Sales Rule (''TSR'').

SUMMARY: In a **Federal Register** notice published on October 4, 2006, 71 FR 58716, the FTC requested comment on two proposed amendments to the TSR. The Notice stated that comments must be submitted on or before November 6, 2006. In response to a request for an extension of the comment period received on October 30, 2006, the Commission has extended the comment period for an additional 40 days.

DATES: Comments addressing the proposed TSR amendments must be submitted on or before December 18, 2006.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to ''TSR Prerecorded Call Prohibition and Call Abandonment Standard Modification, Project No. R411001'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered, with two complete copies, to the following address: Federal Trade Commission, Office of the Secretary, Room H–135 (Annex K), 600 Pennsylvania Avenue, NW., Washington, DC 20580. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments containing confidential material, however, must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with Commission Rule 4.9(c), which requires that the comment be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. See Commission Rule 4.9(c), 16 CFR 4.9(c).

Comments filed in electronic form should be submitted by visiting the Web site at *https://secure.commentworks.com/ftc-tsr* and following the instructions on the Web-based form. To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the *https://secure.commentworks.com/ftc-tsr* Web site. You may also visit *http://www.regulations.gov,* to read the proposed amendments and file an electronic comment through that Web site. The Commission will consider all comments that regulations.gov forwards to it.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov.* As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/Privacy.htm.*

FOR FURTHER INFORMATION CONTACT: Craig Tregillus, (202) 326–2970, Division of Marketing Practices, Bureau of Consumer Protection, Room H–288, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: On October 4, 2006, the Commission published a notice in the **Federal Register** that, among other things, announced two proposals to amend the Telemarketing Sales Rule (''TSR'') by (1) making explicit the prohibition, currently implied in the TSR's ''call abandonment'' provisions, against the use of prerecorded messages in telemarketing calls answered by a person without that person's prior consent to receive such calls; and (2) modifying the method for measuring the maximum allowable call abandonment rate in the TSR's call abandonment safe harbor. The notice set forth the text of the proposed amendments and posed a series of questions designed to elicit public comment. The notice provided for a 30-day comment period, which will end on November 6, 2006.

On October 30, 2006, the Commission received a request from the Direct Marketing Association (''DMA'') seeking a 40-day extension of the comment period, which would expire on December 18, 2006. In support of its extension request, DMA argued that the proposed amendments ''represent a departure from [the Commission's] prior proposal to allow the types of calls it now proposes to prohibit,'' and that DMA needs the additional time to ''compile information from its members to submit into the record that is essential to the Commission's proposals.''

The Commission believes that the request for a 40-day extension of the deadline for receipt of public comments is reasonable. Moreover, as the request notes, ''there will be no change to the status quo with an extension'' because ''consumers will receive the same protections they have received since the Commission's prior proposal.'' [1] Accordingly, the Commission has determined to extend the comment period for an additional 40 days. The Commission therefore will accept comments received on or before Monday, December 18, 2006.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. E6–19012 Filed 11–8–06; 8:45 am]

BILLING CODE 6750–01–P

[1] The requested extension will not alter the expiration on January 2, 2007, of the Commission's policy of forbearing to bring enforcement actions against sellers and telemarketers using prerecorded messages that violate the TSR.

DEPARTMENT OF THE TREASURY

31 CFR Part 1

Privacy Act; Proposed Implementation

AGENCY: Internal Revenue Service, Treasury.

ACTION: Proposed rule.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, the Department of the Treasury gives notice of a proposed amendment to this part to exempt a new Internal Revenue Service (IRS) system of records entitled ''IRS 42.002, Excise Tax Compliance Programs'' from certain provisions of the Privacy Act.

DATES: Comments must be received no later than December 11, 2006. You may also submit comments through the Federal rulemaking portal at *http://www.regulations.gov* (follow the instructions for submitting comments).

ADDRESSES: Please submit comments to the Office of Governmental Liaison and Disclosure, 1111 Constitution Avenue, NW., Washington, DC 20224. Comments will be made available for inspection at the IRS Freedom of Information Reading Room (Room 1621), at the above address. The telephone number for the Reading Room is (202) 622–5164.

FOR FURTHER INFORMATION CONTACT: Telephonic inquiries should be directed to David Silverman, Tax Law Specialist, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224. Telephone: (202) 283–7382.

SUPPLEMENTARY INFORMATION: Under 5 U.S.C. 552a(k)(2), the head of an agency may promulgate rules to exempt a system of records from certain provisions of 5 U.S.C. 552a if the system contains investigatory material compiled for law enforcement purposes. The IRS is hereby giving notice of a proposed rule to exempt Treasury/IRS 42.002—Excise Tax Compliance Records from certain provisions of the Privacy Act of 1974, pursuant to 5 U.S.C. 552a(k)(2).

The proposed exemption is from provisions 552a(c)(3), (d) (1), (2), (3) and (4), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f) because the system contains investigatory material compiled for law enforcement purposes. The following are the reasons why this system of records maintained by the IRS is exempt pursuant to 5 U.S.C. 552a(k)(2) of the Privacy Act of 1974.

(1) 5 U.S.C. 552a(c)(3). This provision of the Privacy Act provides for the release of the disclosure accounting required by 5 U.S.C. 552a(c)(1) and (2) to the individual named in the record at his/her request. The reasons for exempting this system of records from the foregoing provisions are:

(i) The release of disclosure accounting would put the tax exempt or government entity subject to investigation, or individuals connected with those entities, on notice that an investigation exists and that such person is the subject of that investigation.

(ii) Such release would provide the tax exempt or government entity subject to investigation, or individuals connected with those entities, with an accurate accounting of the date, nature, and purpose of each disclosure and the name and address of the person or agency to which disclosure was made. The release of such information to the individual covered by the system would provide the individual or entity subject to investigation with significant information concerning the nature of the investigation and could result in the altering or destruction of documentary evidence, the improper influencing of witnesses, and other activities that could impede or compromise the investigation. In the case of a delinquent account, such release might enable the subject of the investigation to dissipate assets before levy.

(iii) Release to the individual of the disclosure accounting would alert the individual as to which agencies were investigating the tax exempt or government entity subject to investigation, would provide information concerning the scope of the investigation, and could aid the individual in impeding or compromising investigations by those agencies. (2) 5 U.S.C. 552a(d)(1), (2), (3) and (4), (e)(4)(G), (e)(4)(H), and (f). These provisions of the Privacy Act relate to an individual's right to be notified of: The existence of records pertaining to such individual; requirements for identifying an individual who requested access to records; the agency procedures relating to access to records; the content of the information contained in such records; and the civil remedies available to the individual in the event of adverse determinations by an agency concerning access to or amendment of information contained in record systems.

The reasons for exempting this system of records from the foregoing provisions are as follows: Notifying an individual (at the individual's request) of the existence of an investigative file pertaining to such individual or granting access to an investigative file pertaining to such individual could: Interfere with investigative and enforcement proceedings; deprive co-defendants of a right to a fair trial or an impartial adjudication; constitute an unwarranted invasion of the personal privacy of others; disclose the identity of confidential sources and reveal confidential information supplied by such sources; or disclose investigative techniques and procedures.

(3) 5 U.S.C. 552a(e)(1). This provision of the Privacy Act requires each agency to maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or executive order. The reasons for exempting this system of records from the foregoing provision are as follows:

(i) The IRS will limit the system to those records that are needed for compliance with the provisions of Title 26. However, an exemption from the foregoing is needed because, particularly in the early stages of an investigation, it is not possible to determine the relevance or necessity of specific information.

(ii) Relevance and necessity are questions of judgment and timing. What appears relevant and necessary when first received may subsequently be determined to be irrelevant or unnecessary. It is only after the information is evaluated that the relevance and necessity of such information can be established with certainty.

(4) 5 U.S.C. 552a(e)(4)(I). This provision of the Privacy Act requires the publication of the categories of sources of records in each system of records. The reasons for exempting this system of records from this provision are as follows:

(i) Revealing categories of sources of information could disclose investigative techniques and procedures.

(ii) Revealing categories of sources of information could cause sources who supply information to investigators to refrain from giving such information because of fear of reprisal, or fear of breach of promises of anonymity and confidentiality.

A proposed notice to establish the Privacy Act system of records entitled ''IRS 42.002, Excise Tax Compliance Records'' will be published separately in the **Federal Register**.

As required by Executive Order 12866, it has been determined that this proposed rule is not a significant regulatory action, and therefore, does not require a regulatory impact analysis.

The regulation will not have a substantial direct effect on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various

levels of government. Therefore, it is determined that this proposed rule does not have federalism implications under Executive Order 13132.

Pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, it is hereby certified that these regulations will not significantly affect a substantial number of small entities. The proposed rule imposes no duties or obligations on small entities.

In accordance with the provisions of the Paperwork Reduction Act of 1995, the Department of the Treasury has determined that this proposed rule would not impose new recordkeeping, application, reporting, or other types of information collection requirements.

List of Subjects in 31 CFR Part 1

Privacy.

Part 1, subpart C of title 31 of the Code of Federal Regulations is amended as follows:

PART 1—[AMENDED]

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

Authority: 5 U.S.C. 301 and 31 U.S.C. 321. Subpart A also issued under 5 U.S.C. 552 as amended. Subpart C also issued under 5 U.S.C. 552a.

2. Section 1.36 paragraph (g)(1)(viii) is amended by adding the following text to the table in numerical order.

§ 1.36 Systems exempt in whole or in part from provisions of 5 U.S.C. 552a and this part.

* * * * *

(g) * * *

(1) * * *

(viii) * * *

Number	Name of system
* * * * * * *	
IRS 42.002	Excise Tax Compliance Records.
* * * * * * *	

* * * * *

Dated: September 27, 2006.

Sandra L. Pack,

Assistant Secretary for Management and Chief Financial Officer.

[FR Doc. E6–18853 Filed 11–8–06; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2006–0829, FRL–8235–1]

Revisions to the California State Implementation Plan, Lake County Air Quality Management District, Monterey Bay Unified Air Pollution Control District, San Joaquin Valley Unified Air Pollution Control District, and Ventura County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Lake County Air Quality Management District (LCAQMD), Monterey Bay Unified Air Pollution Control District (MBUAPCD), San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD), and Ventura County Air Pollution Control District (VCAPCD) portions of the California State Implementation Plan (SIP). Under authority of the Clean Air Act as amended in 1990 (CAA or the Act), we are proposing to approve local rules that address particulate matter (PM–10) emissions from open burning, general area sources, cotton gins, incinerators, and fuel burning equipment.

DATES: Any comments on this proposal must arrive by December 11, 2006.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2006–0829, by one of the following methods:

1. Federal eRulemaking Portal: *www.regulations.gov.* Follow the on-line instructions.
2. E-mail: *steckel.andrew@epa.gov.*
3. Mail or deliver: Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

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

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

FOR FURTHER INFORMATION CONTACT: Al Petersen, EPA Region IX, (415) 947–4118, *petersen.alfred@epa.gov.*

SUPPLEMENTARY INFORMATION: This proposal addresses the following local rules: LCAQMD Chapter VIII Section 1002 and Chapter VIII Table 8, MBUAPCD Rule 403, SJVUAPCD Rule 4240, and VCAPCD Rules 57 and 57.1. In the Rules and Regulations section of this **Federal Register**, we are approving these into the SIP in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is

planned. For further information, please see the direct final action.

Dated: October 12, 2006.

Alexis Strauss,

Acting Regional Administrator, Region IX.

[FR Doc. E6–18875 Filed 11–8–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–8237–8]

Idaho: Proposed Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Idaho has applied to EPA for final authorization of certain changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has reviewed Idaho's application, has preliminarily determined that these changes satisfy all requirements needed to qualify for final authorization, and is proposing to authorize the State's changes.

DATES: Comments on this proposed rule must be received by December 11, 2006.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R10–RCRA–2006–0830 by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: hunt.jeff@epa.gov.*
- *Mail:* Jeff Hunt, U.S. Environmental Protection Agency Region 10, Office of Air, Waste & Toxics (AWT–122) 1200 Sixth Avenue, Seattle, WA 98101.

Instructions: Direct your comments to Docket ID No. EPA–R10–RCRA–2006–0830. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *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 or 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.*

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 *http://www.regulations.gov* or in hard copy during normal business hours at the U.S. Environmental Protection Agency Region 10, Office of Air, Waste & Toxics, 1200 Sixth Ave, Seattle, Washington, contact: Jeff Hunt, phone number: (206) 553–0256; or Idaho Department of Environmental Quality, 1410 N. Hilton, Boise, Idaho, contact: John Brueck, phone number: (208) 373–0458.

FOR FURTHER INFORMATION CONTACT: Jeff Hunt, U.S. Environmental Protection Agency Region 10, Office of Air, Waste & Toxics (AWT–122), 1200 Sixth Ave, Seattle, Washington 98101, phone number: (206) 553–0256, e-mail: *hunt.jeff@epa.gov.*

SUPPLEMENTARY INFORMATION:

A. Why Are Revisions to State Programs Necessary?

States which have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, States must change their programs and ask EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) Parts 124, 260 through 268, 270, 273, and 279.

B. What Decisions Have We Made in This Rule?

EPA has preliminarily determined that Idaho's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we are proposing to grant Idaho final authorization to operate its hazardous waste program with the changes described in the authorization application. Idaho will have responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs) within its borders (except in Indian country) and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States before the States are authorized for the requirements. Thus, EPA will implement those requirements and prohibitions in Idaho, including issuing permits, until the State is granted authorization to do so.

C. What Will Be the Effect if Idaho Is Authorized for These Changes?

If Idaho is authorized for these changes, a facility in Idaho subject to RCRA will have to comply with the authorized State requirements in lieu of the corresponding Federal requirements in order to comply with RCRA. Additionally, such persons will have to comply with any applicable Federal requirements, such as, for example, HSWA regulations issued by EPA for which the State has not received authorization, and RCRA requirements that are not supplanted by authorized State-issued requirements. Idaho continues to have enforcement responsibilities under its State hazardous waste management program for violations of this program, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, the authority to:

- Conduct inspections; require monitoring, tests, analyses, or reports;
- Enforce RCRA requirements; suspend or revoke permits; and
- Take enforcement actions regardless of whether the State has taken its own actions.

The action to approve these revisions would not impose additional requirements on the regulated community because the regulations for which Idaho will be authorized are already effective under State law and are not changed by the act of authorization.

D. What Happens If EPA Receives Comments on This Action?

If EPA receives comments on this action, we will address those comments in a later final rule. You may not have another opportunity to comment. If you want to comment on this authorization, you must do so at this time.

E. What Has Idaho Previously Been Authorized for?

Idaho initially received final authorization on March 26, 1990, effective April 9, 1990 (55 FR 11015) to implement the RCRA hazardous waste management program. EPA granted authorization for changes to Idaho's authorized program on April 6, 1992, effective June 5, 1992 (57 FR 11580); June 11, 1992, effective August 10, 1992 (57 FR 24757); April 12, 1995, effective June 11, 1995 (60 FR 18549); October 21, 1998, effective January 19, 1999 (63 FR 56086); July 1, 2001, effective July 1, 2001 (67 FR 44069); March 10, 2004, effective March 10, 2004 (69 FR 11322); and July 22, 2005, effective July 22, 2005 (70 FR 42273).

F. What Changes Are We Proposing?

On June 16, 2006, Idaho submitted a program revision application seeking authorization for all delegable Federal hazardous waste regulations codified as of July 1, 2005, incorporated by reference in IDAPA 58.01.05.(002)–(016). With the exception of the non-delegable provisions described below, we have preliminarily determined that Idaho's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization.

In reviewing the authorization package, EPA discovered that Idaho inadvertently incorporated by reference sections of the Federal rule ''Hazardous Waste Management System; Modification of the Hazardous Waste Manifest System; Final Rule'' (March 4, 2005, 70 FR 10776) related to the national registry for printing and distribution of hazardous waste manifest forms as described in 40 CFR 262.21 and associated references in 40 CFR 262.54(e), 262.60, 264.71(a)(3), and 265.71(a)(3). In an Addendum to the Revised Attorney General's Statement dated September 29, 2006, Idaho clarified that it is not seeking authorization for these non-delegable provisions and intends to amend its regulations to remove these provisions. EPA will retain direct authority for implementation of all non-delegable provisions, and Idaho has agreed to refer all applicants seeking approval of manifest forms to the EPA Office of Solid Waste as described in the rule.

G. Who Handles Permits After the Authorization Takes Effect?

Idaho will continue to issue permits for all the provisions for which it is authorized and administer the permits it issues. If EPA issued permits prior to authorizing Idaho for these revisions, these permits would continue in force until the effective date of the State's issuance or denial of a State hazardous waste permit, at which time EPA would modify the existing EPA permit to expire at an earlier date, terminate the existing EPA permit for cause, or allow the existing EPA permit to otherwise expire by its terms, except for those facilities located in Indian Country. EPA will not issue new permits or new portions of permits for provisions for which Idaho is authorized after the effective date of this authorization. EPA will continue to implement and issue permits for HSWA requirements for which Idaho is not yet authorized.

H. What Is Codification and Is EPA Codifying Idaho's Hazardous Waste Program as Authorized in This Rule

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. This is done by referencing the authorized State rules in 40 CFR Part 272. Through codification actions dated December 6, 1990 (55 FR 50327); June 11, 1992 (57 FR 24757); June 25, 1999 (64 FR 34180); March 8, 2005 (70 FR 11132); and April 20, 2006 (71 FR 20341), EPA codified at 40 CFR Part 272, Subpart N all previous authorization actions for the State of Idaho program. EPA is reserving the amendment of 40 CFR Part 272, Subpart N for codification of this current revision to Idaho's program to a later date.

I. How Would Authorizing Idaho for These Revisions Affect Indian Country (18 U.S.C. 1151) in Idaho?

Idaho is not authorized to carry out its hazardous waste program in Indian country, as defined in 18 U.S.C. 1151. Indian country includes:

1. All lands within the exterior boundaries of Indian reservations within or abutting the State of Idaho;

2. Any land held in trust by the U.S. for an Indian tribe; and

3. Any other land, whether on or off an Indian reservation, that qualifies as Indian country.

Therefore, this action has no effect on Indian country. EPA will continue to implement and administer the RCRA program on these lands.

J. Statutory and Executive Order Reviews

This proposed rule seeks to revise the State of Idaho's authorized hazardous waste program pursuant to section 3006 of RCRA and imposes no requirements other than those currently imposed by State law. This rule complies with applicable executive orders and statutory provisions as follows:

1. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is ''significant,'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. It has been determined that this proposed rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

2. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, because this proposed rule does not establish or modify any information or recordkeeping requirements for the regulated community and only seeks to authorize the pre-existing requirements under State law and imposes no additional requirements beyond those imposed by State law.

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; 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.

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 40 CFR are listed in 40 CFR Part 9.

3. Regulatory Flexibility

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), 5 U.S.C. 601 *et seq.*, generally requires Federal agencies to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business defined by the Small Business Administration's size regulations at 13 CFR Part 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. EPA has determined that this action will not have a significant economic impact on small entities because the proposed rule will only have the effect of authorizing pre-existing requirements under State law and imposes no additional requirements beyond those imposed by State law. After considering the economic impacts of today's rule, I certify that this action will not have a significant economic impact on a substantial number of small entities.

4. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act (UMRA) of 1995 (Pub. L. 104–4) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the rule an explanation why the alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements. Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. It imposes no new enforceable duty on any State, local, or tribal governments or the private sector. Similarly, EPA has also determined that this rule contains no regulatory requirements that might significantly or uniquely affect small government entities. Thus, today's rule is not subject to the requirements of sections 202 and 203 of the UMRA.

5. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government.'' This 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 various levels of government, as specified in Executive Order 13132. This rule seeks authorization of pre-existing State rules. Thus, Executive Order 13132 does not apply to this rule.

6. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (59 FR 22951, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This rule does not have tribal implications, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

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

Executive Order 13045 applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to Executive Order 13045 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.

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

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'' as defined under Executive Order 12866.

9. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Pub. L. 104–113, 12(d) (15 U.S.C. 272), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices) that are developed or adopted by voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This rule does not involve ''technical standards'' as defined by the NTTAA. Therefore, EPA is not considering the use of any voluntary consensus standards.

10. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low Income Populations

To the greatest extent practicable and permitted by law, and consistent with the principles set forth in the report on the National Performance Review, each Federal agency must make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health and environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States and its territories and possessions, the District of Columbia, the Commonwealth of Puerto Rico, and the Commonwealth of the Mariana Islands. Because this rule proposes authorization of pre-existing State rules and imposes no additional requirements beyond those imposed by State law and there are no anticipated significant adverse human health or environmental effects, the rule is not subject to Executive Order 12898.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indians-lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This proposed action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: October 18, 2006.

Ronald A. Kreizenbeck,

Acting Regional Administrator, EPA Region 10.

[FR Doc. E6–18486 Filed 11–8–06; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 235

RIN 0750–AF45

Defense Federal Acquisition Regulation Supplement; Contracting Methods and Contract Type (DFARS Case 2006–D018)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to add an exception to the requirement for a written determination before using a fixed-price type contract for a development program effort. The exception would apply to contracts for systems integration of commercial off-the-shelf information technology products under the DoD Enterprise Software Initiative.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before January 8, 2007, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2006–D018, using any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- E-mail: *dfars@osd.mil*. Include DFARS Case 2006–D018 in the subject line of the message.
- Fax: (703) 602–0350.
- Mail: Defense Acquisition Regulations System, Attn: Mr. Mark Gomersall, OUSD (AT&L) DPAP (DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.
- Hand Delivery/Courier: Defense Acquisition Regulations System, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

Comments received generally will be posted without change to *http://www.regulations.gov*, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Gomersall, (703) 602–0302.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed rule amends DFARS 235.006 to add an exception to the requirement for a written determination before using a fixed-price type contract for a development program effort. The exception would apply to contracts for systems integration of commercial off-the-shelf information technology products under the DoD Enterprise Software Initiative. The Enterprise Software Initiative, addressed in DFARS Subpart 208.74, promotes the use of enterprise software agreements with contractors that allow DoD to obtain favorable terms and pricing for commercial software and related services.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD does not expect this 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 relates to requirements for a written determination that is prepared and executed by the Government. The rule makes no significant change to DoD policy regarding the use of fixed-price contracts for development effort. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2006–D018.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because the rule does not impose any 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 Part 235

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

Therefore, DoD proposes to amend 48 CFR part 235 as follows:

PART 235—RESEARCH AND DEVELOPMENT CONTRACTING

1. The authority citation for 48 CFR part 235 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

2. Section 235.006 is amended as follows:

a. By revising paragraph (b)(i)(C) introductory text;

b. By redesignating paragraphs (b)(ii) and (iii) as paragraphs (b)(iii) and (iv) respectively; and

c. By adding a new paragraph (b)(ii) to read as follows:

235.006 Contracting methods and contract type.

(b)(i) * * *

(C) Except as provided in paragraph (b)(ii) of this section, a written determination that the criteria of paragraphs (b)(i)(A) and (B) of this section have been met is executed—

(ii) The written determination specified in paragraph (b)(i)(C) of this section is not required for the acquisition of systems integration of commercial off-the-shelf information technology products under the Enterprise Software Initiative (see Subpart 208.74).

* * * * *

[FR Doc. E6–19034 Filed 11–8–06; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 252 and Chapter 2

RIN 0750–AF53

Defense Federal Acquisition Regulation Supplement; Receiving Reports for Shipments (DFARS Case 2006–D024)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to address requirements for the distribution of material inspection and receiving reports under DoD contracts. The proposed rule clarifies that copies of the Wide Area WorkFlow-Receipt and Acceptance (WAWF–RA) report must be distributed with a shipment, when WAWF–RA is used to satisfy material inspection and receiving report requirements.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before January 8, 2007, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2006–D024, using any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- E-mail: *dfars@osd.mil*. Include DFARS Case 2006–D024 in the subject line of the message.
- Fax: (703) 602–0350.
- Mail: Defense Acquisition Regulations System, Attn: Ms. Robin Schulze, OUSD (AT&L) DPAP (DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.
- Hand Delivery/Courier: Defense Acquisition Regulations System, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

Comments received generally will be posted without change to *http://www.regulations.gov*, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Robin Schulze, (703) 602–0326.

SUPPLEMENTARY INFORMATION:

A. Background

The clause at DFARS 252.246–7000, Material Inspection and Receiving Report, contains requirements for preparing and furnishing material inspection and receiving reports to the Government. Contractors can satisfy material inspection and receiving report requirements by using DD Form 250, in a manner and to the extent required by DFARS Appendix F, or by using the Wide Area WorkFlow-Receipt and Acceptance (WAWF–RA) electronic form. This proposed rule clarifies that, when WAWF–RA is used, two copies of the WAWF–RA report must be distributed with the shipment in accordance with DFARS Appendix F. Such clarification is needed to ensure proper identification of all shipments.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD does not expect this 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 makes no significant change to DoD policy for preparation and use of material inspection and receiving reports. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2006–D024.

C. Paperwork Reduction Act

The information collection requirements for DoD material inspection and receiving reports have been approved by the Office of Management and Budget, under Control Number 0704–0248, for use through March 31, 2008.

List of Subjects in 48 CFR Part 252

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

Therefore, DoD proposes to amend 48 CFR part 252 and Appendix F to chapter 2 as follows:

1. The authority citation for 48 CFR part 252 and Appendix F to subchapter I continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

2. Section 252.246–7000 is revised to read as follows:

252.246–7000 Material Inspection and Receiving Report.

As prescribed in 246.370, use the following clause:

Material Inspection and Receiving Report (XXX 2006)

(a) At the time of each delivery of supplies or services under this contract, the Contractor shall prepare and furnish to the Government a material inspection and receiving report in the manner and to the extent required by Appendix F, Material Inspection and Receiving Report, of the Defense FAR Supplement.

(b) Contractor submission of the material inspection and receiving information required by Appendix F of the Defense FAR Supplement by using the Wide Area

WorkFlow-Receipt and Acceptance (WAWF–RA) electronic form (see paragraph (b)(1) of the clause at 252.232–7003) fulfills the requirement for a material inspection and receiving report (DD Form 250). Two copies of the WAWF–RA report shall be distributed with the shipment, in accordance with Appendix F, Part 4, F–401, Table 1, of the Defense FAR Supplement.

(End of clause)

3. Appendix F to chapter 2 is amended in Part 4, Section F–401, by revising paragraph (a) to read as follows:

Appendix F—Material Inspection and Receiving Report

* * * * *

F–401 Distribution.

(a) The contractor is responsible for distributing the DD Form 250, including mailing and payment of postage. Use of the Wide Area WorkFlow-Receipt and Acceptance electronic form satisfies the distribution requirements of this section, except for the copies required to accompany shipment.

* * * * *

[FR Doc. E6–19035 Filed 11–8–06; 8:45 am]

BILLING CODE 5001–08–P

Notices

Federal Register

Vol. 71, No. 217

Thursday, November 9, 2006

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Solicitation of Nominations, Advisory Committee on Biotechnology and 21st Century Agriculture

AGENCY: Agricultural Research Service, Office of the Under Secretary, Research, Education, and Economics, USDA.

SUMMARY: Pursuant to 5 U.S.C. App., the Agricultural Research Service is requesting nominations for qualified persons to serve as members of the Secretary's Advisory Committee on Biotechnology and 21st Century Agriculture (AC21). The charge for the AC21 is two-fold: to examine the long-term impacts of biotechnology on the U.S. food and agriculture system and USDA; and to provide guidance to USDA on pressing individual issues, identified by the Office of the Secretary, related to the application of biotechnology in agriculture.

DATES: Written nominations must be received by fax or postmarked on or before December 11, 2006.

ADDRESSES: All nomination materials should be sent to Michael Schechtman, Designated Federal Official, Office of the Deputy Secretary, USDA, 202B Jamie L. Whitten Federal Building, 14th and Independence Avenue, SW., Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Michael Schechtman, Telephone (202) 720–3817.

SUPPLEMENTARY INFORMATION: AC21 members serve terms of up to 2 years, with terms for around half of the Committee members expiring in any given year. Nominations are being sought for open Committee seats. The terms of 12 members of the AC21 will expire in early 2006. The AC21 Charter allows for flexibility to appoint up to a total of 17 members. Members can be reappointed to serve up to 6 consecutive years. Equal opportunity practices, in line with USDA policies, will be followed in all membership appointments to the Committee. To ensure that recommendations of the Committee take into account the needs of the diverse groups served by the Department, membership shall include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

Nominees of the AC21 should have recognized expertise in one or more of the following areas: recombinant-DNA (rDNA) research and applications using plants; rDNA research and applications using animals; rDNA research and applications using microbes; food science; silviculture and related forest science; fisheries science; ecology; veterinary medicine; the broad range of farming or agricultural practices; weed science; plant pathology; biodiversity; applicable laws and regulations relevant to agricultural biotechnology policy; risk assessment; consumer advocacy and public attitudes; public health/epidemiology; ethics, including bioethics; human medicine; biotechnology industry activities and structure; intellectual property rights systems; and international trade. Members will be selected by the Secretary of Agriculture in order to achieve a balanced representation of viewpoints to address effectively USDA biotechnology policy issues under consideration. Over the next two years, it is expected that the AC21 will complete work on a project related to biotechnology coexistence issues, begin work related to transgenic animal technologies, and, if time permits, begin work on additional topics under the Committee's charge.

Nominations for AC21 membership must be in writing and provide the appropriate background documents required by USDA policy, including background disclosure form AD–755. All nomination materials should be sent to Michael Schechtman at the address listed in the **ADDRESSES** section. Forms may also be submitted by fax to (202) 690–4265. To obtain form AD–755 ONLY, please contact Debra Lindsay, Office of Pest Management Policy, telephone (202) 720–4074, fax (202) 720–3191; e-mail *Debra.lindsay@ars.usda.gov*.

The AC21 meets in Washington, DC, up to four (4) times per year. The function of the AC21 is solely advisory. Members of the AC21 and its subcommittees serve without pay, but with reimbursement of travel expenses and per diem for attendance at AC21 and subcommittee functions for those AC21 members who require assistance in order to attend the meetings. While away from home or their regular place of business, those members will be eligible for travel expenses paid by the Office of the Under Secretary, Research, Education, and Economics, USDA, including per diem in lieu of subsistence, at the same rate as a person employed intermittently in the government service is allowed under Section 5703 of Title 5, United States Code.

Submitting Nominations: Nominations should be typed and include the following:

1. A brief summary of no more than two (2) pages explaining the nominee's suitability to serve on the AC21.
2. A résumé or curriculum vitae.
3. A completed copy of form AD–755.

All nominations must be postmarked no later than December 11, 2006.

Dated: November 2, 2006.

Jeremy Stump,

Senior Advisor for International and Homeland Security Affairs and Biotechnology.

[FR Doc. E6–19029 Filed 11–8–06; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of the Advisory Committee on Biotechnology and 21st Century Agriculture Meeting

AGENCY: Agricultural Research Service, Office of the Under Secretary, Research, Education, and Economics, USDA.

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. App. II, the United States Department of Agriculture announces a meeting of the Advisory Committee on Biotechnology and 21st Century Agriculture (AC21).

DATES: The meeting dates are December 14, 2006, 8 a.m. to 5 p.m., and December 15, 8 a.m. to 4 p.m.

ADDRESSES: Room 107A, USDA Jamie L. Whitten Building, 12th Street and

Jefferson Drive, SW, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Michael Schechtman, Telephone (202) 720–3817.

SUPPLEMENTARY INFORMATION: The fourteenth meeting of the AC21 has been scheduled for December 14–15, 2006. The AC21 consists of 19 members representing the biotechnology industry, international plant genetics research, farmers, food manufacturers, commodity processors and shippers, environmental and consumer groups, and academic researchers. In addition, representatives from the Departments of Commerce, Health and Human Services, and State, and the Environmental Protection Agency, the Council on Environmental Quality, the Office of the United States Trade Representative, and the National Association of State Departments of Agriculture serve as ''ex officio'' members. At this meeting, the Committee plans to continue work on the effects (in terms of planting decisions, markets, and rural communities) of coexistence issues on the development and use of new crops derived through modern biotechnology. This will include consideration of presentations from external speakers as well as development of a statement of work and a work plan to address current and future relevant factors. Background information regarding the work of the AC21 will be available on the USDA Web site at *http://www.usda.gov/wps/portal/ !ut/p/_s.7_0_A/7_0_1OB?navid=BIOTECH&parentnav=AGRICULTURE&navtype=RT.*

Members of the public should enter the building through the Jefferson Drive entrance. Requests to make oral presentations at the meeting may be sent to Michael Schechtman, Designated Federal Official, Office of the Deputy Secretary, USDA, 202 B Jamie L. Whitten Federal Building, 12th Street and Jefferson Drive, SW., Washington, DC 20250, Telephone (202) 720–3817; Fax (202) 690–4265; E-mail *Michael.schechtman@ars.usda.gov.* On December 14, 2006, if time permits, reasonable provision will be made for oral presentations of no more than five minutes each in duration. Written requests to make oral presentations at the meeting must be received by the contact person identified herein at least three business days before the meeting. The meeting will be open to the public, but space is limited. If you would like to attend the meetings, you must register by contacting Ms. Debra Lindsay at (202) 720–4074, by fax at (202) 720–3191 or by E-mail at *debra.lindsay@ars.usda.gov* at least five business days prior to the meeting. Please provide your name, title, business affiliation, address, and telephone and fax numbers when you register. If you require a sign language interpreter or other special accommodation due to disability, please indicate those needs at the time of registration.

Dated: November 2, 2006.

Jeremy Stump,

Senior Advisor for International and Homeland Security Affairs and Biotechnology.

[FR Doc. E6–19028 Filed 11–8–06; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2006–0055]

Notice of Request for Approval of an Information Collection; Animal Care; Educational and Outreach Efforts

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: New information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to initiate a new information collection activity associated with the Agency's Animal Care program. The activity involves surveying customers to determine the effectiveness of Animal Care's educational and outreach efforts.

DATES: We will consider all comments that we receive on or before January 8, 2007.

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

- Federal eRulemaking Portal: Go to *http://regulations.gov*, select ''Animal and Plant Health Inspection Service'' from the agency drop-down menu, then click ''Submit.'' In the Docket ID column, select APHIS–2006–0055 to submit or view public comments and to view supporting and related materials available electronically. Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''User Tips'' link.
- Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. APHIS–2006–0055, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2006–0055.

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

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

FOR FURTHER INFORMATION CONTACT: For information on an information collection associated with effectiveness of Animal Care's educational and outreach efforts, contact Dr. Jodie Kulpa-Eddy, Senior Staff Veterinarian, Animal Care, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737; (301) 734–7833. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: Animal Care; Educational and Outreach Efforts.

OMB Number: 0579–XXXX.

Type of Request: Approval of a new information collection.

Abstract: The Animal and Plant Health Inspection Service, Animal Care program, conducts inspections to administer and enforce the Animal Welfare Act and the Horse Protection Act and regulations issued under those Acts. Animal Care also conducts workshops, symposia, and meetings, and other activities to educate regulated entities and the public about these Acts and regulations.

Animal Care plans to survey participants in these activities to measure the effectiveness of its outreach and educational efforts. The surveys would be distributed to attendees following workshops, symposia, meetings, and other events, as well as attached to educational material provided to the public. Survey questions would seek to determine whether the information was helpful and how it might be improved.

Animal Care plans to use the information collected through these surveys to assess the effectiveness of its efforts and to plan improvements to activities.

We are asking OMB to approve our use of this information collection activity for 3 years. The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.08222 hours per response.

Respondents: Outreach contacts, partnership efforts, and educational contacts.

Estimated annual number of respondents: 2,700.

Estimated annual number of responses per respondent: 1.

Estimated annual number of responses: 2,700.

Estimated total annual burden on respondents: 222 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 3rd day of November 2006.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E6–19017 Filed 11–8–06; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Roadless Area Conservation National Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Roadless Area Conservation National Advisory Committee petition submitted on October 5, 2006, by the Governor of Idaho for state specific rulemaking for inventoried roadless area management in the State of Idaho under the authority of the Administrative Procedure Act, 5 U.S.C. 553(e) and 7 CFR 1.28.

DATES: The meeting will be held November 29 to December 1, 2006 from 9 a.m. to 5 p.m each day.

ADDRESSES: The meeting will be held at the Forest Service's Yates Building at 201 14th Street, SW, Washington, DC, 20250.

FOR FURTHER INFORMATION CONTACT: Bill Supulski, National Roadless Coordinator, at *bsupulski@fs.fed.us* or (202) 205–0948, USDA Forest Service, 1400 Independence Avenue, SW, Mailstop 1104, Washington, DC 20250.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The meeting is open to the public and interested parties are invited to attend; building security requires you to provide your name to the National Roadless Coordinator (contact information listed above) by November 20, 2006. You will need photo identification to enter the building.

While meeting discussion is limited to Forest Service staff and Committee members, the public will be allowed to offer written and oral comments for the Committee's consideration. Attendees wishing to comment orally will be allotted a specific amount of time to speak during a public comment period at the end of the first day's agenda. To offer oral comment, please contact the National Roadless Coordinator at the contact number above.

Dated: November 3, 2006.

Gloria Manning,

Associate Deputy Chief, National Forest System.

[FR Doc. E6–18983 Filed 11–8–06; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of New Recreation Fee Site; Federal Lands Recreation Enhancement Act, (Title VIII, Pub. L. 108–447)

AGENCY: Forest Service, USDA.

ACTION: Notice of new recreation fee site.

SUMMARY: The National Forests in North Carolina will begin charging a $3.00 special recreation permit fee per user per day and $30.00 per user for a season pass for use of the Flintlock Shooting Range. The shooting range is managed to provide a legal shooting opportunity, to protect forest resources and will facilitate continued sport shooting use within the National Forests in North Carolina on the Uwharrie Ranger District. Fee revenue will support operations and maintenance of the shooting range and future site improvements.

DATES: The fee is scheduled for implementation in May of 2007.

FOR FURTHER INFORMATION CONTACT: David H. Wright, Recreation Fee Coordinator, 828–257–4256, National Forest in North Carolina, PO Box 2750, Asheville, NC 28802.

SUPPLEMENTARY INFORMATION: The Federal Recreation Lands Enhancement Act (Title VIII, Pub. L. 108–447) directed the Secretary of Agriculture to publish advance notice in the **Federal Register** whenever new recreation fee areas are established. This new fee will be reviewed by a Recreation Resource Advisory Committee prior to a final decision and implementation. The National Forests in North Carolina presently manages one other shooting range fee site in North Carolina. Recreation fees are $2.00 per user per day and $20.00 per user per season pass at this site. The Flintlock Shooting Range will offer a vault toilet facility at the site, trash receptacle, improved parking area, information kiosk, 100 yard and 50 yard shooting lanes, shooting benches and shooting bench weather shelters.

Dated: November 3, 2006.

Marisue Hilliard,

National Forests in North Carolina Supervisor.

[FR Doc. 06–9134 Filed 11–8–06; 8:45 am]

BILLING CODE 3410–52–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of New Recreation Fee Site; Federal Lands Recreation Enhancement Act (Title VIII, Pub. L. 108–447)

AGENCY: Forest Service, USDA.

ACTION: Notice of new recreation fee site.

SUMMARY: The National Forests in North Carolina will begin charging a $3.00 special recreation permit trail fee per

day per mountain bike rider and $20.00 per mountain bike rider for a season pass for use of the Woodrun mountain bike trail system. This trail system consists of 24 miles of trails managed primarily for use by mountain bikers. The trail system is managed to protect environmental and cultural resource sites and will facilitate continued mountain bike use within the National Forests in North Carolina on the Uwharrie Ranger District. Fee revenue will support operations and maintenance of the trail system and trailhead and future site improvements.

DATES: The fee is scheduled for implementation in May of 2007.

FOR FURTHER INFORMATION CONTACT: David H. Wright, Recreation Fee Coordinator, 828–257–4256, National Forests in North Carolina, P.O. Box 2750, Asheville, NC 28802.

SUPPLEMENTARY INFORMATION: The Federal Recreation Lands Enhancement Act (Title VIII, Pub. L. 108–447) directed the Secretary of Agriculture to publish advance notice in the **Federal Register** whenever new recreation fee areas are established. This new fee will reviewed by a Recreation Resource Advisory Committee prior to a final decision and implementation. The National Forests in North Carolina presently manages one other mountain bike trail system fee site in North Carolina. Recreation fees are $3.00 per mountain bike per day and $20.00 per mountain bike per season pass at this site. The Woodrun mountain bike trail system will offer a vault toilet facility at the trailhead, trash receptacle, improved parking area, information kiosk, area specific map, and access to twenty-four miles of mountain bike trails.

Dated: November 3, 2006.

Marisue Hilliard,

National Forests in North Carolina Supervisor.

[FR Doc. 06–9161 Filed 11–7–06; 8:45 am]

BILLING CODE 3410–52–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of New Recreation Fee Site; Federal Lands Recreation Enhancement Act, (Title VIII, Pub. L. 108–447)

AGENCY: Forest Service, USDA.

ACTION: Notice of new recreation fee site.

SUMMARY: The National Forests in North Carolina will begin charging a $5.00 special recreation permit trail fee per day per rider and $30.00 per rider for a season pass for use of the Uwharrie Horse Trail system. This trail system consists of 40 miles of trails managed primarily for use by horseback riders. The trail system is managed to protect environmental and cultural resource sites and will facilitate continued equestrian use within the National Forests in North Carolina on the Uwharrie Ranger District. Fee revenue will support operations and maintenance of the trail system and trailhead and future site improvements.

DATES: The fee is scheduled for implementation in May of 2007.

FOR FURTHER INFORMATION CONTACT: David H. Wright, Recreation Fee Coordinator, 828–257–4256, National Forests in North Carolina, PO Box 2750, Asheville, NC 28802.

SUPPLEMENTARY INFORMATION: The Federal Recreation Lands Enhancement Act (Title VIII, Pub. L. 108–447) directed the Secretary of Agriculture to publish advance notice in the **Federal Register** whenever new recreation fee areas are established. This new fee will be reviewed by a Recreation Resource Advisory Committee prior to a final decision and implementation. The Uwharrie Horse Trail system will offer a vault toilet facility at the trailhead, trash receptacle, improved parking area, information kiosk, area specific map, and access to forty miles of equestrian trails.

Dated: November 3, 2006.

Marisue Hilliard,

National Forests in North Carolina Supervisor.

[FR Doc. 06–9162 Filed 11–8–06; 8:45 am]

BILLING CODE 3410–52–M

DEPARTMENT OF AGRICULTURE

Forest Service

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Southeast Alaska Federal Subsistence Regional Advisory Council Meeting

AGENCY: Forest Service, USDA; Fish and Wildlife Service, Interior.

ACTION: Notice of meeting (teleconference).

SUMMARY: This notice informs the public that the Southeast Alaska Federal Subsistence Regional Advisory Council will hold a public meeting by teleconference on November 21, 2006. The public is invited to participate and to provide oral testimony.

DATES: The teleconference will be held November 21, 2006, at 10 a.m., Alaska Standard Time. For how to participate, please see **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: Chair, Federal Subsistence Board, c/o Office of Subsistence Management, U.S. Fish and Wildlife Service, 3601 C Street, Suite 1030, Anchorage, Alaska 99503; telephone (907) 786–3888. For questions related to subsistence management issues on National Forest Service lands, contact Steve Kessler, Subsistence Program Leader, 3601 C Street, Suite 1030, Anchorage, Alaska 99503; telephone (907) 786–3592.

SUPPLEMENTARY INFORMATION: The Southeast Alaska Subsistence Regional Advisory Council will meet by teleconference on Tuesday, November 21, 2006, to develop a petition to the Secretary of the Interior and Secretary of Agriculture concerning the requirement that subsistence hunters possess a State of Alaska-issued resident hunting or trapping license to hunt or trap under Federal subsistence regulations, and for discussing other matters affecting subsistence users in Southeast Alaska. This meeting is open to the public to provide testimony. To participate, call toll free, 1–800–369–3372. The Teleconference Leader is Dr. Robert Schroeder and the Passcode is ''REGIONAL COUNCIL''.

Authority: Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA), 16 U.S.C. 3101–3126.

Dated: October 25, 2006.

Peter J. Probasco,

Acting Chair, Federal Subsistence Board.

Dated: October 25, 2006.

Steve Kessler,

Subsistence Program Leader, USDA—Forest Service.

[FR Doc. 06–9147 Filed 11–8–06; 8:45 am]

BILLING CODE 3410–11–P; 4310–55–P

COMMISSION ON CIVIL RIGHTS

Sunshine Meeting Act Notice

DATE AND TIME: Friday, November 17, 2006, 9 a.m.

PLACE: U.S. Commission on Civil Rights, 624 9th Street, NW., Room 540, Washington, DC 20425.

The meeting is also accessible to the public through the following: Call-in number: 1–800–597–0731, Access Code Number: 43783773.

Federal Relay Service: 1–800–877–8339.

STATUS:

Agenda

I. Approval of Agenda

II. Approval of Minutes of October 13, Meeting
III. Announcements
IV. Staff Director's Report
V. Program Planning
- Briefing Report Benefits of Diversity in Elementary and Secondary Education

VI. Management and Operations
- Orange County Voter Harassment Letter
- 2007 Business Meeting and Briefing Calendar

VII. State Advisory Committee Issues
- Recharter Package for California State Advisory Committee

VIII. Future Agenda Items
IX. Adjourn

CONTACT PERSON FOR FURTHER INFORMATION: Manuel Alba, Press and Communications (202) 376–8587.

David Blackwood,
General Counsel.

[FR Doc. 06–9186 Filed 11–7–06; 3:15 pm]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

[Docket No. 05–BIS–22]

In the Matter of: Mr. Daqing Zhou; Manten Electronics, Inc.; Beijing Office, Suite 2–4–501, 2nd Area Cherry Garden, Li Qiao Town, Shun Yi, Beijing, PRC 101300, Respondent; Final Decision and Order

In a charging letter filed on December 1, 2005, the Bureau of Industry and Security (''BIS'') alleged that the Respondent, Daqing Zhou (''Zhou''), committed three violations of the Export Administration Regulations (''Regulations''),[1] issued under the Export Administration Act of 1979, as amended (50 U.S.C. app. 2401–2420 (2000)) (the ''Act'').[2]

Specifically, the charging letter filed by BIS alleged that Zhou conspired to export microwave amplifiers, items subject to the Regulations and classified under Export Control Classification Number (''ECCN'') 3A001, from the United States to China without the required Department of Commerce license. BIS alleged that the goal of the conspiracy was to obtain microwave amplifiers on behalf of a Chinese end-user and to export those microwave amplifiers to China. In so doing, BIS charged that Zhou committed one violation of Section 764.2(d) of the Regulations.

The charging letter also alleged that Zhou caused the doing of an act prohibited by the Regulations. Specifically, BIS alleged that Zhou ordered the aforementioned microwave amplifiers from a U.S. company for use by an end-under in China. The U.S. company then exported the microwave amplifiers to China without the Department of Commerce license required by Section 742.4 of the Regulations. In so doing, BIS charged that Zhou committed one violation of Section 764.2(b) of the Regulations.

Finally, the charging letter filed by BIS alleged that, in connection with the export of microwave amplifiers on or about May 23, 2002, Zhou ordered or financed microwave amplifiers that were to be exported from the United States with knowledge that a violation of the Regulations would occur in connection with those items. In so doing, BIS charged that Zhou committed one violation of section 764.2(e) of the Regulations.

In accordance with Section 766.3(b)(1) of the Regulations, on December 1, 2005, BIS mailed the notice of issuance of the charging letter by registered mail to Zhou at his last known address. Although postage marks indicate that the charging letter arrived in Beijing, the letter was returned to BIS unopened. BIS then sent a copy of the charging letter to Zhou at the same address in Beijing by Federal Express on May 1, 2006. The record established that on May 17, 2006, the charging letter sent by Federal Express was signed for by a ''D. Zhou.''

Section 766.6(a) of the Regulations provides, in pertinent part, that ''[t]he respondent must answer the charging letter within 30 days after being served with notice of issuance of the charging letter'' initiating the administrative enforcement proceeding. To date, Zhou has not filed an answer to the charging letter with the Administrative Law Judge (ALJ), and has not otherwise responded to the charging letter, as required by the Regulations.

Pursuant to the default procedures set forth in Section 766.7 of the Regulations, BIS filed a Motion for Default Order with the ALJ on September 11, 2006. Under Section 766.7(a) of the Regulations, ''[f]ailure of the respondent to file an answer within the time provided constitutes a waiver of the respondent's right to appear,'' and ''on BIS's motion and without further notice to the respondent, [the ALJ] shall find the facts to be as alleged in the charging letter.''

On October 17, 2006, the ALJ issued a Recommended Decision and Order in which he concluded that ''BIS submitted evidence to establish delivery of the notice of the Charging Letter was constructively refused on or about December 17, 2006 and that BIS properly served notice of the Charging Letter in accordance with Section 766.3 of the Regulations.'' I conclude that the ALJ's reference to ''December 17, 2006'' was a typographical error. In this case, I find that the charges were served on the Respondent on May 17, 2006; the date that ''D. Zhou'' signed for the Federal Express package containing the charging letter that was sent to the Respondent's, Daqing Zhou, last known address. Thirty days having past since the charges were properly served and not answered, BIS was entitled to seek a default judgment.

Based upon the record before him, the ALJ held Zhou in default. In the Recommended Decision and Order, the ALJ found the facts to be as alleged in BIS's charging letter, and determined that those facts established that Zhou committed one violation of Section 764.2(d), one violation of Section 764.2(b), and one violation of Section 764.2(e) of the Regulations. The ALJ recommended that Zhou be denied export privileges for twenty years.

The ALJ's Recommended Decision and Order, together with the entire record in this case, has been referred to me for final action under Section 766.22 of the Regulations. I find that the record supports the ALJ's findings of fact and conclusions of law, as modified above, with respect to each of the above-referenced charges brought against Zhou. I also find that the penalty recommended by the ALJ is appropriate, given the nature of the violations, the lack of mitigating circumstances, the importance of preventing future unauthorized exports, and penalties imposed in past similar cases. Although the imposition of a monetary penalty is an appropriate option, I agree with the ALJ that in this case such a penalty may not be effective, given the difficulty of collecting payment against a party outside the United States.

Based on my review of the entire record, I affirm the findings of fact, as modified, and conclusions of law in the ALJ's Recommended Decision and Order.

[1] The Regulations are currently codified at 15 CFR Parts 730–774 (2006). The violations charged occurred in 2001 and 2002. The Regulations governing the violations at issue are found in the 2001 through 2002 versions of the Code of Federal Regulations (15 CFR Parts 730–774 (2001–2002). The 2006 Regulations establish the procedures that apply to this matter.

[2] Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR., 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 3, 2006 (71 FR 44,551 (August 7, 2006)) has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706 (2000)).

Accordingly, it is therefore ordered:

First, that, for a period of twenty years from the date this Order is published in the **Federal Register**, Daqing Zhou (a/k/a ''David Zhou''), Manten Electronics, Inc., Beijing Office, Suite 2–4–501, 2nd Area Cherry Garden, Li Quiao Town, Shun Yi, Beijing, PRC 101300, and when acting for or on his behalf, his representatives, agents, assigns, or employees (''Denied Person''), may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

Second, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject tot he Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and that is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves that use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, that, after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to the Denied Person by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order.

Fourth, that this Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are foreign-produced direct product of U.S.-origin technology.

Fifth, that this Order shall be served on the Denied Person and on BIS, and shall be published in the **Federal Register**. In addition, the ALJ's Recommended decision and Order, except for the section related to the Recommended Order, shall be published in the **Federal Register**.

This Order, which constitutes the final agency action in this matter, is effective upon publications in the **Federal Register**.

Dated: November 3, 2006.

Mark Foulon,

Acting Under Secretary of Commerce for Industry and Security.

Recommended Decision and Order

On December 1, 2005, the Bureau of Industry and Security, U.S. Department of Commerce (''BIS''), issued a Charging Letter initiating this administrative enforcement proceeding against Daqing Zhou (''Zhou''). The Charging Letter alleged that Zhou committed three violations of the Export Administration Regulations (currently codified at 15 CFR Parts 730–774 (2006)) (''Regulations''),[1] issued under the Export Administration Act of 1979, as amended (50 U.S.C. App. 2401–2420 (2000)) (''Act'').[2]

Specifically, the Charging Letter alleged that Zhou conspired and acted in concert with others, known and unknown, to export microwave amplifiers from the United States to China without the required Department of Commerce license. BIS alleged that the goal of the conspiracy was to obtain microwave amplifiers on behalf of a Chinese end-user and to export those microwave amplifiers to China. BIS alleged that in furtherance of the conspiracy, Zhou negotiated with individuals from China and developed a plan to acquire the amplifiers for shipment from the United States to China. BIS alleged that, contrary to Section 742.4 of the Regulations, no Department of Commerce license was obtained for the export of the amplifiers from the United States to China. (Charge 1).

The Charging Letter filed by BIS also alleged that, on or about May 23, 2002, Zhou caused a violation of the Regulations by ordering microwave amplifiers, items subject to the Regulations and classified under export control classification number (''ECCN'') 3A001, from a U.S. company for use by an end-user in China. At the time of the export caused by Zhou, the microwave amplifiers in question were controlled on the Commerce Control List for National Security reasons. BIS alleged that, contrary to Section 742.4 of the Regulations, no Department of Commerce license was obtained for the export of the amplifiers from the United States to China. (Charge 2).

Finally, the Charging Letter filed by BIS also alleged that, in connection with the export of microwave amplifiers on or about May 23, 2002, Zhou ordered or financed microwave amplifiers that were to be exported from the United States with knowledge that a violation of the Regulations would occur. Specifically, BIS alleged that Zhou knew that a violation of the Regulations would occur as Zhou notified the U.S. exporter that the items in question were classified as ECCN 3A001, and was aware that the exporter was not going to obtain a license for the export. (Charge 3).

Section 766.3(b)(1) of the Regulations provides that notice of the issuance of a charging letter shall be served on a respondent by mailing a copy by registered or certified mail addressed to the respondent at the respondent's last known address. Further, the date of service is the date of its delivery or of its attempted delivery is refused. *See* 15 CFR 766.4(c).

Here, BIS mailed the Charging Letter by registered mail on December 1, 2005 to Zhou at his last known address: Mr. Daqing Zhou, Manten Electronics, Inc., Beijing Office, Suite 2–4–501, 2nd Area Cherry Garden, Li Qiao Town, Shun Yi, Beijing, PRC 101300. Although postage marks indicate that the letter arrived in Beijing, the letter was returned to BIS unopened. BIS sent a courtesy copy of the Charging Letter to the same address in Beijing by Federal Express on May 1, 2006.[3] This time a person named

[1] The charged violations occurred in 2001 through 2002. The Regulations governing the violations at issue are found in the 2001 through 2002 versions of the Code of Federal Regulations (15 CFR Parts 730–774 (2001–2002)). The 2006 Regulations establish the procedures that apply to this matter.

[2] Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), as extended by the Notice of August 3, 2006 (71 FR 44,551 (Aug. 7, 2006)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706 (2000)).

[3] Furthermore, on May 1, 2006, BIS sent a courtesy copy of the charging letter to Zhou at the last known e-mail address: *david.zhou@163.com*.

''Dr. Zhou'' signed for the delivery on May 17, 2006. The undersigned concludes, BIS submitted evidence to establish delivery of the notice of the Charging Letter was constructively refused on or around December 17, 2006 and that BIS properly served notice of the Charging Letter in accordance with Section 766.3 of the Regulations.

Section 766.6(a) of the Regulations provides, in pertinent part, that ''[t]he respondent must answer the charging letter within 30 days after being served with notice of issuance of the charging letter'' initiating the administrative enforcement proceeding. To date, Zhou has not filed an answer to the Charging Letter.

Pursuant to the default procedures set forth in Section 766.7 of the Regulations, I find the facts to be as alleged in the Charging Letter, and hereby determine that those facts establish that Zhou committed one violation of Section 764.2(d), one violation of Section 764.2(b), and one violation of Section 764.2(e) of the Regulations.

Section 764.3 of the Regulations sets forth the sanctions BIS may seek for violations of the Regulations. The applicable sanctions are: (i) A monetary penalty, (ii) suspension from practice before the Bureau of Industry and Security, and (iii) a denial of export privileges under the Regulations. *See* 15 CFR 764.3 (2001–2002). Because Zhou caused the export of microwave amplifiers, items controlled by BIS for national security reasons for export to China, BIS requests that I recommend to the Under Secretary of Commerce for Industry and Security[4] that Zhou's export privileges be denied for twenty years.

BIS suggested this sanction because Zhou's role in conspiring to export amplifiers to China, as well as his role in ordering amplifiers for export to China, represents a significant harm to U.S. national security. BIS further argued that Zhou knowingly engaged in conduct prohibited by the Regulations by conspiring to, and causing the export of microwave amplifiers to China with knowledge that a violation of the Regulations would occur. The items involved in this unlicensed export—microwave amplifiers—required a license for export to China for national security reasons. Accordingly, BIS asserted that Zhou's actions represented a significant potential harm to the essential national security interests protected by U.S. export controls.[5] Furthermore, BIS believes that the recommended denial order is particularly appropriate in this case, since Zhou failed to respond to the Charging Letter filed by BIS, despite evidence indicating that Zhou received actual service of the Charging Letter. Finally, BIS believes that the imposition of a twenty-year denial order is particularly appropriate in this case since BIS would likely face difficulties in collecting a monetary penalty, as Zhou is not located in the United States. In light of these circumstances, BIS believes that the denial of Zhou export privileges for twenty years is an appropriate sanction.

On this basis, I concur with BIS and recommended that the Under Secretary enter an Order denying Zhou's export privileges for a period of twenty years. Such a denial order is consistent with penalties imposed in similar cases. *See In the Matter of Mark Jin a/k/a Zhongda Jin et al*, 66 FR 40,971 (Aug. 6, 2001) (affirming the recommendation of the ALJ that a twenty-five year denial order was appropriate where the respondent knowingly exported items to China without a license and defaulted on the BIS charging letter); *In the Matter of Petrom GmbH International Trade*, 70 FR 32,743 (June 6, 2005) (affirming the recommendations of the ALJ that a twenty year denial order and a civil monetary sanction of $143,000 were appropriate where knowing violations involved a shipment of EAR99 items to Iran); *In the Matter of Adbulamir Mahdi*, 68 FR 57,406 (Oct. 3, 2003) (affirming the recommendation of the ALJ that a twenty year denial order was appropriate where knowing violations involved shipments of EAR99 items to Iran as a part of a conspiracy to ship such items through Canada to Iran).

[Redacted Section]

This Order, which constitutes the final agency action in this matter, is effective upon publication in the **Federal Register**,

Accordingly, I am referring this Recommended Decision and Order to the Under Secretary of Commerce for Industry and Security for review and final action for the agency, without further notice to the respondent, as provided in Section 766.7 of the Regulations.

Within 30 days after receipt of this Recommended Decision and Order, the Under Secretary shall issue a written order affirming modifying, or vacating the Recommended Decision and Order. *See* 15 CFR 766.22(c).

Dated: October 17, 2006.

The Honorable Joseph N. Ingolia, Chief Administrative Law Judge.

[FR Doc. 06–9121 Filed 11–8–06; 8:45 am]

BILLING CODE 3510–33–M

[4] Pursuant to Section 13(c)(1) of the Export Administration Act and Section 766.17(b)(2) of the Regulations, in export control enforcement cases, the Administrative Law Judge makes recommended findings of fact and conclusions of law that the Under Secretary must affirm, modify or vacate. The Under Secretary's action is the final decision for the U.S. Commerce Department.

[5] *See* 15 CFR Part 766, Supp. No. 1, III, A. (Stating that a denial order may be considered even in matters involving simple negligence or carelessness, if the violation(s) involves ''harm to the national security or other essential interests protected by the export control system,'' if the violations are of such a nature and extent that a monetary fine alone represents an insufficient penalty * * *) (emphasis added).

DEPARTMENT OF COMMERCE

International Trade Administration

(A–570–827)

Notice of Amended Final Results in Accordance With Court Decision: Antidumping Duty Administrative Review of Certain Cased Pencils from the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On July 12, 2006, the United States Court of Appeals for the Federal Circuit (CAFC) affirmed the decision of the Court of International Trade (CIT) to sustain the Department of Commerce's (the Department's) remand redetermination in the 1999–2000 antidumping duty administrative review of certain cased pencils (pencils) from the People's Republic of China (PRC). In its redetermination, the Department assigned Guangdong Provincial Stationery & Sporting Goods Import & Export Corp. (Guangdong) a cash deposit rate of 13.91 percent, rather than the PRC–wide rate assigned to the company in the contested administrative review. As there is now a final and conclusive court decision in this case, the Department is amending the final results of the 1999–2000 antidumping duty administrative review of pencils from the PRC.

EFFECTIVE DATE: November 9, 2006.

FOR FURTHER INFORMATION CONTACT: Magd Zalok or Howard Smith at (202) 482–4162 or (202) 482–5193, respectively; AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On December 28, 1994, the Department published in the **Federal Register** the antidumping duty order on pencils from the PRC. *See Antidumping Duty Order: Certain Cased Pencils from the People's Republic of China*, 59 FR 66,909 (December 28, 1994). The Department excluded from this order Guangdong's U.S. sales of pencils produced by Shanghai Three Star Stationery Industry Corp. (Three Star). However, in the final determination that gave rise to the antidumping duty order, the Department stated that if Guangdong sold subject merchandise to the United States that was produced by manufacturers other than Three Star, such sales would be subject to a cash

deposit rate equal to the rate applied to the PRC entity. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cased Pencils from the People's Republic from China*, 59 FR 55625, 55627 (November 8, 1994), *see also Certain Cased Pencils From the People's Republic of China; Notice of Amended Final Determination of Sales at Less Than Fair Value and Amended Antidumping Duty Order in Accordance With Final Court Decision*, 64 FR 25275 (May 11, 1999).

In the 1999–2000 administrative review of the antidumping duty order on pencils from the PRC, the Department ''collapsed'' Three Star with another entity, China First Pencil Co. Ltd. (China First), based upon information that came to light late in the review. Further, the Department determined that the combined entity, China First/Three Star, was distinct from the Three Star whose factors of production formed the basis for excluding Guangdong from the antidumping duty order. Because there was no information on the record of the 1999–2000 review from which to calculate a dumping margin for Guangdong, consistent with the investigation in this proceeding, in the final results of review the Department assigned Guangdong's sales of China First/Three Star produced subject merchandise a cash deposit rate equal to the PRC–wide rate. *See Certain Cased Pencils from the People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 48,612 (July 25, 2002), as amended in *Notice of Amended Final Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Cased Pencils from the People's Republic of China*, 67 FR 59,049 (September 19, 2002) (*2000 Amended Final Results of Review*).

China First, Guangdong, Three Star, Orient International Holding Shanghai Foreign Trade Co. Ltd., and Kaiyuan Group Corporation, respondents in the 1999–2000 administrative review, filed a motion of judgement upon the agency record contesting the final results of that review. Specifically, these respondents challenged a number of the surrogate values selected by the Department, as well as the Department's decision to collapse Three Star with China First, and initiate a review of Guangdong and assign it the PRC–wide rate. After considering the respondents' arguments, the CIT upheld the Department's selection of surrogate values but remanded the case to the Department instructing it to reevaluate the PRC–wide rate applied to Guangdong because the Court found that by assigning this rate to Guangdong the Department had effectively applied adverse facts available to a participating and cooperative respondent. The CIT also instructed the Department to articulate specifically the portions of the existing collapsing statutes and regulations which are applicable or inapplicable in the non–market economy (NME) context, and provide the Court with a clearly articulated methodology for collapsing companies in NME countries. *See Kaiyuan Group Corp., et al v. United States and the Pencil Section Writing Instrument Manufacturers Ass'n, et al.*, 343 F. Supp. 2d 1289 (May 14, 2004). In its remand redetermination, the Department continued to collapse Three Star with China first (providing the additional explanation requested by the Court) but assigned Guangdong a cash deposit rate of 13.91 percent, which is equal to the weighted–average of the dumping margins calculated for the other respondents in the 1999–2000 administrative review. On August 23, 2005, the CIT sustained the Department's remand redetermination. *See Kaiyuan Group Corp., et al v. United States and the Pencil Section Writing Instrument Manufacturers Association, et al.*, 391 F. Supp. 2d 1317 (August 23, 2005), and the Department's Final Results of Redetermination Pursuant to Court Remand: Kaiyuan Group Corp., et al v. United States and Pencil Section Writing Instrument Manufacturers Association, et al. (dated September 30, 2004). On October 21, 2005, respondents filed a notice of appeal with the CAFC. On July 12, 2006, the CAFC issued a ''Notice of Entry of Judgement Without Opinion,'' in which it affirmed the decision of the CIT.

Amended Final Results of Review

As the litigation in this case has concluded, the Department is amending the *2000 Amended Final Results of Review* to reflect a dumping margin for Guangdong of 13.91 percent. The dumping margins for the other respondents in that review and the PRC–wide rate did not change as a result of the Department's remand redetermination.

Cash Deposit Requirements

Subsequent to the 1999–2000 antidumping duty administrative review of pencils from the PRC, the Department determined, with respect to the pencils order, that Guangdong ''did not merit a separate rate and will be subject to the PRC–wide rate.'' *See Certain Cased Pencils from The People's Republic of China: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 38366 (July 6, 2006) (*2003–2004 Pencils AD Review*) and accompanying *Issues and Decision Memorandum* at Comment 10. Specifically, in the ''Cash Deposit Requirements'' section of the *2003–2004 Pencils AD Review*, and the Department's corresponding cash deposit instructions to Customs and Border Protection (CBP), issued on July 28, 2006, we noted that for all PRC exporters of subject merchandise, to which we have not assigned a separate rate, the cash deposit rate will be the PRC wide rate of 114.9 percent. The cash deposit rate in the *2003–2004 Pencils AD Review* supersedes the cash deposit rate assigned to Guangdong in the instant amended final results. Therefore, Guangdong's future entries will continue to be subject to the PRC–wide rate and there will be no need to issue cash deposit instructions to CBP in connection with the instant **Federal Register** notice.

Assessment

Consistent with the *2000 A mended Final Results of Review*, because there is no information on the record which identifies the importers of record, we calculated exporter–specific assessment rates for respondents' shipments of subject merchandise. Specifically, we calculated duty assessment rates for subject merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total quantity of those sales. The Department will issue appropriate assessment instructions directly to U.S. Customs and Border Protection within 15 days of publication of this notice.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended.

Dated: November 2, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E6–19040 Filed 11–8–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 110606B]

Caribbean Fishery Management Council; Public Meeting

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

ACTION: Notice of the St. Croix EEZ Working Group meeting.

SUMMARY: The Caribbean Fishery Management Council's St. Croix EEZ Working Group will hold a meeting.

DATES: The St. Croix EEZ Working Group meeting will be held on November 15, 2006, from 6 p.m. to 10 p.m., approximately.

ADDRESSES: The meeting will be held at the Bucanneer Hotel, 5007 Estate Shoys, Lot 7, St. Croix, USVI 00820.

FOR FURTHER INFORMATION CONTACT: Caribbean Fishery Management Council, 268 Munoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico 00918, telephone (787) 766–5926.

SUPPLEMENTARY INFORMATION: The St. Croix EEZ Working Group will meet to discuss the items contained in the following agenda:

Adoption of Agenda
Review of Summary Minutes October 10, 2006 Meeting
Selection of Suggested Preferred Alternatives to be Presented at the Next Council Meeting
Other Business
Next Meeting

Special Accomodations

The meeting is physically accessible to people with disabilities. For more information or request for sign language interpretation and/other auxiliary aids, please contact Mr. Miguel A. Rolon, Executive Director, Caribbean Fishery Management Council, 268 Munoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico, 00918, telephone (787) 766–5926, at least five days prior to the meeting date.

Dated: November 6, 2006.

Tracey L. Thompson,

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

[FR Doc. E6–19037 Filed 11–8–06; 8:45 am]

BILLING CODE 3510–22–S

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (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 its proposed renewal of its Application Instructions for State Administrative Funds, Program Development Assistance and Training, and Disability Placement. These applications are used by state commissions to apply for funds to support activities related to administration, training, and access for people with disabilities.

Copies of the information collection request can be obtained by contacting the office listed in the address section of this notice.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by January 8, 2007.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) By mail sent to: Corporation for National and Community Service, AmeriCorps State and National, Amy Borgstrom, Associate Director for Policy, 1201 New York Ave. NW., Washington, DC 20525.

(2) By hand delivery or by courier to the Corporation's mailroom at Room 8100 at the mail address given in paragraph (1) above, between 9 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

(3) By fax to: (202) 606–3476, Attention Amy Borgstrom, Associate Director for Policy.

(4) Electronically through the Corporation's e-mail address system: *aborgstrom@cns.gov.*

FOR FURTHER INFORMATION CONTACT: Amy Borgstrom, (202) 606–6930 or by e-mail at *aborgstrom@cns.gov.*

SUPPLEMENTARY INFORMATION: The Corporation is particularly interested in comments that:

- 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 expected to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submissions of responses).

Background: AmeriCorps grants are generally awarded to eligible organizations to recruit, train, and manage AmeriCorps members who address unmet community needs. AmeriCorps members are individuals who engage in community service. Members may receive a living allowance during their term of service. Upon successful completion of their service members receive an education award from the National Service Trust.

Roughly three quarters of all AmeriCorps grant funding goes to Governor-appointed state service commissions which award subgrants to nonprofit organizations in their states. The State Administrative Funds, Program Development Assistance and Training, and Disability Placement Application Instructions are used by commissions to complete their application for these funds in eGrants, the Corporation's Web-based grants management system.

Current Action: The Corporation seeks to renew and revise the current application instructions. The application instructions are being revised for increased clarity and burden reduction. The application will be used in the same manner as the existing application. The Corporation also seeks to continue using the current application instructions until the revised application instructions are approved by OMB. The current application instructions are due to expire on April 30, 2008.

Type of Review: Renewal; previously granted approval by OMB.

Agency: Corporation for National and Community Service.

Title: State Administrative Funds, Program Development Assistance and Training, and Disability Placement Application Instructions.

OMB Number: 3045–0099.

Agency Number: None.

Affected Public: State commissions.

Total Respondents: 54.

Frequency: Annually.

Average Time Per Response: 24 hours.

Estimated Total Burden Hours: 1296 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 OMB approval of the information collection request; they will become a matter of public record.

Dated: November 3, 2006.

Kristin McSwain,

Director, AmeriCorps State and National.

[FR Doc. E6–18914 Filed 11–8–06; 8:45 am]

BILLING CODE 6050–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Office of the Secretary, DoD.

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Time Critical Conventional Strike from Strategic Standoff will meet in closed session on November 28 and 29, 2006; at the Science Applications International Corporation, 4001 N. Fairfax Drive, Arlington, VA.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Defense Science Board Task Force will: Assess the various attributes associated with time critical conventional strike.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II), it has been determined that these Defense Science Board Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, the meetings will be closed to the public.

FOR FURTHER INFORMATION CONTACT: Mr. Andrew Chappell, USA Military Assistant, Defense Science Board, 3140 Defense Pentagon, Room 3C553, Washington, DC 20301–3140, via e-mail at *andrew.chappel@osd.mil,* or via phone at (703) 571–0082.

Dated: November 3, 2006.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 06–9137 Filed 11–8–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Nuclear Deterrence Skills will meet in closed session on November 8 and 9, 2006; at the Strategic Analysis Inc., 3601 Wilson Boulevard, Arlington, VA.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Defense Science Board Task Force will: assess all aspects of nuclear deterrent skills as well as the progress Department of Energy (DOE) has made since the publication of the chiles Commission report.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II), it has been determined that these Defense Science Board Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, the meetings will be closed to the public.

FOR FURTHER INFORMATION CONTACT: LCDR Clifton Phillips, USN, Defense Science Board, 3140 Defense Pentagon, Room 3C553, Washington, DC 20301–3140, via e-mail at *clifton.phillips@osd.mil,* or vial phone at (703) 571–0083.

Due to scheduling difficulties, there is insufficient time to provide timely notice required by Section 10(a) of the Federal Advisory Committee Act and Subsection 102–3.150(b) of the GSA Final Rule on Federal Advisory Committee Management, 41 CFR part 102–3.150(b), which further requires publication at least 15 calendar days prior to the meeting.

Dated: November 3, 2006.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 06–9138 Filed 11–8–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Privacy Act of 1974; Systems of Records

AGENCY: Defense Threat Reduction Agency, DOD.

ACTION: Notice to amend a system of records.

SUMMARY: The Defense Threat Reduction Agency is amending a system of records notice to its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on December 11, 2006 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the General Counsel, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201.

FOR FURTHER INFORMATION CONTACT: Ms. Brenda Carter at (703) 325–1205.

SUPPLEMENTARY INFORMATION: The Defense Threat Reduction Agency notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the Federal Register and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendment is not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: November 3, 2006.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

HDTRA 019

SYSTEM NAME:

Treaty Inspection Information Management System (August 3, 2005, Vol 70 FR 44577)

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete and replace entry with ''Defense Threat Reduction Agency, Room 4528, HQ Complex, 8725 John J. Kingman Road, VA 22060–6201.''

* * * * *

SAFEGUARDS:

Delete and replace entry with ''Records are maintained in areas accessible only to DTRA personnel who must use the records to perform their duties. The computer files are password protected with access restricted to authorized users. Records are secured in locked or guarded buildings, locked offices, or locked cabinets during non-duty hours.''

RETENTION AND DISPOSAL:

Delete and replace entry with ''Records are maintained for as long as the individual is assigned to DTRA. Upon departure from DTRA, records concerning that individual are removed from the active file and retained in an inactive file for two years. Information that has been held in inactive file for two years is then deleted.''

* * * * *

HDTRA 019

SYSTEM NAME:

Treaty Inspection Information Management System (August 3, 2005, 70 FR 44577).

SYSTEM LOCATION:

Defense Threat Reduction Agency, Room 4528, HQ Complex, 8725 John J. Kingman Road, VA 22060–6201.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals affiliated with the Defense Threat Reduction Agency, either by military assignment, civilian employment, or contractual support agreement. Individuals are weapons inspectors, linguists, mission schedulers/planners, personnel assistants/specialists, portal rotation specialists, operation technicians, passport managers, clerical staff, and database management specialists.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information includes individual's name, Social Security Number, date of birth, city/state/country of birth, education, gender, race, civilian or military member, rank (if military), security clearance, occupational category, job organization and location, and emergency locator information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 5 U.S.C. 302, Delegation of authority; 5 U.S.C. 4103, Establishment of training programs; Pub. L. 89–554 (September 6, 1966); and E.O. 9397 (SSN).

PURPOSE(S):

To manage the Treaty Monitoring and Inspection activities, including personnel resources, manpower/billet management, passport status, mission scheduling and planning, inspection team composition, inspector and transport list management, inspector training, and inspection notification generation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of DTRA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES OF STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on paper and electronic storage media.

RETRIEVABILITY:

Records may be retrieved by name or Social Security Number, title, and personnel type.

SAFEGUARDS:

Records are maintained in areas accessible only to DTRA personnel who must use the records to perform their duties. The computer files are password protected with access restricted to authorized users. Records are secured in locked or guarded buildings, locked offices, or locked cabinets during non-duty hours. Records are stored in a computer system with extensive intrusion safeguards.

RETENTION AND DISPOSAL:

Records are maintained for as long as the individual is assigned to DTRA. Upon departure from DTRA, records concerning that individual are removed from the active file and retained in an inactive file for two years. Information that has been held in an inactive file for two years is then deleted.

SYSTEM MANAGER(S) AND ADDRESS:

TIIMS System Administrator, Operations Enterprise, Operations Branch, Defense Threat Reduction Agency, Room 4528, HQ Complex, 8725 John J. Kingman Rd., VA 22060–6201.

NOTIFICATION PROCEDURE:

Individuals seeking information about themselves contained in this system should address written inquiries to TIIMS System Administrator, Operations Enterprise, Operations Branch, Defense Threat Reduction Agency, Room 4528, HQ Complex, 8725 John J. Kingman Road, VA 22060–6201.

The inquiry should include full name and Social Security Number.

RECORD ACCESS PROCEDURES:

Individuals seeking to access information about themselves contained in this system should address written inquiries to TIIMS System Administrator, Operations Enterprise, Operations Branch, Defense Threat Reduction Agency, Room 4528, HQ Complex, 8725 John J. Kingman Road, VA 22060–6201.

The inquiry should include full name and Social Security Number.

CONTESTING RECORD PROCEDURES:

The DTRA rules for accessing records and for contesting contents and appealing initial agency determinations are published in DTRA Instruction 5400.11; 32 CFR part 318; or may be obtained from the TIIMS System Administrator, Operations Enterprise, Operations Branch, Defense Threat Reduction Agency, Room 4528, HQ Complex, 8725 John J. Kingman Road, Ft. Belvoir VA 22060–6201.

RECORD SOURCE CATEGORIES:

Information is provided by the individual, obtained form other personnel record sources, and from the individual's superiors and assignment personnel.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 06–9139 Filed 11–8–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Privacy Act of 1974; Systems of Records

AGENCY: Defense Logistics Agency, DoD.

ACTION: Notice to amend a system of records.

SUMMARY: The Defense Logistics Agency is amending a system of records notice to its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This action will be effective without further notice on December 11, 2006 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DP,

8725 John J. Kingman Road, Stop 2533, Fort Belvoir, VA 22060–6221.

FOR FURTHER INFORMATION CONTACT: Ms. Jody Sinkler at (703) 767–5045.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendment is not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: November 3, 2006.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S600.30

SYSTEM NAME:

Safety, Health, Injury, and Accident Records (July 26, 2006, 71 FR 42364).

CHANGES:

* * * * *

PURPOSE(S):

Delete entry and replace with ''Information is collected to comply with regulatory reporting requirements. Details about the accident site will be used to identify and correct known or potential hazards and to formulate improved accident prevention programs. The data, with all personal identifiers removed, may be used to prepared statistical reports.''

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete ''To hospitals, medical centers, medical or dental practitioners, or similar persons for the purpose of providing initial of follow-up care or treatment.''

* * * * *

S600.30

SYSTEM NAME:

Safety, Health, Injury, and Accident Records.

SYSTEM LOCATION:

Environment, Safety and Occupational Health Office, Headquarters, Defense Logistics Agency, ATTN: DES, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221, and the DLA Field Activity Safety and Health Offices. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

Records are also maintained by DLA Security Control Centers, Emergency Support Operations Centers, and fire and rescue departments certified to provide primary response and medical aid in emergencies. Official mailing addresses are available from the Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DP, 8725 John J. Kingman Road, Stop 2533, Fort Belvoir, VA 22060–6221.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All individuals who suffer accidents, become injured or ill, or otherwise require emergency rescue or medical assistance while on DLA facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Employee's name, Social Security Number or Foreign National Number, gender, age, date of birth, home address and telephone numbers, place of employment, accident reports, next of kin data, names of witnesses and their statements, photographs, and proposed or actual corrective action, where appropriate, and the name of physician/health care professional providing treatment, company providing medical treatment, and the address of the medical providers. Information is collected on DLA Form 1591, Supervisory Mishap Report. The records may also contain medical history data, current medications, allergies, vital signs and other medical details obtained at the site of injury or illness, details of treatment administered on the scene, name of receiving medical facility, names of units responding to the scene along with their response times, and whether the patient refused treatment of transport.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; 29 U.S.C. 651 *et seq.*, The Occupational Safety and Health Act of 1970 (OSHA); E.O. 12196, Occupational Safety and Health Programs for Federal Employees; 29 CFR 1960, Subpart I, Record keeping and Reporting Requirements for Federal Occupational Safety and Health Programs; DoD Instruction 6055.1, DoD Safety and Occupational Health (SOH) Program; and E.O. 9397 (SSN).

PURPOSE(S):

Information is collected to comply with regulatory reporting requirements. Details about the accident site will be used to identify and correct known or potential hazards and to formulate improved accident prevention programs. The data, with all personal identifiers removed, may be used to prepare statistical reports.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Department of Labor to comply with the requirement to report Federal civilian employee on-the-job accidents (29 CFR part 1960).

The DoD 'Blanket Routine Uses' set forth at the beginning of DLA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in paper and electronic formats.

RETRIEVABILITY:

Retrieved by name, Social Security Number, or SHIRS case number.

SAFEGUARDS:

Records are maintained in areas accessible only to DLA personnel who must use the records to perform their duties. The computer files are password protected with access restricted to authorized users. Records are secured in locked or guarded buildings, locked offices, or locked cabinets during non-duty hours. All individuals granted access to this system of records are to have taken Privacy Act training.

RETENTION AND DISPOSAL:

Cases involving reportable mishaps are destroyed five years after case is closed. Cases involving non-reportable mishaps are destroyed three years after case is closed. Documentation of fire department activities and actions pertaining to fire/emergency calls are destroyed after 7 years.

SYSTEM MANAGER(S) AND ADDRESS:

Staff Director, Environment, Safety and Occupational Health Office, Headquarters, Defense Logistics Agency, ATTN: DES, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221;

Commander, Defense Distribution Center, 2001 Mission Drive, New Cumberland, PA 17070–5000;

Commander, Defense Supply Center, Columbus, 3990 Broad Street, Columbus, OH 43216–5000;

Commander, Defense Supply Center Richmond, 8000 Jefferson Davis Highway, Richmond, VA 23297–5000; and

Commander, Defense Logistics Information Service, 74 Washington Avenue North, #7, Battle Creek, MI 49017–3084.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DP, 8725 John J. Kingman Road, Stop 2533, Fort Belvoir, VA 22060–6221.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DP, 8725 John J. Kingman Road, Stop 2533, Fort Belvoir, VA 22060–6221.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DP, 8725 John J. Kingman Road, Stop 2533, Fort Belvoir, VA 22060–6221.

RECORD SOURCE CATEGORIES:

Record subject, supervisors, medical units, security offices, police, fire departments, investigating officers, or witnesses to accident.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 06–9140 Filed 11–8–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Army

Intent To Grant an Exclusive License of a U.S. Government-Owned Patent

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 35 U.S.C. 209(e) and 37 CFR 404.7(a)(I)(i), announcement is made of the intent to grant an exclusive, royalty-bearing, revocable license to U.S. patent number 6,878,100 issued April 12, 2005 entitled ''Force Sensing Treadmill,'' to Advanced Mechanical Technology, Inc. with its principal place of business at 176 Waltham Street, Watertown, MA 02472–4800.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, MD 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: Anyone wishing to object to the grant of this license can file written objections along with supporting evidence, if any, 15 days from the date of this publication. Written objections are to be filed with the Command Judge Advocate (see **ADDRESSES**).

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 06–9145 Filed 11–8–06; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Public Hearing and Notice of Availability for the Draft Environmental Impact Statement for Widening of the Freeport Ship Channel in Freeport, Brazoria County, TX

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of availability.

SUMMARY: The U.S. Army Corps of Engineers, Galveston District announces the release of the Draft Environmental Impact Statement (DEIS), the Draft General Conformity Determination, the public comment period, and the date and location of the Public Hearing, for the Brazos River Harbor Navigation District's (Port Freeport) proposed widening of the Freeport Harbor Ship Channel.

DATES: The USACE Galveston District will be accepting written public comments on the DEIS and the Draft General Conformity Determination through January 9, 2007. All comments must be postmarked by January 9, 2007.

ADDRESSES: You may send written comments to the USACE, Galveston District, Attn: Sam Watson, P.O. Box 1229, Galveston, TX 77553–1229.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and DEIS can be answered by Mr. Sam Watson, (409) 766–3946.

SUPPLEMENTARY INFORMATION:

Authority: This Federal Action is in consideration of a Department of the Army Permit application for work under Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403), Section 404 of the Clean Water Act (33 U.S.C. 1344) and Section 103 of the Marine Protection and Sanctuaries Act (MPRSA) (33 U.S.C. 1413).

Background: In April 2005, Port Freeport submitted a Department of Army Permit Application to widen portions of the Freeport Harbor Jetty Channel and all of the Freeport Harbor Entrance Channel from 400 feet (ft) to 600 ft. It was determined that an Environmental Impact Statement would be required for the proposed project. Since the November 29, 2005 Scoping Meeting, the consulting firm of PBS&J, under the direction of the Galveston District, U.S. Army Corps of Engineers (USACE), prepared a Draft Environmental Impact Statement for the proposed project. The DEIS is now available for public review and comment.

Project Description: Port Freeport proposes to widen portions of the Freeport Ship Channel. The project includes widening the Freeport Harbor Jetty Channel beginning at Channel Station 63+35 with a gradual widening, at the authorized depth, up to an additional 150 feet (ft) for about 1,835 ft to Channel Station 45+00. From that point to Channel Station 40+00 the widening would be less gradual from the additional 150 ft to an additional 200 ft. Through the rest of the Jetty Channel and to the end of the Freeport Harbor Entrance Channel (Channel Station −260+00), the channel would be widened an additional 200 ft. The length of channel proposed for widening is about 6.1 miles, of which 5.7 miles would be widened by 200 ft. The project depth will remain the same at 45 ft in the Jetty Channel and 47 ft in the Entrance Channel. The widening would generate approximately 3.2 million cubic yards (mcy) of new dredged material. Approximately 2.9 mcy of the new work material would consist of clay material and about 300,000 cubic yards (cy) would consist of silty/sand material. If approved by EPA and by USACE under Section 102 and 103 of MPRSA, an ODMDS previously designated as a one-time use site would be redesignated for placement of the 2.9 mcy of clay/silt material. The 300,000 cy of silty/sand material would be used beneficially and placed on Quintana Beach in front of

the Seaway upland confined placement area (UPCA). The beach on either side of this location has been enhanced through GLO or other programs, leaving a ''gap'' in front of the Seaway UPCA. Placement of the material in this location would fill the gap, allowing for continuous beach use and providing some protection from erosion for the Seaway UPCA.

Availability of Draft Environmental Impact Statement (DEIS): Pursuant to Section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, as amended and as implemented by the Council on Environmental Quality (40 CFR Parts 1500–1508) a DEIS for the proposed Freeport Channel Widening has been filed with the EPA and is being made available to Federal, State, and local agencies and all interested parties. The DEIS can be viewed at *www.swg.usace.army.mil/reg/pn.asp*. Copies of the DEIS are available by contacting Mr. Sam Watson. In addition, copies of the DEIS are available for viewing at the following libraries:

Brazoria County Library System, Catherine H. Threadgill, County Librarian, 451 N Velasco, Angleton, TX 77515.

Brazoria Library, Jerry Measells, Librarian, 620 S. Brooks, Brazoria, TX 77422.

Clute Library, Carolyn Weatherly, Librarian, 215 N. Shanks, Clute, TX 77531.

Freeport Library, Marge Janke, Librarian, 410 Brazosport Blvd., Freeport, TX 77541.

Lake Jackson Library, Nancy Hackney, 250 Circle Way, Lake Jackson, TX 77566.

Draft General Conformity Review: Pursuant to Section 176 of the Clean Air Act Amendments (CAAA) of 1990, a Draft General Conformity Determination has been filed with the EPA and Texas Commission on Environmental Quality (TCEQ) and is being made available to Federal, State and local air quality agencies and all interested parties for the proposed Freeport Channel Widening. Copies of the Draft General Conformity Determination are available by contacting Mr. Sam Watson. In addition, copies of the Draft General Conformity Determination are available for viewing, along with the DEIS, at the libraries listed above.

Section 102/103: The Environmental Protection Agency (EPA) is charged with developing ocean dumping criteria to be used in evaluating permit applications under Section 102(a) of the Marine Protection and Sanctuaries Act (MPRSA). EPA is also responsible for designating recommended sites for ocean dumping under Section 102(c) of the MPRSA. Redesignation by EPA of an inactive ODMDS will be required for placement of new work (virgin) dredged material. Section 103 of the MPRSA authorizes the USACE to permit the transportation of dredged material to a designated ODMDS, subject to EPA concurrence and use of EPA's dumping criteria. Information required for the redesignation (Section 102) and permit (Section 103) is included in the DEIS (primarily in Appendix C).

Public Comment and Public Hearing: If you wish to voice your comments, a Public Hearing on the proposed project is scheduled for December 6, 2006 at the Freeport Community House, 1300 W. 2nd Street, Freeport, TX 77541. Poster presentations will be available for viewing and project team members will be present to discuss the DEIS at a Workshop that will precede the hearing. The Workshop will be conducted from 5 pm to 6:45 pm, and the formal Hearing will commence at 7 pm.

Other Agency Authorizations: Texas Coastal Zone consistency certification is required. The applicant has stated that the project is consistent with the Texas Coastal Management Program goals and policies and will be conducted in a manner consistent with said Program.

National Register of Historic Places: The staff archaeologist has reviewed the latest published version of the National Register of Historic Places, lists of properties determined eligible, and other sources of information. The following is current knowledge of the presence or absence of historic resources and the effects of the proposed project upon these properties: A remote sensing survey of the Freeport Harbor Channel was performed by PBS&J in March and April, 2005 and a close-order survey was performed in February 2006. A total of eleven anomalies having potential historic significance were located in areas of potential impact during the initial inventory. Six of those anomalies were identified as areas that were of potential historic significance during the second inventory. Because these six anomalies occur within areas that would be impacted by bottom disturbing activities, it was recommended to the Texas Historical Commission (THC) that these areas be surveyed by diving and/or probing to confirm whether or not they are significant archaeological sites. This confirmation would occur prior to a decision regarding issuance or denial of the Section 404/10 permit by USACE. The THC concurred with the recommendation. Coordination with THC is ongoing regarding the confirmation surveys.

Threatened and Endangered Species: Preliminary indications are that no known threatened and/or endangered species or their critical habitat would be affected by the proposed work. A Biological Assessment has been prepared and is presented to U.S. Fish and Wildlife Service and National Marine Fisheries Services (NMFS) in the DEIS.

Essential Fish Habitat: Consultation for Essential Fish Habitat of the Magnuson-Stevens Fishery Conservation and Management Act was initiated in November 2005 via the workshop prior to the public scoping meeting. Letters were also sent to the NMFS in February and May, 2006. Our initial determination is that the proposed action would not have a substantial adverse impact on Essential Fish Habitat or Federally managed fisheries in the Gulf of Mexico. Our final determination relative to project impacts and the need for mitigation measures is subject to additional review by and coordination with NMFS.

Public Interest Review Factors: The application will be reviewed in accordance with 33 CFR 320–330, the Regulatory Programs of USACE, and other pertinent laws, regulations and executive orders. The decision whether to issue a permit will be based on an evaluation of the probable impacts, including cumulative impacts, of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefits, which reasonably may be expected to accrue from the proposal, must be balanced against reasonably foreseeable detriments associated with the proposal. All factors which may be relevant to the proposal will be considered. These include, but are not limited to: dredged material management, air quality, shoreline erosion, economics, general environmental concerns, historic resources, protected species, navigation, recreation, water and sediment quality, energy needs, safety, hazardous materials, and, in general, the welfare of the people.

Solicitation of Comments: USACE is soliciting comments from the public, Federal, State, and local agencies and officials, Indian tribes, and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by USACE to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision,

comments will be considered in the evaluation of impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments will be used in the preparation of the Final Environmental Impact Statement pursuant to NEPA. Comments are also used to determine the overall public interest of the proposed activity.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 06–9146 Filed 11–8–06; 8:45 am]

BILLING CODE 3710–52–M

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Notice of Availability for the Draft Environmental Impact Statement/ Environmental Impact Report for the Burlington Northern Santa Fe (BNSF) Cajon Third Main Track Summit to Keenbrook, San Bernardino County, CA

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD

ACTION: Notice of Availability.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969 (as amended), the U.S. Army Corps of Engineers, Los Angeles District (Corps) Regulatory Branch, in coordination with the County of San Bernardino and in cooperation with U.S. Forest Service, has completed a Draft Environmental Impact Statement/Environmental Impact Report (EIS/EIR) for the Burlington Northern Santa Fe (BNSF) Third Main Track Summit to Keenbrook Project. The proposed BNSF project requires authorization pursuant to section 404 of the Clean Water Act for approximately 2.95 acres of fill placement in jurisdictional waters of the United States, including wetlands, to construct 15.9 miles of a new main track through the Cajon Pass in San Bernardino County, California. A public hearing will be held at the Norman F. Feldheym Central Library—Bing Wong Auditorium, located at 555 West 6th Street, San Bernardino, CA 92401 on December 5, 2006 from 6 p.m. to 8 p.m.

FOR FURTHER INFORMATION CONTACT: Questions or comments concerning the Draft EIS/EIR should be directed to Ms. Susan A. Meyer, Senior Project Manager, Regulatory Branch, U.S. Army Corps of Engineers, Los Angeles District, P.O. Box 532711, 915 Wilshire Boulevard, Los Angeles, CA 90053–2325, (808) 438–2137.

SUPPLEMENTARY INFORMATION: Copies of the Draft EIS/EIR will be made available to the public for review only at the following libraries: Norman F. Feldheym Central Library (San Bernardino, California), Hesperia Branch Library (Hesperia, California), and the Rancho Cucamonga Public Library (Rancho Cucamonga, California). Written comments received on or before January 4, 2007 will be considered by the Corps in decision making for the Final EIS. Comments should be submitted to the contact listed above.

Dated: October 31, 2006.

David J. Castanon,

Chief, Regulatory Branch.

[FR Doc. E6–19049 Filed 11–8–06; 8:45 am]

BILLING CODE 3710–KF–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Correction notice.

SUMMARY: On November 3, 2006, the Department of Education published a notice in the **Federal Register** (page 64687, column 3) for the information collection, ''Data Collection Instrument and Performance Report for Statewide AT Programs''. This notice hereby corrects the burden hours to 26,768. The IC Clearance Official, Regulatory Information Management Services, Office of the Chief Information Officer, hereby issues a correction notice as required by the Paperwork Reduction Act of 1995.

Dated: November 3, 2006.

Dianne M. Novick,

Acting Leader, Information Policy and Standards Team, Office of Management.

[FR Doc. E6–18979 Filed 11–8–06; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Extension of Public Comment Period and Additional Public Meeting for the Supplemental Yucca Mountain Rail Corridor and Rail Alignment Environmental Impact Statement

AGENCY: Department of Energy.

ACTION: Notice of public comment period extension and additional public meeting.

SUMMARY: On October 13, 2006, the U.S. Department of Energy (DOE) published an Amended Notice of Intent (71 FR 60484) to expand the scope of the ongoing ''Environmental Impact Statement for the Alignment, Construction and Operation of a Rail Line to a Geologic Repository at Yucca Mountain, Nye County, Nevada'' (entitled the Supplemental Yucca Mountain Rail Corridor and Rail Alignment EIS) (DOE/EIS–0250F–S2 and EIS–0369), and announced a 45-day public comment period ending on November 27, 2006. Based on input from the public, DOE is now announcing an additional public meeting in Reno, Nevada. The public comment period also is being extended through December 12, 2006. Additionally, DOE has posted graphical representations of the rail routes at the Office of Civilian Radioactive Waste Management Web site *http://www.ocrwm.doe.gov* under the caption, What's New.

DATES: The additional public meeting in Reno, Nevada will be held on November 27, 2006, from 4 to 7 p.m. The address for this and all other public scoping meetings are provided below under Public Scoping Meetings. The public comment period is extended through December 12, 2006. Comments received after this date will be considered to the extent practicable.

ADDRESSES: Requests for additional information on the Supplemental Yucca Mountain Rail Corridor and Rail Alignment EIS (DOE/EIS–0250F–S2 and EIS–0369) or transportation planning in general should be directed to: Mr. M. Lee Bishop, EIS Document Manager, Office of Logistics Management, Office of Civilian Radioactive Waste Management, U.S. Department of Energy, 1551 Hillshire Drive, M/S 011, Las Vegas, NV 89134, Telephone 1–800–967–3477. Written comments on the scope of the Supplemental Yucca Mountain Rail Corridor and Rail Alignment EIS may be submitted to Mr. M. Lee Bishop at this address, by facsimile to 1–800–967–0739, or via the Internet at *http://www.ocrwm.doe.gov* under the caption, What's New.

FOR FURTHER INFORMATION CONTACT: For general information regarding the DOE NEPA process contact: Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585, Telephone 202–586–4600, or leave a message at 1–800–472–2756.

Public Scoping Meetings

DOE has scheduled public scoping meetings on the Supplemental Yucca Mountain Rail Corridor and Rail

Alignment EIS. In order to facilitate input from the public, comments will also be accepted on the Supplement to the Final Environmental Impact Statement for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, NV at these meetings. DOE will have representatives responsible for preparation of both EISs at each of the following meetings to accept comments on either document:

- Washington, District of Columbia, L'Enfant Plaza Hotel, 480 L'Enfant Plaza, SW., October 30, 2006, from 4–7 p.m.
- Amargosa Valley, Nevada. Longstreet Hotel Casino, Nevada State Highway 373, November 1, 2006, from 4–7 p.m.
- Las Vegas, Nevada. Cashman Center, 850 North Las Vegas Blvd., November 2, 2006, from 4–7 p.m.
- Caliente, Nevada. Caliente Youth Center, U.S. 93 North, November 8, 2006, from 6–8 p.m.
- Goldfield, Nevada. Goldfield School Gymnasium, Hall and Euclid, November 13, 2006, from 4–7 p.m.
- Hawthorne, Nevada. Hawthorne Convention Center, 932 E. Street, November 14, 2006, from 4–7 p.m.
- Fallon, Nevada. Fallon Convention Center, 100 Campus Way, November 15, 2006, from 4–7 p.m.
- Reno, Nevada. University of Nevada, Reno, Lawlor Event Center, 1500 N. Virginia St., November 27, 2006, from 4–7 p.m.

Public Reading Rooms

The Notice of Intent published on October 13, 2006 (71 FR 60484) provided an incorrect phone number for the Pahrump Yucca Mountain Information Center. The correct phone number is (775) 751–5817.

Issued in Washington, DC, November 3, 2006.

David R. Hill,

General Counsel.

[FR Doc. E6–19030 Filed 11–8–06; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Extension of Public Comment Period and Additional Public Meeting for the Supplement to the Final Environmental Impact Statement for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, NV

AGENCY: Department of Energy.

ACTION: Notice of public comment period extension and additional public meeting.

SUMMARY: On October 13, 2006, the U.S. Department of Energy (DOE) published a Notice of Intent (71 FR 60490) to prepare a Supplement to the ''Final Environmental Impact Statement for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada'' (DOE/EIS–0250F, February 2002), and announced a 45-day public comment period ending on November 27, 2006. Based on input from the public, DOE is now announcing an additional public meeting in Reno, Nevada. The public comment period also is being extended through December 12, 2006. Additionally, DOE has posted graphical representations of the transport, aging and disposal canister on the Office of Civilian Radioactive Waste Management Web site located at *http://www.ocrwm.doe.gov* under the caption, What's New.

DATES: The additional public meeting in Reno, Nevada will be held on November 27, 2006, from 4 to 7 p.m. The addresses for this and all other public scoping meetings are provided below under Public Scoping Meetings. The public comment period is extended through December 12, 2006. Comments received after this date will be considered to the extent practicable.

ADDRESSES: Requests for additional information on the Supplemental Yucca Mountain EIS (DOE/EIS–0250F–S1) or on the repository program in general, should be directed to: Dr. Jane Summerson, EIS Document Manager, Regulatory Authority Office, Office of Civilian Radioactive Waste Management, U.S. Department of Energy, 1551 Hillshire Drive, M/S 010, Las Vegas, NV 89134, telephone 1–800–967–3477. Written comments on the scope of the Supplemental Yucca Mountain EIS may be submitted to Dr. Jane Summerson at this address, or by facsimile to 1–800–967–0739, or via the Internet at *http://www.ocrwm.doe.gov* under the caption, What's New.

FOR FURTHER INFORMATION CONTACT: For general information regarding the DOE National Environmental Policy Act (NEPA) process contact: Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585, telephone 202–586–4600, or leave a message at 1–800–472–2756.

Public Scoping Meetings

DOE has scheduled public scoping meetings on the Supplement to the Yucca Mountain EIS. In order to facilitate input from the public, comments will also be accepted on the Supplemental Yucca Mountain Rail Corridor and Rail Alignment EIS at these meetings. DOE will have representatives responsible for preparation of both EISs at each of the following meetings to accept comments on either document:

- Washington, District of Columbia, L'Enfant Plaza Hotel, 480 L'Enfant Plaza, SW., October 30, 2006, from 4–7 p.m.
- Amargosa Valley, Nevada. Longstreet Hotel Casino, Nevada State Highway 373, November 1, 2006, from 4–7 p.m.
- Las Vegas, Nevada. Cashman Center, 850 North Las Vegas Blvd., November 2, 2006, from 4–7 p.m.
- Caliente, Nevada. Caliente Youth Center, U.S. 93 North, November 8, 2006, from 6–8 p.m.
- Goldfield, Nevada. Goldfield School Gymnasium, Hall and Euclid, November 13, 2006, from 4–7 p.m.
- Hawthorne, Nevada. Hawthorne Convention Center, 932 E. Street, November 14, 2006, from 4–7 p.m.
- Fallon, Nevada. Fallon Convention Center, 100 Campus Way, November 15, 2006, from 4–7 p.m.
- Reno, Nevada. University of Nevada, Reno, Lawlor Event Center, 1500 N. Virginia St., November 27, 2006, from 4–7 p.m.

Public Reading Rooms

The Notice of Intent published on October 13, 2006 (71 FR 60490), provided an incorrect phone number for the Pahrump Yucca Mountain Information Center. The correct phone number is (775) 751–5817.

Issued in Washington, DC, November 3, 2006.

David R. Hill,

General Counsel.

[FR Doc. E6–19023 Filed 11–8–06; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency information collection activities: submission for OMB review; comment request.

SUMMARY: The EIA has submitted the ''Voluntary Reporting of Greenhouse Gases,'' form EIA–1605 to the Office of Management and Budget (OMB) for review and a three-year extension under section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) (44 U.S.C. 3501 *et seq.*).

DATES: Comments must be filed by December 11, 2006. If you anticipate that you will be submitting comments but find it difficult to do so within that period, you should contact the OMB Desk Officer for DOE listed below as soon as possible.

ADDRESSES: Send comments to OMB Desk Officer for DOE, Office of Information and Regulatory Affairs, Office of Management and Budget. To ensure receipt of the comments by the due date, submission by fax (202–395–7285) or e-mail, *Sarah_P._Garman@omb.eop.gov* is recommended. The mailing address is 726 Jackson Place, NW., Washington, DC 20503. (A copy of your comments should also be provided to EIA's Statistics and Methods Group at the address below.)

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Grace Sutherland. To ensure receipt of the comments by the due date, submission by fax (202–287–1705) or e-mail (*grace.sutherland@eia.doe.gov*) is also recommended. The mailing address is Statistics and Methods Group (EI–70), Forrestal Building, U.S. Department of Energy, Washington, DC 20585–0670. Ms. Sutherland may be contacted by telephone at (202) 287–1712.

SUPPLEMENTARY INFORMATION: This section contains the following information about the energy information collection submitted to OMB for review: (1) The collection numbers and title; (2) the sponsor (i.e., the Department of Energy component); (3) the current OMB docket number (if applicable); (4) the type of request (i.e., new, revision, extension, or reinstatement); (5) response obligation (i.e., mandatory, voluntary, or required to obtain or retain benefits); (6) a description of the need for and proposed use of the information; (7) a categorical description of the likely respondents; and (8) an estimate of the total annual reporting burden (i.e., the estimated number of likely respondents times the proposed frequency of response per year times the average hours per response).

1. Forms EIA–1605, ''Voluntary Reporting of Greenhouse Gases''.
2. Energy Information Administration.
3. OMB Number 1905–0194.
4. Three-year extension to an existing approved request.
5. Voluntary.
6. EIA–1605 form is designed to collect voluntarily reported data on greenhouse gas emissions, achieved reductions of these emissions, and carbon fixation. Data are used to establish a publicly available database. Respondents are participants in a domestic or foreign activity that either reduces greenhouse gas emissions or increases sequestration.
7. Individuals or households; business or other for-profit; not-for-profit institutions; farms; Federal government; State, local or tribal government.
8. 9,000 hours.

Although the **Federal Register** notice published July 27, 2006, requesting public comment stated that the burden would be an average of 48 hours per response, EIA has responded to comments and has adjusted the estimate to be 60 hours per response. Other changes were made based on public comment and a summary of the responses are contained within the supporting statement.

Please refer to the supporting statement as well as the proposed forms and instructions for more information about the purpose, who must report, when to report, where to submit, the elements to be reported, detailed instructions, provisions for confidentiality, and uses (including possible nonstatistical uses) of the information. For instructions on obtaining materials, see the **FOR FURTHER INFORMATION CONTACT** section.

Statutory Authority: Section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) (44 U.S.C. 3501 *et seq.*).

Issued in Washington, DC, November 7, 2006.

Jay H. Casselberry,

Agency Clearance Officer, Energy Information Administration.

[FR Doc. E6–19101 Filed 11–8–06; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–301–149]

ANR Pipeline Company; Notice of Negotiated Rate Filing

November 3, 2006.

Take notice that on November 1, 2006, ANR Pipeline Company (ANR) tendered for filing and approval five copies of amendments to four Rate Schedule FTS–1 agreements between ANR and Wisconsin Public Service Corporation, one Rate Schedule FTS–1 agreement between ANR and Wisconsin Electric Power Company and three Rate Schedule ETS agreements between ANR and Wisconsin Gas LLC. ANR requests that the Commission accept and approve the subject negotiated rate agreement amendments to be effective November 1, 2006.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–19010 Filed 11–8–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–39–000]

Black Marlin Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

November 2, 2006.

Take notice that on October 31, 2006, Black Marlin Pipeline Company (Black Marlin) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, to be effective December 1, 2006:

Fifteenth Revised Sheet No. 4, Alternate Fifteenth Revised Sheet No. 4.

Black Marlin states that copies of the filing have been mailed to each of its customers, interested state commissions and other interested persons.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–18932 Filed 11–8–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–47–000]

Canyon Creek Compression Company; Notice of Proposed Changes in FERC Gas Tariff

November 2, 2006.

Take notice that on October 31, 2006, Canyon Creek Compression Company (Canyon) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, to become effective December 1, 2006: Sixteenth Revised Sheet No. 6, Tenth Revised Sheet No. 6A.

Canyon states that copies of the filing are being mailed to its customers and interested state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–18938 Filed 11–8–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–49–000]

CenterPoint Energy Gas Transmission Company ; Notice of Petition for Limited Waiver of Tariff Provisions

November 3, 2006.

Take notice that on November 1, 2006, CenterPoint Energy Gas Transmission Company (CEGT) filed a Petition for Limited Waiver of Tariff Provisions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for

review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. eastern time November 9, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–19000 Filed 11–8–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04–38–002]

Cheniere Sabine Pass Pipeline, L.P.; Notice of Errata to Compliance Filing

November 2, 2006.

Take notice that on October 27, 2006, Cheniere Sabine Pass Pipeline Company (CSPP) filed an errata to its February 22, 2005 compliance filing. Through this errata filing, CSPP submitted the Second Revised Pro Forma Sheet No. 5 to its Pro Forma FERC Gas Tariff. All other exhibits, including CSPP's Pro Forma FERC Gas Tariff, and explanations submitted with the February 22, 2005 compliance filing remain unchanged.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. eastern time on November 17, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–18940 Filed 11–8–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–43–000]

Cheyenne Plains Gas Pipeline Company, LLC; Notice of Proposed Changes in FERC Gas Tariff

November 2, 2006.

Take notice that on October 31, 2006, Cheyenne Plains Gas Pipeline Company, L.L.C. (Cheyenne Plains) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheet to become effective December 1, 2006:

Fourth Revised Sheet No. 1, Original Sheet No. 22, Original Sheet No. 23, Original Sheet No. 24, Original Sheet No. 25, Original Sheet No. 26, Sheet Nos. 27–29.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–18935 Filed 11–8–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–36–021]

Dauphin Island Gathering Partners; Notice of Negotiated Rate

November 3, 2006.

Take notice that on November 1, 2006, Dauphin Island Gathering Partners (Dauphin Island) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Twenty-Fourth Revised Sheet No. 10, and Original Sheet No. 10A, to become effective December 2, 2006.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–18994 Filed 11–8–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–595–001]

Discovery Gas Transmission LLC; Notice of Negotiated Rate Filing

November 3, 2006.

Take notice that on October 31, 2006, Discovery Gas Transmission LLC (Discovery) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Second Revised Sheet No. 22, to become effective November 1, 2006.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–18998 Filed 11–8–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–51–000]

Distrigas of Massachusetts LLC; Notice of Proposed Changes in FERC Gas Tariff

November 3, 2006.

Take notice that on October 31, 2006, Distrigas of Massachusetts LLC (DOMAC) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, to become effective as of December 1, 2006: Twenty-Second Revised Sheet No. 94, Third Revised Sheet No. 94A.

DOMAC states that the purpose of this filing is to record semiannual changes in DOMAC's Index of Customers.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–19002 Filed 11–8–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–38–000]

Eastern Shore Natural Gas Company; Notice of Tariff Filing

November 2, 2006.

Take notice that on October 31, 2006, Eastern Shore Natural Gas Company (Eastern Shore) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the revised tariff sheets listed below. Such revised tariff sheets are proposed to be effective November 1, 2006.

Eighteenth Revised Sheet No. 4
Seventeenth Revised Sheet No. 5
Seventeenth Revised Sheet No. 6

Eastern Shore states that copies of the filing have been served upon its customers and interested state commissions.

Any person desiring to intervene or to protest this filing must file in

accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–18931 Filed 11–8–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–40–000]

El Paso Natural Gas Company; Notice of Tariff Filing

November 2, 2006.

Take notice that on October 31, 2006, El Paso Natural Gas Company (El Paso) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1–A, Thirteenth Revised Sheet No. 2 to become effective December 1, 2006, and three firm transportation service agreements with Southwest Gas Corporation.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of § 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–18933 Filed 11–8–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–53–000]

Enbridge Pipelines (Midla) L.L.C.; Notice of Proposed Changes in FERC Gas Tariff

November 3, 2006.

Take notice that on November 1, 2006, Enbridge Pipelines (Midla) L.L.C. (Midla) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, to become effective on December 1, 2006:

First Revised Sheet No. 22,
First Revised Sheet No. 23,
First Revised Sheet No. 30,
First Revised Sheet No. 41,
Third Revised Sheet No. 102,
First Revised Sheet No. 183A,
First Revised Sheet No. 300,
Original Sheet No. 300A,
First Revised Sheet No. 301,
Original Sheet No. 301A,
First Revised Sheet No. 307,
First Revised Sheet No. 308,
First Revised Sheet No. 311,
Original Sheet No. 311A,
First Revised Sheet No. 317,
First Revised Sheet No. 318,
First Revised Sheet No. 331,
Original Sheet No. 331A,
First Revised Sheet No. 337,
First Revised Sheet No. 338.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission,

888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–19004 Filed 11–8–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–518–096]

Gas Transmission Northwest Corporation; Notice of Negotiated Rate

November 3, 2006.

Take notice that on October 31, 2006, Gas Transmission Northwest Corporation (GTN) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1–A, Thirty-Ninth Revised Sheet No. 15, to become effective November 1, 2006.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of § 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–18984 Filed 11–8–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP05–150–002]

Hardy Storage Company, LLC.; Notice of Application

November 3, 2006.

Take notice that on October 26, 2006, Hardy Storage Company, LLC (HSC) tendered for filing an application to amend the certificate issued under Section 7 of the Natural Gas Act to revise initial rates and estimated costs pursuant to an executed settlement revise status of two wells, to transfer ownership of certain facilities, modify and certificate a lease agreement, and revise certain exhibits as described in the Order Issuing Certificate And Authorizing Abandonment dated November 1, 2005 in this proceeding.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. eastern time on November 20, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–19011 Filed 11–8–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–18–023]

Iroquois Gas Transmission System, L.P.; Notice of Negotiated Rate

November 3, 2006.

Take notice that on November 1, 2006, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing the following revised sheets to its FERC Gas Tariff, First Revised Volume No. 1, to be effective on November 1, 2006: Second Revised Sheet No. 6G, Second Revised Sheet No. 6H.

Iroquois states that copies of its filing were served on all jurisdictional customers and interested state regulatory agencies and all parties to the proceeding.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone

filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–19008 Filed 11–8–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP97–14–016 and RP07–42–000]

Midwestern Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

November 2, 2006.

Take notice that on October 31, 2006, Midwestern Gas Transmission Company (Midwestern) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets to become effective November 1, 2006:

Tenth Revised Sheet No. 7, Fourteenth Revised Sheet No. 273.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–18921 Filed 11–8–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–11–001]

MIGC, Inc.; Notice of Filing

November 2, 2006.

Take notice that on October 25, 2006, MIGC, Inc. (MIGC) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No.1, First Revised Sheet No. 158, to become effective October 12, 2006.

MIGC asserts that the purpose of this filing is to cancel Rate Schedule TE–5 Tariff Sheet Nos. 158 through 167, a Gas Exchange Agreement between MIGC and Arco Oil and Gas Company, Division of Atlantic Richfield Company. The Commission granted abandonment of Rate Schedule TE–5 in Docket No. CP06–11–000 on October 12, 2006, with the requirement that MIGC file revised tariff sheets necessary to remove Rate Schedule TE–5 from its Tariff.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. eastern time on November 17, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–18922 Filed 11–8–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–291–003]

National Fuel Gas Supply Corporation; Notice of Compliance Filing

November 2, 2006.

Take notice that on October 30, 2006, National Fuel Gas Supply Corporation (National Fuel) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the tariff sheets listed in Appendix A to its filing, with an effective date of September 30, 2006.

National Fuel states that copies of this filing were served upon its customers, interested state commissions and the parties on the official service list.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–18929 Filed 11–8–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–48–000]

National Fuel Gas Supply Corporation; Notice of Tariff Filing

November 2, 2006.

Take notice that on October 31, 2006, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, Ninety Fifth Revised Sheet No. 9, to become effective November 1, 2006.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–18939 Filed 11–8–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–52–000]

North Baja Pipeline, LLC; Notice of Proposed Changes in FERC Gas Tariff

November 3, 2006.

Take notice that on October 31, 2006, North Baja Pipeline, LLC (NBP) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, First Revised Sheet No. 199, to become effective December 1, 2006.

NBP states that First Revised Sheet No. 199 is being submitted to incorporate an additional type of permissible discount.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call

(866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–19003 Filed 11–8–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–377–011]

Northern Border Pipeline Company; Notice of Negotiated Rates

November 3, 2006.

Take notice that on October 31, 2006, Northern Border Pipeline Company (Northern Border) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, Fifteenth Revised Sheet No. 99A, to become effective November 1, 2006.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–18993 Filed 11–8–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–45–000]

Northern Natural Gas Company; Notice of Proposed Chages in FERC Gas Tariff

November 2, 2006.

Take notice that on October 31, 2006, Northern Natural Gas Company (Northern) tendered for filing to become part of its FERC Gas Tariff, Fifth Revised Volume No. 1, Sixth Revised Sheet No. 54A, to be effective on December 1, 2006.

Northern further states that copies of the filing have been mailed to each of its customers and interested state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–18937 Filed 11–8–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP07–18–000]

Panhandle Eastern Pipe Line; Notice of Request Under Blanket Authorization

November 2, 2006.

Take notice that on October 30, 2006, Panhandle Eastern Pipe Line Company, LP (Panhandle), P.O. Box 4967, Houston, Texas 77210–4967, filed in Docket No. CP07–18–000, a prior notice request pursuant to sections 157.205 and 157.211(a)(2) of the Federal Energy Regulatory Commission's regulations under the Natural Gas Act, and Panhandle's blanket certificate issued in Docket No. CP83–83–000, to construct, own and operate certain facilities to be located in Wayne County, Michigan, all as more fully set forth in the application, which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@gerc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Specifically, Panhandle proposed facilities will consist of a 16-inch by 22-inch tee and 16-inch tap valve on its existing Edgerton 22-inch Line (No. 41–08–001–3000) and approximately 390 feet of 16-inch connecting pipeline between the downstream flange of Panhandle's proposed tap to the upstream flange of the delivery measurement station. The proposed facility will establish a new point of

interconnection with Severstal North America, Inc.

Any questions regarding the application should be directed to William W. Grygar, Vice President, Rates and Regulatory Affairs, Panhandle Eastern Pipe Line Company, LP, 5444 Westheimer Road, Houston, Texas 77056 at (713) 989–7000.

Any person or the Commission's Staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and, pursuant to section 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. E6–18925 Filed 11–8–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–50–000]

Panther Interstate Pipeline Energy, LLC.; Notice of Proposed Changes in FERC Gas Tariff

November 3, 2006.

Take notice that on November 1, 2006, Panther Interstate Pipeline Energy, LLC (Panther), tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Third Revised Sheet No. 4, to permit the negotiation of blending arrangements with gathering customers. Panther requests an effective date of November 2, 2006.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–19001 Filed 11–8–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–336–001]

Pine Needle LNG Company, LLC; Notice of Tariff Filing

November 3, 2006.

Take notice that on October 31, 2006, Pine Needle LNG Company, LLC (Pine Needle) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Substitute Eleventh Revised Sheet No. 4, to become effective November 1, 2006.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–18996 Filed 11–8–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–37–000]

Questar Overthrust Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

November 2, 2006.

Take notice that on October 30, 2006, Questar Overthrust Pipeline Company (Overthrust) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A, Seventh Revised Sheet No. 54, to be effective December 1, 2006.

Overthrust states that copies of the filing have been served upon Overthrust's customers and the public service commissions of Utah and Wyoming.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of

the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–18930 Filed 11–8–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–200–014]

Rockies Express Pipeline LLC; Notice of Negotiated Rate

November 3, 2006.

Take notice that on October 31, 2006, Rockies Express Pipeline LLC (REX) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, to be effective November 1, 2006: Tenth Revised Sheet No. 22, Fourth Revised sheet No. 24.

REX stated that a copy of this filing has been served upon all parties to this proceeding, REX's customers, the Colorado Public Utilities Commission and the Wyoming Public Service Commission.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–18995 Filed 11–8–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP06–582–002]

Sabine Pipe Line LLC; Notice of Compliance Filing

November 3, 2006.

Take notice that on October 27, 2006, Sabine Pipe Line LLC (Sabine) submitted a compliance filing pursuant to the Commission's Letter Order issued September 29, 2006 in Docket No. RP06–582–000.

Sabine states that copies of the filing were served on parties on the official service list in the above-captioned proceeding.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–18997 Filed 11–8–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–44–000]

Southern LNG Inc.; Notice of Proposed Changes in FERC Gas Tariff

November 2, 2006.

Take notice that on October 31, 2006, Southern LNG Inc. (SLNG) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, to become effective December 1, 2006: Sixteenth Revised Sheet No. 5, Sixteenth Revised Sheet No. 6.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–18936 Filed 11–8–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER06–1399–001]

Sunbury Generation LP; Notice of Compliance Filing

November 3, 2006.

Take notice that on October 4, 2006, Sunbury generation LP (Sunbury) tendered for filing revised tariff sheets in order to reflect the change in name of the public utility as a result of the transactions described in the August 24, 2006 Notice of Succession.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. eastern time on November 13, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–18989 Filed 11–8–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–255–074]

TransColorado Gas Transmission Company; Notice of Negotiated Rate

November 3, 2006.

Take notice that on October 31, 2006, TransColorado Gas Transmission Company (TransColorado) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Eleventh Revised Sheet No. 22B, to be effective November 1, 2006.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed

docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–19007 Filed 11–8–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–439–001]

Transcontinental Gas Pipe Line Corporation; Notice of Cancellation of Rate Schedule

November 2, 2006.

Take notice that on October 27, 2006, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 2, Twenty-Sixth Revised Sheet No. 1; Second Revised Sheet No. 2063; and Second Revised Sheet No. 2215 with an effective date of October 20, 2006.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. eastern time on November 17, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–18923 Filed 11–8–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–359–031]

Transcontinental Gas Pipe Line Corporation; Notice of Negotiated Rate

November 3, 2006.

Take notice that on October 31, 2006 Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing copies of executed amendments to four Municipal Gas Authority of Georgia service agreements under Transco's Rate Schedule FT that contain negotiated rates for firm transportation service under Transco's South Coast, Sundance, and Momentum Expansion Projects. The effective date of these service agreements is November 1, 2006.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–19005 Filed 11–8–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–359–032]

Transcontinental Gas Pipe Line Corporation; Notice of Negotiated Rate

November 3, 2006.

Take notice that on October 31, 2006, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing copies of an executed service agreement between Transco and Patriots Energy Group and an executed amendment to service agreement between Transco and Progress Ventures, Inc. both of which pertain to negotiated rate agreements for firm transportation service under Transco's Momentum Expansion Project. The effective date of the agreements is November 1, 2006.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically

should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–19006 Filed 11–8–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–35–001]

Trunkline Gas Company, LLC; Notice of Compliance Filing

November 3, 2006.

Take notice that on October 31, 2006, Trunkline Gas Company, LLC (Trunkline) submitted a compliance filing pursuant to the Commission's order issued April 26, 2006 in Docket No. CP06–35–000. This compliance filing includes tariff sheets to revise the fuel reimbursement mechanism for recovery of purchased power costs associated with facilities placed in service in this proceeding. A December 1, 2006 effective date is requested.

Trunkline states that copies of the filing were served on parties on the official service list in the above captioned proceeding.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. eastern time on November 20, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–18985 Filed 11–8–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–46–000]

Trunkline Gas Company, LLC; Notice of Filing

November 3, 2006.

Take notice that on October 31, 2006, Trunkline Gas Company, LLC (Trunkline) tendered for filing its Annual Interruptible Storage Revenue Credit Surcharge Adjustment in accordance with section 24 of the general terms and conditions of its FERC Gas Tariff, Third Revised Volume No. 1.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–18999 Filed 11–8–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP07–14–000]

Wyoming Interstate Company, Ltd.; Notice of Application

November 2, 2006.

Take notice that on October 23, 2006, Wyoming Interstate Company, Ltd. (WIC), Post Office Box 1087, Colorado Springs, Colorado 80944, filed an application in Docket No. CP07–14–000, pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of a new supply lateral pipeline and metering facilities, with appurtenances, to be located in Uintah and Daggett Counties, Utah. Known as the Kanda Lateral, the facilities will be comprised of approximately 123 miles of 24-inch diameter pipeline, with appurtenances, designed to transport and deliver up to 406,000 Dth per day into WIC's mainline. In addition, WIC is also proposing to construct mainline expansion facilities that will consist of two compressor units totaling approximately 20,620 horsepower to be sited inside Colorado Interstate Gas Company's (CIG) existing Wamsutter

Compressor Station located in Sweetwater County, Wyoming. WIC estimates the total cost for the Kanda Lateral and Mainline Expansion project to be $143 million, all as more fully set forth in the application which is on file with the Commission and open for public inspection. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Any questions regarding this Application should be directed to Richard Derryberry, Director, Regulatory Affairs, Wyoming Interstate Company, Ltd., P.O. Box 1087, Colorado Springs, Colorado, 80944 at (719) 520–3788 or by fax at (719) 667–7534, or Craig V. Richardson, Vice President and General Counsel, Wyoming Interstate Company, Ltd.; P.O. Box 1087, Colorado Springs, Colorado, 80944 at (719) 520–4829 or by fax at (719) 520–4898.

On February 8, 2006, the Commission staff granted WIC's request to utilize the National Environmental Policy Act (NEPA) Pre-Filing Process and assigned Docket No. PF06–15–000 to staff activities involving the WIC's expansion project. Now, as of the filing of WIC's application on October 23, 2006, the NEPA Pre-Filing Process for this project has ended. From this time forward, WIC's proceeding will be conducted in Docket No. CP07–14–000, as noted in the caption of this Notice.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the below listed comment date, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Motions to intervene, protests and comments may be filed electronically via the internet in lieu of paper; *see,* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: November 24, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–18924 Filed 11–8–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–41–000]

Wyoming Interstate Company, Ltd.; Notice of Proposed Changes in FERC Gas Tariff

November 2, 2006.

Take notice that on October 31, 2006, Wyoming Interstate Company, Ltd. (WIC) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No 2, Sixteenth Revised Sheet No. 4C, the following tariff sheet proposed to be effective December 1, 2006.

WIC states that copies of its filing have been sent to all firm customers, interruptible customers, and affected state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call

(866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–18934 Filed 11–8–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL07–14–000]

Wisconsin Public Power Inc., Municipal Wholesale Power Group, and Great Lakes Utilities, Complainants v. Wisconsin Power & Light Co., Respondent; Notice of Complaint

November 2, 2006.

Take notice that on November 1, 2006, Wisconsin Public Power Inc., Municipal Wholesale Power Group, and Great Lakes Utilities (collectively, Wisconsin Publics) filed a complaint against Wisconsin Power & Light Co., (WPL) pursuant to section 206 of the Federal Power Act (FPA). Wisconsin Publics states that in Docket Nos. ER06–1517 and ER06–1518 WPL has made filings under section 205 of the FPA to change its rates, terms, and conditions for service to Wisconsin Publics WPL's PR–1 Tariff and W–3A Tariff, respectively. Wisconsin Publics notes that it has recently submitted extensive protests regarding both of those filings, and has requested consolidation of Docket Nos. ER06–1517 and ER06–1518. Wisconsin Publics states that this complaint also seeks an investigation and refund effective date under section 206 of the FPA, and asks that this third proceeding be consolidated with both of the ER Dockets.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. eastern time on November 21, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–18926 Filed 11–8–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP07–4–000]

Mississippi Hub, L.L.C.; Notice of Intent To Prepare an Environmental Assessment for the Proposed Mississippi Hub Gas Storage Project and Request for Comments on Environmental Issues

November 3, 2006.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of a proposal by Mississippi Hub, L.L.C. (MS HUB) to construct, own, and operate a new salt cavern natural gas storage facility in Simpson and Jefferson Davis Counties, Mississippi.[1] The proposal would provide for the injection, storage, and withdrawal of natural gas in two underground caverns created in the Bond Salt Dome formation using a solution mining (leaching) process. Once complete, the project would provide approximately 12 billion cubic feet (Bcf) of working gas storage capacity, capable of injecting 600 million cubic feet per day (MMcfd) and delivering gas at maximum rates up to 1,200 MMcfd. Proposed project facilities include gas compression and withdrawal facilities, a leaching plant, an electrical substation, raw water withdrawal and brine disposal facilities, approximately 11.4 miles of pipeline and utility corridor, metering facilities and ancillary equipment.

This notice announces the opening of the public comment period that will be used to gather environmental input from the public and interested agencies on the project. Comments are requested by December 4, 2006.

This notice is being sent to potentially affected landowners; Federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American Tribes, other interested parties; local libraries and newspapers. State and local government representatives are asked to notify their constituents of this planned project and encourage them to comment on their areas of concern. If you are a landowner receiving this notice, you may be contacted by a MS HUB company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the natural gas company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' was attached to the project notice MS HUB provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site (*http://www.ferc.gov*).

Summary of the Proposed Project

MS HUB seeks authority to construct and operate the following:

(1) *Natural Gas Handling Facility Site*; Simpson County (approximately 80 acres). The facility would include two storage caverns; a 29,205 horsepower compressor station; separation, dehydration, metering, and appurtenant facilities; leaching plant; one freshwater well; and a non-jurisdictional electrical substation. Solution mining of the caverns would occur over an approximate five-year time span.

(2) *Primary Raw Water Withdrawal and Brine Disposal Facility*

[1] MS HUB's application was filed with the Commission under section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

(approximately 45 acres), located south of the Natural Gas Handling Facility in Jefferson Davis County, including three raw water wells, two brine disposal wells, pipelines, roads, and ancillary equipment.

(3) *SONAT (Southern Natural Gas Company) Tie-in and Metering/ Secondary Raw Water Withdrawal and Brine Disposal Facility* (approximately 40 acres), located north of the Natural Gas Handling Facility in Simpson County, including two raw water wells, three brine disposal wells, pipelines, roads, ancillary equipment, and metering equipment for an interconnection to the SONAT pipeline system.

(4) *CrossTex Tie-In and Metering Facility Site* (approximately 0.52 acre), located in Simpson County along the West Pipeline Corridor. The site would include metering, pressure control, and related ancillary equipment, pipelines, and roads.

(5) *SONAT Crossover Tie-in and Metering Facility Site* (approximately 0.52 acre), located in Jefferson Davis County at the terminus of the West Pipeline Corridor. The site would include metering, pressure control, and related ancillary equipment, pipelines, and roads.

(6) *Utility and Pipeline Corridors.* Five pipeline corridors (Utility, South, North, East, and West) totaling 11.4 miles, are proposed for the collocation of raw water and brine disposal pipelines, 36-inch-diameter natural gas pipelines, and an overhead electric utility line (non-jurisdictional). All corridors except the 0.2 mile Utility Corridor would parallel existing utility or pipeline right-of-ways. Construction right-of-way widths range from 300-feet-wide (Utility Corridor) to 75-feet-wide (West Pipeline Corridor). Following construction, the permanent pipeline rights-of-way would be 50-feet-wide for all pipeline corridors.

Non-jurisdictional facilities would need to be constructed by others in order to complete the project. These facilities include the permanent electrical substation at the Natural Gas Handling Facility Site, overhead electrical power lines, and five permanent electrical power drops. These facilities would be constructed and operated by local electric utility companies. The permanent electric powerline easement along the Utility Corridor would be 175-feet-wide, adjacent to the pipeline right-of-way.

The general location of the project facilities is shown in Appendix 1.[2]

Land Requirements for Construction

Construction of the proposed facilities would require about 250.2 acres of land. Following construction, about 196.1 acres would be maintained as new aboveground facility sites or pipeline right-of-way. MS HUB has purchased in fee the tracts for the Natural Gas Handling Facility Site, the Primary Raw Water Withdrawal and Brine Disposal Facility Site, and the SONAT Tie-in and Metering/Secondary Raw Water Withdrawal and Brine Disposal Facility Site. Land requirements for meter stations would be purchased. The remainder of pipeline rights-of-way would be acquired by easement.

The EA Process

We[3] are preparing this EA to comply with the National Environmental Policy Act (NEPA) which requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. This process is referred to as ''scoping''. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission staff requests public comments on the scope of the issues to address in the EA. All comments received are considered during the preparation of the EA.

By this notice, we are also asking Federal, state, and local agencies with jurisdiction and/or special expertise with respect to environmental issues to formally cooperate with us in the preparation of the EA. Agencies that would like to request cooperating status should follow the instructions for filing comments below.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

Currently Identified Environmental Issues

In the EA, we will discuss impacts that could occur as a result of the construction and operation of the project. We will also evaluate reasonable alternatives to the proposed project or portions of the project. We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by MS HUB. This preliminary list of issues may be changed based on your comments and our analysis.

Project-related impact on:

- Noise sensitive areas (i.e. residences) located in proximity to construction operations and the proposed compressor facility;
- habitat for Federally and state-listed aquatic species downstream from project locations;
- gopher tortoise habitat in the project area (state listed endangered species);
- 159.3 acres of forest lands;
- 58.5 acres of prime farmland soils;
- 29 waterbody crossings; and
- 2 wetlands.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations/routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of Gas Branch 3.
- Reference Docket No. CP07–4–000.
- Mail your comments so that they will be received in Washington, DC on or before December 4, 2006.

The Commission strongly encourages electronic filing of comments. Please refer to 18 Code of Federal Regulations

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of all appendices, other than Appendix 1 (maps), are available on the Commission's Web site at the ''eLibrary'' link or from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

[3] ''We'', ''us'', and ''our'' refer to the environmental staff of the Office of Energy Projects (OEP).

(CFR) 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link and the link to the User's Guide. Prepare your submission in the same manner as you would if filing on paper and save it to a file on your hard drive. Before you can file comments, you will need to create an account by clicking on ''Login to File'' and then ''New User Account.'' You will be asked to select the type of filing you are making. This filing is considered a ''Comment on Filing.''

The determination of whether to distribute the EA for public comment will be based on the response to this notice. If you are interested in receiving a copy of the EA, please return the Information Request form (Appendix 2). An effort is being made to send this notice to all individuals affected by the proposed project. This includes all landowners who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within distances defined in the Commission's regulations of certain aboveground facilities.

Site Visit

On November 16, 2006, the OEP staff will conduct a site visit of the planned MS HUB Storage Project. We will view the proposed facility locations and pipeline route. Examination will be by automobile and on foot. Representatives of MS HUB will be accompanying the OEP staff.

All interested parties may attend. Those planning to attend must provide their own transportation and should meet at 9 a.m. (CST) in the parking lot of the Wal-Mart, 1625 Simpson Highway 49, Magee, Mississippi on November 16, 2006.

For additional information, please contact the Commission's Office of External Affairs at 1–866–208–FERC (3372).

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding, or ''intervenor''. To become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214). Intervenors have the right to seek rehearing of the Commission's decision. Motions to Intervene should be electronically submitted using the Commission's eFiling system at *http://www.ferc.gov.* Persons without Internet access should send an original and 14 copies of their motion to the Secretary of the Commission at the address indicated previously. Persons filing Motions to Intervene on or before the comment deadline indicated above must send a copy of the motion to the Applicant. All filings, including late interventions, submitted after the comment deadline must be served on the Applicant and all other intervenors identified on the Commission's service list for this proceeding. Persons on the service list with e-mail addresses may be served electronically; others must be served a hard copy of the filing.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Environmental Mailing List

If you wish to remain on our environmental mailing list, please return the Information Request Form included in Appendix 2. If you do not return this form, you will be removed from our mailing list.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202)502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

Finally, public meetings or additional site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Magalie R. Salas,

Secretary.

[FR Doc. E6–18988 Filed 11–8–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–403–000]

Northern Natural Gas Company, LLC; Notice of Availability of the Environmental Assessment for the Proposed Northern Lights Expansion Project

November 3, 2006.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) on the natural gas pipeline facilities proposed by Northern Natural Gas Company, LLC (Northern) in the above-referenced docket.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major federal action significantly affecting the quality of the human environment.

The EA assesses the potential environmental effects of the construction and operation of six pipeline loops and extensions (five in Minnesota and one in Iowa), two pipeline replacement segments (both in Minnesota), and a greenfield pipeline in Minnesota. Northern would also abandon and remove a segment of existing pipeline in Minnesota. The project would also require modifications at an existing compressor station and construction and modification at several town border stations (TBSs) (i.e., meter stations) and regulator stations. Northern states that the purpose of the project is to provide an estimated incremental firm service of 374,225 Decatherms per day (Dth/day) in Northern's market area. The project is designed to optimize the placement of facilities to meet customer growth requirements for a 2-year period while taking into consideration a long-term design that meets customer growth needs thorughout an approximately 20-year period, to 2026.

The EA has been placed in the public files of the FERC. A limited number of copies of the EA are available for distribution and public inspection at:

Federal Energy Regulatory Commission, Public Reference Room, 888 First Street, N.E., Room 2A, Washington, DC 20426, (202) 502–8371.

Copies of the EA have been mailed to federal; state; and local agencies; public interest groups; individuals who have requested the EA; libraries; newspapers; and parties to this proceeding.

Any person wishing to comment on the EA may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

• Send an original and two copies of your comments to: Secretary Federal Energy Regulatory Commission, 888 First St., N.E., Room 1A, Washington, DC 20426;

• Label one copy of the comments for the attention of the Gas Branch 3;

• Reference Docket No. CP06–403–000; and

• Mail your comments so that they will be received in Washington, DC on or before December 4, 2006.

The Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created by clicking on ''Sign-up.''

Comments will be considered by the Commission but will not serve to make the commenter a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).[1] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your comments considered.

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202)502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

Magalie R. Salas,

Secretary.

[FR Doc. E6–18987 Filed 11–8–06; 8:45 am]

BILLING CODE 6717–01–P

[1] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Availability of the Draft Environmental Impact Statement for the Rockies Western Phase Project

November 3, 2006.

Rockies Express Pipeline, LLC, Docket No. CP06–354–000; TransColorado Gas Transmission Company, Docket No. CP06–401–000; Questar Overthrust Pipeline Company, Docket No. CP06–423–000.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared a draft Environmental Impact Statement (EIS) for the natural gas pipeline facilities proposed by Rockies Express Pipeline LLC (Rockies Express), TransColorado Gas Transmission Company (TransColorado), and Questar Overthrust Pipeline Company (Overthrust) in the above-referenced dockets. These individual corporate entities have submitted separate and distinct proposals to the Commission; however, the FERC views the proposed facilities as interconnected projects that are necessary components of a larger, combined natural gas transportation system. As such, all three project proposals have been included in this draft EIS, and are collectively referred to as the Rockies Western Phase Project (or the Project). The Project facilities would be located in Colorado, Wyoming, Nebraska, Kansas, Missouri, and New Mexico.

The draft EIS was prepared to satisfy the requirements of the National Environmental Policy Act (NEPA) and the Federal Land Management and Policy Act. The U.S. Bureau of Land Management (BLM) and U.S. Fish and Wildlife Service (FWS) are federal land management agencies with lands affected by this proposal and are cooperating agencies for the development of the EIS. A cooperating agency has jurisdiction by law or special expertise with respect to potential environmental impacts associated with the proposal, and is involved in the NEPA analysis. The Project would cross federal land under the jurisdiction of the BLM Rawlins, Kemmerer, and Rock Springs Field Offices. Lands administered by the FWS would also be crossed by the Project. Under section 185(f) of the Mineral Leasing Act of 1920, the BLM has the authority to issue Right-of-Way Grants for all affected federal lands.

The FERC staff has concluded that if the Rockies Western Phase Project is constructed and operated in accordance with applicable laws and regulations, the mitigation proposed by Rockies Express, TransColorado, and Overthrust, and the staffs' additional mitigation recommendations, the Project would have limited adverse environmental impact and would be an environmentally acceptable action.

As currently proposed, the Rockies Western Phase Project would consist of the construction and operation of approximately 796 miles of natural gas pipeline and a total of 237,320 horsepower of new compression. Following completion of the proposed facilities, the Project would transport up to 1.5 billion cubic feet of natural gas per day. Specifically, the draft EIS addresses the potential environmental effects of the construction and operation of the following natural gas pipeline facilities proposed by Rockies Express, TransColorado, and Overthrust:

Rockies Express (REX-West Project)

• 712.7 miles of 42-inch-diameter natural gas pipeline in Wyoming, Colorado, Nebraska, Kansas, and Missouri;

• 5.3 miles of 24-inch-diameter pipeline (Echo Springs Lateral) in Sweetwater and Carbon Counties, Wyoming;

• five new compressor stations (Cheyenne Compressor Station in Weld County, Colorado; Julesburg Compressor Station in Sedgwick County, Colorado;

Echo Springs Compressor Station in Sweetwater County, Wyoming; the Steele City Compressor Station in Gage County, Nebraska; and Turney Compressor Station in Clinton County, Missouri);

• four new compressor units at two previously certificated compressor stations (Meeker Compressor Station in Rio Blanco County, Colorado and Wamsutter Compressor Station in Sweetwater County, Wyoming); and

• 8 new meter stations, 41 mainline valves, and associated facilities.

TransColorado (Blanco to Meeker Project)

• 392 feet of discharge line and 478 feet of suction line, 1,300 feet of 24-inch-diameter pipeline, and 60 feet of 16-inch-diameter pipeline in San Juan County, New Mexico;

• two new compressor stations (Blanco Compression Station in San Juan County, New Mexico and the Conn Creek Compressor Station in Garfield County, Colorado);

• modifications at three existing compressor stations (Mancos Compressor Station in Montezuma County, Colorado; Redvale Compressor Station in Montrose County, Colorado; and Whitewater Compressor Station in Mesa County, Colorado); and

• one new meter station.

Overthrust (Wamsutter Expansion Project)

• 77.2 miles of 36-inch-diameter natural gas pipeline in Sweetwater County, Wyoming;

• 0.1 mile of 36-inch-diameter pipeline (Opal Extension) and 0.1 mile of 20-inch-diameter pipeline (TL–90 Tie-in);

• two new compressor stations in Wyoming (Roberson Compressor Station in Lincoln County and Rock Springs Compressor Station in Sweetwater County); and

• two new meter stations, three new block valves, and associated facilities.

Comment Procedures and Public Meetings

Any person wishing to comment on the draft EIS may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that the Commission receives your comments before the date specified below. Please carefully follow these instructions to ensure that your comments are received and properly recorded:

• Send an original and two copies of your comments to:

Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1A, Washington, DC 20426.

• Reference Docket Nos. CP06–354–000, CP06–401–000, and CP06–423–000.

• Label one copy of the comments for the attention of Gas Branch 1.

• Mail your comments so that they will be received in Washington, DC *on or before December 28, 2006.*

The Commission strongly encourages electronic filing of any comments, interventions, or protests to this proceeding. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link and the link to the User's Guide. Before you can file comments, you will need to create a free account, which can be created by clicking on ''Login to File'' and then ''New User Account.'' You will be asked to select the type of filing you are making. This filing is considered a ''Comment on Filing.''

In lieu of sending written comments, you are invited to attend public comment meetings the FERC will conduct in the project area to receive comments on the draft EIS. Date, time, and location of these meetings will be sent under separate cover. Interested groups and individuals are encouraged to attend and present oral comments on the draft EIS. Transcripts of the meetings will be prepared.

After the comments are reviewed, any significant new issues are investigated, and modifications are made to the draft EIS, a final EIS will be published and distributed by the FERC staff. The final EIS will contain the staff's responses to timely comments received on the draft EIS.

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214). Only intervenors have the right to seek rehearing of the Commission's decision. Anyone may intervene in this proceeding based on this draft EIS. You must file your request to intervene as specified above.[1] You do not need intervenor status to have your comments considered.

The draft EIS has been placed in the public files of the FERC and is available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 208–1371.

CD–ROM copies of the draft EIS have been mailed to Federal, State, and local agencies; public interest groups; individuals and affected landowners who requested a copy of the draft EIS or provided comments during scoping; libraries and newspapers in the Project area; and parties to this proceeding. Hard copy versions of the draft EIS were mailed to those specifically requesting them. A limited number of hard copies and CD–ROMs are available from the Public Reference Room identified above.

Additional information about the Project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659. The eLibrary link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to the eSubscription link on the FERC Internet Web site.

Magalie R. Salas,

Secretary.

[FR Doc. E6–18986 Filed 11–8–06; 8:45 am]

BILLING CODE 6717–01–P

[1] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2082–027; Oregon and California]

PacifiCorp; Notice of Intent to Hold an Additional Public Meeting for Discussion of the Draft Environmental Impact Statement for the Klamath Hydroelectric Project and Extending Comment Deadline

November 2, 2006.

On September 25, 2006, Commission staff delivered the Draft Environmental Impact Statement (DEIS) for the relicensing of the Klamath Hydroelectric project to the Environmental Protection Agency and mailed it to resource and land management agencies, interested organizations, and individuals.

The DEIS was noticed in the **Federal Register** on September 29, 2006 (71 FR 57503), with a comment deadline of November 24, 2006. The DEIS evaluates the environmental consequences of the issuance of a new license for the continued operation and maintenance of the Klamath Hydroelectric, located primarily on the Klamath River, in Klamath County, Oregon and Siskiyou County, California. The existing project occupies a total of 219 acres of land administered by the U.S. Bureaus of Land Management and Reclamation. It also evaluates the environmental effects of implementing the licensee's proposals, agency and NGO recommendations, staff's recommendations, and the no-action alternative.

On October 6, 2006, we noticed four public meetings to receive comments on the DEIS (71 FR 60,505), which will be recorded by an official stenographer, as follows.

Date: Tuesday, November 14, 2006.
Time: 9 a.m.–12 noon (PST).
Place: Shilo Inn.
Address: 2500 Almond Street, Klamath Falls, Oregon.
Date: Wednesday, November 15, 2006.
Time: 9 a.m.–12 noon (PST).
Place: Yreka Community Theatre.
Address: 812 North Oregon Street, Yreka, California.
Date: Wednesday, November 15, 2006.
Time: 7–10 p.m. (PST).
Place: Yreka Community Theatre.
Address: 812 North Oregon Street, Yreka, California.
Date: Thursday, November 16, 2006.
Time: 7–10 p.m. (PST).
Place: Red Lion Hotel.
Address: 1929 Fourth Street, Eureka, California.

We are now providing notice that we will be holding one additional meeting to receive comments on our DEIS:

Date: Wednesday, November 29, 2006.
Time: 7–10 p.m. (PST).
Place: North Bend Community Center.
Address: 2222 Broadway Street, North Bend, Oregon.

At these meetings, resource agency personnel and other interested persons will have the opportunity to provide oral and written comments and recommendations regarding the DEIS for the Commission's public record.

In light of our addition of this fifth meeting, we are extending the due date for receipt of written comments on the DEIS to December 1, 2006.

For further information, please contact John Mudre at e-mail address *john.mudre@ferc.gov*, or by telephone at (202) 502–8902.

Magalie R. Salas,
Secretary.

[FR Doc. E6–18927 Filed 11–8–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Settlement Agreement and Soliciting Comments

November 3, 2006.

Take notice that the following settlement agreement has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Settlement Agreement.
b. *Project No.:* P–2630–004.
c. *Date filed:* October 26, 2006.
d. *Applicant:* PacifiCorp Energy (PacifiCorp).
e. *Name of Project:* Prospect Nos. 1, 2, and 4 Hydroelectric Project (Prospect Project).
f. *Location:* On the Rogue River and certain tributaries, near the Town of Prospect, Jackson County, Oregon.
g. *Filed Pursuant to:* Rule 602 of the Commission's Rules of Practice and Procedure, 18 CFR 385.602.
h. *Applicant Contact:* Dave Leonhardt, Project Manager; PacifiCorp; 825 NE. Multnomah, Suite 1500; Portland, Oregon 97232; tel. (503) 813–6658.
i. *FERC Contact:* Nick Jayjack; tel. (202) 502–6073; e-mail *nicholas.jayjack@ferc.gov.*
j. *Deadline for filing comments:* 30 days *from the date of this notice.* Reply comments due 45 days *from the date of this notice.*

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

k. The Settlement Agreement, entered into by PacifiCorp and Oregon Department of Fish and Wildlife (Oregon DFW), concerns certain resident trout issues related to the relicense proceeding for the Prospect Project. Specifically, PacifiCorp and Oregon DFW have agreed that PacifiCorp: (1) Would implement certain ramping rates (*i.e.*, project-induced increases and decreases in river discharge and related changes in river surface elevation over time) downstream of the project's diversion dams and Prospect No. 2 powerhouse; (2) would conduct certain large woody debris management practices at the project diversion dams; and (3) would not be required to augment gravel downstream of the project diversion dams.

l. A copy of the settlement agreement is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects.

For assistance, contact FERC Online Support.

Magalie R. Salas,

Secretary.

[FR Doc. E6–18990 Filed 11–8–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

November 3, 2006.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of License to Increase its Authorized Generating Capacity.

b. *Project No:* 2720–045.

c. *Date Filed:* October 10, 2006.

d. *Applicant:* City of Norway.

e. *Name of Project:* Sturgeon Falls Hydroelectric Project.

f. *Location:* The project is located on the Menominee River in Dickenson County in Michigan and Marinette County in Wisconsin.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Ray Anderson, City Manager, 915 Main Street, P.O. Box 99, Norway, Michigan 49870, Tel: (906) 563–8015.

i. *FERC Contact:* Any questions on this notice should be addressed to Jake Tung at (202) 502–8757, or e-mail address: *hong.tung@ferc.gov.*

j. *Deadline for filing comments and/or motions:* November 20, 2006.

k. *Description of Request:* The licensee proposes to replace and upgrade the project's existing turbine units and re-rate generator units. The proposed upgrade would restore its largest generating unit which suffered severe damage in December 2005; increase the plant's maximum hydraulic capacity from 3,448 cfs to 3,890 cfs, or approximately 13%; and improve the project's turbine's generating capacity from 5,330 kW to 6,404 kW, or about 20%.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''Comments'', ''Recommendations for Terms and Conditions'', ''Protest'', or ''Motion to Intervene'', as applicable, and the Project Number of the particular application to which the filing refers. All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. E6–18991 Filed 11–8–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the Record Communications; Public Notice

November 3, 2006.

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped by docket numbers in ascending order. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC, Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Docket number	Date received	Presenter or requester
Exempt:		
1. CP06–275–000	10–19–06	Hon. Tim Murphy
CP06–369–000		
2. ER05–116–000	10–19–06	Dennis Dickman
3. Project No. 1494–000	10–31–06	Hon. Dan Boren
4. Project No. 1971–079	10–31–06	Alan Mitchnick
5. Project No. 2539–000	10–19–06	Hon. Charles E. Schumer, Hon. Hillary Rodham Clinton, Hon. Michael R. McNulty
6. Project No. 2545–000	10–19–06	Gregory Griffith
7. Project No. 2545–000	10–19–06	Kevin J. Lyons
8. Project No. 2545–000	10–19–06	Susan Pengilly Neitzel
9. Project No. 2545–000	10–19–06	Jill Wagner, Ph.D.
10. Project No. 11858–000	10–24–06	Eric Ginney
11. Project No. 11858–002	10–31–06	Richard and Victoria Bogard
12. Project No. 11858–000	11–2–06	Lucy and Harvey Miles
13. Project No. 11858–002	11–2–06	Katy Miles
14. Project No. 11858–002	11–2–06	Lois Nisporic
15. Project No. 11858–002	11–2–06	Christopher Oates
16. Project No. 11858–002	11–2–06	Orba Smith
17. Project No. 11858–002	11–2–06	Sandra M. Weaver
18. Project No. 11858–002	11–2–06	Sharon West
19. Project No. 11858–002	11–2–06	Bryan Groth
20. Project No.11858–002	11–2–06	Mr. and Mrs. Matthew Miles

Magalie R. Salas,

Secretary.

[FR Doc. E6–18992 Filed 11–8–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM05–30–000]

Rules Concerning Certification of Electronic Reliability Organization; and Procedures for the Establishment, Approval and Enforcement of Electric Reliability Standards; Notice of Availability of Filing

November 2, 2006.

Take notice that, on October 23, 2006, the Commission received the 2006 Long-Term Reliability Assessment prepared by the North American Electric Reliability Council (NERC).

Section 39.11 of the Commission's regulations provides that the Electric Reliability Organization (ERO) shall conduct assessments of, among other things, the adequacy of the Bulk-Power System in North America and report its findings to the Commission, the Secretary of Energy, each Regional Entity, and each Regional Advisory Body annually or more frequently if so ordered by the Commission. According to NERC, the 2006 Long-Term Reliability Assessment is the first assessment filed by NERC in its capacity as the ERO.

This assessment is filed under Docket No. RM05–30–000 and is accessible online at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room. For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–18928 Filed 11–8–06; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2006–0807; FRL–8098–2]

Agency Information Collection Activities; Proposed Collection; Comment Request; Request for Contractor Access to TSCA CBI; EPA ICR No. 1250.08, OMB Control No. 2070–0075

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: ''Request for Contractor Access to TSCA CBI'' and identified by EPA ICR No. 1250.08 and OMB Control No. 2070–0075, is scheduled to expire on August 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 January 8, 2007.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2006–0807, 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–2006–0807. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA–HQ–OPPT–2006–0807. 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 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 electronically at *http://www.regulations.gov*, or, if only available in hard copy, at the OPPT Docket, EPA Docket Center (EPA/DC). The EPA/DC suffered structural damage due to flooding in June 2006. Although the EPA/DC is continuing operations, there will be temporary changes to the EPA/DC during the clean-up. The EPA/DC Public Reading Room, which was temporarily closed due to flooding, has been relocated in the EPA Headquarters Library, Infoterra Room (Room Number 3334) in the EPA West Bldg., located at 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. EPA visitors are required to show photographic identification and sign the EPA visitor log. Visitors to the EPA/DC Public Reading Room will be provided with an EPA/DC badge that must be visible at all times while in the EPA Building and returned to the guard upon departure. In addition, security personnel will escort visitors to and from the new EPA/DC Public Reading Room location. Up-to-date information about the EPA/DC is on the EPA web site at *http://www.epa.gov/epahome/dockets.htm*.

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: Pam Moseley, Information Management Division (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8956; fax number: (202) 564–8955; e-mail address: *moseley.pamela@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 are companies under contract to EPA to provide certain services and whose employees must have access to the Toxic Substances Control Act (TSCA) CBI to perform their duties.

Title: Request for Contractor Access to TSCA CBI.

ICR numbers: EPA ICR No. 1250.08, OMB Control No. 2070–0075.

ICR status: This ICR is currently scheduled to expire on August 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: Certain employees of companies working under contract to EPA require access to TSCA CBI collected under the authority of TSCA in order to perform their official duties. The Office of Pollution Prevention and Toxics (OPPT), which is responsible for maintaining the security of TSCA confidential business information, requires that all individuals desiring access to TSCA CBI obtain and annually renew official clearance to TSCA CBI. As part of the process for obtaining TSCA CBI clearance, OPPT requires certain information about the contracting company and about each contractor employee requesting TSCA CBI clearance, primarily the name, social security number and EPA identification badge number of the employee, the type of TSCA CBI clearance requested and the justification for such clearance, and the signature of the employee to an agreement with respect to access to and use of TSCA CBI.

Responses to the collection of information are voluntary, but failure to provide the requested information will prevent a contractor employee from obtaining clearance to TSCA CBI. EPA will observe strict confidentiality precautions with respect to the information collected on individual employees, based on the Privacy Act of 1974, as outlined in the ICR and in the collection instrument.

Burden statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 1.6 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: 28.

Frequency of response: On occasion (one time only per individual employee needing TSCA CBI clearance).

Estimated total average number of responses for each respondent: 10.

Estimated total annual burden hours: 446 hours.

Estimated total annual costs: $20,466. This includes an estimated burden cost of $20,466 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 an increase of 31 hours in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB. This increase reflects an increase in the number of contractor employees needing TSCA CBI clearance. 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: November 1, 2006.

James B. Gulliford,

Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. E6–19014 Filed 11–8–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6681–1]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at 202–564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in the FR dated April 7, 2006 (71 FR 17845).

Draft EISs

EIS No. 20060366, ERP No. D1–COE–D39028–00, Mid-Chesapeake Bay Island Ecosystem Restoration Integrated Feasibility Study, Using Uncontaminated Dredged Material from the Upper Chesapeake Bay Approach Channels to the Port of Baltimore to Restore and Protect Island Habitat in the Middle Portion of Chesapeake Bay, Dorchester County, MD.

Summary: EPA does not object to the proposed action.

Rating LO. EIS No. 20060284, ERP No. D–FHW–E40808–KY, I–66 Somerset to London Project, Construction from the Vicinity of the Northern Bypass (I–66) in Somerset, KY to I–75 between London and Corbin Cities, Pulaski, U.S. Army COE Section 404 Permit, Rockcastle and Laurel Counties, KY.

Summary: EPA expressed environmental concerns about impacts to wetlands, karst features and associated water resources, stream and river crossings, and potential construction-related impacts to the Daniel Boone National Forest. Rating EC2.

EIS No. 20060356, ERP No. D–COE–F32198–00, Lock and Dam 3 Mississippi River Navigation Safety and Embankments, To Reduce Related Navigation Safety and Embankment Problems, Upper Mississippi River, Goodhue County, MN and Pierce County, WI.

Summary: EPA expressed environmental concerns about the proposed mitigation for impacts to forested floodplains and water quality, and requested additional information regarding the analysis of cumulative impacts. Rating EC2.

EIS No. 20060358, ERP No. D–AFS–K39101–CA, Lake Davis Pike Eradication Project, To Eradicate Pike and Re-Establish Trout Fishery in the Tributaries, Special-Use-Permit, Plumas National Forest, Plumas County, CA.

Summary: EPA expressed environmental concerns about drinking water impacts, the possible presence of toxic blue-green algae, discharge permit requirements, neutralization options, and the overall effectiveness of the eradication project. Rating EC2.

EIS No. 20060368, ERP No. D–NSF–K99036–HI, Advanced Technology Solar Telescope Project, Construction of Site at the University of Hawaii Institute for Astronomy, Haleakala High Altitude Observatory (HO) Site, Island of Maui, HI.

Summary: EPA expressed environmental concerns about impacts to cultural resources, Native Hawaiians, Haleakala National Park, and endangered species. Rating EC2.

EIS No. 20060337, ERP No. DS–COE–E39051–FL, Lake Okeechobee Regulation Schedule Study, Updated Information on Operational Changes to the Current Water Control Plan, Caloosahatchee and St. Lucie River Estuaries, Lake Okeechobee, FL.

Summary: EPA commented that the interim schedule will need to be re-evaluated in 2010 when additional storage areas are in place, and requested clarification regarding the existing conditions of Lake Okeechobee and estuaries, as well as the potential effects of the proposed new schedule on Total Maximum Daily Load (TMDL) goals. Rating EC1.

Final EISs

EIS No. 20060381, ERP No. F–AFS–D65032–WV, Programmatic—Monongahela National Forest Plan Revision, Proposes to Revise Land and Resource Management Plan, Barbour, Grant, Greenbrier, Nicholas, Pendleton, Pocahontab, Preston, Randolph, Tucker and Webster Counties, WV.

Summary: EPA continues to have environment concerns about impacts caused by commercial/recreational activities and fragmentation from roadways.

EIS No. 20060382, ERP No. F–BLM–K65291–00, Lake Havasu Field Office Resource Management Plan, Implementation, Colorado River, Davis Dam in the north and south to Park Dam, CA and AZ.

Summary: EPA does not object to the project as proposed.

EIS No. 20060387, ERP No. F–AFS–J65451–UT, West Fork Blacks Fork Allotment Management Plan, Proposes to Authorize Continued Livestock Grazing, Township 1 North, Range 11 East, Salt Lake Principle Meridan, Evanston Ranger District, Wasatch-Cache National Forest, Summit County, UT.

Summary: EPA's previous concerns have been resolved; therefore, EPA does not object to the proposed action.

EIS No. 20060391, ERP No. F–NRC–F06028–MN, Generic—License Renewal of Nuclear Plants, Supplement 26 to NUREG 1437, Regarding Monticello Nuclear Generating Plant (TAC NO. MC6441) Renewal of Operating License DRP–22 for Additional 20-Years of Operation, Mississippi River, City of Monticello, Wright County, MN.

Summary: EPA's previous concerns have been resolved; therefore, EPA does not object to the proposed action.

EIS No. 20060393, ERP No. F–COE–H36111–00, Kansas City's Levees, Missouri and Kansas Flood Damage Reduction Study, Improvements to the Existing Line of Protection, Birmingham, Jackson, Clay Counties, MO and Wyandotte County, KS.

Summary: No formal comment letter was sent to the preparing agency.

EIS No. 20060397, ERP No. F–NAS–A12044–00, Programmatic—Development of Advanced Radioisotope Power Systems, Two New Advanced RPS's: Multi-Mission Radioisotope Thermoelectric Generator (MMRTG) and Stirling Radioisotope Generator (SRG).

Summary: EPA does not object to the proposed action.

EIS No. 20060404, ERP No. F–SFW–L64052–AK, Kodiak National Wildlife Refuge, Draft Revised; Comprehensive Conservation Plan, Implementation, AK.

Summary: EPA does not object to the proposed action.

EIS No. 20060240, ERP No. FS–AFS–L65400–ID, West Gold Creek Project, Updated Information, Forest Management Activities Plan, Implementation, Idaho Panhandle National Forests, Sandpoints Ranger District, Bonner County, ID.

Summary: EPA does not object to the proposed action.

EIS No. 20060386, ERP No. FS–AFS–F65034–WI, Northwest Howell Vegetation Management Project, New Information to Address Inadequate Disclosure of the Cumulative Effects Analysis for Six Animal and Two Plant Species, Eagle River-Florence Ranger District, Chequamegon-Nicole National Forest, Florence and Forest Counties, WI.

Summary: EPA does not object to the proposed action.

EIS No. 20060424, ERP No. FS–FRC–C05146–00, Northeast (NE)–07 Project, Construction and Operation of a Natural Gas Pipeline Facilities, Millennium Pipeline Project—Phase I, U.S. Army COE Section 10 and 404 Permits, several counties, NY, Morris County, NJ; Fairfield and New Haven Counties, CT.

Summary: EPA does not object to the proposed action.

Dated: November 6, 2006.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. E6–19022 Filed 11–8–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6680–9]

Environmental Impacts Statements; Notice of Availability

AGENCY: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/*.

Weekly receipt of Environmental Impact Statements filed 10/30/2006 through 11/03/2006 pursuant to 40 CFR 1506.9

EIS No. 20060452, Draft EIS, AFS, WA, Natapoc Ridge Restoration Project, To Improve Forest Health and Sustainability, and Reduce Wildfire and Hazardous Fuels, Wenatchee River Ranger District, Okanogan-Wenatchee National Forest, Chelan County, WA, *Comment Period Ends:* 12/26/2006, *Contact:* Steve Willet 509–548–6977.

EIS No. 20060453, Final EIS, FHW, CA, Willits Freeway Bypass Project, Construction and Operation of a New Segment of U.S. 101, COE Section 404 Permit, NPDES Permit and Endangered Species Act (Incidental Take Permit), City of Willits, Mendocino County, CA, *Wait Period Ends:* 12/11/2006, *Contact:* Maiser Khaled 916–498–5020.

EIS No. 20060454, Final EIS, SFW, CA, Orange County Southern Subregion Habitat Conservation Plan (HCP), Implementation, Application for and Incidental Take Permit, Orange County, CA, *Wait Period Ends:* 12/11/2006, *Contact:* Vicki Campbell 916–414–6464.

EIS No. 20060455, Draft EIS, WPA, AZ, San Luis Rio Colorado Project, Construct, Operate, Maintain, and Connect a Double-Circuited 500,000-volt Electric Transmission Line, Right-of-Way Grant and Presidential Permit, (DOE/EIS–0395) Yuma County, AZ, *Comment Period Ends:* 12/26/2006, *Contact:* Mark J. Wieringa 720–962–7263.

EIS No. 20060456, Final EIS, IBR, CA, Contra Costa Water District Alternative Intake Project, To Protect and Improve the Quality of Water Delivery to Untreated and Treated-Water Customers, Contra Costra County, CA, *Wait Period Ends:* 12/11/2006, *Contact:* Katrina Chow 916–978–5067.

EIS No. 20060457, Draft EIS, COE, TX, Brazos Harbor Navigation District Project, Proposed Port Freeport Channel Widening to the Entrance and Jetty Reach of the Freeport Harbor Jetty Channel and Entrance, Brazoria County, TX, *Comment Period Ends:*

01/09/2007, *Contact:* Sam Watson 409–766–3946.

EIS No. 20060458, Final EIS, AFS, 00, Custer National Forest Weed Management, To Implement Specific Invasive Weed Treatments, Carbon, Stillwater, Sweetgrass, Park, Powder River, Rosebud and Carter Counties, MT and Harding County, SD, *Wait Period Ends:* 12/11/2006, *Contact:* Kim Reid 406–657–6205 Ext 233.

EIS No. 20060459, Final EIS, NPS, SD, Badlands National Park/North Unit General Management Plan, Implementation, Jackson, Pennington and Shananon Counties, SD, *Wait Period Ends:* 12/11/2006, *Contact:* Paige Baker 605–433–5281.

EIS No. 20060460, Third Draft Supplement, FHW, VT, Southern Connector/Champlain Parkway Project (MEGC–M5000(1), Updated Information, Construction from Interchange of I–189 to Shelburne Street (US Route &) and Extending westerly and northerly to the City of Center District within the City of Burlington, Chittenden County, VT, *Comment Period Ends:* 12/29/2006, *Contact:* Kenneth R. Sikora, 802–828–4423.

EIS No. 20060461, Draft EIS, USN, FL, Boca Chica Field, Restoration of Clear Zones and Stormwater Drainage Systems, Implementation, Naval Air Station (NAS) Key West, Monroe County, FL, *Comment Period Ends:* 01/08/2007, *Contact:* Agnes Peters 703–604–5421.

EIS No. 20060462, Draft EIS, COE, CA, Cajon Third Main Track, Construction from Summit to Keenbrook, Special Use Permit and U.S. Army COE 404 Permit, San Bernardino County, CA, *Comment Period Ends:* 01/03/2007, *Contact:* Susan Meyer 808–438–2137.

EIS No. 20060463, Final EIS, CGD, TX, Beacon Port Deepwater Port License Application, Construction and Operation, Deepwater Port and Offshore Pipeline, U.S. COE Section 404 and 10 Permits, Gulf of Mexico, San Patricio County, TX, *Wait Period Ends:* 12/11/2006, *Contact:* Ray Martin 202–372–1449.

EIS No. 20060464, Draft Supplement, AFS, MT, Northeast Yaak Project, Additional Documentation of Cumulative Effects Analysis, Proposed Harvest to Reduce Fuels in Old Growth, Implementation, Kootena National Forest, Three Rivers Ranger District, Lincoln County, MT, *Comment Period Ends:* 12/26/2006, *Contact:* Eric Dickinson 406–295–4693.

EIS No. 20060465, Draft EIS, FRC, 00, Rockies Express Western Phase Project, Construction and Operation for the Natural Gas Pipeline Facilities: Rockies Express (CP06–354–000), TransColorado (CP06–401–000) and Overthrust (CP06–423–000), CO, WY, NE, KS, MO and NM, *Comment Period Ends:* 12/28/2006, *Contact:* Bryan Lee 1–866–208–3372.

Amended Notices

EIS No. 20060390, Final EIS, FHW, PA, Southern Beltway Transportation Project, Improvement from US–22 in Robinson Township to Interstate 79 in South Fayette Township and Cecil Township, Funding and U.S. Army COE Section 404 Permit, Washington, Allegheny Counties, PA, *Wait Period Ends:* 11/09/2006, *Contact:* Karyn E. Vandervoort 717–221–2276. Revision of FR Notice Published 09/29/2006: Correction to Wait Period from 10/30/2006 to 11/09/2006.

Dated: November 6, 2006.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. E6–19026 Filed 11–8–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[Docket# EPA–RO4–SFUND–2006–0884; FRL–8240–9]

Flura Coproration Leaking AST Superfund Site; Newport, Cocke County, TN; Notice of Settlement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of settlement.

SUMMARY: Under section 122(h)(1) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the United States Environmental Protection Agency has entered into a settlement for reimbursement of past response costs concerning the Flura Corporation Leaking AST Superfund Site located in Newport, Cocke County, Tennessee.

DATES: The Agency will consider public comments on the settlement until December 11, 2006. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate.

ADDRESSES: Copies of the amended portion of the settlement are available from Ms. Paula V. Batchelor. Submit your comments, identified by Docket ID No. EPA–RO4–SFUND–2006–0884 or Site name Flura Corporation Leaking AST Superfund Site by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- E-mail: *Batchelor.Paula@epa.gov*.
- Fax: 404/562–8842/Attn Paula V. Batchelor.

Mail: Ms. Paula V. Batchelor, U.S. EPA Region 4, WMD–SEIMB, 61 Forsyth Street, SW., Atlanta, Georgia 30303. ''In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17th St. NW., Washington, DC 20503.''

Instructions: Direct your comments to Docket ID No. EPA–R04–SFUND–2006–0884. 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*.

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 *http://www.regulations.gov* or in hard copy at the U.S. EPA Region 4 office located at 61 Forsyth Street, SW., Atlanta, Georgia 30303. Regional office is open from 7 a.m. until 6:30 p.m. Monday through Friday, excluding legal holidays.

Written comments may be submitted to Ms. Batchelor within 30 calendar days of the date of this publication.

FOR FURTHER INFORMATION CONTACT: Paula V. Batchelor at 404/562–8887.

Dated: November 2, 2006.

Greg Armstrong,

Acting Chief, Superfund Enforcement & Information Management Branch, Waste Management Division.

[FR Doc. E6–19013 Filed 11–8–06; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK

[Public Notice 94]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Export Import Bank of the U.S.

ACTION: Notice and request for comments.

SUMMARY: The Export-Import Bank, as a part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal Agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995. Our customers will be able to submit this form electronically. The proposed form may be viewed on our Web site at *http://www.exim.gov/pub/ins/pdf/EIB%2092-30%20August 172006_proposed.pdf.*

DATES: Written comments should be received on or before December 11, 2006. to be assured of consideration.

ADDRESSES: Direct all comments and requests for additional information to David Rostker, Office of Management and Budget, Office of Information and Regulatory Affairs, NEOB, Room 10202, Washington, DC 20503, (202) 395–3897.

SUPPLEMENTARY INFORMATION:

Title and Form Numbers: EIB 92–30 Report of Premiums Payable for Financial Institutions Only.

OMB Number: None.

Type of Review: Regular.

Need and Use: The information requested enables the applicant to provide Ex-Im Bank with the information necessary to record customer utilization and manage prospective insurance liability relative to risk premiums received.

Affected Public: The form affects entities involved in the export of U.S. goods and services.

Estimated Annual Respondents: 150.

Estimated Time Per Respondent: 15 minutes.

Estimated Annual Burden: 450 hours.

Frequency of Reporting or Use: Monthly.

Dated: November 3, 2006.

Solomon Bush,

Agency Clearance Officer.

[FR Doc. 06–9129 Filed 11–8–06; 8:45 am]

BILLING CODE 6690–01–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget

October 31, 2006.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before December 11, 2006. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Allison E. Zaleski, Office of Management and Budget, Room 10236 NEOB, Washington, DC 20503, (202) 395–6466, or via fax at 202–395–5167 or via Internet at *Allison_E._Zaleski@eop.omb.gov* and to *Judith-B.Herman@fcc.gov,* Federal Communications Commission, Room 1–B441, 445 12th Street, SW., DC 20554 or an e-mail to *PRA@fcc.gov.* If you would like to obtain or view a copy of this information collection, you may do so by visiting the FCC PRA Web page at: *http://www.fcc.gov/omd/pra.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0799.

Title: FCC Ownership Disclosure Information for the Wireless Telecommunications Services.

Form No.: FCC Form 602.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions; and state, local or tribal governments.

Number of Respondents: 500 respondents; 5,065 responses.

Estimated Time Per Response: .50–1.50 hours.

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Total Annual Burden: 5,065 hours.

Total Annual Cost: $478,200.

Privacy Act Impact Assessment: N/A.

Needs and Uses: The Commission will submit this information collection to OMB as an extension (no change in reporting or third party requirements) in order to obtain the full three-year clearance from them. There is no change to the estimated average burden, costs, or the number of respondents.

The purpose of the FCC Form 602 is to obtain the identity of the filer and to elicit information required by 47 CFR 1.2112 of the Commission's rules regarding: (1) persons or entities holding a 10 percent or greater direct or indirect ownership interest or any general partners in a general partnership holding a direct or indirect ownership interest in the applicant (''Disclosable Interest Holders''); and (2) all FCC-regulated entities in which the filer or any of its Disclosable Interest Holders owns a 10 percent or greater interest. The data collected on the FCC Form 602 includes the FCC Registration Number (FRN) which serves as a ''common link'' for all filings an entity has with the Commission. The Debt Collection

Improvement Act of 1996 requires that entities filing with the Commission use a FRN. Finally, the FCC Form 602 was designed for, and must be filed electronically by, all licensees that hold licenses in auctionable services. Without such information, the Commission could not determine whether to issue licenses to applicants that provide telecommunications services to the public and fulfill its statutory responsibilities in accordance with the Communications Act of 1934, as amended.

OMB Control Number: 3060–1092.

Title: Interim Procedures for Filing Applications Seeking Approval for Designated Entity Reportable Eligibility Events and Annual Reports.

Form Nos.: FCC Form 609–T and 611–T.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions; and state, local or tribal governments.

Number of Respondents: 1,000 respondents; 2,500 responses.

Estimated Time Per Response: .50–6 hours.

Frequency of Response: On occasion and annual reporting requirements.

Total Annual Burden: 6,625 hours.

Total Annual Cost: $1,358,750.

Privacy Act Impact Assessment: N/A.

Needs and Uses: The Commission will submit this information collection to OMB as an extension (no change in reporting requirements) in order to obtain the full three-year clearance from them. There is no change to the estimated average burden, costs, or the number of respondents.

FCC Form 609–T is used by Designated Entities (DEs) to request prior Commission approval pursuant to Section 1.2114 of the Commission's rules for any reportable eligibility event. The data collected on the form is used by the Commission to determine whether the public interest would be served by the approval of the reportable eligibility event.

FCC Form 611–T is used by DE licensees to file an annual report, pursuant to Section 1.2110(n) of the Commission's rules, related to eligibility for designated entity benefits.

The Commission adopted these information collection requests to ensure that licensees receiving designated entity benefits remain, on an on-going basis, in compliance with the designated entity rules and policies—that the entity remains eligible for designated entity benefits for a prescribed period of time (which may vary depending upon the particular circumstances of a licensee or service.) Specifically, the Commission provides benefits to entities eligible to be designated entities pursuant to Congressional directive, as reflected in Section 309(j) of the Communications Act of 1934, as amended. Thus, the Commission has indicated that it acted to ensure that designated entities are given the opportunity to participate in the provision of spectrum-based services, while at the same time, ensuring that entities ineligible for designated entity incentives cannot circumvent the Commission's rules by obtaining those benefits indirectly, thought their relationships with entities that in fact are eligible for such benefits.

OMB Control Number: 3060–0292.

Title: Part 69—Access Charges (Section 69.605, Reporting and Distribution of Pool Access Revenues).

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 1,250 respondents; 15,000 responses.

Estimated Time Per Response: .75 hours (45 minutes).

Frequency of Response: On occasion, annual and monthly reporting requirements and third party disclosure requirement.

Total Annual Burden: 11,250 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Needs and Uses: The Commission will submit this information collection to OMB as a revision in order to obtain the full three-year clearance from them.

Part 9 of the Commission's rules and regulations establishes the rules for access charges for interstate or foreign access provided by telephone companies on or after January 1, 1984. Part 69 essentially consists of rules or the procedures for the computation of access charges which are not information collections as defined by 5 CFR part 1320 (OMB's rules). Any reporting or disclosure occurs in connection with particular tariff filings and other reporting requirements with the FCC, National Exchange Carriers Association (NECA), or state commissions or with records maintained in accordance with the Uniform System of Accounts (USOA). OMB approval of tariff filings and USOA records required by the FCC is contained under OMB control numbers 3060–0298, 3060–0370 and 3060–0400.

The Commission has revised this collection of information because many of the rule sections that were subject to OMB review under the Paperwork Reduction Act (PRA) in Part 69 are no longer in effect. Specifically, only section 69.605 remains under this OMB control number.

The information is used by the Commission to compute charges in tariffs for access service (or origination and termination) and to compute revenue pool distributions. Neither process could be implemented without this information.

OMB Control Number: 3060–0952.

Title: Proposed Demographic Information and Notifications, Second FNPRM in CC Docket No. 98–147 and Fifth NPRM in CC Docket No. 96–98.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 1,400.

Estimated Time Per Response: 2 hours for 2 filings per year.

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Total Annual Burden: 5,600 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Needs and Uses: The Commission will submit this information collection to OMB as an extension (no change in reporting or third party requirements) in order to obtain the full three-year clearance from them. There is no change to the estimated average burden or the number of respondents.

In a Second Further Notice of Proposed Rulemaking (FNPRM) in FCC 00–297, the Commission invited comments on, among other things, whether physical collocation in remote terminals presents technical or security concerns and, if so, whether these concerns warranted modification of its collocation rules. The Commission asked whether incumbent Local Exchange Carriers (LECs) should be required to provide requesting carriers with demographic and other information regarding particular remote terminals similar to the information available regarding incumbent LEC central offices. Requesting carriers use demographic and other data obtained from incumbent LECs to determine whether they wish to collocate at particular remote terminals. This proposed collection of information will be used by the Commission, state commissions, and competitive carriers to facilitate the deployment of advanced services and other telecommunications services in implementation of section 251(c)(6) of the Communications Act of 1934, as amended.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E6–19046 Filed 11–8–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 27, 2006.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. Dennis Duane Haugen, Portland, North Dakota; to acquire voting shares of Full Service Insurance Agency, Inc., Buxton, North Dakota and thereby indirectly acquire voting shares of First State Bank, Buxton, North Dakota.

Board of Governors of the Federal Reserve System, November 6, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E6–18974 Filed 11–8–06; 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 December 7, 2006.

A. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. First Banks, Inc., Hazelwood, Missouri; to acquire an additional 4.09 percent, for a total direct and indirect control of 24.99 percent, of Community West Bancshares, Goleta, California, and thereby indirectly acquire voting shares of Community West Bank, National Association, Goleta, California.

B. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. B & E Investments Inc., (State Bank of Arcadia) Employee Stock Ownership Plan & Trust, Arcadia , Wisconsin; and B & E Investments, Inc., Bloomer, Wisconsin; to acquire 100 percent of the voting shares of John O. Melby & Company Bank, Whitehall, Wisconsin.

Board of Governors of the Federal Reserve System, November 6, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E6–18973 Filed 11–8–06; 8:45 am]

BILLING CODE 6210–01–S

Federal Reserve System

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 4:00 p.m., Tuesday, November 14, 2006.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th Street entrance between Constitution Avenue and C Streets, NW., Washington, DC 20551.

STATUS: Open.

We ask that you notify us in advance if you plan to attend the open meeting and provide your name, date of birth, and social security number (SSN) or passport number. You may provide this information by calling (202) 452–2474 or you may **register online**. You may pre–register until close of business November 13, 2006. You also will be asked to provide identifying information, including a photo ID, before being admitted to the Board meeting. The Public Affairs Office must approve the use of cameras; please call (202) 452–2955 for further information. If you need an accommodation for a disability, please contact Penelope Beattie on (202) 452–3982. For the hearing impaired only, please use the Telecommunication Device for the Deaf (TDD) on (202) 263–4869.

Privacy Act Notice: Providing the information requested is voluntary; however, failure to provide your name, date of birth, and social security number or passport number may result in denial of entry to the Federal Reserve Board. This information is solicited pursuant to Sections 10 and 11 of the Federal Reserve Act and will be used to facilitate a search of law enforcement databases to confirm that no threat is posed to Board employees or property. It may be disclosed to other persons to evaluate a potential threat. The information also may be provided to law enforcement agencies, courts, and others, but only to the extent necessary to investigate or prosecute a violation of law.

MATTERS TO BE CONSIDERED:

Discussion Agenda:

1. Proposed 2007 Private Sector Adjustment Factor and Fee Schedules for Priced Services.

NOTE: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office and copies may be ordered for $6 per cassette by calling (202) 452–3684 or by writing to: Freedom of Information Office, Board of Governors of the

Federal Reserve System, Washington, DC 20551.

FOR FURTHER INFORMATION CONTACT: Michelle Smith, Director, or Dave Skidmore, Assistant to the Board, Office of Board Members at 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call (202) 452–3206 for a **recorded announcement** of this meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an **electronic announcement**. (The Web site also includes procedural and other information about the open meeting.)

Board of Governors of the Federal Reserve System, November 7, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 06–9175 Filed 11–7–06; 1:51 pm]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

[File No. 061 0187]

Thermo Electron Corporation; Analysis of Agreement Containing Consent Orders to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before November 15, 2006.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to ''Thermo Electron Corp., File No. 061 0187,'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/ Office of the Secretary, Room 135–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments containing confidential material must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with Commission Rule 4.9(c). 16 CFR 4.9(c) (2005).[1] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments that do not contain any nonpublic information may instead be filed in electronic form as part of or as an attachment to e-mail messages directed to the following e-mail box: *consentagreement@ftc.gov.*

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at *www.ftc.gov.* As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

FOR FURTHER INFORMATION CONTACT: Richard H. Cunningham, Bureau of Competition, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–2214.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 of the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for October 17, 2006), on the World Wide Web, at *http://www.ftc.gov/os/2006/10/index.htm.* A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before the date specified in the **DATES** section.

Analysis of Agreement Containing Consent Order To Aid Public Comment

I. Introduction

The Federal Trade Commission (''Commission'') has accepted, subject to final approval, an Agreement Containing Consent Orders (''Consent Agreement'') from Thermo Electron Corporation (''Thermo''). The purpose of the Consent Agreement is to remedy the anticompetitive effects resulting from Thermo's acquisition of Fisher Scientific International Inc. (''Fisher''). Under the terms of the Consent Agreement, Thermo is required to divest Genevac Limited and Genevac, Inc. (hereinafter referred to together as ''Genevac''), which together comprise the entirety of Fisher's centrifugal vacuum evaporator (''CVE'') business, within five months after the date Thermo signed the Consent Agreement.

The Consent Agreement has been placed on the public record for thirty days to solicit comments from interested persons. Comments received during this period will become part of the public record. After thirty days, the Commission will again review the Consent Agreement and the comments received, and will decide whether it should withdraw from the Consent Agreement or make it final.

Pursuant to an Agreement and Plan of Merger dated May 7, 2006, Thermo proposes to acquire Fisher in a transaction valued at approximately $12.8 billion. The Commission's complaint alleges that the proposed acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, by lessening competition in the market for high-performance CVEs.

II. The Parties

Headquartered in Waltham, Massachusetts, Thermo is one of the largest and most diversified suppliers of analytical instruments in the world. Founded in 1956, the company now employs 11,000 people worldwide with offices in thirty countries. Thermo owns many well-known laboratory equipment brands and sells high-performance CVEs under its Savant Speedvac brand.

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

Thermo's 2005 worldwide revenue was $2.6 billion and its North American sales were approximately $1.2 billion.

Fisher is headquartered in Hampton, New Hampshire. Founded in 1902 to supply equipment and consumables to laboratories, Fisher today employs 19,500 people worldwide, 13,000 of those in the United States. The company is divided into three segments: biopharma services, scientific equipment and products, and distribution. Fisher has many well-known laboratory equipment and instrument brands and sells its CVE products under the Genevac brand. Through its distribution operations, Fisher sells approximately 600,000 scientific and laboratory products and serves over 350,000 customers worldwide. Fisher's 2005 worldwide revenue was $5.6 billion, of which $4.1 billion was achieved in the United States.

III. High-Performance CVEs

High-performance CVEs apply heat, vacuum, and centrifugal force to rapidly remove solvents from samples suspended in solution in the wells of microtiter plates or test tubes, while preventing any molecular degradation or cross-contamination of the samples. High-performance CVEs are used primarily in combinatorial chemistry laboratories, which develop processes to simultaneously synthesize large collections of potentially biologically-active molecules, a process called parallel synthesis. The collections of molecules then can be tested for activity against identified targets as potential drug candidates during the early stages of the drug discovery process. In academic laboratories, high-performance CVEs are used to aid in the creation of chemical libraries of potentially biologically-active molecules for research purposes. High-performance CVEs typically cost between $25,000 and $100,000, depending on features and throughput capabilities.

CVEs are available in both high-performance and lower-performance models. High-performance CVEs differ from their lower-performance counterparts in a number of significant respects. High-performance CVEs can process hundreds of samples at a time and include advanced control and monitoring capabilities to prevent cross contamination between samples or degradation of the molecules as they are evaporated. They also are compatible with corrosive and environmentally sensitive solvents, such as hydrochloric acid and acetonitrile. In addition, high-performance models offer sophisticated programing capabilities. All of these features are considered useful and necessary by high-performance CVE purchasers because they enhance the efficiency of their work and reduce the likelihood of sample loss, degradation, and contamination. High-performance CVE purchasers do not consider lower-performance CVEs to be viable alternatives because of the high value of the samples, which in many cases take a week or more to synthesize and can represent the entire quantity of the compound that the scientist has developed. The repercussions of a sample loss or degradation resulting from a failure of the CVE are simply too great to justify the use of lower performance CVEs in these applications.

Besides the use of CVEs, there are also other methods available for removing solvents and drying samples, such as freeze drying and nitrogen blowdown. These technologies, however, have many limitations as compared to high-performance CVEs. Freeze drying, also called lyophilisation, is an effective technique for drying samples suspended in aqueous solvents. Lyophilisation is far less effective, however, with solvents that are not water-based and can be significantly more time consuming than high-performance CVEs when evaporating a large number of samples. Nitrogen blowdown equipment, which circulates nitrogen—a very dry gas—across the samples' surface to evaporate the solvent, does not capture the evaporated solvent and does not maintain a constant temperature during evaporation. These drawbacks, among others, prevent the alternative technologies from being viable alternatives to high-performance CVEs.

The United States is the relevant geographic market in which to analyze the effects of Thermo's proposed acquisition of Fisher in the market for high-performance CVEs. Firms that lack significant U.S. business operations cannot compete meaningfully in the United States. Successful participation in the U.S. high-performance CVE market requires substantial domestic, even local service and support. Because many purchasers use their high-performance CVEs daily, breakdowns may halt work in the lab. Such delay is costly, so customers demand reliable equipment and, in the event of a breakdown, that required service, support, and replacement parts be readily available. Thus, establishing a reputation for high quality products and strong after-sales support is necessary to gain acceptance among customers and succeed in the U.S. high-performance CVE market.

IV. Competitive Effects and Entry Conditions

Thermo and Fisher are the only two significant suppliers in the approximately $10 million U.S. high-performance CVE market. Thermo and Fisher account for approximately 30 percent and 70 percent of the market, respectively, and compete directly on price, service, and product innovations. The evidence gathered in the Commission's investigation demonstrates that customers receive lower prices and other economic benefits, such as favorable service or payment terms, as a result of the competition between Thermo and Fisher. Indeed, many customers fear that the proposed transaction would allow the merged entity to increase prices of high-performance CVE's considerably, as they would have no alternative but to go along with a price increase imposed by the combined Thermo/Fisher. The evidence also shows that the parties compete on the basis of product performance, features, and innovation resulting in product improvements, such as enhanced vacuum and monitoring capabilities. If the proposed transaction were consummated, Thermo would obtain a virtual monopoly in the U.S. high-performance CVE market.

Martin Christ GmbH (''Martin Christ''), which is based in Germany, also offers high-performance CVEs. Martin Christ currently is not a significant competitor in the United States, however, and is not expected to be in the future. Martin Christ has had minimal sales of its high-performance CVE products in the United States during the last three years, and its sales are not likely to increase sufficiently to restore the lost competition.

Entry into the relevant market that would be sufficient to deter or counteract the anticompetitive effects of proposed transaction is unlikely to occur in a timely manner, as there are significant impediments to entry and expansion. First, a firm would have to design, develop, and test a product with functionality and reliability nearly equivalent to the products offered by incumbent models, while designing around, or obtaining licenses to, any intellectual property protecting the features and design of the incumbent high-performance CVEs. Second, if a prospective entrant does not have a pre-existing sales force directly selling related products, it also would have to establish a distribution channel by building a sales force and initiating a marketing effort sufficient to convince customers to buy its new high-

performance CVE. Third, because high-performance CVEs are used regularly to perform critical laboratory functions, a new entrant must build a reputation for product quality and reliability and for responsive service in order to succeed. Finally, even if an entrant could overcome these barriers to entry, the relatively small high-performance CVE market, and correspondingly limited profit opportunities available to a new entrant, likely are insufficient to justify the investment necessary to enter the high-performance CVE market.

V. The Consent Agreement

The Consent Agreement effectively remedies the anticompetitive effects that are likely to occur as a result of the proposed transaction on the high-performance CVE market by requiring Thermo to divest Genevac, Fisher's stand alone CVE subsidiary. Pursuant to the Consent Agreement, Thermo is required to divest Genevac to a Commission-approved buyer, at no minimum price, within five months after the date Thermo signed the Consent Agreement. The Commission's goal in evaluating and approving purchasers of divested assets is to ensure that the competitive environment that existed prior to the acquisition is maintained. A proposed acquirer of divested assets must not itself present competitive problems.

Should Thermo fail to accomplish the divestiture within the time and in the manner required by the Consent Agreement, the Commission may appoint a trustee to divest the assets. If approved, the trustee would have the exclusive power and authority to accomplish the divestiture within six months of being appointed, subject to any necessary extensions by the Commission. The Consent Agreement requires Thermo to provide the trustee with access to information related to the Genevac business as necessary to fulfill his or her obligations.

The Order to Hold Separate and Maintain Assets (''Hold Separate Order'') that is included in the Consent Agreement requires that Thermo hold separate and maintain the viability of Genevac as a competitive operation until the business is transferred to the Commission-approved acquirer. Furthermore, it contains measures designed to ensure that no material confidential information is exchanged between Thermo and Genevac (except as otherwise provided in the Consent Agreement) and provisions designed to prevent interim harm to competition in the high-performance CVE market.

The Hold Separate Order provides that the Commission may appoint a Hold Separate Trustee who is charged with the duty of monitoring Thermo's compliance with the Consent Agreement. Pursuant to that order, the Commission has appointed Harry Cole as Hold Separate Trustee to oversee Genevac prior to its divestiture and to ensure that Thermo complies with its obligations under the Consent Agreement. Mr. Cole was employed by Genevac from its incorporation in 1990 until 2005 and held numerous production, service, sales, and management positions, including serving as General Manager of Genevac with plenary responsibility for Genevac's performance. Mr. Cole's extensive background in the CVE market and intimate knowledge of Genevac uniquely qualify him to serve as the Hold Separate Trustee. The Hold Separate Order will become effective upon the date the Commission accepts the Consent Agreement for placement on the public record and will remain in effect until Thermo divests Genevac to a Commission-approved buyer. In the event that Thermo does not divest Genevac within the five-month time period, the Consent Agreement allows the Commission to appoint a trustee to divest Genevac.

The Consent Agreement contains several further provisions designed to help ensure that the divestiture of Genevac is successful. First, because a few of Genevac's lower-performance CVEs are currently sold through Fisher's catalog, the Consent Agreement requires Themo, at the acquirer's option, to enter into a distribution agreement with the acquirer for Genevac's products to continue to be sold via the Fisher catalog, ensuring that Thermo cannot diminish Genevac's competitiveness by disrupting Genevac's distribution channels. Second, so that key Genevac employees stay with Genevac through the divestiture process, the Consent Agreement requires Thermo to implement and fund a retention plan for key employees. Third, the Consent Agreement prohibits Thermo from soliciting Genevac employees for at least a year after the divestiture of Genevac. For key Genevac employees, including its management and head of research and development, this prohibition is extended to two years.

In order to ensure that the Commission remains informed about the status of the Genevac business pending divestiture, and about the efforts being made to accomplish the divestiture, the Consent Agreement requires Thermo to file periodic reports with the Commission until the divestiture is accomplished.

The purpose of this analysis is to facilitate public comment on the Consent Agreement, and it is not intended to constitute an official interpretation of the Decision and Order or the Hold Separate Order, or to modify their terms in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. E6–18917 Filed 11–8–06; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

[File No. 061–0139]

Watson Pharmaceuticals, Inc., and Andrx Corporation; Analysis of Agreement Containing Consent Orders to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before November 29, 2006.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to ''Watson, Inc. and Andrx Corp., File No. 061 0139,'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/ Office of the Secretary, Room 135–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments containing confidential material must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with Commission Rule 4.9(c). 16 CFR 4.9(c) (2005).[1] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments that do not contain any nonpublic information may instead be filed in electronic form as part of or as an attachment to e-mail messages directed to the following e-mail box: *consentagreement@ftc.gov.*

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov.* As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

FOR FURTHER INFORMATION CONTACT: Kari Wallace, Bureau of Competition, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–3085.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and Section 2.34 of the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for October 31, 2006), on the World Wide Web, at *http://www.ftc.gov/os/2006/10/index.htm.* A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before the date specified in the **DATES** section.

Analysis of Agreement Containing Consent Order to Aid Public Comment

The Federal Trade Commission (''Commission'') has accepted, subject to final approval, an Agreement Containing Consent Orders (''Consent Agreement'') from Watson Pharmaceuticals, Inc. (''Watson'') and Andrx Corporation (''Andrx''), which is designed to remedy the anticompetitive effects of the acquisition of Andrx by Watson. Under the terms of the proposed Consent Agreement, the companies would be required to: (1) Terminate Watson's marketing agreement with Interpharm Holdings, Inc. (''Interpharm'') and return all of the Watson rights and assets necessary to market generic hydrocodone bitartrate/ibuprofen tablets back to Interpharm; (2) assign and divest the Andrx rights and assets necessary to develop, manufacture, and market generic extended release glipizide (''glipizide ER'') tablets to Actavis Elizabeth LLC, a subsidiary of The Actavis Group hf. (''Actavis''); and (3) divest the Andrx rights and assets necessary to develop, manufacture, and market the eleven generic oral contraceptive products to Teva Pharmaceutical Industries, Inc. (''Teva'').

The proposed Consent Agreement has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the proposed Consent Agreement and the comments received, and will decide whether it should withdraw from the proposed Consent Agreement, modify it, or make final the Decision and Order (''Order''). Pursuant to an Agreement and Plan of Merger dated March 12, 2006, Watson proposes to acquire all of the outstanding shares of Andrx at a cost of $25.00 per share. The Commission's Complaint alleges that the proposed acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, by lessening competition in the U.S. markets for the manufacture and sale of the following generic pharmaceutical products: (1) Hydrocodone bitartrate/ibuprofen tablets; (2) glipizide ER tablets; and (3) eleven oral contraceptive products (the ''Products''). The proposed Consent Agreement will remedy the alleged violations by replacing the lost competition that would result from the acquisition in each of these markets.

The Products and Structure of the Markets

The proposed acquisition of Andrx by Watson would strengthen Watson's position in generic pharmaceuticals and provide Watson with a stronger pipeline of generic products. The companies overlap in a number of generic pharmaceutical markets, and if consummated, the transaction likely would lead to anticompetitive effects in thirteen of these markets, including eleven oral contraceptive markets.

The transaction would reduce the number of competing generic suppliers in the overlap markets. The number of generic suppliers has a direct and substantial effect on generic pricing as each additional generic supplier can have a competitive impact on the market. Because there are multiple generic equivalents for each of the products at issue here, the branded versions no longer significantly constrain the generics' pricing.

For four generic products, Watson and Andrx currently are two of a small number of suppliers offering the product. In each of these markets, there are a limited number of competitors. In nine additional oral contraceptive product markets, both Watson and Andrx have generic products either on the market or in development. Furthermore, there are few firms that are capable of, and interested in, entering these markets. As a result, the proposed acquisition would eliminate important future competition in these markets.

Hydrocodone bitartrate/ibuprofen is a combination of an opioid analgesic agent, hydrocodone bitartrate, and a nonsteroidal anti-inflammatory drug (''NSAID''), ibuprofen and is the generic version of Abbott Laboratories Inc.'s Vicoprofen. Generic hydrocodone bitartrate/ibuprofen tablets are used for the short-term management of acute pain and have been available in the United States since 2003. In 2005, sales of generic hydrocodone bitartrate/ibuprofen exceeded $62 million. Only three companies compete in the generic hydrocodone bitartrate/ibuprofen market: Watson, Andrx, and Teva. An additional company is in the process of obtaining FDA approval and expects to enter the market once the approval is granted, which is likely to occur in the next two years. Teva is the market leader with approximately 62 percent of the market. Andrx and Watson account for the rest of the market with about 27 percent and 12 percent market share, respectively. After Watson's acquisition of Andrx, Watson's market share would increase from 12 percent to approximately 39 percent, and Teva

would be the only remaining competitor to Watson.

Glipizide ER is the generic version of Pfizer's Glucotrol XL. Glipizide ER corrects the effects of type 2 diabetes by stimulating the release of insulin in the pancreas, thereby reducing blood sugar levels in the body. Generic glipizide ER was first introduced in the United States in November 2003. In 2005, sales of generic glipizide ER totaled approximately $174 million. Watson is the leading supplier in the U.S. market for generic glipizide ER tablets with over 45 percent of the market. Only two other firms, Andrx and Greenstone Ltd. (''Greenstone''), compete with Watson in this market. Andrx and Greenstone have market shares of about 35 percent and 20 percent, respectively. Post-acquisition, Watson's market share would increase to over 80 percent, and Greenstone would be the only other remaining U.S. supplier of generic glipizide ER.

Oral contraceptives are pills taken by mouth to prevent ovulation and pregnancy. They are the most common method of reversible birth control, used by up to 82 percent of women in the United States at some time during their reproductive years. Oral contraceptives contain various formulations of synthetic estrogen and progestin, which are chemical analogues of natural female hormones. Andrx and Teva have an agreement whereby Andrx develops and manufactures these oral contraceptives and Teva markets the products. Andrx also receives a royalty payment on Teva's sales of the products. In each of the eleven relevant oral contraceptive markets, Watson and Andrx/Teva are two of a limited number of suppliers or potential entrants.

Two of the oral contraceptive products at issue are currently marketed formulations of generic norgestimate/ethinyl estradiol bioequivalent to the branded products, Ortho-Cyclen and Ortho Tri-Cyclen, from Johnson & Johnson. Both products have varying ratios of norgestimate (a progestin) and ethinyl estradiol (an estrogen) that prevent ovulation and pregnancy. Generic formulations of Ortho-Cyclen and Ortho Tri-Cyclen are among the best selling generic oral contraceptives, representing sales of over $58 million and $261 million, respectively, in 2005.

Watson, Andrx/Teva, and Barr Pharmaceuticals, Inc. (''Barr'') are the only suppliers of generic Ortho-Cyclen and generic Ortho Tri-Cyclen in the United States. After the acquisition, the combined Watson/Andrx would account for 28 percent of the generic Ortho-Cyclen market. Watson is the leading supplier in the U.S. market for the manufacture and sale of generic Ortho Tri-Cyclen tablets. After the acquisition, Watson would account for 56 percent of the market.

Watson currently competes in seven additional oral contraceptive markets where Andrx/Teva is developing competitive products. These seven markets represent generic products that are equivalent to Ortho-cept, Triphasil 28, Alesse, Ortho-Novum 1/35, Ortho-Novum 7/7/7, Loestrin FE (1 mg/0.020 mg), and Loestrin FE (1.5 mg/0.030 mg). In each of these highly concentrated markets, Watson is one of only two or three suppliers. Andrx/Teva is one of a limited number of firms developing generic oral contraceptives that would compete in each of these markets, and is well-positioned to enter the markets in a timely manner.

Both Watson and Andrx/Teva are developing generic Mircette tablets and generic Ovcon-35 tablets. They are two of a limited number of suppliers capable of entering these future generic markets in a timely manner.

Entry

Entry into the markets for the manufacture and sale of the Products would not be timely, likely or sufficient in its magnitude, character, and scope to deter or counteract the anticompetitive effects of the acquisition. Developing and obtaining Food and Drug Administration (''FDA'') approval for the manufacture and sale of the Products takes at least two (2) years due to substantial regulatory, technological, and intellectual property barriers.

Effects

The proposed acquisition would cause significant anticompetitive harm to consumers in the U.S. markets for the manufacture and sale of generic hydrocodone bitartrate/ibuprofen tablets, generic glipizide ER tablets, generic Ortho-Cyclen tablets, and generic Ortho Tri-Cyclen tablets. In generic pharmaceutical markets, pricing is heavily influenced by the number of competitors that participate in a given market. Here, the evidence shows that the price of the generic pharmaceutical product at issue decreases with the entry of each additional competitor. The proposed transaction would eliminate one of at most four competitors in these markets. Evidence gathered during our investigation indicates that anticompetitive effects—whether unilateral or coordinated—are likely to result from a decrease in the number of independent competitors in the markets at issue.

In the markets for generic hydrocodone bitartrate/ibuprofen and generic glipizide ER, the acquisition of Andrx by Watson would leave only two current competitors: The combined firm and one other company. The evidence indicates that the presence of three independent competitors in these markets allows customers to negotiate lower prices, and that a reduction in the number of competitors would allow the merged entity and other market participants to raise prices. Likewise, in the generic oral contraceptive markets, the reduction in the number of competitors from three to two would likely lead to higher prices.

The competitive concerns can be characterized as both unilateral and coordinated in nature. The homogenous nature of the products involved, the minimal incentives to deviate, and the relatively predictable prospects of gaining new business all indicate that the firms in the market will find it profitable to coordinate their pricing. The impact that a reduction in the number of firms would have on pricing can also be explained in terms of unilateral effects, as the likelihood that the merging parties would be the first and second choices in a significant number of bidding situations is enhanced where the number of firms participating in the market decreases substantially.

The acquisition also would cause significant anticompetitive harm to consumers in the U.S. markets for the manufacture and sale of generic Ortho-Cept tablets, generic Triphasil 28 tablets, generic Alesse tablets, generic OrthoNovum 1/35 tablets, generic OrthoNovum 7/7/7 tablets, generic Loestrin FE (1 mg/0.020 mg) tablets, and generic Loestrin FE (1.5 mg/0.030 mg) tablets, generic Mircette tablets and generic Ovcon-35 tablets by eliminating future competition between Watson and Andrx. In each of these markets, there are no more than three current suppliers, and Andrx is poised to enter in the near future. Andrx's independent entry into these markets likely would result in lower prices. The proposed transaction would eliminate that independent entry and, hence, would leave prices at their current, higher levels.

The Consent Agreement

The proposed Consent Agreement effectively remedies the proposed acquisition's anticompetitive effects in the relevant product markets. Pursuant to the Consent Agreement, Watson and Andrx are required to divest certain rights and assets related to the relevant products to a Commission-approved acquirer no later than ten (10) days after the acquisition. Specifically, the

proposed Consent Agreement requires that: (1) Watson terminate its marketing agreement with Interpharm, thereby returning all of its rights to generic hydrocodone bitartrate/ibuprofen back to Interpharm; (2) Andrx divest its rights and assets to generic glipizide ER to Actavis, including assigning its supply agreement with Pfizer, Inc.; and (3) Andrx divest its rights and assets related to the eleven generic oral contraceptives to Teva, and supply Teva with the products for five years in order for Teva (or its designated contract manufacturer) to obtain all necessary FDA approvals to manufacture and sell the products independently.

The acquirers of the divested assets must receive the prior approval of the Commission. The Commission's goal in evaluating possible purchasers of divested assets is to maintain the competitive environment that existed prior to the acquisition. A proposed acquirer of divested assets must not itself present competitive problems.

Interpharm specializes in the development, manufacture, and marketing of generic pharmaceutical and over-the-counter products. Interpharm currently manufactures and markets 23 generic pharmaceutical products, and has ten ANDAs under review by the FDA. As a contract manufacturer for Watson's product, Interpharm is an acceptable acquirer of generic hydrocodone bitartrate/ibuprofen because it already has the experience, know-how, and manufacturing infrastructure to produce and sell generic hydrocodone bitartrate/ibuprofen in the United States. Interpharm understands the scientific and technical details of generic hydrocodone bitartrate/ibuprofen because it formulated, developed, and tested the product, and registered the product with the FDA. Moreover, Interpharm will not present competitive problems in any of the markets in which it will acquire a divested asset because it currently does not compete in those markets. With its resources, capabilities, good reputation, and experience marketing generic products, Interpharm is well-positioned to replicate the competition that would be lost with the proposed acquisition.

Actavis is a leading developer, manufacturer, marketer, and distributer of generic pharmaceutical products, and is an acceptable acquirer of generic glipizide ER. Actavis has an extensive distribution network in the United States, with three major manufacturing facilities and approximately 162 pharmaceutical products in the U.S. market. Actavis also has experience obtaining FDA approvals for generic pharmaceutical products. While Actavis currently does not compete in the market for the divested assets, it has the resources, capabilities, good reputation, and experience necessary to restore fully the competition that would be lost if the proposed Watson/Andrx transaction were to proceed unremedied.

Teva is a global pharmaceutical company specializing in the development, production, and marketing of generic and branded pharmaceuticals. Founded in 1901 and headquartered in Petach Tikva, Israel, Teva employs approximately 25,000 people worldwide and has production facilities in Israel, North America, Europe, and Mexico. Teva and its affiliates are the world's largest generic pharmaceutical company with over 300 generic products, representing $6.6 billion in estimated 2006 revenue. Because of its current agreement with Andrx, and its well-known reputation and experience in the pharmaceutical industry, Teva is ideally positioned to be a viable, independent competitor in the eleven generic oral contraceptive markets. The acquisition of the eleven generic oral contraceptive products by Teva would effectively restore the competition that would be lost with the proposed merger.

If the Commission determines that either Interpharm or Actavis is not an acceptable acquirer of the assets to be divested, or that the manner of the divestitures to Interpharm, Actavis, or Teva is not acceptable, the parties must unwind the sale and divest the Products within six (6) months of the date the Order becomes final to another Commission-approved acquirer. If the parties fail to divest within six (6) months, the Commission may appoint a trustee to divest the Product assets.

The proposed remedy contains several provisions to ensure that the divestitures are successful. The Order requires Watson and Andrx to provide transitional services to enable the Commission-approved acquirers to obtain all of the necessary approvals from the FDA. These transitional services include technology transfer assistance to manufacture the Products in substantially the same manner and quality employed or achieved by Watson and Andrx.

The Commission has appointed Francis J. Civille as the Interim Monitor to oversee the asset transfer and to ensure Watson and Andrx's compliance with all of the provisions of the proposed Consent Agreement. Mr. Civille has over 27 years of experience in the pharmaceutical industry. He is a highly-qualified expert in areas such as pharmaceutical research and development, regulatory approval, manufacturing and supply, and marketing. He has provided consulting services in healthcare business development to major pharmaceutical companies, biotechnology companies, universities, and government agencies. In order to ensure that the Commission remains informed about the status of the proposed divestitures and the transfers of assets, the proposed Consent Agreement requires Watson and Andrx to file reports with the Commission periodically until the divestitures and transfers are accomplished.

The purpose of this analysis is to facilitate public comment on the proposed Consent Agreement, and it is not intended to constitute an official interpretation of the proposed Order or to modify its terms in any way.

By direction of the Commission, with Commissioner Rosch recused.

Donald S. Clark,

Secretary.

[FR Doc. E6–18916 Filed 11–8–06; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

[File No. 052 3130]

Zango, Inc., Formerly Kown as 180solutions, Inc.; Analysis of Proposed Consent Order to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before December 5, 2006.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to ''Zango, Inc., File No. 052 3130,'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room 135–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments containing confidential material must be

filed in paper form, must be clearly labeled ''Confidential,'' and must comply with Commission Rule 4.9(c). 16 CFR 4.9(c) (2005).[1] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments that do not contain any nonpublic information may instead be filed in electronic form as part of or as an attachment to e-mail messages directed to the following e-mail box: *consentagreement@ftc.gov.*

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov.* As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

FOR FURTHER INFORMATION CONTACT: David K. Koehler (202–326–3627) or Carl H. Settlemyer (202–326–2019), Bureau of Consumer Protection, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and Section 2.34 of the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for November 3, 2006), on the World Wide Web, at *http://www.ftc.gov/os/2006/11/index.htm.* A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before the date specified in the **DATES** section.

Analysis of Agreement Containing Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from proposed respondents Zango, Inc., formerly known as 180solutions, Inc. and Keith Smith and Daniel Todd, individually and as officers of Zango, Inc. (together ''Respondents''). The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

General Allegations

Respondents develop, market, and distribute via Internet downloads advertising software programs (''adware'')—including programs with the names n-CASE, 180search Assistant, Seekmo, and Zango—that monitor consumers' Internet use in order to display targeted pop-up ads. This matter concerns allegations that Respondents: (1) Via a network of numerous affiliates and sub-affiliates installed their adware on consumers' computers without adequate notice or consent; and (2) made their adware difficult for consumers to identify, locate, and remove.

The Commission's complaint alleges that from at least 2002 through 2005, the primary way Respondents distributed their adware was through a network of affiliates. These affiliates often recruited large numbers of third-party sub-affiliates who purported to offer, generally for free, some content to the public, such as Internet browser upgrades, utilities, games, screensavers, peer-to-peer file sharing software and/or entertainment content (hereinafter ''lureware'') and bundled the adware with that content.

The Commission's complaint further alleges that consumers often have been unaware that Respondents' adware would be installed on their computers because it was not adequately disclosed to them that downloading the lureware would result in installation of Respondents' adware. In some instances, no reference to the adware was made on websites offering the lureware or in the install windows. In others, information regarding the adware was available only by clicking on inconspicuous hyperlinks contained in the install windows or in lengthy terms and conditions regarding the lureware. Often the existence and information about the effects of Respondents' adware could only be ascertained, if at all, by clicking through multiple inconspicuous hyperlinks. Other affiliates and sub-affiliates used security exploits and drive-by downloads to bypass consumer notice and consent completely. The complaint alleges that Respondents knew or should have known of their affiliates' and sub-affiliates' widespread failure to provide adequate notice of their adware and obtain consumer consent to its installation.

The Commission's complaint further alleges that Respondents, until at least mid-2005, made identifying, locating, and removing their adware extremely difficult for consumers. Among other things, Respondents: installed code on consumers' computers that would enable their adware to be reinstalled silently after consumers attempted to uninstall or remove it; failed to identify adequately the name or source of the adware in pop-up ads so as to enable consumers to locate the adware on their computers; named adware files or processes with names resembling core systems software or applications and placing files in a variety of locations; listed the adware in the Windows Add/Remove utility under names intended and/or likely to confuse consumers; required consumers to have a live Internet connection and download additional software from Respondents to uninstall the adware; represented to consumers that the adware did not show pop-up ads and/or exaggerated the consequences of uninstalling the adware; provided uninstall tools that failed to uninstall the adware in whole or part; and/or reinstalled the adware files on consumers' computers with randomly generated names to avoid further detection and removal.

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

Deception Allegation

The Commission's complaint alleges that by offering content over the Internet such as browser upgrades, utilities, games, screensavers, peer-to-peer file sharing software and/or entertainment content, without disclosing adequately that this content was bundled with Respondents' adware, Respondents committed a deceptive practice. The bundling of Respondents' adware, which monitors their Internet use and causes them to receive pop-up advertisements, would be material to consumers in their decision whether to download the other software programs and/or content.

Unfairness Allegations

The Commission's complaint also alleges that it was an unfair practice for Respondents to install on consumers' computers, without their knowledge or authorization, adware that could not be reasonably identified, located, or removed by consumers. In addition, the complaint alleges that it was an unfair practice, in and of itself, for Respondents not to provide consumers with a reasonable means to identify, locate, and remove Respondents' adware from their computers. The complaint further alleges that these practices have caused or are likely to cause substantial consumer injury by requiring consumers to spend substantial time and/or money to locate and remove this adware from their computers. The injury to consumers was neither reasonably avoided by the consumers themselves, nor outweighed by countervailing benefits to consumers or competition.

The Proposed Consent Order

The proposed consent order contains provisions designed to prevent Respondents from engaging in similar acts and practices in the future and to halt continuing harm caused by Respondents' prior unlawful practices. Part I of the proposed order prohibits Respondents from contacting any consumer's computer, to display ads or otherwise, if their adware was installed on that computer before January 1, 2006.

Parts II and III prohibit Respondents from, or assisting others in, installing software onto any computer by exploiting security vulnerabilities or failing to give adequate notice to consumers, or installing any software program or application without express consent. ''Express consent'' is defined in the proposed order to require clear and prominent disclosure of material terms prior to and separate from any end user license agreement, and consumer activation of the download or installation via clicking a button or a substantially similar action.

Part IV requires Respondents to establish, implement, and maintain a clearly disclosed, user-friendly mechanism through which consumers can report and Respondents can timely address complaints regarding Respondents' practices.

Part V requires Respondents to establish, implement, and maintain a comprehensive program that is reasonably designed to require affiliates to obtain express consent before installing Respondents' software onto consumers' computers. Part V also contains sub-parts mandating certain measures Respondents must take to monitor their distribution network.

Part VI requires Respondents to identify advertisements served via Respondents' adware in order for consumers to easily locate the source of the advertisement, easily access Respondents' complaint mechanism, and access directions on how to uninstall such adware.

Part VII requires Respondents to provide reasonable and effective means for consumers to uninstall Respondents' adware.

Part IX requires Respondents to pay $3 million to the Commission over the course of a year. In the discretion of the Commission, these funds may be used to provide such relief as it determines to be reasonably related to Respondents' practices alleged in the complaint, and to pay any attendant administrative costs. Such relief may include the rescission of contracts, payment of damages, and/or public notification respecting such unfair or deceptive practices. If the Commission determines, in its sole discretion, that such relief is wholly or partially impractical, any funds not used shall be paid to the U.S. Treasury.

Part X requires Respondents to cooperate with the Commission in this action or any subsequent investigations related to or associated with the transactions or the occurrences that are the subject of the Complaint.

The remaining order provisions govern record retention (Part VIII), order distribution (Part XI), ongoing reporting requirements (Parts XII and XIII), and filing a compliance report (Part XIV). Part XV provides that the order will terminate after twenty (20) years under certain circumstances.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. E6–18912 Filed 11–8–06; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

No FEAR Act Notice

AGENCY: Federal Trade Commission (FTC).

ACTION: Notice.

SUMMARY: The Federal Trade Commission (FTC) is providing notice to its employees, former employees, and applicants for Federal employment about the rights and remedies available to them under the Federal antidiscrimination, whistleblower protection, and retaliation laws. This notice fulfills the FTC's initial notification obligation under the Notification and Federal Employees Antidiscrimination and Retaliation Act (No FEAR Act), as implemented by Office of Personnel Management (OPM) regulations at 5 CFR part 724.

FOR FURTHER INFORMATION CONTACT: Barbara Wiggs, Director, Office of Equal Employment Opportunity (EEO), by mail at Federal Trade Commission, Mail Drop H–413, 600 Pennsylvania Avenue, NW., Washington, DC 20580, or by telephone at (202) 326–2197. Additional information can be found on the FTC's Web site at *http://www.ftc.gov.*

SUPPLEMENTARY INFORMATION: On May 15, 2002, Congress enacted the ''Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002,'' which is now known as the No FEAR Act. *See* Pub. L. 107–174, codified at 5 U.S.C. 2301 note. As stated in the full title of the Act, the Act is intended to ''require that Federal agencies be accountable for violations of antidiscrimination and whistleblower protection laws.'' In support of this purpose, Congress found that ''agencies cannot be run effectively if those agencies practice or tolerate discrimination.'' Pub. L. 107–174, section 101(1).

The Act also requires this agency to provide this notice to its Federal employees, former Federal employees and applicants for Federal employment to inform you of the rights and protections available to you under Federal antidiscrimination, whistleblower protection, and retaliation laws.

Antidiscrimination Laws

A Federal agency cannot discriminate against an employee or applicant with

respect to the terms, conditions or privileges of employment on the basis of race, color, religion, sex, national origin, age, disability, marital status or political affiliation. Discrimination on these bases is prohibited by one or more of the following statutes: 5 U.S.C. 2302(b)(1), 29 U.S.C. 206(d), 29 U.S.C. 631, 29 U.S.C. 633a, 29 U.S.C. 791 and 42 U.S.C. 2000e–16.

If you believe that you have been the victim of unlawful discrimination on the basis of race, color, religion, sex, national origin or disability, you must contact an Equal Employment Opportunity (EEO) counselor within 45 calendar days of the alleged discriminatory action, or, in the case of a personnel action, within 45 calendar days of the effective date of the action, before you can file a formal complaint of discrimination with your agency. *See, e.g.*, 29 CFR part 1614. If you believe that you have been the victim of unlawful discrimination on the basis of age, you must either contact an EEO counselor as noted above or give notice of intent to sue to the Equal Employment Opportunity Commission (EEOC) within 180 calendar days of the alleged discriminatory action. If you are alleging discrimination based on marital status or political affiliation, you may file a written complaint with the U.S. Office of Special Counsel (OSC) (see contact information below). In the alternative (or in some cases, in addition), you may pursue a discrimination complaint by filing a grievance through your agency's administrative or negotiated grievance procedures, if such procedures apply and are available.

Whistleblower Protection Laws

A Federal employee with authority to take, direct others to take, recommend or approve any personnel action must not use that authority to take or fail to take, or threaten to take or fail to take, a personnel action against an employee or applicant because of disclosure of information by that individual that is reasonably believed to evidence violations of law, rule or regulation; gross mismanagement; gross waste of funds; an abuse of authority; or a substantial and specific danger to public health or safety, unless disclosure of such information is specifically prohibited by law and such information is specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs.

Retaliation against an employee or applicant for making a protected disclosure is prohibited by 5 U.S.C. 2302(b)(8). If you believe that you have been the victim of whistleblower retaliation, you may file a written complaint (Form OSC–11) with the U.S. Office of Special Counsel at 1730 M Street, NW., Suite 218, Washington, DC 20036–4505 or online through the OSC Web site at *http://www.osc.gov.*

Retaliation for Engaging in Protected Activity

A Federal agency cannot retaliate against an employee or applicant because that individual exercises his or her rights under any of the Federal antidiscrimination or whistleblower protection laws listed above. If you believe that you are the victim of retaliation for engaging in protected activity, you must follow, as appropriate, the procedures described in the Antidiscrimination Laws and Whistleblower Protection Laws sections or, if applicable, the administrative or negotiated grievance procedures in order to pursue any legal remedy.

Disciplinary Actions

Under the existing laws, each agency retains the right, where appropriate, to discipline a Federal employee for conduct that is inconsistent with Federal antidiscrimination and whistleblower protection laws up to and including removal. If OSC has initiated an investigation under 5 U.S.C. 1214, however, according to 5 U.S.C. 1214(f), agencies must seek approval from the Special Counsel to discipline employees for, among other activities, engaging in prohibited retaliation. Nothing in the No FEAR Act alters existing laws or permits an agency to take unfounded disciplinary action against a Federal employee or to violate the procedural rights of a Federal employee who has been accused of discrimination.

Additional Information

For further information regarding the No FEAR Act regulations, refer to 5 CFR part 724, as well as the appropriate offices within the FTC (*e.g.*, Office of EEO, Human Resources Management Office, or Office of the General Counsel). Additional information regarding Federal antidiscrimination, whistleblower protection and retaliation laws can be found on the EEOC Web site at *http://www.eeoc.gov* and on the OSC Web site at *http://www.osc.gov.*

Existing Rights Unchanged

Pursuant to section 205 of the No FEAR Act, neither the Act nor this notice creates, expands or reduces any rights otherwise available to any employee, former employee or applicant under the laws of the United States, including the provisions of law specified in 5 U.S.C. 2302(d).

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. E6–19066 Filed 11–8–06; 8:45 am]

BILLING CODE 6750–01–P

GENERAL SERVICES ADMINISTRATION

[BCA 2006–N01]

Board of Contract Appeals; The Establishment of The Civilian Board of Contract Appeals and the Termination of The Boards of Contract Appeals of the General Services Administration and the Departments of Agriculture, Energy, Housing and Urban Development, Interior, Labor, Transportation, and Veterans Affairs

AGENCY: General Services Administration (GSA), Board of Contract Appeals.

ACTION: Notice.

SUMMARY: In section 847 of the National Defense Authorization Act for Fiscal Year 2006, Pub. L. No. 109–163, Congress established the Civilian Board of Contract Appeals (CBCA) within GSA to hear and decide contract disputes involving executive agencies (other than the Department of Defense, the Department of the Army, the Department of the Navy, the Department of the Air Force, the National Aeronautics and Space Administration, the United States Postal Service, the Postal Rate Commission, and the Tennessee Valley Authority) under the provisions of the Contract Disputes Act of 1978 and regulations and rules issued thereunder. Boards of contract appeals currently exist at the General Services Administration and the departments of Agriculture, Energy, Housing and Urban Development, Interior, Labor, Transportation, and Veterans Affairs. Effective January 6, 2007, all of those boards in existence on that date will terminate, and their cases, Board judges, and other personnel will transfer to the new Civilian Board.

SUPPLEMENTARY INFORMATION: The legislation establishing the Civilian Board provides that the CBCA will have jurisdiction to decide contract appeals from any executive agency (other than the Department of Defense, the Department of the Army, the Department of the Navy, the Department of the Air Force, the National Aeronautics and Space Administration, the United States Postal Service, the Postal Rate Commission, and the

Tennessee Valley Authority). Cases currently before a board of contract appeals affected by the legislation will be transferred to the Civilian Board on January 6, 2007, and reassigned CBCA docket numbers. Agency acquisition personnel should review agency regulations, contract provisions, and language in contracting officer decision letters that may refer contractors to one of the affected boards of contract appeals for dispute resolution, including alternative dispute resolution, and modify those provisions accordingly.

The Civilian Board will also conduct other proceedings as required or permitted under statutes or regulations. Such other proceedings include the resolution of disputes involving grants and contracts under the Indian Self-Determination and Education Assistance Act, 25 U.S.C. 450 *et seq.* Because jurisdiction over these disputes is vested by statute, 25 U.S.C. 450m–1(d), in the Department of the Interior Board of Contract Appeals, section 847(e) of the National Defense Authorization Act for Fiscal Year 2006 reassigns that jurisdiction to the Civilian Board of Contract Appeals.

Such other proceedings also include the resolution of disputes between insurance companies and the Department of Agriculture's Risk Management Agency (RMA) involving actions of the Federal Crop Insurance Corporation (FCIC) pursuant to the Federal Crop Insurance Act, 7 U.S.C. 1501 *et seq.* These disputes were formerly resolved by the Department of Agriculture Board of Contract Appeals, and it is anticipated that this authority will be transferred to the Civilian Board of Contract Appeals under an agreement with the Secretary of Agriculture, as permitted under section 42(c)(2) of the Office of Federal Procurement Policy Act, 41 U.S.C. 438(c)(2).

In addition, other proceedings that the Civilian Board will conduct include several types of cases heard by the General Services Board of Contract Appeals by delegation from the Administrator of General Services. It is anticipated that, effective January 6, 2007, the Administrator of General Services will redelegate those cases to the Civilian Board of Contract Appeals. Those cases include the following:

— Pursuant to 31 U.S.C. 3726(i)(1), requests by carriers or freight forwarders to review actions taken by the Audit Division of the General Services Administration's Office of Transportation and Property Management.

— Pursuant to 31 U.S.C. 3702, claims by Federal civilian employees against the United States for reimbursement of (1) expenses incurred while on official temporary duty travel and (2) expenses incurred in connection with relocation to a new duty station.

— Pursuant to section 204 of the General Accounting Office Act of 1996, Pub. L. 104–316, requests of agency disbursing or certifying officials, or agency heads, on questions involving payment of travel or relocation expenses that were formerly considered by the Comptroller General under 31 U.S.C. 3529.

The offices of the Civilian Board of Contact Appeals will be located at 1800 M Street, NW, 6th Floor, Washington, DC 20036. The mailing address of the Civilian Board will be 1800 F Street, NW, Washington, DC 20405. The phone number of the Office of the Clerk of the Board will be (202) 606–8800; the facsimile number will be (202) 606–0019. The internet address of the Civilian Board's Web site will be *www.cbca.gsa.gov*.

FOR FURTHER INFORMATION CONTACT Margaret S. Pfunder, Chief Counsel, GSA Board of Contract Appeals, telephone (202) 501–0272, internet address *margaret.pfunder@gsa.gov*.

Dated: November 2, 2006.

Stephen M. Daniels,

Chairman, Board of Contract Appeals, General Services Administration.

[FR Doc. E6–18982 Filed 11–8–06; 8:45 am]

BILLING CODE 6820–AL–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: OS–0990–]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: New.

Title of Information Collection: Evaluation of the National Abstinence Media Campaign: Focus Group.

Form/OMB No.: 0990.

Use: The National Abstinence Media Campaign (NAMC) is a media campaign to encourage and help parents to communicate with their children about the need to avoid premarital sexual intercourse. The purpose of this information collection is to conduct focus groups and qualitative analyses of the NAMC.

Frequency: Reporting on Occasion.

Affected Public: Individuals or Households.

Annual Number of Respondents: 128.

Total Annual Responses: 128.

Average Burden per Response: 2 hrs.

Total Annual Hours: 256.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov*, or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be received with 60-days, December 29, 2006 and directed to the OS Paperwork Clearance Officer at the following address: Department of Health and Human Services, Office of the Secretary, Assistant Secretary for Research and Technology, Office of Resource Management, Attention: Sherrette Funn-Coleman (0990–NEW), Room 537–H, 200 Independence Avenue, SW., Washington DC 20201.

Dated: October 30, 2006.

Mary Oliver-Anderson,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. E6–18963 Filed 11–8–06; 8:45 am]

BILLING CODE 4151–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006N–0433]

Agency Information Collection Activities; Proposed Collection; Comment Request; Guidance for Industry on How to Use E–Mail to Submit a Notice of Final Disposition of Animals Not Intended for Immediate Slaughter

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on extending the Office of Management and Budget (OMB) approval on the existing reporting requirements for the information collection activity entitled ''How to Use E–Mail to Submit a Notice of Final Disposition of Animals Not Intended for Immediate Slaughter.''

DATES: Submit written or electronic comments on the collection of information by January 8, 2007.

ADDRESSES: Submit electronic comments on the collection of information to: *http://www.fda.gov/dockets/ecomments*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Jr., Office of the Chief Information Officer (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1472.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Guidance for Industry on How to Use E–Mail to Submit a Notice of Final Disposition of Animals Not Intended for Immediate Slaughter—21 CFR 514.117(b)(2) and 21 CFR 511.1(b)(5); (OMB Control Number 0910–0453)—Extension

The Center for Veterinary Medicine (CVM) monitors the final disposition of investigational animals where such animals do not enter the human food chain immediately at the completion of the investigational study. CVM's monitoring of the final disposition of investigational food animals is intended to ensure that unsafe residues of new animal drugs do not get into the food supply. CVM issues a slaughter authorization letter to investigational new animal drug (INAD) sponsors that sets the terms under which investigational animals may be slaughtered (21 CFR 511.1(b)(5)). Also in this letter, CVM requests that sponsors submit a notice of final disposition of investigational animals (NFDA) not intended for immediate slaughter. NFDAs have historically been submitted to CVM on paper. CVM's guidance ''How to Use E–Mail to Submit a Notice of Final Disposition of Animals Not Intended for Immediate Slaughter'' provides sponsors with the option to submit an NFDA as an e-mail attachment to CVM via the Internet.

The likely respondents are INAD sponsors.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section/ Form No.	No. of Respondents	Annual Frequency per Response	Total Annual Responses[2]	Hours per Response	Total Hours
511.1(b)(5)/Form FDA 3487	25	1.44	36	.08	2.88

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Electronic submissions received between July 1, 2005, and June 30, 2006.

The number of respondents in table 1 are the number of sponsors registered to make electronic submissions (25). The number of total annual responses is based on a review of the actual number of such submissions made between July 1, 2005, and June 30, 2006 (36 x hours per response (.08) = 2.88 total hours).

Dated: November 6, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–19044 Filed 11–8–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006N–0183]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Guidance on Reagents for Detection of Specific Novel Influenza A Viruses

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by December 11, 2006.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Jr., Office of the Chief Information Officer (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1472.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Guidance on Reagents for Detection of Specific Novel Influenza A Viruses—21 CFR 866.3332 (OMB Control Number 0910–0584)—Extension

In accordance with section 513 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c), FDA evaluated an application for an in vitro diagnostic device for detection of influenza subtype H5 (Asian lineage), commonly known as avian flu. FDA concluded that this device is properly classified into class II in accordance with section 513(a)(1)(B) of the act, because it is a device for which the general controls by themselves are insufficient to provide reasonable assurance of the safety and effectiveness of the device, but there is sufficient information to establish special controls to provide such assurance. The statute permits FDA to establish as special controls many different things, including postmarket surveillance, development and dissemination of guidance, recommendations, and ''other appropriate actions as the Secretary deems necessary'' (section 513(a)(1)(B) of the act). This information collection is a measure that FDA determined to be necessary to provide reasonable assurance of safety and effectiveness of reagents for detection of specific novel influenza A viruses.

FDA issued an order classifying the H5 (Asian lineage) diagnostic device into class II on February 3, 2006, establishing the special controls necessary to provide reasonable assurance of the safety and effectiveness of that device and similar future devices. The new classification will be codified in 21 CFR 866.3332, a regulation that will describe the new classification for reagents for detection of specific novel influenza A viruses and set forth the special controls that help to provide a reasonable assurance of the safety and effectiveness of devices classified under that regulation. The regulation will refer to the special control guidance document, ''Class II Special Controls Guidance Document: Reagents for Detection of Specific Novel Influenza A Viruses,'' which provides recommendations for measures to help provide a reasonable assurance of safety and effectiveness for these reagents.

The guidance document recommends that sponsors obtain and analyze postmarket data to ensure the continued reliability of their device in detecting the specific novel influenza A virus that it is intended to detect, particularly given the propensity for influenza viruses to mutate and the potential for changes in disease prevalence over time. As updated sequences for novel influenza A viruses become available (from the World Health Organization, National Institutes for Health, and other public health entities), sponsors of reagents for detection of specific novel influenza A viruses will collect this information, compare them with the primer/probe sequences in their devices and incorporate the result of these analyses into their quality management system, as required by 21 CFR 820.100(a)(1). These analyses will be evaluated against the device design validation and risk analysis required by 21 CFR 820.30(g), to determine if any design changes may be necessary.

FDA considered comments expressed by the Centers for Disease Control and Prevention before the issuance of this guidance.

FDA also published a notice in the **Federal Register** of May 22, 2006 (71 FR 29342) soliciting comments on this information collection as required under 5 CFR 1320.8(d). In response, FDA received one comment concerning this information collection. The comment pointed out that the estimated hours per response should be closer to 15, rather than FDA's estimate of 10 hours, in order to comply with quality system regulation/document control for the new information collection. FDA agrees with this comment and as a result, the annual reporting burden hour estimate has been recalculated accordingly, i.e., the total annual reporting burden hour estimate is now 300 hours instead of 200.

Respondents to this collection of information are manufacturers of in vitro diagnostic devices.

FDA estimates the burden for this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN

No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours	Total Operating and Maintenance Costs
10	2	20	15	300	$3,500

The FDA estimates that 10 respondents will be affected annually. Each respondent will collect this information twice per year, estimated to take 15 hours. This results in a total data collection burden of 300 hours. (15 x 20 = 300). FDA estimates that cost of developing standard operating procedures for each data collection is $350 (10 hours of work at $35/hour). This results in a total cost to industry of $3,500 ($350 x 10 respondents).

Dated: November 6, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–19045 Filed 11–8–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[CGD08–06–039]

Lower Mississippi River Waterway Safety Advisory Committee

AGENCY: Coast Guard, DHS.

ACTION: Notice of meeting.

SUMMARY: The Lower Mississippi River Waterway Safety Advisory Committee (LMRWSAC) will meet to discuss various issues relating to navigational safety on the Lower Mississippi River and related waterways. The meeting will be open to the public.

DATES: The next meeting of LMRWSAC will be held on Thursday, December 14, 2006, from 9 a.m. to 12 noon. This meeting may adjourn early if all business is finished. Requests to make oral presentations or submit written materials for distribution at the meeting should reach the Coast Guard on or before December 1, 2006. Requests to have a copy of your material distributed to each member of the committee in advance of the meeting should reach the Coast Guard on or before December 1, 2006.

ADDRESSES: The meeting will be held in the Hale Boggs Building, 500 Poydras St., New Orleans, LA 70130. This notice is available on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade (LTJG) Thao Nguyen, Assistant Committee Administrator, e-mail *thao.v.nguyen@uscg.mil.* Written materials and requests to make presentations should be mailed to Commanding Officer, USCG Sector New Orleans, Attn: Waterways Management, 1615 Poydras St, New Orleans, LA 70112.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, Public Law 92–463; 86 Stat. 770 (5 U.S.C. App. 2).

Agenda of Meeting

Lower Mississippi River Waterway Safety Advisory Committee (LMRWSAC)

The agenda includes the following:

(1) Introduction of committee members.

(2) Opening Remarks.

(3) Approval of the April 25, 2006 minutes.

(4) Old Business:

(a) Captain of the Port status report.

(b) VTS update report.

(c) Subcommittee/Working Group update reports.

(5) New Business.

(a) New Orleans PORTS System.

(6) Adjournment.

Procedural

The meeting is open to the public. Please note that the meeting may close early if all business is finished. At the Chair's discretion, members of the public may make oral presentations during the meeting. If you would like to make an oral presentation at the meeting, please notify the Committee Administrator no later than December 1, 2006. Written material for distribution at the meeting should reach the Coast Guard no later than December 1, 2006. If you would like a copy of your material distributed to each member of the committee in advance of the meeting, please submit 25 copies to the Committee Administrator no later than December 1, 2006.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities, or to request special assistance at the meetings, contact the Committee Administrator at the location indicated under Addresses as soon as possible.

Dated: October 23, 2006.

J.R. Whitehead,

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

[FR Doc. E6–18900 Filed 11–8–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5044–N–20]

Notice of Proposed Information Collection for Public Comment; Civil Rights Front End and Limited Monitoring Review

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments due date:* January 8, 2007.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name/or OMB Control number and should be sent to: Aneita Waites, Reports Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4116, Washington, DC 20410–5000.

FOR FURTHER INFORMATION CONTACT: Aneita Waites, (202) 708–0713, extension 4114, for copies of the proposed forms and other available documents. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). This notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Civil Rights Front End and Limited Monitoring Review.

OMB Control Number: 2577–new.

Description of the need for the information and proposed use:

The information collected during the onsite comprehensive reviews of Public Housing Agencies (PHAs) will be used by HUD to evaluate the PHAs' compliance with civil rights and fair housing laws and regulations (Regulatory Authorities: 24 CFR 1.6(b); 24 CFR 8.55; 24 CFR 125).

Agency form number, if applicable: None.

Members of affected public: Public Housing Agencies

Estimation of the total number of hours needed to prepare the information collection including number of respondents: The estimated total number of burden hours needed to prepare the information collection is 40; the number of respondents is 20; the frequency of response is annually; the estimated time to gather and prepared the necessary document is 2 hours per submission.

Status of the proposed information collection: New Collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: November 3, 2006.

Bessy Kong,

Director, Office of Policy, Program and Legislative Initiatives.

[FR Doc. E6–18888 Filed 11–8–06; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5045–N–45]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

DATES: *Effective Date:* November 9, 2006.

FOR FURTHER INFORMATION CONTACT: Kathy Ezzell, Department of Housing and Urban Development, Room 7262, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: November 1, 2006.

Mark R. Johnston,

Acting Deputy Assistant Secretary for Special Needs.

[FR Doc. 06–9085 Filed 11–8–06; 8:45am]

BILLING CODE 4210–67–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered Species Recovery Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and receipt of application.

SUMMARY: We announce the receipt of an application to conduct certain activities pertaining to enhancement of survival of endangered species.

DATES: Written comments on this permit application must be received by December 11, 2006.

ADDRESSES: Written data or comments should be submitted to the Assistant Regional Director, Fisheries-Ecological Services, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225–0486; facsimile 303–236–0027. Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act [5 U.S.C. 552A] and Freedom of Information Act [5 U.S.C. 552], by any party who submits a request for a copy of such documents within 20 days of the date of publication of this notice to Kris Olsen, by mail or by telephone at 303–236–4256. All comments received from individuals become part of the official public record.

SUPPLEMENTARY INFORMATION: The following applicant has requested an issuance of enhancement of survival permit to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Applicant: Craig Paukert, Kansas State University, Manhattan, Kansas, TE–136943. The applicant requests a permit to take Topeka shiner (*Notropis topeka*) in conjunction with recovery activities throughout the species' range for the purpose of enhancing their survival and recovery.

Dated: October 6, 2006.

James J. Slack,

Deputy Regional Director, Denver, Colorado.

[FR Doc. E6–18967 Filed 11–8–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Proposed Programmatic Safe Harbor Agreement for the Oregon Silverspot Butterfly Along the Central Coast, Lane County, OR

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; receipt of application.

SUMMARY: The Nature Conservancy (TNC) has applied to the U.S. Fish and Wildlife Service (Service) for an enhancement of survival permit pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (Act). The permit application includes a proposed Safe Harbor Agreement (Agreement) between TNC and the Service. The proposed term of the permit and Agreement is 35 years. The requested permit would authorize TNC and private landowners to carry out habitat management measures that would benefit the federally-listed as threatened Oregon silverspot butterfly (*Speyeria zerene hippolyta*). The covered area or geographic scope of this Agreement includes all non-Federal properties on the central coast of Oregon located in whole or in part within the approximately 7-mile corridor along the central coast between Bray Point and Big Creek in Lane County, Oregon. We request comments from the public on the permit application, proposed Agreement, and related documents, all of which are available for review.

DATES: Comments must be received from interested parties on or before December 11, 2006. The final permit decision will be made no sooner than December 11, 2006.

ADDRESSES: You may obtain copies of the documents for review by contacting

Richard Szlemp, U.S. Fish and Wildlife Service, 2600 SE. 98th Ave., Suite 100, Portland, Oregon 97266; facsimile (503) 231–6195; or by making an appointment to view the documents at the above address during normal business hours. You may also view the documents on the Internet through *http://www.fws.gov/oregonfwo/*. You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please address written comments to Kemper M. McMaster, State Supervisor, Fish and Wildlife Service, 2600 SE. 98th Ave., Suite 100, Portland, Oregon 97266, or facsimile (503) 231–6195. If you wish to use e-mail, address your comments to *centralcoast_sha@fws.gov*. Include your name and address in your comments and please refer to the TNC Central Coast SHA.

FOR FURTHER INFORMATION CONTACT: Richard Szlemp (see **ADDRESSES**) (503) 231–6179.

SUPPLEMENTARY INFORMATION: Under a Safe Harbor Agreement, participating landowners voluntarily undertake management activities on their property to enhance, restore, or maintain habitat benefiting species listed under the Act (16 U.S.C. 1531 *et seq.*). Safe Harbor Agreements, and the subsequent enhancement of survival permits that are issued pursuant to section 10(a)(1)(A) of the Act, encourage private and other non-Federal property owners to implement conservation efforts for listed species by assuring the landowners that they will not be subjected to increased property use restrictions as a result of their efforts to attract listed species to their property, or to increase the numbers or distribution of listed species already on their property. Application requirements and issuance criteria for enhancement of survival permits through Safe Harbor Agreements are found in 50 CFR 17.22(c). These permits allow any necessary future incidental take of any covered species above the mutually agreed upon baseline conditions for those species in accordance with the terms of the permit and accompanying agreement.

We have worked with TNC to develop the proposed Agreement for the conservation of the Oregon silverspot butterfly within the central coast region of Oregon, roughly between Bray Point and Big Creek. The area covered by this Agreement is about 7 miles long and within 1 mile of the coastal waters of the Pacific Ocean. Under this programmatic Agreement, individual Cooperative Agreements (CAs) between the Service, TNC, and landowner/cooperators would be developed for individuals who volunteer to engage in activities, such as habitat restoration, that are likely to benefit the Oregon silverspot butterfly and wish to become a party to the Agreement. Environmental baseline conditions would be established and would primarily be based on the presence or absence of the Oregon silverspot butterfly's larval host plant, the early blue violet (*Viola adunca*), prior to restoration efforts. We anticipate that the baseline conditions will in most cases be determined to be at or near zero. The landowners would then be issued a Certificate of Inclusion (CI), which would allow activities on the enrolled property that might involve incidental take of Oregon silverspot butterflies above the baseline conditions to be covered under TNC's section 10(a)(1)(A) permit. TNC and/or the landowners would implement restoration and management actions to restore and enhance coastal meadow habitat for the Oregon silverspot butterfly.

TNC has agreed to work with landowners to improve Oregon silverspot butterfly habitat by suppressing or removing invasive vegetation, planting native coastal meadow vegetation, and/or specifically enhancing early blue violet plant populations. Without the regulatory assurances provided through the Agreement, CI, and permit, landowners may otherwise be unwilling or reluctant to engage in activities that would attract federally-listed species such as the Oregon silverspot butterfly onto their properties. Additionally, the requested permit coverage would allow management activities to proceed that might result in some limited amount of take incidental to those activities that are intended to benefit the species over the term of the permit. TNC would carry out the management activities itself on private lands or work in conjunction with landowners to carry out management activities. TNC has already begun working with landowners in the area and has the expertise to carry out these types of restoration activities and advise landowners of management options to provide the desired future conditions that would benefit the Oregon silverspot butterfly. The proposed management activities are expected to provide a net conservation benefit to the Oregon silverspot butterfly within the covered area along Oregon's central coast by restoring and improving habitat conditions, potentially increasing the local butterfly population, and providing habitat patches linking butterfly populations on the south and north ends of the project area.

The Oregon silverspot butterfly was listed as a threatened species by the Service in 1980 (45 FR 44935). At the time of listing, the only known population was within an area along the Oregon coast in the vicinity of Rock Creek and Big Creek in Lane County. Additional populations were subsequently discovered at Bray Point, Cascade Head, and the Clatsop Plains in Oregon; Long Beach Peninsula in Washington; and northwestern Del Norte County, California. Succession, due to lack of disturbance from fire and grazing and the spread of non-native plants, has affected the presence and abundance of early blue violets through crowding and shading. Succession has resulted in trees, shrubs, and ferns developing within coastal grassland communities that were previously maintained by disturbances such as fire and grazing. Non-native pasture grasses that have spread and become well-established along the coast crowd out other native plants and create dense layers of vegetation that inhibit the growth of native species, including early blue violets and native nectar sources used by adult butterflies.

The Service has made a preliminary determination that the proposed Agreement and permit application are eligible for a categorical exclusion under the National Environmental Policy Act of 1969 (NEPA). We explain the basis for this determination in an Environmental Action Statement that is also available for public review (see **ADDRESSES**).

The Service will evaluate the permit application, associated documents, and comments submitted thereon to determine whether the permit application meets the requirements of section 10(a) of the Act and NEPA regulations. All comments received, including names and addresses, will become part of the administrative record and will be available for review pursuant to section 10(c) of the Act. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. Anonymous comments will not be considered. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, are available for public inspection in their entirety.

If we determine that all requirements are met, we will sign the Agreement and issue an enhancement of survival permit under section 10(a)(1)(A) of the Act to TNC for the take of Oregon silverspot butterflies, incidental to otherwise lawful activities in accordance with the terms of the Agreement. This notice is provided pursuant to section 10(c) of the Act and NEPA regulations (40 CFR 1506.6).

Dated: November 3, 2006.

Miel Corbett,

Acting State Supervisor, Fish and Wildlife Service, Oregon Fish and Wildlife Office, Portland, Oregon.

[FR Doc. E6–18970 Filed 11–8–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of the Draft Comprehensive Conservation Plan and Environmental Assessment for Lacassine National Wildlife Refuge in Cameron and Evangeline Parishes, LA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability

SUMMARY: The Fish and Wildlife Service announces that a Draft Comprehensive Conservation Plan and Environmental Assessment for Lacassine National Wildlife Refuge is available for distribution. This document was prepared pursuant to the National Wildlife Refuge System Administration Act of 1966, as amended, and the National Environmental Policy Act of 1969. The draft plan and environmental assessment describes the Service's proposal for management of the refuge for 15 years.

DATES: Written comments must be received at the postal or electronic address listed below no later than December 11, 2006.

ADDRESSES: To provide written comments or to obtain a copy of the draft plan and environmental assessment, please contact the Project Leader, Southwest Louisiana National Wildlife Refuge Complex, 1428 Highway 27, Bell City, Louisiana 70630; Telephone: 337–598–2216. Comments may also be submitted via electronic mail to *judy_mcclendon@fws.gov*. The draft plan and environmental assessment may be accessed and downloaded from the Service's Internet site *http://southeast.fws.gov/planning/*.

SUPPLEMENTARY INFORMATION: The National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd–66ee), requires the Service to develop a comprehensive conservation plan for each refuge. The purpose in developing a plan is to provide refuge managers with a 15-year strategy for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and Service policies. In addition to outlining broad management direction on conserving wildlife and their habitats, plans identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation.

Background: Lacassine National Wildlife Refuge is one of four refuges that makes up the Southwest Louisiana National Wildlife Refuge Complex. It is located at the edge of Grand Lake and 15 miles from the Gulf of Mexico in Cameron and Evangeline Parishes in Louisiana. The 34,724-acre refuge is strategically located on the boundary of coastal marsh and agricultural habitats; as well as at the southern terminus of the Mississippi and Central Flyways, making the refuge critically important to migratory birds, especially wintering waterfowl. Habitat types and approximate acreage on the refuge include: 14,700 acres of fresh marsh; 16,000 acres of impounded fresh marsh; 1,048 acres of open water, 352 acres of forested wetlands, 348 acres of shrub wetlands; 1,109 acres of croplands (e.g., rice and fallow); 307 acres of early successional wetlands; and 334 acres of coastal prairie, plus roads, levees, etc. About 3,300 acres are set aside with wilderness designation.

Lacassine National Wildlife Refuge was established on December 30, 1937, as Lacassine Migratory Waterfowl Refuge by the following: (1) Executive Order 7780 ''as a Refuge and breeding ground for migratory birds and other wildlife,'' and (2) the Migratory Bird Conservation Act ''for use as an inviolate sanctuary, or any other management purpose, for migratory birds'' (16 U.S.C. 715d). Additional lands were added to the refuge under the Fish and Wildlife Act of 1956 ''for the development, advancement, management, conservation, and protection of fish and wildlife resources'' [16 U.S.C. 742f(a)(4)] and ''for the benefit of the United States Fish and Wildlife Service in performing its activities and services'' [16 U.S.C. 742f(b)(1)].

Significant issues addressed in the draft plan and environmental assessment include: Migratory bird management; management for special habitats, such as the wilderness area, Lacassine Pool (i.e., freshwater impoundment), and prairie habitat; water management; management of oil and gas activities; access management for public use activities, including recreational freshwater sportfishing, fishing tournaments, and hunting; and protection of cultural resources.

Also included in the draft plan and environmental assessment are compatibility determinations for the following: Berry picking (collecting berries, fruits, and nuts); environmental education and interpretation; recreational freshwater sportfishing; recreational freshwater sportfishing tournaments; recreational hunting; research and monitoring; wildlife observation and photography; commercial alligator harvests; commercial video and photography; commercially guided wildlife viewing, photography, environmental education, and interpretation; and cooperative farming.

The Service developed three alternatives for management of the refuge and chose Alternative B as the proposed alternative.

Alternative A represents no change from current management of the refuge. Under the ''No Action'' Alternative the refuge will remain at 34,724 acres in fee title, including Farm Service Agency transfer lands and the lease of the 652-acre Cameron Parish school section. With no action, marsh loss rates of at least 0.23 percent per year are anticipated (low to moderate loss) in the Mermentau River Basin; similar rates are expected in other areas of the refuge. The refuge will continue to manage impounded freshwater marsh (16,000 acres), state-jurisdictional waterways (Lacassine Bayou and Mermentau River), ephemeral freshwater marsh (Streeter Canal and Duck Pond), and manage upland vegetation to benefit native plants. Acreages of different habitats will remain as they are now. About 3,300 acres south of the Gulf Intracoastal Waterway will continue to be formally designated as wilderness. Management at Lacassine Refuge will focus on biological monitoring, wildlife management, invasive plant management, moist-soil management, cooperative farming program management, and priority public use management, including hunting, fishing and environmental education.

Alternative B is the Service's proposed action to maximize refuge management capabilities in all

programs. Under the proposed alternative, the refuge would pursue acquiring, from willing sellers, lands within its approved acquisition boundary. The 3,300-acre Wilderness Area would remain the same size. Gross habitat acreages (until approved acquisition boundary expansion occurs) would not change appreciably from those under Alternative A, but habitats in general would be managed more intensively. The refuge would also expand existing wildlife management programs including: Focus refuge management on improving and extending the value of Lacassine Pool as a waterfowl sanctuary through adaptive management and increased emphasis on research; provide additional waterfowl food by increasing early successional wetland acreage from 300 to 500 acres and expanding the farming program; pursue opportunities to reduce erosion to refuge marshes caused by commercial navigation, wind/wave action, other natural forces, and oil and gas industry traffic/activities. The refuge would evaluate the seasonality and habitat conditions for prescribed fire in Lacassine Pool and other refuge marshes to enhance habitat for migratory birds, fish, and other wildlife; seek support to control invasive plants in the Wilderness Area and refuge-wide using approved minimum tools; continue partnerships to manage and protect the 334-acre coastal prairie on the Duralde Unit; improve quality hunting/fishing experiences; and manage oil and gas activities in accordance with Service policy. Under this alternative, levees would be constructed within Lacassine Pool, subdividing it into four units (Unit D, plus three additional units). This action would facilitate the management of the pool and lengthen its longevity by increasing the ability of refuge staff to dewater it, drawing it down to facilitate oxidation of accumulating organic sediments and more frequent use of prescribed fire. Thus, management could proceed unit-by-unit on a regular basis without having to impact the value of the entire pool to migratory birds and fisheries all at once. The six priority wildlife-dependent public uses would continue to be supported and in some cases would be expanded. This alternative would also strengthen the close working relationship in existence between the Service, the local community, conservation organizations, and the Louisiana Department of Wildlife and Fisheries.

Under Alternative C, the refuge would remain at 34,724 acres but would refocus management priority to actively investigating and extending the life/value of Lacassine Pool as a migratory waterfowl sanctuary. Due to sedimentation rates and constraints on water level management capabilities, the pool's lifespan is limited and, if nothing is done, it would gradually lose its value to both migratory waterfowl and fish populations, eventually becoming a wet meadow rather than a marshy wetland characterized by a mix of open water and emergent vegetation. Other programs dealing either with non-pool areas of the refuge or non-habitat aspects of refuge management (i.e., cooperative farming, moist-soil management, upland vegetation management, visitor services and priority public uses) would be managed at a reduced level since refuge resources would be directed to the pool. Under this alternative, levees would be constructed within the pool, subdividing it into six units over the next 10–15 years. This action would facilitate the management of the pool and lengthen its longevity by increasing the ability of refuge staff to dewater it, drawing it down to facilitate oxidation of accumulating sediments and more beneficial use of prescribed fire. Thus, management could proceed unit-by-unit on a regular basis without having to impact the value of the entire pool to fisheries and migratory birds all at once.

The Service believes that Alternative B will be the most effective one to contribute to the purpose for which the refuge was established and to the mission of the National Wildlife Refuge System. Implementation of the goals, objectives, and strategies of Alternative B will allow the refuge to maintain freshwater marsh and upland prairie habitat; serve as a critical resting area for waterfowl in a heavily hunted area; conserve, restore, and enhance diverse habitats for migratory and native wildlife species; maintain healthy and viable native fish and wildlife populations; provide opportunities for safe, quality, compatible, wildlife-dependent public use and recreation; and protect cultural resources.

After the review and comment period for the draft plan and environmental assessment, all comments will be analyzed and considered by the Service. All comments received from individuals on the draft plan and environmental assessment become part of the official public record. Requests for such comments will be handled in accordance with the Freedom of Information Act and other Service and Departmental policies and procedures.

Authority: This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997, Pub. L. 105–57.

Dated: October 6, 2006.

Cynthia K. Dohner,

Acting Regional Director

[FR Doc. 06–9135 Filed 11–8–06; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection for 1029–0057 and 1029–0087

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request approval for the collections of information under 30 CFR Part 882, Reclamation of private lands; and Form OSM–76, Abandoned Mine Land Problem Area Description form. These information collection activities were previously approved by the Office of Management and Budget (OMB), and assigned clearance numbers 1029–0057 and 1029–0087, respectively.

DATES: Comments on the proposed information collection must be received by January 8, 2006, to be assured of consideration.

ADDRESSES: Comments may be mailed to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave. NW., Room 202–SIB, Washington, DC 20240. Comments may also be submitted electronically to *jtrelease@osmre.gov.*

FOR FURTHER INFORMATION CONTACT: To request a copy of either information collection request, explanatory information and related forms, contact John A. Trelease, at (202) 208–2783.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8 (d)]. This notice identifies information collections that OSM will be submitting to OMB for approval. These collections are contained in (1) 30 CFR Part 882, Reclamation on private lands; and (2) Form OSM–76, Abandoned Mine Land Problem Area Description form. OSM

will request a 3-year term of approval for each information collection activity.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany OSM's submissions of the information collection requests to OMB.

The following information is provided for the information collection: (1) Title of the information collection; (2) OMB control number; (3) summary of the information collection activity; (4) the bureau form number; and (5) frequency of collection, description of the respondents, estimated total annual responses, and the total annual reporting and recordkeeping burden for the collection of information.

Title: Reclamation on Private Lands, 30 CFR 882.

OMB Control Number: 1029–0057.

Summary: Public Law 95–87 authorizes Federal, State, and Tribal governments to reclaim private lands and allows for the establishment of procedures for the recovery of the cost of reclamation activities on privately owned lands. These procedures are intended to ensure that governments have sufficient capability to file liens so that certain landowners will not receive a windfall from reclamation.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: State governments and Indian tribes.

Total Annual Responses: 1

Total Annual Burden Hours: 16.

*Title:*Abandoned Mine Land Problem Area Description Form, OSM–76.

OMB Control Number: 1029–0087.

Summary: This form will be used to update the Office of Surface Mining Reclamation and Enforcement's inventory of abandoned mine land. From this inventory, the most serious problem areas are selected for reclamation through the apportionment of funds to States and Indian tribes.

Bureau Form Number: OSM–76.

Frequency of Collection: On occasion.

Description of Respondents: State governments and Indian tribes.

Total Annual Responses: 1,800.

Total Annual Burden Hours: 4,000.

Dated: November 6, 2006.

John A. Trelease,

Acting Chief, Division of Regulatory Support.

[FR Doc. 06–9141 Filed 11–8–05; 8:45am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–027–1020-PH–029H; HAG 07–0019]

Meeting Notice for the Southeast Oregon Resource Advisory Council

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice.

SUMMARY: The Southeast Oregon Resource Advisory Council (SEORAC) will hold a meeting Thursday, November 16 from 8 a.m. to 3 p.m., at the U.S. Bureau of Land Management (BLM) Burns District Office, 28910 Hwy 20 West in Hines.

Agenda items for the 1-day meeting include updates on the Grazing Administration Rule and associated litigation, the Off-Highway Vehicle/Transportation Strategy for Oregon and Washington public lands, the Wind Energy and Energy Corridors Environmental Impact Statements, the Wild Horse Program, and the Malheur National Forest Plan. Council members will also hear a presentation on southeast Oregon's wild horses and their importance to area heritage, give liaison and sub-group reports, elect officers for the upcoming year, develop agenda items for the February meeting, and establish dates and locations for the 2007 schedule. Any other matters that may reasonably come before the SEORAC may also be addressed.

The public is welcome to attend all portions of the meeting and may contribute during the public comment period at 1 p.m. Those who verbally address the SEORAC during the public comment period are asked to also provide a *written* statement of their comments or presentation. Unless otherwise approved by the SEORAC Chair, the public comment period will last no longer than 30 minutes, and each speaker may address the SEORAC for a maximum of 5 minutes.

If you have information you would like distributed to RAC members, please send it to Tara Wilson at the Burns District Office, 28910 Hwy 20 West, Hines, Oregon 97738, prior to the start of the meeting. If you send information or general correspondence to anyone at the Burns District Office and would like a copy given to the RAC, please write ''COPY TO RAC'' on the envelope and enclosed document(s).

The SEORAC consists of 15 members chartered and appointed by the Secretary of the Interior. Their diverse perspectives are represented in commodity, conservation, and general interests. They provide advice to BLM and Forest Service resource managers regarding management plans and proposed resource actions on public land in southeast Oregon.

FOR FURTHER INFORMATION CONTACT: Tara Wilson, SEORAC Facilitator, Burns District Office, 28910 Hwy 20 West, Hines, Oregon 97738, (541) 573–4519, or *Tara_Wilson@blm.gov.*

Dated: November 3, 2006.

Dana R. Shuford,

District Manager.

[FR Doc. E6–19019 Filed 11–8–06; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Proposed Award; Temporary Concession Contract for Great Smoky Mountains National Park, TN

SUMMARY: Public notice is hereby given that the National Park Service proposes to award a temporary concession contract that requires the operation of horseback riding stables and vending machine sales of soft drinks and bottled water, and authorizes limited souvenir sales in the Sugarlands region of the Great Smoky Mountains National Park near Gatlinburg, Tennessee for a term not to exceed October 31, 2007.

DATES: *Effective Date:* November 1, 2006.

ADDRESSES: Ben Hanslin, Concessions Management Specialist, Southeast Region, National Park Service, 100 Alabama Street, 1924 Building, Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: Ben Hanslin, Concessions Management Specialist, Southeast Region, National Park Service, (404) 562–3108, extension 740.

SUPPLEMENTARY INFORMATION: The temporary concession contract is being awarded to Smoky Mountain Stables, Inc., a qualified person, as that term is defined in 36 CFR 51.3. Following termination of the prior concession contract at Sugarlands on May 2, 2005, the National Park Service awarded a temporary concession contract to Smoky Mountain Stables, Inc. on July 6, 2005 that expires on October 31, 2006. A new concession contract cannot be awarded in time to avoid the interruption of visitor services during November 2006 and the 2007 operating season. The National Park Service has taken all reasonable and necessary steps to consider alternatives to avoid interruption of visitor services, and has determined that this award is necessary to avoid interruption of visitor services.

This action is issued pursuant to 36 CFR 51.24(a). This is not a request for proposals and no prospectus is being issued at this time. The Director intends to issue a prospectus in 2007 to allow the competitive award of a long-term concession contract that will be effective prior to the 2008 operation season at Sugarlands. You may be placed on a mailing list for receiving information regarding the prospectus by sending a written request to the above address.

Dated: September 14, 2006.

Patricia A. Hooks,

Regional Director, Southeast Region.

[FR Doc. E6–18969 Filed 11–8–06; 8:45 am]

BILLING CODE 4310–8A–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before October 28, 2006. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service,1201 Eye St. NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by November 24, 2006.

John W. Roberts,

Acting Chief, National Register/National Historic Landmarks Program.

ALABAMA

Elmore County

First Baptist Church of Wetumpka, 205 West Bridge St., Wetumpka, 06001101

COLORADO

Gunnison County

Chance Gulch Site, Address Restricted, Gunnison, 06001102

MONTANA

Gallatin County

Manhattan Masonic Hall, 301 Railroad Ave. W, Manhattan, 06001103

NORTH CAROLINA

Buncombe County

Raoul, Thomas Wadley, House, 394 Vanderbilt Rd., Asheville, 06001105

Burke County

Franklin—Penland House, 8646 NC 183, Linville Falls, 06001106

Lenoir County

Kinston Battlefield, 1.5 mi. S of Kinston on U.S. 258; 2–3 mi. S of Kinston on U.S. 258; 3 mi. S of Kinston on NC 58; 4 mi. S of Kinston on 258, Kinston, 06001104

Transylvania County

Morrow, Royal and Louise, House, (Transylvania County MPS) 630 E. Main St., Brevard, 06001107

Orr, Charles E., House, (Transylvania County MPS) 334 E. Main St., Brevard, 06001108

Wake County

Adams—Edwards House, (Wake County MPS) 5400 Tryon Rd., Raleigh, 06001109

OKLAHOMA

Carter County

Central Park Bandstand, SW jct. of W Main and E St. SW in about the middle of Central Park, Ardmore, 06001111

Cherokee County

Park Hill Mission Cemetery, South Park Hill Rd, 0.5 mi. S of East Murrell Rd., Park Hill, 06001113

Coal County

Merchants National Bank Building, SW corner of Main and Railway Sts., Lehigh, 06001112

Garfield County

Waverley Historic District, Roughly bounded by W Broadway Ave., N and S Tyler Sts.,S. Harrison St., W. Oklahoma St. and N and S Bachanan Sts., Enid, 06001110

Muskogee County

Muskogee Depot and Freight District, Roughly bounded by Columbus Ave., S. Main St., Elgin Ave., and S 5th St., Muskogee, 06001114

Okmulgee County

Nichols Park, 1.9 mi. S of jct of Lake Rd. and Main St., Henryetta, 06001115

VERMONT

Franklin County

Willard Manufacturing Company Building, 25 Stowell St., St. Albans, 06001116

WISCONSIN

Dunn County

Evergreen Cemetery, N end of Shorewood Dr., Menomonie, 06001117

[FR Doc. E6–18946 Filed 11–8–06; 8:45 am]

BILLING CODE 4312–51–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–06–057]

Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: November 15, 2006 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. Nos. 731–TA–471 and 472 (Second Review) (Silicon Metal from Brazil and China)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before December 6, 2006.)
5. 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.

Issued: November 6, 2006.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 06–9164 Filed 11–7–06; 10:57 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Water Act

Notice is hereby given that on October 16, 2006, a proposed consent decree in *United States* v. *Detrex Corporation, Inc.*, Civ. No. 1:06–cv–2482 was lodged with the United States District Court for the Northern District of Ohio.

In this action, the United States seeks civil penalties and injunctive relief for alleged violations of the Clean Water Act (''Act'') and its pertinent regulations at Detrex's chemical manufacturing facility in Ashtabula, Ohio. Specifically, in its Complaint, the United States, on behalf of the United States Environmental Protection Agency (''U.S. EPA'') seeks civil penalties pursuant to Section 309(b) and (d) of the Act, 33 U.S.C. 1319(b) and (d), from Defendant Detrex, for discharging pollutants into navigable waters in excess of its NPDES permit limitations and also failing to accurately monitor and correctly report

its discharges to the U.S. EPA and the Ohio Environmental Protection Agency.

Under the proposed Consent Decree, the United States would recover a total of $250,000 plus interest (determined by a Department of Justice financial analyst to be the amount that the corporation can pay). In addition, Detrex will implement specified compliance measures concerning the discharges associated with its chemical manufacturing plant in Ashtabula, Ohio.

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, 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. *Detrex Corporation*. D.J. Ref. 90–5–1–1–08201.

The proposed Consent Decree may be examined at the Office of the United States Attorney for the Northern District of Ohio, 801 West Superior Avenue Suite 400, Cleveland, OH 44113 (contact Asst. U.S. Attorney Steven Paffilas (216–622–3698)), and at U.S. EPA Region 5, 7th Floor Records Center, 77 West Jackson Blvd., Chicago, Illinois 60604 (contact Assoc. Regional Counsel Nicole Cantello (312–2870)).

During the public comment period, the proposed consent decree may also be examined on the following Department of Justice Website, *http://www.usdoj.gov/enrd/consent-decree.html*. A copy of the proposed 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

In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $7.25 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by email or fax, forward a check in that amount to the Consent Decree Library at the stated address.

William Brighton,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 06–9127 Filed 11–8–06; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that on September 6, 2006, a proposed Consent Decree (Decree) in *United States* v. *John J. McKenna, Jr.,* Civil Action No. 98–CV–5162 was lodged with the United States District Court for the Eastern District of Pennsylvania.

In this action the United States sought from defendant McKenna recovery of $88,000 in response costs incurred by the U.S. Environmental Protection Agency performing studies of contamination at Royal Cleaners property within the North Penn 6 Superfund Site in Lansdale, Montgomery County, Pennsylvania. Defendant McKenna previously spent $150,000 performing cleanup at the Royal Cleaners property under EPA's direction. In this settlement, he will pay an additional $40,000 to defray part of EPA's past costs. He receives from the United States a covenant not to sue under Sections 106 and 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act with respect to the Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the 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. *John J. McKenna (E.D.Pa.),* D.J. Ref. 90–11–2–06024/2.

The Decree may be examined at the Office of the United States Attorney, Eastern District of Pennsylvania, 615 Chestnut Street, Suite 1250, Philadelphia, PA 19106, and at U.S. EPA Region III, 150 Arch Street, Philadelphia, PA 19103. During the public comment period, the 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 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 $4.00 (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.

Robert Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 06–9128 Filed 11–8–06; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging Proposed Consent Decree

In accordance with Department Policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Milner,* No. C01–0809RBL, was lodged with the United States District Court for the Western District of Washington on October 12, 2006.

This proposed Consent Decree concerns a complaint filed by the United States against Donald C. Walker and Gloria Walker, pursuant to Sections 301(a) and 404 of Clean Water Act (CWA), 33 U.S.C. 1311(a) & 1344, and Section 10 of the Rivers & Harbors (Act) (RHA), 33 U.S.C. 403, to obtain injunctive relief from and impose civil penalties against the Defendants for violating the CWA by discharging pollutants without a permit into waters of the United States, and the RHA by constructing a structure in navigable waters. The proposed Consent decree resolved these allegations by requiring the Defendants to perform mitigation and to pay a civil penalty.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this Notice. Please address comments to John McKay, United States Attorney, 5220 United States Courthouse, 700 Stewart Street, Seattle, WA 98101–1271, and refer to *United States* v. *Milner,* DJ #90–5–1–1–16918.

The proposed Consent Decree may be examined at the Clerk's Office, United States District Court for the Western District of Washington, 1717 Pacific Avenue, Room 3100, Tacoma, WA 98402. In addition, the proposed Consent Decree may be viewed at *http://www/usdoj.gov/enrd/open.html.*

Russell M. Young,

Assistant Chief, Environmental Defense Section, Environment and Natural Resources Division, Department of Justice.

[FR Doc. 06–9125 Filed 11–8–06; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA'')

Notice is hereby given that on October 17, 2006, a proposed consent decree in *United States* v. *Padraig Tarrant, et al.,* Civil Action No. 03CV3899(JCL), was lodged with the United States District Court for the District of New Jersey.

In this action, the United States sought recovery of response costs pursuant to Section 107(a) of CERCLA, for costs incurred related to the Meadowlands Plating and Finishing Superfund Site in East Rutherford, New Jersey during a removal action from November 1998 through June 1999. The Defendant Kathy Chatterton filed a third-party complaint against Mr. Paul Boyko, a former employee of MPF Plating and Finishing, Inc., and eleven other parties. The claims against all other third-party defendants were resolved either by dismissal or default. The consent decree requires third party defendant Paul Boyko to pay $1.00 to the United States in reimbursement of past response costs at the Sites.

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. *Tarrant, et al.,* D.J. Ref. #90–11–2–07713/2.

The consent decree may be examined at the Office of the United States Attorney, 970 Broad Street Suite 700, Newark, NJ, 07102 (contact Susan Steele) and at U.S. EPA Region II, 290 Broadway, New York, New York 10007–1866 (contact Frances Zizila). During the public comment period, the consent decree, may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decree.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 $4.00 (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.

Ronald G. Gluck,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 06–9126 Filed 11–8–06; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0042]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: Statement of Process-Marking of Plastic Explosives for the Purpose of Detection.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until January 8, 2007. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Gary Bangs, Chief, Explosives Industry Programs Branch, Room 5000, 650 Massachusetts Avenue, NW., Washington, DC 20226. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Statement of Process-Marking of Plastic Explosives for the Purpose of Detection.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* None. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit. *Other:* None. The information contained in the statement of process is required to ensure compliance with the provisions of Public Law 104–132. This information will be used to ensure that plastic explosives contain a detection agent as required by law.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 8 respondents will complete the required information in 30 minutes.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 16 annual total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Deputy Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: November 3, 2006.

Lynn Bryant,

Deputy Clearance Officer, Department of Justice.

[FR Doc. E6–18942 Filed 11–8–06; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0054]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: Commerce in Firearms and Ammunition—Annual Inventory of Firearms.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until January 8, 2007. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Teresa Marshall, Firearms Enforcement Branch, Room 7400, 650 Massachusetts Avenue, NW., Washington, DC 20226.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Commerce in Firearms and Ammunition—Annual Inventory of Firearms.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* None. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit. *Other:* None. The regulations require Federal Firearms Licensees to conduct an annual inventory of their firearms and clarify who is responsible for reporting firearms that are lost or stolen in transit.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 100,293 respondents will keep firearms records that will take approximately 1 minute to record.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 15,483 annual total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: November 3, 2006.

Lynn Bryant,

Department Clearance Officer, Department of Justice.

[FR Doc. E6–18943 Filed 11–8–06; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Meeting of the CJIS Advisory Policy Board

AGENCY: Federal Bureau of Investigation (FBI), Justice.

ACTION: Meeting notice.

SUMMARY: The purpose of this notice is to announce the meeting of the Criminal Justice Information Services (CJIS) Advisory Policy Board (APB). The CJIS APB is responsible for reviewing policy issues and appropriate technical and operational issues related to the programs administered by the FBI's CJIS Division, and thereafter, making appropriate recommendations to the FBI Director. The programs administered by the CJIS Division are the Integrated Automated Fingerprint Identification System, the Interstate Identification Index, Law Enforcement Online, National Crime Information Center, the National Instant Criminal Background Check System, the National Incident-Based Reporting System, Law Enforcement National Data Exchange, and Uniform Crime Reporting.

The meeting will be open to the public on a first-come, first-seated basis. Any member of the public wishing to file a written statement concerning the CJIS Division programs or wishing to address this session should notify Senior CJIS Advisor Roy G. Weise at (304) 625–2730 at least 24 hours prior to the start of the session. The notification should contain the requestor's name, corporate designation, and consumer affiliation or government designation along with a short statement describing the topic to be addressed and the time needed for the presentation. A requestor will ordinarily be allowed no more than 15 minutes to present a topic.

DATES AND TIMES: The APB will meet in open session from 8:30 a.m. until 5 p.m., on December 13–14, 2006.

ADDRESSES: The meeting will take place at the Tuscany Suites & Casino, 255 East Flamingo Road, Las Vegas, Nevada, (702) 893–8933.

FOR FURTHER INFORMATION CONTACT: Inquiries may be addressed to Mrs. Margery E. Broadwater, Management and Program Analyst, Advisory Groups Management Unit, Programs Development Section, FBI CJIS Division, Module C3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306–0149, telephone (304) 625–2446, facsimile (304) 625–5090.

Dated: November 1, 2006.

Roy G. Weise,

Senior CJIS Advisor, Criminal Justice Information Services Division, Federal Bureau of Investigation.

[FR Doc. 06–9143 Filed 11–8–06; 8:45 am]

BILLING CODE 4410–02–M

NATIONAL SCIENCE FOUNDATION

No FEAR Act Notice

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: Notice is hereby given of the National Science Foundation's notification of employee rights and protections under Federal

Antidiscrimination Laws and Whistleblower Protection Laws (No FEAR Act).

DATES: Effective immediately.

ADDRESSES: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

FOR FURTHER INFORMATION CONTACT: Ronald Branch, Director, Office of Equal Opportunity Programs, (703) 292–8020.

SUPPLEMENTARY INFORMATION: 5 CFR part 724, implementing the notice provisions of the Notification and Federal Employees Antidiscrimination and Retaliation Act of 2002 (No FEAR Act), requires that each agency provide public notification of its initial No FEAR Act Notice to employees. This notice provides employees, former employees and applicants notification of their rights and applicable remedies available to them under the Antidiscrimination Laws and Whistleblower Protection Laws.

Authority: Public Law 107–174. Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act).

On May 15, 2002, Congress enacted the ''Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002,'' which is now known as the No FEAR Act. One purpose of the Act is to ''require that Federal agencies be accountable for violations of antidiscrimination and whistleblower protection laws.'' Public Law 107–174, Title I, General Provisions, section 101(1). In support of this purpose, Congress found that ''agencies cannot be run effectively if those agencies practice or tolerate discrimination.'' *Id.*

The Act also requires this agency to provide this notice to Federal employees, former Federal employees and applicants for Federal employment to inform you of the rights and protections available to you under Federal antidiscrimination and whistleblower protection laws.

Antidiscrimination Laws

A Federal agency cannot discriminate against an employee or applicant with respect to the terms, conditions or privileges of employment on the basis of race, color, religion, sex, national origin, age, disability, marital status or political affiliation. Discrimination on these bases is prohibited by one or more of the following statutes: 5 U.S.C. 2302(b)(1), 29 U.S.C. 206(d), 29 U.S.C. 631, 29 U.S.C. 633a, 29 U.S.C. 791 and 42 U.S.C. 2000e–16.

If you believe that you have been the victim of unlawful discrimination on the basis of race, color, religion, sex, national origin or disability, you must contact the Office of Equal Opportunity Programs (OEOP) and request a counselor within 45 calendar days of the alleged discriminatory action, or, in the case of a personnel action, within 45 calendar days of the effective date of the action, before you can file a formal discrimination complaint with the Foundation. See, *e.g.*, 29 CFR Part 1614. If you believe that you have been the victim of unlawful discrimination on the basis of age, you must either contact an EEO counselor as noted above or give notice of intent to sue to the Equal Employment Opportunity Commission (EEOC) within 180 calendar days of the alleged discriminatory action. If you are alleging discrimination based on marital status or political affiliation, you may file a written complaint with the U.S. Office of Special Counsel [OSC] (see contact information below). In the alternative (or in some cases, in addition), you may pursue a discrimination complaint by filing a grievance through the Foundation's administrative or negotiated grievance procedures, if such procedures apply and are available.

Whistleblower Protection Laws

A Federal employee with authority to take, direct others to take, recommend or approve any personnel action must not use that authority to take or fail to take, or threaten to take or fail to take, a personnel action against an employee or applicant because of disclosure of information by that individual that is reasonably believed to evidence violation of law, rule or regulation; gross mismanagement; gross waste of funds; an abuse of authority; or a substantial and specific danger to public health or safety, unless disclosure of such information is specifically prohibited by law and such information is specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs.

Retaliation against an employee or applicant for making a protected disclosure is prohibited by 5 U.S.C. 2302(b)(8). If you believe that you have been the victim of whistleblower retaliation, you may file a written complaint [Form OSC–11] with the U.S. Office of Special Counsel at 1730 M Street, NW., Suite 218, Washington, DC 20036–4505 or online through the OSC Web site—*http://www.osc.gov.*

Retaliation for Engaging in Protected Activity

A Federal agency cannot retaliate against an employee or applicant because that individual exercises his or her rights under any of the Federal antidiscrimination or whistleblower protection laws listed above. If you believe that you are the victim of retaliation for engaging in protected activity, you must follow, as appropriate, the procedures described in the Antidiscrimination Laws and Whistleblower Protection Laws sections or, if applicable, the administrative or negotiated grievance procedures in order to pursue any legal remedy.

Disciplinary Actions

Under the existing laws, each agency retains the right, where appropriate, to discipline a Federal employee for conduct that is inconsistent with Federal Antidiscrimination and Whistleblower Protection Laws up to and including removal. If OSC has initiated an investigation under 5 U.S.C. 1214, however, according to 5 U.S.C. 1214(f), agencies must seek approval from the Special Counsel to discipline employees for, among other activities, engaging in prohibited retaliation. Nothing in the No FEAR Act alters existing laws or permits an agency to take unfounded disciplinary action against a Federal employee or to violate the procedural rights of a Federal employee who has been accused of discrimination.

Additional Information

For further information regarding the No FEAR Act regulations, refer to 5 CFR part 724, as well as the appropriate offices within the Foundation (*e.g.*, Office of Equal Opportunity Programs, Division of Human Resource Management or the Office of the General Counsel). Additional information regarding Federal antidiscrimination, whistleblower protection and retaliation laws can be found at the EEOC Web site—*http://www.eeoc.gov* and the OSC Web site—*http://www.osc.gov.*

Existing Rights Unchanged

Pursuant to section 205 of the No FEAR Act, neither the Act nor this notice creates, expands or reduces any rights otherwise available to any employee, former employee or applicant under the laws of the United States, including the provisions of law specified in 5 U.S.C. 2302(d).

Ronald Branch,

Director, Office of Equal Opportunity Programs.

[FR Doc. E6–18981 Filed 11–8–06; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission (NRC or Commission) has issued a Director's Decision with regard to a Petition dated January 25, 2006, filed pursuant to Section 2.206 of Title 10 of the *Code of Federal Regulations* (10 CFR) by the Union of Concerned Scientists and numerous other organizations and individuals, hereinafter referred to as the ''Petitioners.'' The Petition concerns leaks of radioactively contaminated water into the ground around NRC-licensed facilities.

The Petition requested that the NRC take immediate action to issue Demands for Information (DFIs) to research, test, and power reactors to obtain responses to specific questions regarding leaks or potential leaks of radioactively contaminated water into the ground.

As the basis for their request, the Petitioners pointed to radioactive leaks found during the last few years at several nuclear power plants.

By teleconference on April 5, 2006, the Petitioners discussed the Petition with the NRC's Petition Review Board. This teleconference gave the Petitioners an opportunity to provide additional information and to clarify issues raised in the Petition.

The NRC staff sent a copy of the proposed Director's Decision to the Petitioners and to the Nuclear Energy Institute for comment by letters dated June 28, 2006. The Petitioners submitted comments by letter dated July 20, 2006, and these comments are addressed in the final Director's Decision.

The Director of the Office of Nuclear Reactor Regulation has determined that the Petitioners' request to obtain information on groundwater contamination is granted, in part. The request to obtain the information by issuing DFIs is denied. The reasons for this decision are explained in the Director's Decision pursuant to 10 CFR 2.206 (DD–06–03), the complete text of which is available for inspection at the Commission's Public Document Room, located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland, or electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html.*

A copy of the Director's Decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206 of the Commission's regulations. As provided for by this regulation, the Director's Decision will constitute the final action of the Commission 25 days after the date of the decision, unless the Commission, on its own motion, institutes a review of the Director's Decision in that time.

Dated at Rockville, Maryland, this 2nd day of November, 2006.

For the Nuclear Regulatory Commission.

J.E. Dyer,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. E6–18980 Filed 11–8–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Availability of Draft Interim Staff Guidance Document HLWRS–ISG–02, ''Preclosure Safety Analysis—Level of Information and Reliability Estimation''; Extension of Comment Period

AGENCY: Nuclear Regulatory Commission.

ACTION: Extension of comment period.

SUMMARY: On September 29, 2006 (71 FR 57584), the U.S. Nuclear Regulatory Commission (NRC) published, for public comment, a Notice of Availability of Draft Interim Staff Guidance (ISG) document HLWRS–ISG–02, ''Preclosure Safety Analysis—Level of Information and Reliability Estimation.'' On October 26, 2006, the U.S. Department of Energy requested a 30-day extension to the public comment period for HLWRS–ISG–02, from November 13, 2006, to December 13, 2006. In response to this request, NRC is granting a 30-day extension to the public comment period for HLWRS–ISG–02, to December 13, 2006.

DATES: The comment period has been extended and now expires on December 13, 2006.

ADDRESSES: Mail written comments to: Robert Johnson, Senior Project Manager, Licensing and Inspection Directorate, High-Level Waste Repository Safety Division of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Comments can also be submitted by telephone, fax, or e-mail, which are as follows: *telephone:* (301) 415–6900; *fax number:* (301) 415–5399; or *e-mail: rkj@nrc.gov.*

FOR FURTHER INFORMATION, CONTACT: Jon Chen, Project Manager, Licensing and Inspection Directorate Division of High-Level Waste Repository Safety, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, *Telephone:* (301) 415–5526; *fax number:* (301) 415–5399; *e-mail: jcc2@nrc.gov.*

Dated at Rockville, Maryland, this 2nd day of November, 2006.

For the Nuclear Regulatory Commission.

N. King Stablein,

Chief, Project Management Branch B, Division of High-Level Waste Repository Safety, Office of Nuclear Material Safety and Safeguards.

[FR Doc. E6–18976 Filed 11–8–06; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review, Request for Comments

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) will be sending an Information Collection Request (ICR) to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB) to request a revision to the following collection of information: 3220–0042, Application for Spouse Annuity Under the Railroad Retirement Act, consisting of RRB Form(s) AA–3, Application for Spouse/Divorced Spouse Annuity and AA–3cert, Application Summary and Certification. Our ICR describes the information we seek to collect from the public. Review and approval by OIRA ensures that we impose appropriate paperwork burdens.

The RRB invites comments on the proposed collection of information to determine: (1) The practical utility of the collection; (2) the accuracy of the estimated burden of the collection; (3) ways to enhance the quality, utility and clarity of the information that is the subject of collection; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology. Comments to RRB or OIRA must contain the OMB control number of the ICR. For proper consideration of your comments, it is best if RRB and OIRA receive them within 30 days of publication date.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (71 FR 44727 on August 7, 2006) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Application for Spouse Annuity Under the Railroad Retirement Act.

OMB Control Number: 3220–0042.

Form(s) submitted: AA–3, Application for Spouse/Divorced Spouse Annuity, AA–3cert, Application Summary and Certification.

Type of request: Revision of a currently approved collection.

Affected public: Individuals or households.

Obligation to Respond: Required to obtain or retain benefits.

Abstract: The Railroad Retirement Act provides for the payment of annuities to spouses of railroad retirement annuitants who meet the requirements under the Act. The application obtains information supporting the claim for benefits based on being a spouse of an annuitant. The information is used for determining entitlement to and amount of the annuity applied for.

Changes Proposed: The RRB proposes to add new items to Form(s) AA–3cert and AA–3 to further document an applicant's most recent nonrailroad work. The items ask for the applicant's most recent job title and whether their employer is a seasonal employer. Non-burden impacting changes are proposed to the certification statements of Form(s) AA–3cert and AA–3 that are intended to provide additional specificity regarding post-application events that require an applicant to contact the RRB. Other non-burden impacting, editorial (clarification) and formatting changes to Form AA–3cert and Form AA–3 are also proposed.

The burden estimate for this ICR is unchanged as follows:

Estimated annual number of respondents: 8,500.

Total annual responses: 8,500.

Total annual reporting hours: 4,297.

FOR FURTHER INFORMATION CONTACT: Copies of the form and supporting documents can be obtained from Charles Mierzwa, the agency clearance officer at (312–751–3363) or *Charles.Mierzwa@rrb.gov.*

Comments: Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 or *Ronald.Hodapp@rrb.gov* and to the OMB Desk Officer for the RRB, Karen Matsuoka at *kmatsuoka@omb.eop.gov*, fax (202) 395–6974.

Charles Mierzwa,

RRB Clearance Officer.

[FR Doc. E6–18961 Filed 11–8–06; 8:45 am]

BILLING CODE 7905–01–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review, Request for Comments

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) is forwarding an Information Collection Request (ICR) to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB) to request an extension of the following collection of information: 3220–0193, Job Information Report, consisting of RRB Form(s) G–251a, Employer Job Information (job description) and G–251b, Employer Job Information (general). Our ICR describes the information we seek to collect from the public. Review and approval by OIRA ensures that we impose appropriate paperwork burdens.

The RRB invites comments on the proposed collection of information to determine (1) The practical utility of the collection; (2) the accuracy of the estimated burden of the collection; (3) ways to enhance the quality, utility and clarity of the information that is the subject of collection; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology. Comments to RRB or OIRA must contain the OMB control number of the ICR. For proper consideration of your comments, it is best if RRB and OIRA receive them within 30 days of publication date.

Previous Requests for Comments: The RRB has already published the initial 60-day notice (71 FR 44054 and 44055 on August 3, 2006) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Job Information Report.

OMB Number: 3220–0193.

Form(s) submitted: G–251a, Employer Job Information (position description). G–251b, Employer Job Information (general).

Type of request: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Obligation to respond: Voluntary.

Abstract: The collection obtains information used by the Railroad Retirement Board (RRB) to assist in determining whether a railroad employee is disabled from his or her regular occupation. It provides, under certain conditions, railroad employers with the opportunity to provide information to the RRB regarding the employee applicant's job duties.

The proposed estimated annual burden for this collection is unchanged as follows:

Estimated annual number of respondents: 430.

Total annual responses: 430.

Total annual reporting hours: 144.

FOR FURTHER INFORMATION CONTACT: Copies of the form and supporting documents can be obtained from Charles Mierzwa, the agency clearance officer at (312–751–3363) or *Charles.Mierzwa@rrb.gov.*

Comments: Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 or *Ronald.Hodapp@rrb.gov* and to the OMB Desk Officer for the RRB, Karen Matsuoka at *kmatsuoka@omb.eop.gov*, Fax (202) 395–6974.

Charles Mierzwa,

RRB Clearance Officer.

[FR Doc. E6–18962 Filed 11–8–06; 8:45 am]

BILLING CODE 7905–01–P

RAILROAD RETIREMENT BOARD

2007 Railroad Experience Rating Proclamations, Monthly Compensation Base and Other Determinations

AGENCY: Railroad Retirement Board.

ACTION: Notice.

SUMMARY: Pursuant to section 8(c)(2) and section 12(r)(3) of the Railroad Unemployment Insurance Act (Act) (45 U.S.C. 358(c)(2) and 45 U.S.C. 362(r)(3), respectively), the Board gives notice of the following:

1. The balance to the credit of the Railroad Unemployment Insurance (RUI) Account, as of June 30, 2006, is $114,826,602.43;

2. The September 30, 2006, balance of any new loans to the RUI Account, including accrued interest, is zero;

3. The system compensation base is $3,338,677,272.65 as of June 30, 2006;

4. The cumulative system unallocated charge balance is ($279,893,399.81) as of June 30, 2006;

5. The pooled credit ratio for calendar year 2007 is zero;

6. The pooled charged ratio for calendar year 2007 is zero;

7. The surcharge rate for calendar year 2007 is 1.5 percent;

8. The monthly compensation base under section 1(i) of the Act is $1,230 for months in calendar year 2007;

9. The amount described in section 1(k) of the Act as ''2.5 times the monthly compensation base'' is $3,075 for base year (calendar year) 2007;

10. The amount described in section 2(c) of the Act as ''an amount that bears

the same ratio to $775 as the monthly compensation base for that year as computed under section 1(i) of this Act bears to $600'' is $1,589 for months in calendar year 2007;

11. The amount described in section 3 of the Act as ''2.5 times the monthly compensation base'' is $3,075 for base year (calendar year) 2007;

12. The amount described in section 4(a–2)(i)(A) of the Act as ''2.5 times the monthly compensation base'' is $3,075 with respect to disqualifications ending in calendar year 2007;

13. The maximum daily benefit rate under section 2(a)(3) of the Act is $59 with respect to days of unemployment and days of sickness in registration periods beginning after June 30, 2007.

DATES: The balance in notice (1) and the determinations made in notices (3) through (7) are based on data as of June 30, 2006. The balance in notice (2) is based on data as of September 30, 2006. The determinations made in notices (5) through (7) apply to the calculation, under section 8(a)(1)(C) of the Act, of employer contribution rates for 2007. The determinations made in notices (8) through (12) are effective January 1, 2007. The determination made in notice (13) is effective for registration periods beginning after June 30, 2007.

ADDRESSES: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611–2092.

FOR FURTHER INFORMATION CONTACT: Marla L. Huddleston, Bureau of the Actuary, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611–2092, telephone (312) 751–4779.

SUPPLEMENTARY INFORMATION: The RRB is required by section 8(c)(1) of the Railroad Unemployment Insurance Act (Act) (45 U.S.C. 358(c)(1)) as amended by Public Law 100–647, to proclaim by October 15 of each year certain system-wide factors used in calculating experience-based employer contribution rates for the following year. The RRB is further required by section 8(c)(2) of the Act (45 U.S.C. 358(c)(2)) to publish the amounts so determined and proclaimed. The RRB is required by section 12(r)(3) of the Act (45 U.S.C. 362(r)(3)) to publish by December 11, 2006, the computation of the calendar year 2007 monthly compensation base (section 1(i) of the Act) and amounts described in sections 1(k), 2(c), 3 and 4(a–2)(i)(A) of the Act which are related to changes in the monthly compensation base. Also, the RRB is required to publish, by June 11, 2007, the maximum daily benefit rate under section 2(a)(3) of the Act for days of unemployment and days of sickness in registration periods beginning after June 30, 2007.

Surcharge Rate

A surcharge is added in the calculation of each employer's contribution rate, subject to the applicable maximum rate, for a calendar year whenever the balance to the credit of the RUI Account on the preceding June 30 is less than the greater of $100 million or the amount that bears the same ratio to $100 million as the system compensation base for that June 30 bears to the system compensation base as of June 30, 1991. If the RUI Account balance is less than $100 million (as indexed), but at least $50 million (as indexed), the surcharge will be 1.5 percent. If the RUI Account balance is less than $50 million (as indexed), but greater than zero, the surcharge will be 2.5 percent. The maximum surcharge of 3.5 percent applies if the RUI Account balance is less than zero.

The system compensation base as of June 30, 1991 was $2,763,287,237.04. The system compensation base for June 30, 2006 was $3,338,677,272.65. The ratio of $3,338,677,272.65 to $2,763,287,237.04 is 1.20822665. Multiplying 1.20822665 by $100 million yields $120,822,665. Multiplying $50 million by 1.20822665 produces $60,411,333. The Account balance on June 30, 2006, was $114,826,602.43. Accordingly, the surcharge rate for calendar year 2007 is 1.5 percent.

Monthly Compensation Base

For years after 1988, section 1(i) of the Act contains a formula for determining the monthly compensation base. Under the prescribed formula, the monthly compensation base increases by approximately two-thirds of the cumulative growth in average national wages since 1984. The monthly compensation base for months in calendar year 2007 shall be equal to the greater of (a) $600 or (b) $600 [1 + {(A − 37,800)/56,700}], where A equals the amount of the applicable base with respect to tier 1 taxes for 2007 under section 3231(e)(2) of the Internal Revenue Code of 1986. Section 1(i) further provides that if the amount so determined is not a multiple of $5, it shall be rounded to the nearest multiple of $5.

The calendar year 2007 tier 1 tax base is $97,500. Subtracting $37,800 from $97,500 produces $59,700. Dividing $59,700 by $56,700 yields a ratio of 1.05291005. Adding one gives 2.05291005. Multiplying $600 by the amount 2.05291005 produces the amount of $1,231.75, which must then be rounded to $1,230. Accordingly, the monthly compensation base is determined to be $1,230 for months in calendar year 2007.

Amounts Related to Changes in Monthly Compensation Base

For years after 1988, sections 1(k), 2(c), 3 and 4(a–2)(i)(A) of the Act contain formulas for determining amounts related to the monthly compensation base.

Under section 1(k), remuneration earned from employment covered under the Act cannot be considered subsidiary remuneration if the employee's base year compensation is less than 2.5 times the monthly compensation base for months in such base year. Multiplying 2.5 by the calendar year 2007 monthly compensation base of $1,230 produces $3,075. Accordingly, the amount determined under section 1(k) is $3,075 for calendar year 2007.

Under section 2(c), the maximum amount of normal benefits paid for days of unemployment within a benefit year and the maximum amount of normal benefits paid for days of sickness within a benefit year shall not exceed an employee's compensation in the base year. In determining an employee's base year compensation, any money remuneration in a month not in excess of an amount that bears the same ratio to $775 as the monthly compensation base for that year bears to $600 shall be taken into account.

The calendar year 2007 monthly compensation base is $1,230. The ratio of $1,230 to $600 is 2.05000000. Multiplying 2.05000000 by $775 produces $1,589. Accordingly, the amount determined under section 2(c) is $1,589 for months in calendar year 2007.

Under section 3, an employee shall be a ''qualified employee'' if his/her base year compensation is not less than 2.5 times the monthly compensation base for months in such base year. Multiplying 2.5 by the calendar year 2007 monthly compensation base of $1,230 produces $3,075. Accordingly, the amount determined under section 3 is $3,075 for calendar year 2007.

Under section 4(a–2)(i)(A), an employee who leaves work voluntarily without good cause is disqualified from receiving unemployment benefits until he has been paid compensation of not less than 2.5 times the monthly compensation base for months in the calendar year in which the disqualification ends. Multiplying 2.5 by the calendar year 2007 monthly compensation base of $1,230 produces $3,075. Accordingly, the amount determined under section 4(a-2)(i)(A) is $3,075 for calendar year 2007.

Maximum Daily Benefit Rate

Section 2(a)(3) contains a formula for determining the maximum daily benefit rate for registration periods beginning after June 30, 1989, and after each June 30 thereafter. Legislation enacted on October 9, 1996, revised the formula for indexing maximum daily benefit rates. Under the prescribed formula, the maximum daily benefit rate increases by approximately two-thirds of the cumulative growth in average national wages since 1984. The maximum daily benefit rate for registration periods beginning after June 30, 2007, shall be equal to 5 percent of the monthly compensation base for the base year immediately preceding the beginning of the benefit year. Section 2(a)(3) further provides that if the amount so computed is not a multiple of $1, it shall be rounded down to the nearest multiple of $1.

The calendar year 2006 monthly compensation base is $1,195. Multiplying $1,195 by 0.05 yields $59.75, which must then be rounded down to $59. Accordingly, the maximum daily benefit rate for days of unemployment and days of sickness beginning in registration periods after June 30, 2007, is determined to be $59.

Dated: November 2, 2006.

By authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. E6–18960 Filed 11–8–06; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Rule 17a–5; SEC File No. 270–155; OMB Control No. 3235–0123.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Rule 17a–5 (17 CFR 240.17a–5) is the basic financial reporting rule for brokers and dealers.[1] The Rule requires the filing of the Financial and Operational Combined Uniform Single Report (''FOCUS Report'') on Form X–17A–5 (17 CFR 240.15c3–1e), which was the result of years of study and comments by representatives of the securities industry through advisory committees and through the normal rule proposal methods. The FOCUS Report was designed to eliminate the overlapping regulatory reports required by various self-regulatory organizations and the Commission and to reduce reporting burdens as much as possible. The Rule also requires the filing of an annual audited report of financial statements.

The FOCUS Report consists of: (1) Part I, which is a monthly report that must be filed by brokers or dealers that clear transactions or carry customer securities; (2) one of three alternative quarterly reports: Part II, which must be filed by brokers or dealers that clear transactions or carry customer securities; Part IIA, which must be filed by brokers or dealers that do not clear transactions or carry customer securities; and Part IIB, which must be filed by specialized broker-dealers registered with the Commission as OTC derivatives dealers;[2] (3) supplemental schedules, which must be filed annually; and (4) a facing page, which must be filed with the annual audited report of financial statements. Under the Rule, a broker or dealer that computes certain of its capital charges in accordance with Appendix E to Exchange Act Rule 15c3–1 (17 CFR 240.15c3–1e) must file additional monthly, quarterly, and annual reports with the Commission.

The variation in the size and complexity of brokers and dealers subject to Rule 17a–5 and the differences in the FOCUS Report forms that must be filed under the Rule make it difficult to calculate the cost of compliance. However, we estimate, on average, that each report will require approximately 12 hours. At year-end 2005, the Commission estimates that there were approximately 6,200 brokers or dealers, and that of those firms there were approximately 600 brokers or dealers that clear transactions or carry customer securities. In addition, approximately 400 firms filed annual reports. The Commission therefore estimates that approximately 600 firms filed monthly reports, approximately 5,600 firms filed quarterly reports, and approximately 400 firms filed annual reports. In addition, approximately 6,200 firms filed annual audited reports. As a result, there were approximately 36,200 total annual responses ((600 × 12) + (5,600 × 4) + 400 + 6,200 = 36,200). This results in an estimated annual burden of 434,400 hours (36,200 annual responses × 12 hours = 434,400).

In addition, we estimate that approximately 11 brokers or dealers will elect to use Appendix E to Rule 15c3–1 to compute certain of their capital charges (as of June 2006, five brokers or dealers have elected to use Appendix E). We estimate that the average amount of time necessary to prepare and file the additional monthly reports that must be filed by these firms is about 4 hours per month, or approximately 48 hours per year; the average amount of time necessary to prepare and file the additional quarterly reports is about 8 hours per quarter, or approximately 32 hours per year; and the average amount of time necessary to prepare and file the additional supplemental reports with the annual audit required is approximately 40 hours per year. Consequently, we estimate that the total additional annual burden for these 11 brokers or dealers is approximately 1,320 hours ((48 + 32 + 40) × 11 = 1,320).

The Commission therefore estimates that the total annual burden under Rule 17a–5 is approximately 435,700 hours (434,400 + 1,320 = 435,720, rounded to 435,700).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Comments regarding the estimated burden hours should be directed to: (i) The Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by e-mail to *David_Rostker@omb.eop.gov*; and (ii) R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312, or by e-mail to *PRA_Mailbox@sec.gov*. Comments must be submitted to the Office of Management and Budget within 30 days of this notice.

November 3, 2006.

Nancy M. Morris,

Secretary.

[FR Doc. E6–18950 Filed 11–8–06; 8:45 am]

BILLING CODE 8011–01–P

[1] Rule 17a–5(c) requires a broker or dealer to furnish certain of its financial information to customers and is subject to a separate PRA filing (OMB Control Number 3235–0199).

[2] Part IIB of Form X–17A–5 must be filed by OTC derivatives dealers under Exchange Act Rule 17a–12 and is subject to a separate PRA filing (OMB Control Number 3235–0498).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54691; File No. SR–Amex–2006–103]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Eliminating the Post-Trade Allocation Feature in ANTE

November 2, 2006.

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 October 27, 2006, the American Stock Exchange LLC (''Amex'' or ''Exchange'') submitted to 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 Amex. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [3] and Rule 19b–4(f)(6) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to eliminate the concept of post-trade allocation codified in Amex Rule 935–ANTE(b). The text of the proposed rule change is available on the Amex's Web site at *http://amex.com*, the Amex's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Amex included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to eliminate Amex Rule 935–ANTE (b), governing ANTE post-trade allocation. Amex Rule 935–ANTE (b) currently provides for the post-trade allocation of contracts executed as the result of the submission of orders to trade with orders in the ANTE Central Book. Amex Rule 935–ANTE (b)(2) provides that if more than one ANTE Participant [5] and/or a floor broker representing a customer order submits an order to trade with an order in the ANTE Central book, within a period not to exceed five seconds after the initial ANTE Participant has submitted its order, all those ANTE Participants and the floor broker's customer will be entitled to participate in the allocation of any executed contracts. Amex Rule 935–ANTE (b)(2) provides that the ANTE Participant to first submit the order to trade would be allocated executed contracts up to a size established on a class-by-class basis by the Options Trading Committee and referred to as the ''Take Size.'' The initial ANTE Participant receives the lesser of the number of executed contracts in his indicated order size or the ''Take Size.'' The Options Trading Committee considers the option's liquidity and the size of the trading crowd in determining the appropriate ''Take Size'' for each option class. They are responsible for reviewing and in some cases revising the assigned ''Take Size'' on a periodic basis, but do not change a ''Take Size'' during the course of a trading day.

Other Exchanges have moved towards electronic trading, where the notion of ''Take-Size'' does not exist.[6] The Exchange believes that eliminating the concept of ''Take-Size'' at the Amex will further encourage competition with the liquidity providers on the Exchange's Floor. Accordingly, the Exchange proposes that ANTE Participants will no longer be limited by the post-trade allocation process.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act [7] in general and furthers the objectives of Section 6(b)(5) [8] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [9] and subparagraph (f)(6) of Rule 19b–4 [10] thereunder because it 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; and the Exchange has given the Commission written notice of its intention to file the proposed rule change at least five business days prior to filing. 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.

Under Rule 19b–4(f)(6) of the Act,[11] the proposal does not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. Amex has requested that the Commission waive the 30-day operative

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] Amex Rule 900–ANTE (b)(45) defines ANTE Participant as either the specialist, registered options trader(s), Remote Registered Options Trader or Supplemental Registered Options Trader, assigned to trade a specific options class on the ANTE System.

[6] *See* ISE Rule 714 and NYSEArca Rule 6.76B.

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A)(iii).

[10] 17 CFR 240.19b–4(f)(6).

[11] *Id.*

delay so that it may implement the proposal as quickly as possible. The Commission believes that the proposal raises no issues of regulatory concern. Therefore, the Commission, consistent with the protection of investors and the public interest, has determined to waive the 30-day operative date so that the proposal may take effect upon filing.[12]

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–Amex–2006–103 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–Amex–2006–103. 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 Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2006–103 and should be submitted on or before November 30, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Nancy M. Morris,

Secretary.

[FR Doc. E6–18952 Filed 11–8–06; 8:45 am]

BILLING CODE 8011–01–P

[12] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54698; File No. SR–Amex–2006–104]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Eliminate Certain Licensing Fees

November 2, 2006.

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 October 30, 2006, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. Amex has designated this proposal as one establishing or changing a due, fee, or other charge imposed by a self-regulatory organization pursuant to Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Amex proposes to modify its Options Fee Schedule and its Exchange-Traded Fund (''ETF'') and Trust Issued Receipts Fee Schedule to eliminate certain licensing fees.

The text of the proposed rule change is available on the Exchange's Internet Web site (*http://www.amex.com*), at the Exchange's principal office, 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)(ii).

[4] 17 CFR 240.19b–4(f)(2).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend its Options Fee Schedule to eliminate the licensing fee of $0.10 a contract which is currently charged on (1) options on the S&P 500 Index Tracking Stock® (''SPY®'') and (2) options on the Nasdaq-100 Index Tracking Stock® (''QQQQ®''). The Exchange is proposing to retroactively eliminate the licensing fee applicable to the SPY options as of the close of business on September 29, 2006. The Exchange is also proposing to retroactively eliminate the licensing fee applicable to the QQQQ options as of the close of business on October 11, 2006. The Exchange is proposing the termination of these licensing fees because said licensing fees are no longer being imposed on the Amex.[5]

The Exchange is further proposing to eliminate the licensing fee of $0.10 a contract on the options on the SPDR O-Strip ETF. The Exchange further proposes to modify its Exchange-Traded Fund and Trust Issued Receipts Fee Schedule to eliminate the references to the SPDR O-Strip ETF, which has been delisted. The Exchange asserts that the proposal is equitable as required by Section 6(b)(4) of the Act.

2. Statutory Basis

The Exchange believes that the proposed fee change is consistent with Section 6(b)(4) of the Act[6] regarding the equitable allocation of reasonable dues, fees, and other charges among its

[5] The Exchange has represented that the licensing agreements for the SPY options and the QQQQ options were eliminated on September 29, 2006 and October 11, 2006, respectively. Email communication from Nyieri Nazarian, Assistant General Counsel, Amex, to Leah Mesfin, Special Counsel, Division of Market Regulation, Commission, on November 1, 2006.

[6] 15 U.S.C. 78f(b)(4).

members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [7] and Rule 19b–4(f)(2) thereunder [8] because it establishes or changes a due, fee, or other charge imposed by the Exchange. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–Amex–2006–104 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–Amex–2006–104. 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 Commissions 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 Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2006–104 and should be submitted on or before November 30, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Nancy M. Morris,

Secretary.

[FR Doc. E6–18953 Filed 11–8–06; 8:45 am]

BILLING CODE 8011–01–P

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

[8] 17 CFR 19b–4(f)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54696; File No. SR–Amex–2006–93]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Revise the Equities and Exchange Traded Fund Shares (''ETFs'') Fee Schedule

November 2, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 29, 2006, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. The Exchange designated the proposed rule change as one establishing or changing a due, fee, or other charge, pursuant to Section 19(b)(3)(A)(ii) of the Act [3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to revise the equities and Exchange Traded Fund Shares (''ETFs'') Fee Schedule to provide for various fees related to the routing of orders to other market centers.

The text of the proposed change is available on Amex's Web site at *http://www.amex.com,* at the principal office of Amex, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

On July 17, 2006, the Amex, the Boston Stock Exchange, Inc., the Chicago Board Options Exchange, Inc., the Chicago Stock Exchange, Inc., the Nasdaq Stock Market LLC, the National Stock Exchange, the New York Stock Exchange LLC, and the NYSE Arca, Inc., executed and filed with the Commission a ''Plan for the Purpose of Creating and Operating an Intermarket Communications Linkage Pursuant to Section 11A(a)(3)(B) of the Act. The Philadelphia Stock Exchange, Inc. (''Phlx'') subsequently executed the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

Linkage Plan on August 1, 2006.[5] This ''Linkage Plan'' was filed with the Commission pursuant to Rule 608 of Regulation NMS under the Act.[6] The purpose of the proposed Linkage Plan is to enable the Plan Participants to act jointly in planning, developing, operating and regulating the NMS Linkage System (''Linkage'') that will electronically link the Linkage Plan Participant Markets to one another, as described in the Linkage Plan. The Linkage Plan became operative on October 1, 2006.

Historically, ITS Participants have not imposed transaction charges for executions of commitments delivered through ITS, although the ITS Plan does not prohibit such charges. Under the Linkage Plan, each Participant is accessed through its own members and could charge for orders executed in their market through the Linkage. Therefore, the Exchange now proposes to amend its Fee Schedule to provide: (1) For transactions resulting from equities and ETF orders routed through the Linkage to the Amex, members will be assessed a transaction charge based on the transaction charges currently in place for transactions resulting from other orders; and (2) for transactions resulting from equities and ETF orders routed through the Linkage to an away market, the Amex will pass through to its members fees charged by the other market centers for such transactions.[7] To determine the amount of these fees members will need to consult the fee schedules published by each market center. It is anticipated that, at least initially the transaction charges imposed by other market centers for the execution of orders routed to them through the Linkage will be the same as the transaction charges imposed on executions of orders for their own members.

2. Statutory Basis

The Exchange believes that its proposal to revise its schedule of fees is consistent with Section 6(b) of the Act[8] in general, and furthers the objectives of Section 6(b)(4) of the Act[9] in particular, in that it is an equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities. Specifically, the Exchange is proposing to establish transaction charges for order routed to the Amex through the Linkage and pass through charges assessed by other market centers for orders routed from the Amex through the Linkage.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[10] and subparagraph (f)(2) of Rule 19b–4 thereunder.[11] 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 the 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–Amex–2006–93 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–Amex–2006–93. 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 Room. Copies of the filing also will be available for inspection and copying at the principal office of the Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2006–93 and should be submitted on or before November 30, 2006.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[12]

Nancy M. Morris,

Secretary.

[FR Doc. E6–18954 Filed 11–8–06; 8:45 am]

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[5] *See* Securities Exchange Act Release No. 54551 (Sept. 29, 2006), 71 FR 59148 (Oct. 6, 2006) (approving the Linkage Plan).

[6] 17 CFR 242.608.

[7] *See* Securities Exchange Act Release Nos. 54548 (September 29, 2006), 71 FR 59159 (October 6, 2006) (SR–Amex 2006–85); and 54480 (September 21, 2006), 71 FR 57596 (September 29, 2006) (SR–NYSE 2006–75).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

[11] 17 C.F.R. 240.19b–4(f)(2).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54709; File No. SR–Amex–2006–72]

Self-Regulatory Organizations; American Stock Exchange LLC; Order Approving a Proposed Rule Change and Amendment No. 1 Thereto, and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 3, To Adopt New Rules To Implement on a Pilot Basis an Initial Version of AEMI, Its Proposed New Hybrid Market Trading Platform For Equity Products and Exchange Traded Funds

November 3, 2006.

I. Introduction

On August 8, 2006, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission

(''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to implement an initial version of its Auction & Electronic Market Integration (''AEMI'') system, a new hybrid market trading platform for equity products and exchange-traded funds (''ETFs''). On September 7, 2006, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The proposed rule change, as amended, was published for comment in the **Federal Register** on September 14, 2006.[4] The Commission received four comments on the proposal.[5] On October 31, 2006, Amex filed Amendment No. 3 to the proposal.[6] This notice and order solicits comments from interested persons on Amendment No. 3 and approves the amended proposal on an accelerated basis.

II. Description of Proposal

The Commission recently approved the Exchange's new hybrid market platform for equity products and ETFs, known as AEMI, that will integrate automatic execution and floor-based auction trading (the ''AEMI Rule Filing'').[7] The Exchange has proposed to adopt, prior to the Trading Phase Date,[8] which is set for February 5, 2007, a modified version of the AEMI Rules, known as the ''AEMI-One Rules,'' as a pilot program (the ''AEMI-One Pilot''). The AEMI-One Pilot would commence with two listed equities and two ETF UTP securities. Following a successful ten-day period of trading, up to four listed ETFs would be added for an additional five days of trading. The Exchange would then accelerate the deployment of all equity products and ETFs on a per-post basis and give notice to members and publish on Amex's Web site the timing for each group of securities being migrated to the AEMI platform.

Because not all provisions of Regulation NMS are fully operative, the AEMI-One Pilot rules are modified from their AEMI Rule counterparts to reflect the different regulatory environments in effect before and after the Trading Phase Date. The Exchange expects that the AEMI-One Pilot would be in effect from shortly after Commission approval of the AEMI-One Rules until the Trading Phase Date. At the Trading Phase Date, the AEMI Rules would become effective and supersede the AEMI-One Rules. The Exchange has stated that it would make this change via a filing with the Commission to delete the AEMI-One Rules from its rulebook.

The operation of AEMI-One would be, in most respects, consistent with the operation of AEMI, except for the following provisions:

- A ''protected quotation'' in the AEMI-One Pilot (''AEMI-One Protected Quotation'') is a quotation in an NMS stock that: (1) Is disseminated pursuant to an effective national market system plan; (2) is the best bid or best offer of a national securities exchange or a national securities association that is at a better price than the next trade that would occur on AEMI; and (3) is a firm manual or automated quotation, irrespective of whether the quotation is at the national best bid or offer (''NBBO'').[9] In contrast, a ''protected quotation'' under the AEMI Rules is defined to be consistent with Rule 611 of Regulation NMS[10] and must be an automated quotation that is the best bid or offer of an automated trading center.
- During the AEMI-One Pilot, not every away market center that displays an AEMI-One Protected Quotation may be capable of receiving intermarket sweep orders (''ISOs''), as such orders are defined in Regulation NMS.[11] In such circumstances, AEMI would not utilize ISOs and instead would generate ''away market obligations.'' An ''away market obligation'' is defined in the AEMI-One Rules as an immediate-or-cancel limit order generated by AEMI and routed to one or more away market centers to execute against all AEMI-One Protected Quotations up to their displayed size.[12] If an away market that trades a particular security were capable of receiving ISOs prior to the Trading Phase Date, the Exchange could choose to require AEMI to generate and utilize ISOs as the away market obligations for that market.[13] In contrast, the AEMI Rules effective on and after the Trading Phase Date would provide for the use of ISOs exclusively to comply with the trade-through provisions of Rule 611 for protected quotations displayed at other market centers. However, during the AEMI-One Pilot, AEMI would accept and trade all ISOs received by the Exchange that involve securities traded on the Exchange that have made the transfer from Amex's legacy systems to the AEMI platform, similar to the way AEMI would operate following the AEMI-One Pilot.[14]

III. Amendment No. 3

In Amendment No. 3, the Exchange proposed certain changes to conform the AEMI-One Rules to the final AEMI Rules. These conforming changes are made in Rules 24–AEMI-One, 115–AEMI-One, 128A–AEMI-One, 131–AEMI-One, and 170–AEMI-One. The Exchange also proposed the following:

- To change the language describing how the AEMI platform will route orders in AEMI-One to protected quotations of away markets for trade-through purposes. As described in Amendment No. 3, an AEMI-One Protected Quotation is any firm

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaces and supersedes the original filing in its entirety.

[4] *See* Securities Exchange Act Release No. 54413 (September 7, 2006), 71 FR 54318 (''Notice'').

[5] *See* Letter to Nancy M. Morris, Secretary, Commission, from Michael A. Barth, Senior Vice President, Exchange and Market Centers, Order Execution Services, Inc., dated September 22, 2006 (''OES Letter''); Letter to Nancy M. Morris, Secretary, Commission, from Mary Yeager, Assistant Secretary, New York Stock Exchange LLC, dated September 29, 2006 (''NYSE Letter''); Letter to Nancy M. Morris, Secretary, Commission, from David A. Herron, Chief Executive Officer, Chicago Stock Exchange, Inc., dated October 5, 2006 (''CHX Letter''); and Letter to Nancy M. Morris, Secretary, Commission, from Jeffrery S. Davis, Assistant General Counsel, Nasdaq Stock Market LLC, dated October 10, 2006 (''Nasdaq Letter'').

[6] *See* Partial Amendment to Form 19b–4 dated October 27, 2006 (''Amendment No. 3''), *infra* Section III. The Exchange submitted Amendment No. 2 to the Commission on October 30, 2006 and withdrew Amendment No. 2 on October 31, 2006.

[7] Securities Exchange Act Release No. 54552 (September 29, 2006), 71 FR 59546 (October 10, 2006) (''AEMI Approval Order'').

[8] By the Trading Phase Date, each trading center intending to qualify its quotations for trade-through protection must bring a Regulation NMS-compliant trading system into full operation for all NMS stocks intended to be traded during the phase-in period (*i.e.,* through October 8, 2007). *See* Securities Exchange Act Release No. 53829 (May 18, 2006), 71 FR 30038, 30039 (May 24, 2006) (''NMS Extension Release'') (extending compliance dates for Rules 610 and 611 of Regulation NMS).

[9] *See* Amendment No. 3, *supra* note 6.

[10] *See* 17 CFR 242.600(b)(58) (defining ''protected quotation''); *see also* 17 CFR 242.600(b)(57) (defining ''protecting bid'' and ''protected offer'').

[11] *See* 17 CFR 242.600(b)(30) (defining ''intermarket sweep order'').

[12] The Commission notes that the Exchange has represented that such immediate-or-cancel orders will carry an expiration delay timer that at the outset of AEMI-One will be set to 35 seconds for all away market obligations. *See* Letter to Nancy M. Morris, Secretary, Commission, from Claire P. McGrath, Senior Vice President and General Counsel, Amex, dated October 31, 2006 (''Amex Request Letter'') (requesting exemption from Section 8(d) of the ITS Plan in connection with Amex's use of ISOs and the use of private linkages instead of ITS for routing away market obligations).

[13] The Commission notes that as a condition to the Exchange marking an order as an ISO, the Exchange must immediately send ISOs or away market obligations, as appropriate to the trading center whose quote the Exchange is trying to access, to all AEMI-One Protected Quotations.

[14] In Amendment No. 1 the Exchange, among other things, clarified that, during the period of the AEMI-One Pilot, a member of the Exchange sending an intermarket sweep order to the AEMI platform must simultaneously send an intermarket sweep order (or a comparable order) for the full displayed size of the top of book of every other market center displaying a better-period quotations. *See* proposed Rule 131–AEMI–One. In Amendment No. 2, the Exchange revised proposed Rule 131–AEMI–One to state ''better-priced *protected* quotation'' (emphasis added).

quotation, whether manual or automated, that is at a better price than the next trade that would occur on AEMI, and that is the best bid or offer of a national securities exchange or a national securities association. In contrast, a ''protected quotation'' under the AEMI Rules (effective on and after the Trading Phase Date) is defined to be consistent with Rule 611 of Regulation NMS and must be an automated quotation that is the best bid or offer of an automated trading center (as defined in Regulation NMS).

- To make certain changes to Rule 126A–AEMI-One to insure that the AEMI system's handling of trade-throughs is consistent with the ITS Plan.
- To remove the order types ''buy minus'' and ''sell plus'' from proposed Rule 131–AEMI-One(n) (and all references thereto in the AEMI-One Rules) pending additional study of their functionality in a Regulation NMS environment.
- To revise the descriptions of ''stop order'' in Rule 131–AEMI-One(o) and ''stop limit order'' in proposed Rule 131–AEMI-One(p) to provide that ''too marketable'' stop and stop limit orders for ETFs will be executed, not rejected.
- To codify as Commentary .01 to proposed Rule 154–AEMI-One the Exchange's interpretation that a Specialist will not be deemed to be ''trading ahead'' of a percentage order (of which it is the agent) if: (1) An aggressing order that executes against the Specialist's quote ''elects'' the percentage order (making it eligible for immediate execution); and (2) the percentage order is not executed by that aggressing order due to insufficient remaining interest and therefore reverts back to unelected status. Additionally, the Commentary would provide that any subsequent trade by the Specialist for its own account would not constitute ''trading ahead'' if the percentage order has not been otherwise re-elected at that time.
- To revise the definitions of ''Specialist emergency quote'' and ''stabilizing quote'' in proposed Rule 1A–AEMI-One to provide for an upper limit (not to exceed ten) on the number of Specialist emergency quotes that may be immediately generated under a possible scenario in which the Specialist pairs off through another market. Otherwise, a potentially large number of such quotations might be required to be sent out to protect quotes of away markets, creating excessive risk, before a tolerance breach occurs. Under the proposed rule change, the Specialist must re-quote its market when the above referenced limit is hit. The proposed change in the definition of ''stabilizing quote'' is a related change to provide that a stabilizing quote would be issued if the maximum number of Specialist emergency quotes has been reached.
- To add language to Rule 126A–AEMI-One reiterating the obligations to other market centers that members of the Exchange who choose to send ISOs to AEMI during the AEMI-One Pilot will have. This requirement also appears in proposed Rule 131–AEMI-One as described above. Such members will be obligated to protect all AEMI-One Protected Quotations.
- To clarify the meaning of the last sentence of the definition of an ''intermarket sweep order'' in proposed Rule 131–AEMI-One(k), by adding the word ''protected'' before the word ''quotation.'' This sentence describes the obligations to other market centers of a member of the Exchange who chooses to send an intermarket sweep order to the AEMI platform during the AEMI-One Pilot. Such a member would be obligated to protect all AEMI-One Protected Quotations.

IV. Comments

The Commission received four comment letters regarding the proposed rule change. One commenter, OES, asserted that the proposed routing arrangements contemplate that Amex would inappropriately perform duties required to be performed by a broker-dealer, such as making decisions on when, how, and where orders are routed.[15] New York Stock Exchange (''NYSE'') argued that Amex's proposal constituted ''an attempt to move forward the effective date of the Reg. NMS Order Protection Rule from February 5, 2007 to whenever the Amex is ready to implement AEMI-One.'' [16] NYSE also argued that Amex's proposal would violate the Intermarket Trading System (''ITS'') Plan and give it the ability to trade-through quotes that Amex deems slow. NYSE also observed that, when Amex previewed its proposal with the ITS Operating Committee, several other markets noted that it would have a negative impact on their respective technology implementation schedules. The Chicago Stock Exchange (''CHX'') also viewed Amex's proposed rule change as an attempt to accelerate the Trading Phase Date and opposed Amex's proposal to trade-through quotations Amex deems to be slow.[17]

Nasdaq supported Amex's proposed rule change, characterizing it as a ''sensible transitional approach'' that would help it prepare for the Trading Phase Date at no or little cost to other market participants.[18] Nasdaq disagreed with NYSE's comments on Amex's proposal, stating that the proposed rule change would not result in any technical or programming impact to Nasdaq, is voluntary, and could be implemented by Amex at any time without requiring other markets to implement similar functionality. Nasdaq also asserted that, when Amex previewed its plan to the ITS Operating Committee, there was no overwhelming consensus either for or against the proposal, and this is not unusual given that market participants often have competing interests. In Nasdaq's view, any concerns presented at that time about the proposal's potential impact on other markets' programming requirements were based upon a lack of familiarity with the proposal.

Amex responded to NYSE's and OES's comment letters.[19] Amex disagreed with NYSE's assertion that the Trading Phase Date is the date on which all SRO trading centers will launch their respective Regulation NMS-compliant systems. Rather, Amex stated that the Trading Phase Date represents an end date by which all such systems must comply with Regulation NMS. Moreover, Amex argued that the deadline of the Trading Phase Date does not negate the desirability of providing a phase-in period for a new trading system. The Exchange asserted that the industry should have operating experience with new systems prior to the Trading Phase Date before market participants become liable for compliance. The Exchange also stated that its proposal would not create any additional technical burdens on other market centers. Amex also explained that it would not send ISOs to any market not ready to accept them and would publish the list of markets to which it would send ISOs prior to the Trading Phase Date.[20] The Exchange also stated that it would seek an exemption from the ITS Plan to the extent its proposal required.[21]

In response to OES's comment letter, Amex stated that the Exchange's routing functionality has no discretion and thus the Exchange would not be acting in the

[15] *See* OES Letter at 1. *See also* AEMI Approval Order, 71 FR at 59554, n. 103.

[16] *See* NYSE Letter at 1.

[17] *See* CHX Letter at 1.

[18] *See* Nasdaq Letter at 1.

[19] *See* Letter to Nancy M. Morris, Secretary, Commission, from Neal L. Wolkoff, Chief Executive Officer, Amex, dated October 10, 2006 (''Amex Response Letter'').

[20] *See id.* at 2.

[21] *See id.* at 2; *see also* Amex Request Letter, *supra* note 12 (requesting exemption from Section 8(d) of the ITS Plan in connection with Amex's use of ISOs and the use of private linkages instead of ITS for routing away market obligations).

capacity of a broker.[22] Amex further explained that the routing logic is based on pre-coded functionality which seeks to route orders to the market center displaying the best price based on price-size priority. The Exchange also stated that it does not believe that its use of routing logic or licensing of routing technology would undermine or change its ability to provide a marketplace of buyers and sellers.

The Commission notes that, in Amendment No. 2, the Exchange amended its proposal so that during the AEMI-One Pilot it would protect any firm quotation, whether manual or automated, that is at a better price than the next trade that would occur on AEMI and that is the best bid or offer of a national securities exchange or a national securities association. This change should address the comment made by NYSE and CHX that the Exchange would ''be permitted to trade through quotes it deems slow * * *.''[23]

V. Discussion

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with the requirements of Section 6(b) of the Act.[24] Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act[25] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission also finds that the proposal is consistent with Section 6(b)(8) of the Act,[26] which prohibits an exchange's rules from imposing a burden on competition that is not necessary or appropriate in furtherance of the Act. Finally, the Commission believes that the proposal is consistent with Section 11A(a)(1)(C) of the Act,[27] in which Congress found that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure: (1) Economically efficient execution of securities transactions; (2) fair competition among brokers and dealers and among exchange markets, and between exchange markets, and markets other than exchange markets; (3) the availability to brokers, dealers, and investors of information with respect to quotations and transactions in securities; (4) the practicability of brokers executing investors' orders in the best market; and (5) an opportunity for investors' orders to be executed without the participation of a dealer. Since the Commission has already approved the final AEMI Rules,[28] only those aspects of the AEMI-One Rules that differ from the final AEMI Rules are discussed more fully below.

In its AEMI-One proposal, the Exchange stated that it will protect all AEMI-One Protected Quotations—namely all quotations that: (1) Are disseminated pursuant to an effective national market system plan; (2) are the best bid or best offer of a national securities exchange or a national securities association that is at a better price than the next trade that would occur on AEMI; and (3) are firm quotations, regardless of whether they are manual or automated. The Commission notes that this level of price protection appears consistent with the ITS Plan.

The Exchange plans to utilize ISOs to route orders to AEMI-One Protected Quotations of those market centers capable of receiving ISOs. For markets that are unable to receive ISOs, the AEMI-One Rules provide for the use of an ''away market obligation'' to reach the quotations of such markets. An ''away market obligation'' is an immediate-or-cancel limit order generated by AEMI in connection with the execution of an order by AEMI and simultaneously routed to one or more away market centers to execute against the full displayed size of any AEMI-One Protected Quotation. In addition, an Amex member may send an ISO to AEMI during the AEMI-One Pilot only if it has simultaneously sent an ISO (or comparable order) to execute against the full displayed size of any AEMI-One Protected Quotation. The AEMI-One Rules provide that the Exchange will accept and act upon all inbound, appropriately marked ISOs received before the Trading Phase Date that involve securities traded on the AEMI platform.

The Commission believes that the Exchange's proposal is reasonably designed to allow Amex and its market participants to gain experience with ISOs before the Trading Phase Date. In a separate action, the Commission today is exempting Amex from certain provisions of the ITS Plan relating to the Exchange's use of ISOs and the use of private linkages instead of ITS for routing away market obligations.[29] This exemption will enable Amex to implement certain provisions of the AEMI-One Rules without violating the ITS Plan. For reasons discussed in the Amex Exemption Letter, the Commission believes that granting Amex's request for an exemption from certain provisions of the ITS Plan is warranted.

The Commission does not believe that OES's comments regarding the AEMI routing arrangements preclude approval of the AEMI-One Rules. The Commission previously considered this comment as part of the AEMI Rule Filing. For reasons discussed in the order approving that filing, the Commission believes that the Exchange's arrangements for outbound routing functionality are consistent with the Act.[30]

Accelerated Approval of Amendment No. 3

Pursuant to Section 19(b)(2) of the Act, the Commission finds good cause to approve the proposal, as amended by Amendment No. 3, prior to the thirtieth day after the amended proposal is published for comment in the **Federal Register**. The changes that the Exchange proposes in Amendment No. 3 are technical in nature and raise no new issues of regulatory concern beyond those raised in the original proposal, which had a full notice-and-comment period. The Commission finds good cause to accelerate approval of the amended proposal prior to the thirtieth day after publication in the **Federal Register**.

VI. Solicitation of Comments on Amendment No. 3

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 3, including whether the amendment 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

[22] *See* Amex Response Letter at 3–4.

[23] *See* CHX Letter at 2; see also NYSE Letter at 1.

[24] 15 U.S.C. 78f(b). In approving this proposal, the Commission has considered the proposed rules' impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

[25] 15 U.S.C. 78f(b)(5).

[26] 15 U.S.C. 78f(b)(8).

[27] 15 U.S.C. 78k–1(a)(1)(C).

[28] *See* AEMI Approval Order, *supra* note 7.

[29] *See* Letter to Claire P. McGrath, Senior Vice President and General Counsel, Amex, from David S. Shillman, Associate Director, Division Commission, dated November 3, 2006 (''Amex Exemption Letter'').

[30] *See* AEMI Approval Order, 71 FR at 59554, n. 103.

• Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Amex–2006–72 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–Amex–2006–72. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. 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–Amex–2006–72 and should be submitted on or before November 30, 2006.

VII. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular with Sections 6(b)(5) and 6(b)(8) of the Act.[31]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[32] that the proposed rule change (SR–Amex–2006–72), as amended by Amendment No. 1, be, and it hereby is, approved, and that Amendment No. 3 is approved on an accelerated basis.

[31] 15 U.S.C. 78f(b)(5) and 78f(b)(8).

[32] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[33]

Nancy M. Morris,

Secretary.

[FR Doc. E6–18978 Filed 11–8–06; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54693; File No. SR–CBOE–2006–74]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Regarding the Initial and Continued Listing and Trading of Options on Units That Represent Interests in a Trust That Holds a Specified Non-U.S. Currency

November 2, 2006.

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 August 31, 2006, the Chicago Board Options Exchange, Incorporated (''CBOE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed Amendment No. 1 to the proposed rule change on October 19, 2006.[3] The Exchange filed Amendment No. 2 to the proposed rule change on November 1, 2006.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and is approving the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange hereby proposes to amend CBOE Rule 4.18 Interpretation and Policy .01; CBOE Rule 5.3 Interpretation and Policy .06; CBOE Rule 5.4 Interpretation and Policy .08; CBOE Rule 8.9; and CBOE Rule 15.1 Interpretation and Policy .03 to enable the initial and continued listing and trading on the Exchange of options on Units that represents interests in a trust that holds a specified non-U.S. currency. The text of the proposed rule change, as amended, is available on the Exchange's Web site (*http://www.cboe.com*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change, as amended, and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend CBOE Rule 4.18, Interpretation and Policy .01; CBOE Rule 5.3, Interpretation and Policy .06; CBOE Rule 5.4, Interpretation and Policy .08; CBOE Rule 8.9; and CBOE Rule 15.1, Interpretation and Policy .03 to enable the initial and continued listing and trading on the Exchange of options on Units that represent interests in a trust that holds a specified non-U.S. currency.[5] Currently, the term ''Units,'' as defined under CBOE Rule 5.3, Interpretation and Policy .06, requires that the investment assets held by a trust, investment company, or similar entity consist of portfolios of securities. As proposed, amended CBOE Rule 5.3, Interpretation and Policy .06 would permit the investment assets also to consist of a trust that holds a specified non-U.S. currency deposited with the trust.

In particular, the proposed amendment to CBOE Rule 5.3, Interpretation and Policy .06 would permit the Exchange to list options on the Euro Currency Trust (''Trust''). The

[33] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaced and superseded the original filing in its entirety.

[4] In Amendment No. 2, which supplemented the filing as reflected in Amendment No. 1, the Exchange made several clarifying changes to the proposed rule text contained in CBOE Rule 5.3, Interpretation and Policy .06(D) and (E) and CBOE Rule 5.4, Interpretation and Policy .08.

[5] The Commission notes that it recently approved a substantially similar rule change for the International Securities Exchange, Inc. (n/k/a the International Securities Exchange LLC) (''ISE''), upon which the CBOE has based this proposed rule change. *See* Securities Exchange Act Release No. 54087 (June 30, 2006), 71 FR 38918 (July 10, 2006) (SR–ISE–2005–60).

Trust issues Euro Shares (''Shares'') that represent units of fractional undivided beneficial interest in, and ownership of, the Trust. PADCO Advisors II, Inc., d/b/a Rydex Investments, is the sponsor of the Trust (''Sponsor'')[6] and may be deemed the ''issuer'' of the Shares pursuant to Section 2(a)(4) of the Securities Act of 1933, as amended.[7] The Bank of New York is the trustee of the Trust (''Trustee''), JP Morgan Chase Bank, N.A., London Branch, is the depository for the Trust, and Rydex Distributors, Inc. is the distributor for the Trust. The Trust intends to issue additional Shares on a continuous basis through the Trustee.

As stated in the Trust's Registration statement,[8] the investment objective of the Trust is for the Shares to reflect the price of the euro. The Sponsor believes that the Trust is the first exchange traded fund (''ETF'')[9] whose assets are limited to a particular foreign currency. The Shares may be purchased from the Trust only in one or more blocks of 50,000 Shares, as described in the prospectus under ''Creation and Redemption of Shares.'' A block of 50,000 shares is called a Basket. The Trust issues Shares in Baskets on a continuous basis to certain authorized participants (''Authorized Participants''). Each Basket, when created, is offered and sold to an Authorized Participant at a price in euro equal to the net asset value (''NAV'') for 50,000 Shares on the day that the order to create the Basket is accepted by the Trustee.

The Exchange believes that permitting options on foreign currency-based Units to be traded on the Exchange is consistent with the Commission's approval order of a rule change filed by the New York Stock Exchange, Inc. (''NYSE'') to list and trade shares of the Trust.[10] Through this rule change to CBOE's listing criteria for Units, the Exchange intends to provide appropriate listing standards for options on shares of these and similar types of foreign currency-based Units that may be listed in the future.

Specifically, the Exchange is proposing to amend CBOE Rule 5.3, Interpretation and Policy .06 (Criteria for Underlying Securities) to broaden the definition of Units to include shares or other securities that represent interests in registered investment companies or unit investment trusts or similar entities that hold a specified non-U.S. currency. The Exchange is also proposing to make other conforming changes to the text of CBOE Rule 5.3, Interpretation and Policy .06 to reflect the proposed broadened definition of Units. In addition, the Exchange is proposing to require, in CBOE Rule 5.3, Interpretation and Policy .06(D), that before listing and trading options on Units based on a non-U.S. currency, the Exchange must have entered into a comprehensive surveillance sharing agreement with the applicable marketplace or marketplaces with last sale reporting that represent(s) the highest volume in derivatives (options or futures) on the specified non-U.S. currency, which are utilized by the national securities exchange where the underlying Units are listed and traded.

For options trading, the underlying Units will continue to need to satisfy the initial listing standards in CBOE Rule 5.3, Interpretation and Policy .06. Specifically, the Units must be traded on a national securities exchange or through the facilities of a national securities association and must be an ''NMS stock'' as defined under Rule 600 of Regulation NMS.[11] The Units must also meet either: (1) The criteria and guidelines under CBOE Rule 5.3(a)(1) or (2) (Criteria for Underlying Securities); or (2) be available for creation or redemption each business day from and through the issuing trust, investment company, or other entity in cash or in-kind at a price related to net asset value, and the investment company or issuer is obligated to issue Units in a specified aggregate number even if some or all of the investment assets required to be deposited have not been received by the investment company or issuer, subject to the condition that the person obligated to deposit the investment assets has undertaken to deliver them as soon as possible, and such undertaking is secured by the delivery and maintenance of collateral consisting of cash or cash equivalents satisfactory to the issuer, as described in the Units' prospectus.

The Exchange also proposes to amend CBOE Rule 4.18, Interpretation and Policy .01 to require a member to establish, maintain, and enforce written policies and procedures to prevent the misuse of any material nonpublic information it might have or receive in a related security, option, or derivative security or in the applicable non-U.S. currency, non-U.S. currency options, futures or options on futures on such currency, or any other derivatives based on such currency. In addition, the Exchange proposes to amend CBOE Rules 8.9 and 15.1, Interpretation and Policy .03 to require that Market-Makers handling options on Units provide the Exchange with all necessary information relating to their trading in the applicable non-U.S. currency, non-U.S. currency options, futures or options on futures on such currency, or any other derivatives based on such currency. In addition, proposed CBOE Rule 8.9(a) would prohibit Market-Makers from engaging in stock, options, non-U.S. currency, non-U.S. currency options, futures or options on futures on such currency, or any other derivatives based on such currency or related securities trading in an account which has not been reported in a manner prescribed by the Exchange.[12]

The Exchange further proposes to amend CBOE Rule 5.4, Interpretation and Policy .08 regarding withdrawal of approval of the underlying securities to specify that Units approved for options trading under CBOE Rule 5.3, Interpretation and Policy .06 will not be deemed to meet the requirements for continued approval, and CBOE will not open any additional series of options contracts thereof, if, among other things, the Units are delisted in accordance with the terms of CBOE Rule 5.4, Interpretation and Policy .01(f), or the Units are halted from trading in their primary market, or if the value of the non-U.S. currency on which the Units are based is no longer calculated or available.

The Exchange represents that the expansion of the types of investments that may be held by a Unit under the listing standards in CBOE Rule 5.3, Interpretation and Policy .06 will not have any effect on the rules pertaining to position and exercise limits.[13] The Exchange also represents that the margin requirements for options on Units that represent interests in a trust that holds a specific non-U.S. currency will be evaluated for each product the Exchange anticipates listing. The Exchange represents that any new margin rules it deems necessary will be filed separately with the Commission.

The Exchange represents that it has an adequate surveillance program in place

[6] The Sponsor maintains a public Web site on behalf of the Trust, *http://www.currencyshares.com*, which contains information about the Trust and Shares.

[7] The Exchange does not consider Rydex Investments to be an ''issuer'' as per CBOE rules.

[8] *See* Registration No. 333–125581.

[9] The Exchange notes that the Trust is not a registered investment company under the Investment Company Act of 1940 (the ''1940 Act'') and is not required to register under the 1940 Act.

[10] *See* Securities Exchange Act Release No. 52843 (November 28, 2005), 70 FR 72486 (December 5, 2005). The Shares trade under the symbol ''FXE.''

[11] 17 CFR 242.600.

[12] The Exchange anticipates requiring Market-Makers to provide the information upon request, consistent with CBOE Rule 8.9(a).

[13] *See* CBOE Rules 4.11 and 4.12. *See also* Amendment No. 1, *supra* note 3.

for options on Units based on the value of a non-U.S. currency, and it intends to apply those same program procedures that apply to options on Units that currently trade on the Exchange. In addition, the Exchange may obtain trading information upon request via the Intermarket Surveillance Group (''ISG'') from other exchanges who are members or affiliates of the ISG. Specifically, CBOE can obtain such information from the Philadelphia Stock Exchange (''Phlx'') in connection with euro options trading on the Phlx and from the Chicago Mercantile Exchange (''CME'') and the London International Financial Futures Exchange (''LIFFE'') in connection with euro futures trading on those exchanges.[14]

2. Statutory Basis

The Exchange believes that, with the commencement of trading of a currency-based ETF on the NYSE, amending its rules to accommodate the listing and trading of options on publicly-traded shares of other securities that hold investment assets consisting of foreign currency will benefit investors by providing them with the same valuable risk management tool that is currently available with respect to other publicly-traded ETFs whose investment assets consist of securities. Accordingly, the Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Section 6(b)(5) in particular, in that it would remove impediments to and perfect the mechanism for a free and open market in a manner consistent with the protection of investors and public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change, as amended, will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received by the Exchange with respect to the proposed rule change, as amended.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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–2006–74 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–2006–74. 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 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–2006–74 and should be submitted on or before November 30, 2006.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

CBOE has asked the Commission to approve its proposal on an accelerated basis to accommodate its timetable for listing options on the Units. After careful consideration, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[15] In particular, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of Section 6(b)(5) of the Act,[16] which requires, among other things, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Further, the Commission finds that the CBOE's proposal, as amended, is substantially similar to one it recently approved for the ISE.[17]

Currently, CBOE's rules permit it to list options on Units that represent interests in registered investment companies, unit investment trusts, or similar entities that hold portfolios of securities composed or otherwise based on or representing investments in indexes or portfolios of securities.[18] The Exchange's proposal would allow it to list and trade options on Units whose investment assets consist of a specified non-U.S. currency deposited with a trust. For example, the proposed rule change would allow the CBOE to list options on the Euro Currency Trust.

The underlying Units would continue to need to satisfy the listing standards in CBOE Rule 5.3. To accommodate the listing and trading of options on Units investing primarily in a non-U.S. currency, the Exchange proposes to amend CBOE Rule 4.18 to require a member to establish, maintain, and enforce written policies and procedures designed to prevent the misuse of any material nonpublic information it might have or receive in a related security, option, or derivative security or in the applicable non-U.S. currency, non-U.S. currency options, futures or options on futures on such currency, or any other derivatives based on such currency. In addition, the Exchange proposes to amend CBOE Rule 8.9 and CBOE Rule 15.1, Interpretation and Policy .03 to require that Market-Makers handling options on Units provide the Exchange with all necessary information relating to their trading in the applicable non-U.S. currency, non-U.S. currency

[14] Phlx is a member of ISG. CME and LIFFE are affiliate members of ISG.

[15] 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).

[16] 15 U.S.C. 78f(b)(5).

[17] *See* Securities Exchange Act Release No. 54087 (June 30, 2006), 71 FR 38918 (July 10, 2006) (SR–ISE–2005–60). The CBOE based its proposed rule change on the ISE filing.

[18] *See* CBOE Rule 5.3, Interpretation and Policy .06.

options, futures or options on futures on such currency, or any other derivatives based on such currency. The Commission believes that these requirements are designed to minimize the potential for manipulating the underlying currency held by the Units.

In addition, the Units must be traded on a national securities exchange or through the facilities of a registered securities association and, as the Exchange has proposed, must be an ''NMS stock'' as defined under Rule 600(b)(47) of Regulation NMS.[19] The Units must also either: (1) Meet the criteria and guidelines under CBOE Rule 5.3 (Criteria for Underlying Securities); or (2) be available for creation or redemption each business day from and through the issuing trust, investment company, or other entity in cash or in-kind at a price related to net asset value, and the issuer is obligated to issue Units in a specified aggregate number.[20] The Commission notes that the Exchange has represented that the expansion of the types of investments that may be held by Units will not have any effect on the rules pertaining to position and exercise limits or margin.

Finally, under the proposed change to CBOE Rule 5.4, Interpretation and Policy .08, Units would not be deemed to meet the requirements for continued approval, and the Exchange would not open for trading any additional series of option contracts of the class covering such Units, if, among other things, the Units are delisted in accordance with the terms of CBOE Rule 5.4, Interpretation and Policy .01(f), or the Units are halted from trading in their primary market. The Commission believes that the Exchange's proposal to expand CBOE Rule 5.4, Interpretation and Policy .08 to address the effect of a trading halt or a delisting of the Units is consistent with the protection of investors and the public interest. The Commission also believes that the proposed change by which the Exchange will consider the suspension of opening transactions for Units if the value of the non-U.S. currency on which the Units are based is no longer calculated or available is similarly consistent with the protection of investors and the public interest.[21]

The Commission notes that the Exchange has represented that it has an adequate surveillance program in place for options on Units based on the value of a non-U.S. currency. In addition, the Exchange is able to obtain currency-related trading information via the ISG from other exchanges who are members or affiliates of the ISG, as discussed above, in connection with options and futures trading on those exchanges.

The Commission finds good cause for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of the notice of filing thereof in the **Federal Register**. The Exchange has requested accelerated approval because this proposed rule change is based on, and is substantially similar to, a proposal by the ISE that the Commission recently approved.[22] Accordingly, this proposal raises no new or novel regulatory issues that have not been previously considered by the Commission. In addition, the Commission notes that it did not receive any comments on the ISE's proposal. The Commission believes that expanding CBOE Rule 5.3 to encompass options on Units that represent interests in a trust that holds a non-U.S. currency deposited with the trust will provide investors with an additional investment choice and that accelerated approval of the proposal will allow investors to begin trading these products on the CBOE without further delay. Additionally, the proposal contains measures that are designed to minimize the potential for manipulation of the underlying currency held by the Units. Therefore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act, to approve the proposal on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[23] that the proposed rule change, as amended, (SR–CBOE–2006–74) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[24]

Nancy M. Morris,

Secretary.

[FR Doc. E6–18955 Filed 11–8–06; 8:45 am]

BILLING CODE 8011–01–P

[19] 17 CFR 242.600(b)(47).

[20] *See* proposed CBOE Rule 5.3, Interpretation and Policy .06(E).

[21] *See* proposed CBOE Rule 5.4, Interpretation and Policy .08(c).

[22] *See* Securities Exchange Act Release No. 54087 (June 30, 2006), 71 FR 38918 (July 10, 2006) (SR–ISE–2005–60).

[23] 15 U.S.C. 78s(b)(2).

[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54701; File No. SR–DTC–2006–11]

Self-Regulatory Organizations; The Depository Trust Company; Order Approving Proposed Rule Change To Allow the Inventory Management System To Accept Real-Time and Late Affirmed Trades From Omgeo

November 3, 2006.

I. Introduction

On July 11, 2006, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') and on September 20, 2006, amended proposed rule change SR–DTC–2006–11 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 October 3, 2006.[2] The Commission received no comment letters in response to the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description

DTC seeks to expand its Inventory Management System (''IMS'') to accept in real-time non-Continuous Net Settlement (''non-CNS'') institutional trades from Omgeo LLC (''Omgeo'') and to accept late affirmed trades into IMS for automated settlement at DTC.

1. Current Process for IMS

Omgeo's TradeSuite system currently feeds DTC a batch file of approximately 320,000 eligible affirmed institutional trades at approximately 1 p.m. on T+2. Delivering DTC participants then authorize or exempt these trades in IMS for automated settlement to be attempted at DTC. Any trades affirmed after 12 p.m. on T+2 are ineligible for automated settlement at DTC via the TradeSuite interface. These late affirmed trades are typically settled by the broker-dealer or custodian by processing a DTC Delivery Order (''DO''). These DOs experience a higher reclaim rate than deliveries of eligible affirmed trades.

2. Proposed Changes

DTC proposed to enhance its interface with Omgeo to accept eligible affirmed non-CNS trades from Omgeo's TradeSuite system in real-time. Although DTC will receive affirmed

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 54521 (September 27, 2006), 71 FR 58457.

trades from Omgeo's TradeSuite system in real-time as they are affirmed, participants will still have the ability to process authorizations and exemptions as they do today.

Participants will be able to authorize trades as they are received into IMS through the existing options (*i.e.*, globally or on a trade-for-trade basis). Omgeo will continue to produce the Cumulative Eligible Trade report/file at approximately 1 p.m. on T+2. This batch report/file notifies participants of affirmed Matched Institutional Trades (''MITS'') sent to IMS for the following settlement date. However, IMS will continue the current practice of applying a participant's authorization profile for MITS after the midday cut-off on T+2 (at approximately 1 p.m.).

In addition, some new functionality is also being introduced through the enhanced Omgeo and DTC interface. Omgeo will send ''late affirmed'' [3] trades to IMS. Late affirmed trades will be stored and identified in IMS as a new transaction type, Late Matched Institutional Trades (''LMIT''). These trades are currently ineligible for automated settlement at DTC. This new functionality will allow participants to eliminate settling these transactions as DOs at DTC, which experience a higher reclaim rate than affirmed eligible trades, and will provide for the automated settlement of these transactions.

For the new LMITs, IMS will default to the ''active'' authorization mode (*i.e.*, deliveries would not be processed unless they are authorized). Unauthorized ''late affirmed'' trades will remain in IMS until settlement date + 21 days (the current IMS trade retention time frame). For authorized LMIT items, IMS will apply a participant's authorization profile as the items are received from Omgeo. LMITs will bypass DTC's Receiver Authorized Delivery (''RAD'') processing as do all Omgeo deliveries.

Omgeo will continue to update IMS and notify DTC participants using a status message of any Change of Eligibility (''COE'').[4] COE (*i.e.*, DTC-eligible to DTC-ineligible) messages will be passed to IMS by TradeSuite up until midnight of T+1. IMS will process COE-related messages on a real-time basis for both authorized and yet to be authorized trades. IMS will ''reauthorize'' a previously authorized DTC-eligible trade in the event the trade becomes DTC-eligible, again. In addition, an appropriate audit trail will be provided by IMS for participants. Ineligible MITS transactions in IMS will be cancelled at end of day on settlement date.

DTC will charge the following delivery fees for LMITs:

- $0.17 (current ''night DO'' fee) if authorized by the participant before the night cycle.
- $0.45 (current ''day DO'' fee) if authorized by the participant after the night cycle.
- $0.006 per delivery (current IMS delivery fee) for every trade that is processed through the IMS authorization profile.

Participants that currently submit machine-readable authorization/exemption instructions can choose to continue to process their Omgeo deliveries as they do today. The proposed change is scheduled to be implemented in November 2006.

III. Discussion

Section 19(b) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization. Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions.[5] The Commission finds that DTC's proposed rule change is consistent with this requirement because it should promote the prompt and accurate clearance and settlement of securities transactions by enhancing the IMS interface with Omgeo to accept eligible affirmed trades from Omgeo's TradeSuite system in real-time and to accept late affirmed trades into IMS for automated settlement at DTC. In addition, the proposed rule change should provide for the equitable allocation of reasonable dues, fees, and other charges among DTC's members as required by Section 17A(b)(3)(D).[6]

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.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–DTC–2006–11) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Nancy M. Morris,

Secretary.

[FR Doc. E6–18958 Filed 11–8–06; 8:45 am]

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[3] Late affirmed trades are defined as trades affirmed after the 12:00 p.m. cutoff on T+2 until 12:00 p.m. on settlement date.

[4] COE-related messages can be sent for the following reasons:

(1) When a DTC eligible trade changes to CNS eligible, the trade is resent to IMS by Omgeo with an indicator that it is now ineligible (IMS status becomes ineligible). Omgeo will then send the trade to NSCC for settlement in CNS. A trade can become CNS eligible after being DTC eligible, if the security, ID agent (a prime broker), clearing agent, and clearing broker all are CNS eligible.

(2) When a DTC eligible trade subsequently becomes ineligible for settling at DTC, the trade is resent to IMS by Omgeo with an indicator that it is now Ineligible (IMS status updated to ineligible). A trade may become ineligible for DTC settlement processing if prior to settlement date, the participant, security, or ID agent become ineligible for DTC processing.

(3) If a previously sent DTC eligible trade changed to ineligible becomes eligible for settling at DTC, again, the trade is re-sent to IMS by Omgeo with an indicator that it is now eligible (IMS status is updated to eligible from ineligible).

[5] 15 U.S.C. 78q–1(b)(3)(F).

[6] 15 U.S.C. 78q–1(b)(3)(D).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54682; File No. SR–FICC–2006–15]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing of Proposed Rule Change To Modify its Rules To Diversify and Standardize Clearing Fund Collateral Requirements Across the Divisions To Improve Liquidity and Minimize Risk for its Members

November 1, 2006.

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 October 4, 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. 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 proposed rule change seeks to modify the rules of both of the Government Securities Division (''GSD'') and the Mortgage-Backed Securities Division (''MBSD'')

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

(collectively, the ''Divisions'') of FICC to diversify and standardize Clearing Fund [3] collateral requirements across the Divisions in order to improve liquidity and minimize risk for FICC and its members.[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), 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

Presently, both GSD and MBSD members may satisfy their Clearing Fund requirement with cash deposits. Members may also satisfy a portion of their deposits with an open account indebtedness fully secured by certain types of securities and/or letters of credit. FICC proposes to modify its rules as detailed below to: (1) expand the types of securities which members may deposit to satisfy their Clearing Fund requirement (''Eligible Clearing Fund Securities'') to secure their open account indebtedness; (2) establish concentration requirements with regard to members' use of Eligible Clearing Fund Securities; (3) create a correlating range of haircuts to be applied to the expanded types of Eligible Clearing Fund Securities; and (4) eliminate letters of credit as a generally acceptable form of collateral securing members' open account Clearing Fund indebtedness.

1. Revised Clearing Fund Components

(a) *Cash.* Currently the rules of GSD require that the greater of $100,000 or ten percent of a member's Clearing Fund requirement with a maximum of $500,000 be made in the form of cash.[6] The rules of MBSD currently do not contain a minimum cash requirement. For both Divisions, the proposed new cash collateral component will be the lesser of $500,000 or ten percent of a member's Clearing Fund requirement with a minimum of $100,000.

(b) *Securities.* Currently each Division of FICC accepts different types of securities as Clearing Fund collateral. For example, GSD accepts Agency securities but not mortgage-backed securities, and MBSD accepts mortgage-backed securities but not Agency securities. In addition, there are currently no concentration requirements placed on the securities deposited at either Division. In an effort to standardize the securities which are eligible as Clearing Fund collateral across the Divisions, FICC proposes to modify the rules of both Divisions by adding a definition to each Division's rules for ''Eligible Clearing Fund Securities'' (with respect to GSD) and ''Eligible Participants Fund Securities'' (with respect to MBSD). As defined, these securities will be unmatured bonds which are either an ''Eligible Clearing Fund Agency Security,'' an ''Eligible Clearing Fund Mortgage-Backed Security'' or an ''Eligible Clearing Fund Treasury Security.'' [7] ''Eligible Clearing Fund Agency Security'' would be defined as a direct obligation of those U.S. agencies or government sponsored enterprises as FICC may designate from time to time that satisfies the criteria set forth in notices issued by FICC from time to time. ''Eligible Clearing Fund Mortgage-Backed Security'' would be defined as a mortgage-backed pass through obligation issued by those U.S. agencies or government sponsored enterprises as FICC may designate from time to time that satisfies the criteria set forth in notices issued by FICC from time to time. ''Eligible Clearing Fund Treasury Security'' would be defined as a direct obligation of the U.S. government that satisfies the criteria set forth in notices issued by FICC from time to time.

Initial eligibility criteria for each type of Eligible Clearing Fund/Participant Fund Security will be announced to members through an Important Notice prior to the effective date of this proposed rule change. Any future changes to the eligibility criteria will also be announced to members through Important Notices in advance of such changes becoming effective.

(c) *Security Concentration Provisions.* FICC also proposes to establish security concentration provisions for Clearing Fund deposits. As proposed, a minimum of forty percent of a member's required Clearing Fund deposit would have to be made in cash and Eligible Clearing Fund Treasury Securities. The remainder of a member's deposit could be secured by cash and the pledge of Eligible Clearing Fund Securities in any combination of Eligible Clearing Fund Treasury Securities, Eligible Clearing Fund Agency Securities, and/or Eligible Clearing Fund Mortgage-Backed Securities. However (1) any deposits of Eligible Clearing Fund Agency Securities or Eligible Clearing Fund Mortgage-Backed Securities, respectively, in excess of twenty-five percent of a member's required Clearing Fund deposit would be subject to an additional haircut equal to twice the percentage specified in the haircut schedule. Furthermore, no more than twenty percent of a member's required Clearing Fund deposit could be secured by pledged Eligible Clearing Fund Agency Securities of a single issuer. Lastly, no member would be permitted to post as Clearing Fund collateral Eligible Clearing Fund Agency Securities for which it is the issuer.[8]

(d) *Letters of Credit and Other Adequate Assurances.* The current provisions within FICC's Rules that pertain to Letter of Credit Issuers will be modified to reflect that letters of credit would no longer be accepted by FICC as a form of Clearing Fund collateral.[9] Effective April 1, 2007 (which is the regular expiration date of letters of credit), members that have letters of credit posted as collateral (other than members, if any, that have been required to post letters of credit for legal risk), would be required to replace the portion of the Clearing Fund collateralized by letters of credit with either cash or Eligible Clearing Fund Securities.

(e) *Implementation Timeframes.* The foregoing rule changes would become

[3] The GSD Rules refer to member collateral deposits as the ''Clearing Fund'' while the MBSD rules refer to these deposits as the ''Participants Fund.'' The term ''Clearing Fund'' in this rule filing will refer to both.

[4] This rule filing also proposes to make a minor technical change to Rule 4 of the GSD rules. Section 2 of Rule 4 has been relettered to accommodate changes made in an earlier FICC rule filing, SR–FICC–2006–12.

[5] The Commission has modified the text of the summaries prepared by FICC.

[6] GSD Rule 4, Section 2(b)(ii).

[7] In the MBSD Rules, these terms would be as follows: ''Eligible Participants Fund Agency Security,'' ''Eligible Participants Fund Mortgage-Backed Security,'' and ''Eligible Participants Fund Treasury Security.''

[8] However, a member would be permitted to pledge Eligible Clearing Fund Mortgage-Backed Securities for which it is the issuer subject to a haircut. The haircut would be fourteen percent as an initial matter. If the member exceeded the twenty-five percent concentration limit, the haircut would be twenty-one percent.

[9] FICC has found that in practice letters of credit are not as liquid as cash and securities and therefore pose more risk to FICC and its members when pledged as Clearing Fund collateral. FICC will, however, reserve the right to require letters of credit from members in those instances where a particular member has been found, by FICC in its discretion, to present legal risk.

effective thirty days after an Important Notice is issued to members informing them that FICC's systems are ready to accommodate such changes. The corresponding changes to FICC's rules would be made at that time.

(f) *Alternative Proportions of Eligible Collateral.* As is currently the case under FICC's rules, FICC will continue to reserve the right to require different proportions of the Clearing Fund collateral components as necessary to address any heightened legal or insolvency risks presented by a member.[10]

FICC believes the proposed rule change is consistent with the requirements of Section 17A of the Act[11] and the rules and regulations thereunder because it will enable FICC to standardize acceptable forms of collateral across both of its Divisions, which should lead to an increase of liquidity and a decrease of risk to FICC and its members. As such, FICC believes it will better enable FICC to safeguard the securities or funds in its possession or control or for which it is responsible.

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

Within thirty-five 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 ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding; or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

[10] GSD Rule 4, Section 2(o), MBSD Rule 2, Section 4 of Article IV.

[11] 15 U.S.C. 78q–1.

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–2006–15 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–2006–15. 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. Copies of such filings also will be available for inspection and copying at the principal office of FICC and on FICC's Web site at *http://www.ficc.com/gov/notices/GOV115.06.htm?NS-query*. 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–2006–15 and should be submitted on or before November 30, 2006.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[12]

Nancy M. Morris,

Secretary.

[FR Doc. E6–18948 Filed 11–8–06; 8:45 am]

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[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54697; File No. SR–ISE–2006–61]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Relating to Fee Changes

November 2, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 5, 2006, the International Securities Exchange, LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the ISE. On October 17, 2006, ISE filed Amendment No. 1 to the proposed rule change.[3] The ISE has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the ISE under Section 19(b)(3)(A)(ii) of the Act,[4] and Rule 19b–4(f)(2) thereunder,[5] 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 ISE is proposing to amend its Schedule of Fees to establish fees for transactions in options on eight Premium Products.[6] The text of the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange revised footnote 10, *infra,* to clarify that six of the Premium Products that are the subject of this filing constitute Fund Shares under ISE Rule 502(h), while the other two Premium Products are narrow-based index options listed pursuant to the Exchange's generic listing standards. The Exchange also represented that Amendment No. 1 did not affect the proposed fees covered by this filing.

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

[5] 17 CFR 240.19b–4(f)(2).

[6] ''Premium Products'' is defined in the Schedule of Fees as the products enumerated therein.

proposed rule change, as amended, is available on the ISE's Web site *(http://www.iseoptions.com/legal/proposed_rule_changes.asp),* at the principal office of the ISE, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the ISE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The ISE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend its Schedule of Fees to establish fees for transactions in options on the following eight Premium Products: KBW Bank Index (''BKX''), ISE Revere Natural Gas Index (''FUM''), iShares Dow Jones U.S. Energy Sector Index Fund (''IYE''), iShares Dow Jones Transportation Average Index Fund (''IYT''),[7] PowerShares WilderHill Clean Energy Portfolio (''PBW''),[8] Merrill Lynch Utilities HOLDRs Trust (''UTH''),[9] Consumer Staples Select Sector SPDR Fund (''XLP''), and Consumer Discretionary Select Sector SPDR Fund (''XLY'').[10] Specifically, the Exchange is proposing to adopt an execution fee and a comparison fee for all transactions in options on BKX, FUM, IYE, IYT, PBW, UTH, XLP, and XLY.[11] The amount of the execution fee and comparison fee for products covered by this filing shall be $0.15 and $0.03 per contract, respectively, for all Public Customer Orders [12] and Firm Proprietary orders. The amount of the execution fee and comparison fee for all ISE Market Maker transactions shall be equal to the execution fee and comparison fee currently charged by the Exchange for ISE Market Maker transactions in equity options.[13] Finally, the amount of the execution fee and comparison fee for all non-ISE Market Maker transactions shall be $0.16 and $0.03 per contract, respectively. All of the applicable fees covered by this filing are identical to fees charged by the Exchange for all other Premium Products. The Exchange believes the proposed rule change will further the Exchange's goal of introducing new products to the marketplace that are competitively priced.

Additionally, the Exchange has entered into a license agreement with Keefe, Bruyette & Woods, Inc. in connection with the listing and trading of options on BKX; with Revere Data, LLC in connection with the listing and trading of options on FUM; and with Standard & Poor's in connection with the listing and trading of options on XLP and XLY. As with certain other licensed options, to defray the licensing costs, the Exchange is adopting a surcharge fee of $0.10 per contract for trading in options on BKX, XLP and XLY, and $0.05 per contract for trading in options on FUM. The Exchange believes charging the participants that trade these products is the most equitable means of recovering the costs of the licenses. However, because of competitive pressures in the industry, the Exchange proposes to exclude Public Customer Orders from this surcharge fee. Accordingly, this surcharge fee will only be charged to Exchange members with respect to non-Public Customer Orders (*e.g.*, ISE Market Maker, non-ISE Market Maker, and Firm Proprietary orders) and shall apply to Linkage Orders [14] under a pilot program that is set to expire on July 31, 2007. Further, since options on BKX, IYE, IYT, PBW, UTH, XLP and XLY are multiply-listed, the Payment for Order Flow fee shall also apply.

Finally, the Exchange has terminated its development agreement with Boenning & Scattergood, Inc. for options on the ISE Water Index (''HHO''). As a result, the Exchange proposes to no longer charge a $0.05 per contract surcharge fee for options on HHO. Accordingly, the Exchange proposes to delete the reference to a surcharge for HHO on its Schedule of Fees.

2. Statutory Basis

The Exchanges believes that the basis under the Act for this proposed rule change is the requirement under Section 6(b)(4) of the Act [15] that an exchange have an equitable allocation of reasonable dues, fees and other charges

[7] iShares® is a registered trademark of Barclays Global Investors, N.A. (''BGI''), a wholly owned subsidiary of Barclays Bank PLC. ''Dow Jones,'' ''Dow Jones U.S. Energy Sector Index Fund,'' and ''Dow Jones Transportation Average Index Fund'' are trademarks and service marks of Dow Jones & Company, Inc. (''Dow Jones'') and have been licensed for use for certain purposes by BGI. All other trademarks and service marks are the property of their respective owners. Neither IYE nor IYT are sponsored, endorsed, issued, sold or promoted by Dow Jones. BGI and Dow Jones have not licensed or authorized ISE to: (i) Engage in the creation, listing, provision of a market for trading, marketing, and promotion of options on IYE and IYT; or (ii) use and refer to any of their trademarks or service marks in connection with the listing, provision of a market for trading, marketing, and promotion of options on IYE and IYT or with making disclosures concerning options on IYE and IYT under any applicable federal or state laws, rules or regulations. BGI and Dow Jones do not sponsor, endorse, or promote such activity by ISE and are not affiliated in any manner with ISE.

[8] PowerShares™ and PBW™ are trademarks of PowerShares Capital Management LLC (''PowerShares'' or the ''Adviser''). The WilderHill Clean Energy Index is a service mark of WilderShares, LLC (''WilderShares''). All other trademarks and service marks are the property of their respective owners. WilderShares is not affiliated with the PBW or with the Adviser. PBW is not sponsored, endorsed, sold or promoted by WilderShares, and WilderShares makes no representation regarding the advisability of investing in PBW. WilderShares and PowerShares have not licensed or authorized ISE to: (i) Engage in the creation, listing, provision of a market for trading, marketing, and promotion of options on PBW; or (ii) use and refer to any of their trademarks or service marks in connection with the listing, provision of a market for trading, marketing, and promotion of options on PBW or with making disclosures concerning options on PBW under any applicable federal or state laws, rules or regulations. WilderShares and PowerShares do not sponsor, endorse, or promote such activity by ISE and are not affiliated in any manner with ISE.

[9] UTH issues Depositary Receipts called Utilities HOLDRS℠ representing undivided beneficial ownership in the U.S.-traded common stock of a group of specified companies that, among other things, are involved in various segments of the utilities industry. ''HOLDRS'' and ''HOLding Company Depositary ReceiptS'' are service marks of Merrill Lynch & Co., Inc. (''Merrill Lynch''). All other trademarks and service marks are the property of their respective owners. Merrill Lynch has not licensed or authorized ISE to: (i) Engage in the creation, listing, provision of a market for trading, marketing, and promotion of options on UTH; or (ii) use and refer to any of their trademarks or service marks in connection with the listing, provision of a market for trading, marketing, and promotion of options on UTH or with making disclosures concerning options on UTH under any applicable federal or state laws, rules or regulations. Merrill Lynch does not sponsor, endorse, or promote such activity by ISE and is not affiliated in any manner with ISE.

[10] The Exchange represents that IYE, IYT, PBW, UTH, XLP and XLY constitute ''Fund Shares,'' as defined by ISE Rule 502(h). The Exchange further represents that BKX and FUM meet the standards of ISE Rule 2002(b), which allows the ISE to begin trading these products by filing Form 19b–4(e) at least five business days after commencement of trading these new products pursuant to Rule 19b–4(e) of the Act. Accordingly, the ISE has submitted Form 19b–4(e) to the Commission.

[11] These fees will be charged only to Exchange members. Under a pilot program that is set to expire on July 31, 2007, these fees will also be charged to Linkage Orders (as defined in ISE Rule 1900).

[12] ''Public Customer Order'' is defined in ISE Rule 100(a)(33) as an order for the account of a Public Customer. ''Public Customer'' is defined in ISE Rule 100(a)(32) as a person that is not a broker or dealer in securities.

[13] The execution fee is currently between $0.21 and $0.12 per contract side, depending on the Exchange Average Daily Volume, and the comparison fee is currently $0.03 per contract side.

[14] *See* ISE Rule 1900.

[15] 15 U.S.C. 78f(b)(4).

among its members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change, as amended, does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change, as amended, establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A) of the Act [16] and Rule 19b–4(f)(2) [17] thereunder. At any time within 60 days of the filing of such amended 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.[18]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–ISE–2006–61 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2006–61. 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 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–2006–61 and should be submitted on or before November 30, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Nancy M. Morris,

Secretary.

[FR Doc. E6–18956 Filed 11–8–06; 8:45 am]

BILLING CODE 8011–01–P

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 19b–4(f)(2).

[18] For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on October 17, 2006, the date on which the ISE submitted Amendment No. 1. *See* 15 U.S.C. 78s(b)(3)(C).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54704; File No. SR–ISE–2006–44]

Self-Regulatory Organizations; International Securities Exchange, Inc.; Order Approving a Proposed Rule Change To Amend the Schedule of Fees To Expand the Broker Marketing Alliance To Include Non-Broker-Dealers With Regard to the Enhanced Sentiment Market Data Offering

November 3, 2006.

On July 25, 2006, the International Securities Exchange, Inc. (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] to amend its Schedule of Fees regarding its enhanced sentiment market data offering to expand the Broker Marketing Alliance by eliminating its limitation to only broker-dealers. The proposed rule change was published for comment in the **Federal Register** on October 3, 2006.[3] The Commission received no comments on the proposal.

The Exchange offers an enhanced sentiment market data product that allows an end user to identify investor sentiment for individual securities or select industry sectors based on a calculation methodology that utilizes proprietary Exchange opening long option customer trade data.[4] Previously, the Commission approved a fee structure for this product.[5] The amount that a subscriber is charged depends upon whether the subscription is obtained directly from the Exchange or indirectly through a U.S. broker-dealer participating with the ISE in a Broker Marketing Alliance. A Broker Marketing Alliance is an arrangement between ISE and a participating broker-dealer that allows a participating U.S. broker-dealer to be compensated for enlisting subscribers to the enhanced sentiment market data product. There are four subscription levels of fees based on the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 54508 (September 26, 2006), 71 FR 58459 (''Notice'').

[4] The enhanced sentiment market data is based on the ISE Sentiment Index or ISEE. The ISEE, which is created by the ISE, provides an intra-day picture of how investors view stock prices by assessing customers' option trading activity. *See* Securities Exchange Act Release Nos. 53756 (May 3, 2006), 71 FR 27529 (May 11, 2006) (SR–ISE–2005–56) (order approving the prior fee structure for the product) (''Prior Order''); and 53532 (March 21, 2006), 71 FR 15501 (March 28, 2006) (SR–ISE–2005–56).

[5] *See* Prior Order, *supra* at n.4.

number of customer queries. Broker-dealer clients pay lower fees at the four levels than subscribers directly to the Exchange, and broker-dealers receive a rebate of the subscription fees collected. Specifically, the Fee Schedule provides that participating broker-dealers receive: (1) A rebate of 35% of the subscription fee collected from subscribers; and (2) an additional bonus rebate based on (a) the achievement of certain subscription levels; and (b) the size of their firm, as measured by the number of the firm's customers.

With the instant proposed rule change, the Exchange seeks to expand the Broker Marketing Alliance by eliminating its limitation to only broker-dealers.[6] Under the proposal, the lower level subscription fees billed to broker-dealer clients will now be expanded to apply to subscribers of non-broker-dealers. These non-broker-dealers will also be allowed to receive the same rebates and bonus rebates as described above and previously approved for broker-dealers participating in the Broker Marketing Alliance.[7]

In support of its proposal, the Exchange states that, since the introduction of this market data offering, it has received interest from many non-broker-dealers, including firms that provide investors with market commentary, investment tools and educational materials, seeking to sell subscriptions and participate in a revenue sharing arrangement similar to the Broker Marketing Alliance. The Exchange believes that allowing non-broker dealers to market its enhanced sentiment market data offering will increase the number of product subscribers.

The Commission has reviewed carefully the proposed rule change and finds that it is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[8] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(4) of the Act,[9] which requires that an exchange have an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. We note that the fee structure for subscribers of non-broker-dealers is identical to the fee structure previously approved for subscribers of participating U.S. broker-dealers in the Broker Marketing Alliance and, as noted above, the rebates and revenue sharing arrangements are the same. Further, as noted in the Prior Order, enhanced sentiment market data is a purely optional product, and it is not necessary to subscribe to this service to trade options on the ISE.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[10] that the proposed rule change be and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Nancy M. Morris,

Secretary.

[FR Doc. E6–18975 Filed 11–8–06; 8:45 am]

BILLING CODE 8011–01–P

[6] In the ISE's Schedule of Fees, it will now be referred to as a ''Subscription through Marketing Alliance.''

[7] *See* Prior Order, *supra* at n.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)(4).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54702; File No. SR–NASD–2006–121]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend NASD Rule 11890(b)(2) To Allow NASD To Designate Officers To Take Action Under the Rule With Respect to Clearly Erroneous Transactions

November 3, 2006.

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 October 30, 2006, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by NASD. NASD has designated the proposed rule change as constituting a ''non-controversial'' rule change under 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 from interested persons.

[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).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD is proposing to amend NASD Rule 11890 (Clearly Erroneous Transactions) to allow any NASD officer designated by an Executive Vice President of NASD's Market Regulation Department or an Executive Vice President of NASD's Transparency Services Department to, on his or her own motion, review any transaction in a Nasdaq-listed security or an OTC equity security, as defined in NASD Rule 6610, arising out of or reported through any quotation, communication, or trade reporting system owned or operated by NASD or its subsidiaries. The text of the proposed rule change is available on NASD's Web site (*http://www.nasd.com*), at the NASD's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD 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. NASD 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

Currently, NASD Rule 11890(b)(2) provides that, in the event of (1) a disruption or malfunction in the use or operation of any quotation, communication, or trade reporting system owned or operated by NASD or its subsidiaries and approved by the Commission, or (2) extraordinary market conditions in which the nullification or modification of transactions may be necessary for the maintenance of a fair and orderly market or the protection of investors and the public interest, an Executive Vice President of NASD's Market Regulation Department or an Executive Vice President of NASD's Transparency Services Department may, on his or her own motion, review any transaction in a Nasdaq-listed security or an OTC equity security, as defined in NASD Rule 6610, arising out of or reported through any such quotation,

communication, or trade reporting system.[5]

On October 1, 2005, NASD assumed direct authority for OTC equities operations, in place of a prior delegation to Nasdaq.[6] At that time, NASD amended NASD Rule 11890(b)(2) to provide NASD (rather than Nasdaq) with the authority to declare, on its own motion, clearly erroneous transactions in OTC equity securities (*e.g.*, OTCBB and Pink Sheets securities) in the event of a disruption or malfunction in the use of an NASD system or due to extraordinary market conditions. Additionally, NASD amended NASD Rule 11890(b)(2) to provide NASD with similar clearly erroneous authority with respect to all transactions in Nasdaq-listed securities reported to NASD.[7] Thus, NASD Rule 11890(b)(2) also provides NASD with the authority to declare, on its own motion, clearly erroneous transactions in Nasdaq-listed securities reported to NASD's Alternative Display Facility or an NASD Trade Reporting Facility[8] in the event of a disruption or malfunction in the use of an NASD system or due to extraordinary market conditions.

By its terms, NASD Rule 11890(b)(2) authorizes an Executive Vice President of NASD's Market Regulation Department or an Executive Vice President of NASD's Transparency Services Department to take action with respect to clearly erroneous transactions. Currently, NASD has one Executive Vice President of Market Regulation, and one Executive Vice President of Transparency Services. NASD is proposing to amend NASD Rule 11890(b)(2) to provide that an Executive Vice President of NASD's Market Regulation Department or an Executive Vice President of NASD's Transparency Services Department may also designate any NASD officer (*i.e.*, an NASD employee with the title of Vice President or above) to take action under this Rule. NASD believes that such designation is consistent with current NASD Rules 11890(a)(1) and (b)(1), which authorize officers of Nasdaq designated by its President, or any Executive Vice President of Nasdaq designated by its President, respectively, to act under the Rule.

NASD applies this authority in only very limited circumstances, for example, where there is an extraordinary event and multiple self-regulatory organizations are canceling or modifying trades. However, since implementation of the aforementioned rule changes, it has become apparent to NASD that having just two NASD officers authorized to act under the Rule is insufficient to review and consider promptly potential clearly erroneous transactions as they arise. For example, if the Executive Vice President of Market Regulation and Executive Vice President of Transparency Services are unreachable at the same time because they are in meetings or on travel or out of the office for any other reason, potential clearly erroneous transactions cannot be reviewed in a timely manner. NASD staff believes that delays in reviewing these transactions should be avoided and the proposed rule change will allow NASD to take prompt and effective action with respect to clearly erroneous trades.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[9] which requires, among other things, that NASD rules 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 believes that the proposed rule change will lessen the impact of clearly erroneous transactions on the market and the public by allowing NASD to empower designated NASD officers with the authority to take prompt action with respect to such transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received by NASD.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder.[10] In accordance with Rule 19b–4(f)(6)(iii),[11] NASD provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change.

A proposed rule change filed under Rule 19b–4(f)(6) normally may not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. NASD has requested that the Commission waive the 30-day operative delay based upon a representation that the requested waiver is necessary to enable NASD to take prompt and effective action with respect to clearly erroneous transactions as they arise. NASD noted that there have been instances where the review of potential clearly erroneous transactions has been delayed because both Executive Vice Presidents authorized under the Rule have been unreachable. NASD wishes to remedy this situation as quickly as possible. In light of the foregoing, the Commission believes that such waiver is consistent with the protection of investors and the public interest. Accordingly, the Commission designates the proposal to be effective

[5] NASD has filed a proposed rule change that would (1) renumber NASD Rule 11890(b)(2) as Rule 11890(a) and rename it as ''Procedures for Reviewing Transactions on NASD's Own Motion;'' and (2) expand the scope of the rule to transactions in all securities by deleting the reference to Nasdaq-listed and OTC equity securities. *See* Securities Exchange Act Release No. 54451 (September 15, 2006), 71 FR 55243 (September 21, 2006) (notice of filing of SR–NASD–2006–104).

[6] *See* Securities Exchange Act Release No. 52508 (September 26, 2005), 70 FR 57346 (September 30, 2005) (order approving SR–NASD–2005–089).

[7] *See* Securities Exchange Act Release No. 54084 (June 30, 2006), 71 FR 38935 (July 10, 2006) (order approving SR–NASD–2005–087). Prior to these amendments, such authority was delegated to Nasdaq with respect to trades reported through Nasdaq's Automated Confirmation Transaction (ACT) Service and there was no such authority with respect to trades reported to NASD's Alternative Display Facility.

[8] *See* Securities Exchange Act Release Nos. 54084 (June 30, 2006), 71 FR 38935 (July 10, 2006) (order approving SR–NASD–2005–087 relating to the NASD/Nasdaq Trade Reporting Facility); 54479 (September 21, 2006), 71 FR 56573 (September 27, 2006) (notice of filing of SR–NASD–2006–108 relating to the proposed NASD/National Stock Exchange Trade Reporting Facility); and 54591 (October 12, 2006), 71 FR 61519 (October 18, 2006) (notice of filing of SR–NASD–2006–115 relating to the proposed NASD/Boston Stock Exchange Trade Reporting Facility).

[9] 15 U.S.C. 78*o*–3(b)(6).

[10] 15 U.S.C. 78s(b)(3)(A) and 17 CFR 240.19b–4(f)(6), respectively.

[11] 17 CFR 240.19b–4(f)(6)(iii).

and operative upon filing with the Commission.[12]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASD–2006–121 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–NASD–2006–121. 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 NASD. 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–NASD–2006–121 and should be submitted on or before November 30, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Nancy M. Morris,

Secretary.

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[12] For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54695; File No. SR–NASD–2006–116]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Pricing for NASD Members Using ITS/CAES, Brut and Inet

November 2, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 29, 2006, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by Nasdaq. Nasdaq submitted the proposed rule change under Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to modify the pricing for NASD members using ITS/CAES, Brut, and Inet. Nasdaq implemented the proposed rule change on October 2, 2006. The text of the proposed rule change is available on the Nasdaq's Web site at *http://www.nasdaq.com*, at Nasdaq's Office of the Secretary and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In response to a recently announced pricing change by NYSE Arca, Inc. (''NYSE Arca'')[5] and to better reflect other pre-existing NYSE Arca charges, Nasdaq is instituting a price change for orders in non-Nasdaq exchange-listed securities routed to NYSE Arca for execution. Specifically, most orders in non-Nasdaq securities routed to NYSE Arca will be assessed a routing fee of $0.0028 per share executed; the exception will be for orders for exchange-traded funds routed outside of the Intermarket Trading System (''ITS''),[6] for which the fee will remain $0.003 per share executed. By contrast, the applicable fee had been $0.001 per share executed for orders in securities other than exchange-traded funds and $0.0007 per share executed for orders routed through the ITS. The price change reflects the higher costs that Nasdaq expects to incur to access liquidity at NYSE Arca.

To enhance the competitiveness of Nasdaq's DOT router to the NYSE, Nasdaq is also instituting a cap of $100,000 per month with respect to orders routed through DOT that do not attempt to execute against liquidity in Nasdaq trading systems prior to routing and that are not charged a fee by the

[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)(2).

[5] *See* Securities Exchange Act Release No. 54686 (November 1, 2006) (SR–NYSEArca–2006–68).

[6] Since October 1, 2006, the effective date of the ''Plan for the Purpose of Creating and Operating an Intermarket Communications Linkage Pursuant to Section 11A(a)(3)(B) of the Securities Exchange Act of 1934'' (''Linkage Plan''), connectivity between markets is provided pursuant to the Linkage Plan. The current ITS technology is used to effectuate both the ITS Plan and Linkage Plan. Therefore, the term ''ITS'' applies to the technology used to effectuate both the ITS Plan and the Linkage Plan.

NSYE specialist (also known as non-billable orders). Nasdaq had previously instituted a $60,000 per month cap for non-billable orders that attempt to execute in Nasdaq before routing.[7]

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with Section 15A of the Act,[8] in general, and furthers the objectives of Section 15A(b)(5) of the Act,[9] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Nasdaq has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[10] and subparagraph (f)(2) of Rule 19b–4 thereunder,[11] because it establishes or changes a due, fee, or other charge imposed by the Nasdaq. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASD–2006–116 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–NASD–2006–116. 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 offices of Nasdaq.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2006–116 and should be submitted on or before November 30, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Nancy M. Morris,

Secretary.

[FR Doc. E6–18959 Filed 11–8–06; 8:45 am]

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[7] The proposed rule change also deletes obsolete rule language regarding fees charged to persons that are not NASD members using Brut or Inet. Persons who are not NASD members are no longer permitted to use these systems for trading non-Nasdaq securities. Similarly, persons who are not members of The NASDAQ Stock Market LLC may not use Brut or Inet to trade Nasdaq-listed securities.

[8] 15 U.S.C. 78o–3.

[9] 15 U.S.C. 78o–3(b)(5).

[10] 15 U.S.C. 78s(b)(3)(a)(ii).

[11] 17 CFR 240.19b–4(f)(2).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54705; File No. SR–NASD–2005–146]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change and Amendments No. 1 and 2 Thereto To Expand the Scope of IM–2110–2 Relating To Trading Ahead of Customer Limit Orders To Apply to All OTC Equity Securities

November 3, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 9, 2005, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described below in Items I, II, and III, which Items have been prepared by NASD. On September 26, 2006, NASD filed Amendment No. 1 to the proposed rule change,[3] and on October 19, 2006, NASD filed Amendment No. 2 to the proposed rule change.[4] 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

NASD is proposing to expand the scope of its Interpretive Material 2110–2 relating to trading ahead of customer limit orders to apply to all over-the-counter (''OTC'') equity securities. Below is the text of the proposed rule change. Proposed new language is in *italics*; proposed deletions are in brackets.

IM–2110–2. Trading Ahead of Customer Limit Order

(a) General Application

To continue to ensure investor protection and enhance market quality, NASD's Board of Governors is issuing an interpretation to NASD Rules dealing with member firms' treatment of their customer limit orders in *NMS stocks and OTC equity* [exchange-listed] securities. This interpretation, which is applicable from 9:30 a.m. to 6:30 p.m. Eastern Time, will require members to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaced and superseded the original rule filing in its entirety.

[4] Amendment No. 2 replaced and superseded the amended rule filing in its entirety.

handle their customer limit orders with all due care so that members do not ''trade ahead'' of those limit orders. Thus, members that handle customer limit orders, whether received from their own customers or from another member, are prohibited from trading at prices equal or superior to that of the limit order without executing the limit order. In the interests of investor protection, NASD is eliminating the so-called disclosure ''safe harbor'' previously established for members that fully disclosed to their customers the practice of trading ahead of a customer limit order by a market-making firm.† *For purposes of this interpretation, (1) ''NMS stock'' shall have the meaning set forth in SEC Rule 600(b)(47) of Regulation NMS and (2) ''OTC equity security'' shall have the meaning set forth in Rule 6610(d).*

Rule 2110 states that:

A member, in the conduct of his business, shall observe high standards of commercial honor and just and equitable principles of trade.

Rule 2320, the Best Execution Rule, states that:

In any transaction for or with a customer, a member and persons associated with a member shall use reasonable diligence to ascertain the best inter-dealer market for the subject security and buy or sell in such a market so that the resultant price to the customer is as favorable as possible to the customer under prevailing market conditions.

Interpretation

The following interpretation of Rule 2110 has been approved by the Board:

A member firm that accepts and holds an unexecuted limit order from its customer (whether its own customer or a customer of another member) in an *NMS stock or OTC equity*[exchange-listed] security and that continues to trade the subject security for its own account at prices that would satisfy the customer's limit order, without executing that limit order, shall be deemed to have acted in a manner inconsistent with just and equitable principles of trade, in violation of Rule 2110, provided that a member firm may negotiate specific terms and conditions applicable to the acceptance of limit orders only with respect to limit orders that are: (a) for customer accounts that meet the definition of an ''institutional account'' as that term is defined in Rule 3110(c)(4); or (b) 10,000 shares or more, unless such orders are less than $100,000 in value. In the event that a member trades ahead of an unexecuted customer limit order at a price that is better than the unexecuted limit order, such member is required to execute the limit order at the price received by the member or better. Nothing in this interpretation, however, requires members to accept limit orders from any customer.

By rescinding the safe harbor position and adopting this interpretation, NASD wishes to emphasize that members may not trade ahead of their customer limit orders even if the member had in the past fully disclosed the practice to its customers prior to accepting limit orders. NASD believes that, pursuant to Rule 2110, members accepting and holding unexecuted customer limit orders owe certain duties to their customers and the customers of other member firms that may not be overcome or cured with disclosure of trading practices that include trading ahead of the customer's order. The terms and conditions under which institutional account or appropriately sized customer limit orders are accepted must be made clear to customers at the time the order is accepted by the firm so that trading ahead in the firm's market-making capacity does not occur.

[As outlined in NASD Notice to Members 97–57, the minimum amount of price improvement necessary in order for a member to execute an incoming order on a proprietary basis when holding an unexecuted limit order for a Nasdaq security trading in fractions, and not be required to execute the held limit order, is as follows:]

- [If actual spread is greater than 1/16 of a point, a firm must price improve an incoming order by at least a 1/16. For stocks priced under $10 (which are quoted in 1/32 increments), the firm must price improve by at least 1/64.]
- [If actual spread is the minimum quotation increment, a firm must price improve an incoming order by one-half the minimum quotation increment.]

[For Nasdaq securities authorized for trading in decimals pursuant to the Decimals Implementation Plan For the Equities and Options Markets, t]*T*he minimum amount of price improvement necessary in order for a member to execute an incoming order on a proprietary basis [in a security trading in decimals] when holding an unexecuted limit order in that same security, and not be required to execute the held limit order, is as follows:

(1) For customer limit orders priced *greater than or equal to $1.00 that are* at or inside the best inside market [displayed in Nasdaq], the minimum amount of price improvement required is $0.01; [and]

(2) *For customer limit orders priced less than $1.00 that are at or inside the best inside market, the minimum amount of price improvement required is the lesser of $0.01 or one-half (1/2) of the current inside spread;*

(3) For customer limit orders priced outside the best inside market [displayed in Nasdaq], the member must price improve the incoming order by executing the incoming order at a price *at or inside the best inside market for the security; and* [at least equal to the next superior minimum quotation increment in Nasdaq (currently $0.01)]

(4) For customer limit orders in securities for which there is no published inside market, the minimum amount of price improvement required is $0.01.

NASD also wishes to emphasize that all members accepting customer limit orders owe those customers duties of ''best execution'' regardless of whether the orders are executed through the member or sent to another member for execution. As set out above, the Best Execution Rule requires members to use reasonable diligence to ascertain the best inter-dealer market for the security and buy or sell in such a market so that the price to the customer is as favorable as possible under prevailing market conditions. NASD emphasizes that order entry firms should continue to monitor routinely the handling of their customers' limit orders regarding the quality of the execution received.

(b) through (c) No change.

* * * * *

6541. [Limit Order Protection] *Reserved.*

[(a) Members shall be prohibited from ''trading ahead'' of customer limit orders that a member accepts in securities quoted on the OTCBB. Members handling customer limit orders, whether received from their own customers or from another member, are prohibited from trading at prices equal or superior to that of the customer limit order without executing the limit order. Members are under no obligation to accept limit orders from any customer.]

[(b) Members may avoid the obligation specified in paragraph (a) through the provision of price improvement. If a customer limit order is priced at or inside the current inside spread, however, the price improvement

† For purposes of the operation of certain [Nasdaq] transaction and quotation reporting systems and facilities during the period from 4 p.m. to 6:30 p.m. Eastern Time, members may generally limit the life of a customer limit order to the period of 9:30 a.m. to 4 p.m. Eastern Time. If a customer does not formally assent (''opt-in'') to processing of the customer's limit order(s) during the extended hourse period commencing after the normal close of the [Nasdaq] market, limit order proteciton will not apply to that customer's order(s).

must be for a minimum of the lesser of $0.01 or one-half (½) of the current inside spread. For purposes of this rule, the inside spread shall be defined as the difference between the best reasonably available bid and offer in the subject security.]

[(c) Notwithstanding subparagraph (a) of this rule, a member may negotiate specific terms and conditions applicable to the acceptance of limit orders only with respect to such orders that are:]

[(1) for customer accounts that meet the definition of an ''institutional account'' as that term is defined in Rule 3110(c)(4); or]

[(2) for 10,000 shares or more, and greater than $20,000 in value.]

[(d) Contemporaneous trades]

[A member that trades through a held limit order must execute such limit order contemporaneously, or as soon as practicable, but in no case later than five minutes after the member has traded at a price more favorable than the customer's price.]

[(e) Application]

[(1) This rule shall apply, regardless of whether the subject security is additionally quoted in a separate quotation medium.]

[(2) This rule shall apply from 9:30 a.m. to 4 p.m. Eastern Time.]

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD 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. NASD 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

NASD Interpretive Material (IM) 2110–2, Trading Ahead of Customer Limit Order (''IM–2110–2'') (commonly referred to as the ''Manning Rule'') generally prohibits a NASD member from trading for its own account in an exchange-listed security at a price that is equal to or better than an unexecuted customer limit order in that security, unless the member immediately thereafter executes the customer limit order at the price at which it traded for its own account or better. The legal underpinnings for the Manning Rule are a member's basic fiduciary obligations and the requirement that a member must, in the conduct of its business, ''observe high standards of commercial honor and just and equitable principles of trade.'' [5]

IM–2110–2 currently applies to exchange-listed securities,[6] but does not apply to OTC equity securities. NASD Rule 6541, however, extends the general principles of the Manning Rule to a subset of OTC equity securities, those that are quoted on the OTC Bulletin Board (''OTCBB''), but differs from IM–2110–2 in several respects, which are described in more detail below.

NASD is proposing to expand the scope of IM–2110–2 and any interpretive guidance thereunder to include OTC equity securities.[7] NASD believes that customer limit orders in OTC equity securities should be subject to the same order handling and customer protection requirements under the Manning Rule as exchange-listed securities. Given this proposed expansion of IM–2110–2 to OTC equity securities, NASD also is proposing to repeal NASD Rule 6541. As noted above, although NASD Rule 6541 is substantially similar to the Manning Rule, it differs in its application in several ways. NASD believes that these distinctions in application no longer make sense and that having uniform limit order protection requirements across market sectors is appropriate. The most significant differences between IM–2110–2 and NASD Rule 6541 and any related proposed changes to IM–2110–2 are summarized below.

First, both IM–2110–2 and NASD Rule 6541 provide that a member is not deemed to have traded ahead of a customer limit order if the member provides a contemporaneous execution of the customer's order. For the purposes of IM–2110–2, contemporaneous has been interpreted to require execution as soon as possible, but absent reasonable and documented justification, within one minute.[8] In contrast, NASD Rule 6541(d) provides a longer maximum time limit of five minutes, within which an execution of a customer order will be deemed to be contemporaneous with an execution for a member firm's account. The five-minute standard was intended to be an outside limit, absent extraordinary circumstances, and not a normal practice.[9] NASD believes that most customer limit orders are filled within a period shorter than five minutes following a proprietary trade that triggers the obligation, and despite the more manual nature of the unlisted market, one minute is not an unreasonably short time to fill a customer order.

Second, both IM–2110–2 and NASD Rule 6541 permit members to negotiate terms and conditions on the acceptance of certain large-sized limit orders. Such terms and conditions would permit the member to continue to trade alongside of, or ahead of, the limit order, if the customer agrees. NASD Rule 6541 applies a lower threshold requirement on the types of orders for which a member can negotiate such terms and conditions. Specifically, NASD Rule 6541(c) only requires that an order be 10,000 shares or more and greater than $20,000 in value, while IM–2110–2 requires that an order be 10,000 shares or more and greater than $100,000 in value. This lower threshold for OTCBB securities was established due to the lower average dollar amount of trades in OTCBB securities relative to trades in exchange-listed securities.

NASD believes the higher value threshold requirement under IM–2110–2 should be applied to all securities uniformly. The value threshold of an order is intended to be an objective criteria upon which an assumption can

[5] *See* NASD Rule 2110.

[6] On June 30, 2006, the Commission approved SR–NASD–2005–087, which amended certain NASD rules to reflect separation of The Nasdaq Stock Market, Inc. from NASD upon the operation of the Nasdaq Stock Market LLC as a national securities exchange. *See* Securities Exchange Act Release No. 54084 (June 30, 2006), 71 FR 38935 (July 10, 2006) (File No. SR–NASD–2005–087). SR–NASD–2005–087 became effective on August 1, 2006, the date upon which Nasdaq began operation as an exchange for Nasdaq-listed securities. As part of SR–NASD–2005–087, the Commission approved amendments to IM–2110–2 to reflect Nasdaq's approval and operation as a national securities exchange.

The Commission approved further amendments to IM–2110–2 to codify NASD's existing position that IM–2110–2 applies to all members, whether acting as a market maker or not. These amendments became effective on April 14, 2006. *See* Securities Exchange Act Release No. 53653 (April 14, 2006), 71 FR 20429 (April 20, 2006) (File No. SR–NASD–2006–35).

The Commission also approved the expansion of IM–2110–2, which previously applied to Nasdaq securities, to exchange-listed securities. *See* Securities Exchange Act Release No. 52210 (August 4, 2005), 70 FR 46897 (August 11, 2005) (File No. SR–NASD–2004–089). *See also* NASD Notice to Members 05–64 (October 2005) (announcing Commission approval of the amendments to IM–2110–2, which became effective on January 2, 2006).

[7] NASD states that the term ''OTC equity securities'' does not include options. *See* NASD Rule 6610(d) (defining ''OTC Equity Security'' as any non-exchange-listed security and certain exchange-listed securities that do not otherwise qualify for real-time trade reporting).

[8] *See* NASD Notices to Members 95–67 (August 1995) and 98–78 (September 1998).

[9] *See* NASD Notice to Members 01–46 (July 2001).

be made that the order involves a best-efforts commitment and the commitment of substantial capital on the part of the member, and therefore, it is appropriate for the member to be able to place terms and conditions on the acceptance of that order. As such, NASD believes that it is the value and size of the customer order that is of significance in making this determination, not the average price of securities in a particular market sector.

Third, IM–2110–2 excludes limit orders that are marketable at the time of receipt (marketable limit orders), whereas the requirements under NASD Rule 6541 apply to such orders. This exclusion to IM–2110–2 for marketable limit orders recognizes that marketable limit orders and market orders are functionally equivalent and, thus, customers placing marketable limit orders should not have an unwarranted advantage over market orders. If marketable limit orders were not excluded from the Manning Rule, the Rule's operation could have the unintended consequence of providing marketable limit orders with execution priority over market orders placed at the same time or prior to the marketable limit orders (commonly referred to as ''jumping the queue'').[10] As such, consistent with the current application of IM–2110–2, NASD staff believes that continuing to exclude marketable limit orders from the application of the Manning Rule is appropriate.[11]

Fourth, both IM–2110–2 and NASD Rule 6541 apply only during certain specified time periods. Specifically, IM–2110–2 is applicable from 9:30 a.m. to 6:30 p.m. Eastern Time,[12] whereas NASD Rule 6541 applies only during normal market hours of 9:30 a.m. to 4:00 p.m. Eastern Time. This difference in application for OTCBB securities was established due to the fact that, although the OTCBB service is available from 7:30 a.m. to 6:30 p.m., prices on the OTCBB are required to be firm only during the normal market hours.[13] Given that in some OTC equity securities, quoting of the security may not exist at a given time, NASD believes that linking this requirement to whether quotes in the security are required to be firm is not appropriate. As such, NASD believes the time period under the Manning Rule should be applied to all securities uniformly.

Lastly, both IM–2110–2 and NASD Rule 6541 prescribe a minimum level of price-improvement that a member must provide to trade ahead of an unexecuted customer limit order. Specifically, the price-improvement standard currently set forth in IM–2110–2 provides that, where a member is holding a customer limit order priced at or inside the best inside market displayed in Nasdaq, the member may execute an incoming order on a proprietary basis without being obligated to execute the customer limit order if the member executes the incoming order at least $0.01 better than the price of the customer limit order. Further, if the customer limit order is priced outside the best inside market displayed in Nasdaq, then the member must execute the incoming order at the next superior minimum quotation increment permitted by Nasdaq (currently $0.01). In contrast, NASD Rule 6541 provides that if the customer limit order is priced at or inside the current inside spread,[14] the price improvement is a minimum of the lesser of $0.01 or one-half (1/2) of the current inside spread.

On June 9, 2005, the Commission adopted Regulation NMS that, among other things, established a minimum price variation (''MPV'') standard for NMS stocks.[15] Specifically, Rule 612 of Regulation NMS[16] generally prohibits market participants from accepting, ranking, or displaying orders, quotations, or indications of interest in a pricing increment smaller than a penny, except for orders, quotations, or indications of interest that are priced at less than $1.00 per share. If the order, quotation, or indication of interest is priced less than $1.00 per share, the minimum pricing increment is $0.0001.

Given the implementation of Rule 612 of Regulation NMS,[17] NASD is proposing to amend the price-improvement provisions in IM–2110–2 to revise and make uniform for all equity securities the minimum price-improvement standards as follows. For customer limit orders priced greater than or equal to $1.00 that are at or inside the best inside market, the minimum amount of price improvement required would be $0.01. For customer limit orders priced less than $1.00 that are at or inside the best inside market, the minimum amount of price improvement required would be the lesser of $0.01 or one-half (½) of the current inside spread. For customer limit orders priced outside the best inside market, the member would be required to execute the incoming order at a price at or inside the best inside market for the security. Lastly, for customer limit orders in securities for which there is no published inside market, the minimum amount of price improvement required is $0.01. NASD believes these amendments are necessary to support the new pricing formats and to have uniform price improvement standards across market sectors.

In addition, given that the definition of an ''NMS stock'' effectively covers stocks listed on a national securities exchange, NASD is proposing to replace the term ''exchange-listed security'' with the term ''NMS stock.''[18]

[10] *See* Securities Exchange Act Release No. 41990 (October 7, 1999), 64 FR 5600 (October 15, 1999) (File No. SR–NASD–99–44).

[11] Recently-approved NASD Rule 2111 governs trading ahead of marketable limit orders in Nasdaq and exchange-listed securities. Although NASD Rule 2111 does not apply to OTC equity securities, it is consistent with a member's best execution obligations to execute marketable limit orders fully and promptly. NASD Rule 2111 became effective on January 9, 2006. *See* Securities Exchange Act Release No. 52226 (August 9, 2005), 70 FR 48219 (August 16, 2005) (File No. SR–NASD–2004–045). *See also* NASD Notice to Members 05–69 (October 2005).

[12] A member may generally limit the life of a customer limit order to the period of 9:30 a.m. to 4 p.m. Eastern Time. If a customer does not formally assent to processing of the customer's limit order(s) during the extended hours period commencing after the normal close of the market, limit order protection will not apply to that customer's order. *See* IM–2110–2 (footnote 1).

[13] *See* NASD Notice to Members 01–46 (July 2001).

[14] For purposes of NASD Rule 6541, the inside spread is defined as the difference between the best reasonably available bid and offer in the subject security. The determination of what is ''reasonably available'' is largely factual and best determined on a case-by-case basis. *See* NASD Notice to Members 01–46 (July 2001).

[15] Given that Regulation NMS only applies to national market system (''NMS'') securities and NASD believes that the same potential harms associated with sub-penny quoting that exist in NMS securities also exist in OTC equity securities, NASD filed a proposed rule change that would prohibit members from displaying, ranking, or accepting a bid or offer, an order, or an indication of interest in any OTC equity securities in any quotation medium priced in an increment smaller than $0.01 if such bid or offer, order, or indication of interest is priced equal to or greater than $1.00 per share. Members also would be prohibited from displaying, ranking, or accepting a bid, offer, an order, or an indication of interest in any OTC equity security priced in an increment smaller than $0.0001 if such bid or offer, order, or indication of interest is priced equal to or greater than $0.01 per share and less than $1.00 per share. *See* Securities Exchange Act Release Nos. 52280 (August 17, 2005), 70 FR 49959 (August 25, 2005) (File No. SR-NASD–2005–095); and 53024 (December 27, 2005), 71 FR 159 (January 3, 2006) (File No. SR–NASD–2005–095).

[16] 17 CFR 242.612.

[17] The compliance date for Rule 612 of Regulation NMS was January 31, 2006. *See* Securities Exchange Act Release No. 52196 (August 2, 2005), 70 FR 45529 (August 8, 2005) (File No. S7–10–04) (extending the compliance date for Rule 612 of Regulation NMS).

[18] The term ''NMS stock'' is defined in Rule 600(b)(47) of Regulation NMS as any NMS security other than an option. *See* 17 CFR 242.600(b)(47). The term ''NMS security'' is defined in Rule 600(b)(46) of Regulation NMS as any security or class of securities for which transaction reports are collected, processed, and made available pursuant to an effective transaction reporting plan, or an effective national market system plan for reporting transactions in listed options. *See* 17 CFR

Finally, IM–2110–2 currently contains provisions that prescribe the minimum level of price-improvement for securities trading in non-decimalized fractions. Given that equities no longer trade in fractions, NASD proposes to delete such fractional references as part of this proposed rule change.

As a result of the proposed changes described above, NASD is proposing to apply limit order protection requirements uniformly to all equity securities by extending the scope of the Manning Rule to OTC equity securities.[19] In doing so, NASD also is proposing to repeal NASD Rule 6541, as those requirements would be subsumed in the proposed expansion of the Manning Rule.

NASD intends to announce the effective date of the proposed rule change in a *Notice to Members* to be published no later than 60 days following Commission approval. In recognition of the technological and systems changes the proposed rule change may require, NASD proposed to set the effective date at 90 days following publication of the Notice to Members announcing Commission approval.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[20] which requires, among other things, that NASD 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 believes that the proposed rule change will improve treatment of customer limit orders and promote investor protection.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received by NASD.

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 NASD consents, the Commission will:

(A) by order approve such proposed rule change, as amended, or

(B) institute proceedings to determine whether the proposed rule change, as amended, 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, as amended, is consistent with the Act.

At the NASD's request, the Commission also is seeking comment on whether 90 days from the publication of NASD's *Notice to Members* provides adequate time for implementation of the proposal or whether additional implementation time may be needed and the reasons therefor. 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–NASD–2005–146 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–NASD–2005–146. 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 NASD. 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–NASD–2005–146 and should be submitted on or before November 30, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

Nancy M. Morris,

Secretary.

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242.600(b)(46). As such, the term ''NMS stock,'' for purposes of IM–2110–2, would include, among other things, exchange traded funds (ETFs).

[19] In addition to the differences between IM–2110–2 and NASD Rule 6541 described above, the Commission also approved amendments to IM–2110–2 that generally require a member that has traded ahead of a customer limit order at a price that is more favorable than the customer limit order price, to pass along that price improvement to the customer limit order. This requirement currently does not apply under NASD Rule 6541. *See* Securities Exchange Act Release No. 52210 (August 4, 2005), 70 FR 46897 (August 11, 2005) (File No. SR–NASD–2004–089). *See* also NASD Notice to Members 05–64 (October 2005).

[20] 15 U.S.C. 78*o*–3(b)(6).

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54692; File No. SR–NSX–2006–12]

Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Implement a Fee Schedule Under Rule 16.1(a) and 16.1(c) for Transactions Executed Through the Intermarket Trading System Plan and/or the Plan for the Purpose of Creating and Operating an Intermarket Communications Linkage

November 2, 2006.

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 October 2, 2006, the National Stock Exchange, Inc.SM (''NSX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change, as described in Items I, II, and III below, which Items have been prepared by NSX. NSX submitted the proposed rule change

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

under Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to implement a Fee Schedule under Rule 16.1(a) and 16.1(c) for transactions executed through the Intermarket Trading System Plan and/or the Plan for the Purpose of Creating and Operating an Intermarket Communications Linkage (''ITS Plans'').[5] The text of the proposed rule change is available on the Exchange's Web site at *http://www.nsx.com*, at the Exchange's Office of the Secretary and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In anticipation of the approval of the Exchange's new trading rules,[6] the Exchange amended its rules in July 2006 to add Chapter XVI to its rules to set forth, in their own chapter, rules relating to fees, dues, assessments and the tape rebate program. The rule change, SR–NSX–2006–10, was filed pursuant to Section 19(b)(3)(A) of the Act, which rendered it effective upon filing.[7] As part of that filing, Rule 16.1(c) states that the Exchange will ''provide ETP Holders with notice of all relevant dues, fees, assessments and charges of the Exchange. Such notice may be made available to ETP Holders on the Exchange's Web site or by any other method deemed reasonable by the Exchange.''

As part of this rule change, the Exchange is filing a Fee Schedule under Rule 16.1(a) and 16.1(c) for transactions executed through the ITS Plans.[8] The Fee Schedule provides for the ability to pass through costs that are assessed by a third party to the Exchange if such costs are attributable to transactions executed through the ITS Plans.[9]

While SR–NSX–2006–10 was effective upon filing, Rule 16.3 allows the Exchange to delay the effectiveness of Chapter XVI until it gives written notice to its ETP Holders. The Exchange will give notice declaring Rule 16.1(a) and 16.1(c) of Chapter XVI effective solely to implement the pass-through cost provisions for transactions executed through the ITS Plans. All other fees continue to be governed by Rule 11.10 for National Securities Trading System Fees. Moreover, nothing in the proposed Fee Schedule alters in any way any fees otherwise owed under NSX Rule 11.10.

Pursuant to newly approved Rule 16.1(c), the Exchange will ''provide ETP Holders with notice of all relevant dues, fees, assessments and charges of the Exchange.'' ETP Holders and others using the Exchange will be advised of these fees through the Exchange's Web site. In addition, the ETP Holders will, simultaneous with the filing, be notified through the issuance of a Regulatory Circular declaring Rule 16.1(a) and 16.1(c) of Chapter XVI effective, and attaching the new Fee Schedule applicable to transactions through the ITS plans.

The fees have been designed in this manner in order to ensure that the Exchange can continue to fulfill its obligations under Section 6(b) of the Act.[10]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act,[11] in general, and Section 6(b)(4) of the Act,[12] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges.

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

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[13] and subparagraph (f)(2) of Rule 19b–4[14] thereunder, because it involves a member due, fee or other charge. 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

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(2).

[5] Since October 1, 2006, the effective date of the ''Plan for the Purpose of Creating and Operating an Intermarket Communications Linkage Pursuant to Section 11A(a)(3)(B) of the Securities Exchange Act of 1934'' (''Linkage Plan''), connectivity between markets is provided pursuant to the Linkage Plan. *See* Securities Exchange Act Release No. 54551 (September 29, 2006), 71 FR 59148 (October 6, 2006) (approving the NMS Linkage Plan).

[6] *See* Securities Exchange Act Release No. 54391 (August 31, 2006), 71 FR 52836 (September 7, 2006).

[7] *See* Securities Exchange Act Release No. 54194 (July 24, 2006), 71 FR 43258 (July 31, 2006) (Rule 16.3 provides that the new Chapter XVI will become effective upon written notice by the Exchange to the ETP Holders).

[8] As set forth in Release No. 34–54194, the Exchange proposed to maintain a separate fee schedule that contains its current fees, dues and other charges, instead of including all of its specific fees, dues and charges in the text of its rules.

[9] *See* Securities Exchange Act Release Nos. 54548 (September 29, 2006), 71 FR 59159 (October 6, 2006) and 54480 (September 21, 2006) 71 FR 57596 (September 29, 2006) (which allow Linkage Plan participants to directly bill, and to accept direct billing from, any such Linkage Plan participants that are unable to implement Sponsoring Member billing by October 1, 2006.)

[10] 15 U.S.C. 78f(b).

[11] *See id.*

[12] 15 U.S.C. 78f(b)(4).

[13] 15 U.S.C. 78s(b)(3)(A)(ii).

[14] 17 CFR 240.19b–4(f)(2).

Number SR–NSX–2006–12 on the subject line.

Paper Comments

• Send paper comments in triplicate to Nancy Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–NSX–2006–12. This file number should be included in the subject line if e-mail is used. To help the Commission process and review 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 filings will also 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–NSX–2006–12 and should be submitted on or before November 30, 2006.

For the Commission, by the Division of Market Regulation, pursuant to the delegated authority.[15]

Nancy Morris,

Secretary.

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[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54694; File No. SR–NYSE–2006–93]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change Relating to Amendments to NYSE Rule 607 Concerning the Use of the Random Selection Method To Appoint Arbitrators in Matters Not Involving Customers

November 2, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 24, 2006, the New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NYSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NYSE is proposing to amend Rule 607(c) to provide that in all arbitration matters not involving customers, claimants may use the ''Random List Selection'' method for arbitrator appointment. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

Rule 607. Appointment of Arbitrators

(c) Party Requests for [Agreement on Arbitrator Selection] Random List Selection

If the customer [or non-member] requests in writing within 45 days from the time the statement of claim is filed, [or, if all parties agree and so notify the Exchange within that time frame,] arbitrators will be selected according to Random List Selection, as described below. *In all arbitration matters not involving customers, if the claimant requests in writing within 45 days from the time the statement of claim is filed, arbitrators will be selected according to Random List Selection, as described below*. The Exchange will accommodate any reasonable alternative way to select arbitrators, provided the parties agree.

* * * * *

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–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, the NYSE included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE 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

Under the Random List Selection methodology, the Director of Arbitration sends parties a randomly generated list of five public arbitrators for claims heard by a single arbitrator. If the claim is heard by three arbitrators, the Director of Arbitration provides parties a randomly generated list of 10 public arbitrators and another list of five securities industry arbitrators. Each party is then allocated strikes against these arbitrators.[3] Currently, customers or non-members may request in writing a Random List Selection within 45 days after they file a statement of claim. The parties also may agree to this methodology provided that they notify the NYSE within this timeframe.[4] If parties do not request a Random List Selection, the Director of Arbitration will select the arbitrator(s) and name a chairman of each panel.[5] NYSE Rule 607(c) also permits the NYSE to accommodate reasonable alternatives to select arbitrators, provided that all parties agree on the methodology.

Under the proposed amendments to NYSE Rule 607(c), the Random List Selection methodology could be used in all arbitration matters not involving customers if the claimant requests that methodology in writing within 45 days after filing its statement of claim. The proposed amendments would not change the ability of a customer to request the Random Selection Method. The purpose of these amendments is to allow non-member or member claimants to use the Random List Selection method and to ensure that their choice of methodology for arbitrator appointment would prevail.

[3] NYSE Rule 607(c)(2)(i).

[4] NYSE Rule 607(c).

[5] NYSE Rule 607(b).

2. Statutory Basis

The NYSE believes that the proposed rule change is consistent with Section 6(b)(5) [6] of the Act requiring exchanges to have rules designed to promote just and equitable principles of trade, and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NYSE 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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2006–93 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–NYSE–2006–93. 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 NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File number SR–NYSE–2006–93 and should be submitted on or before November 30, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Nancy M. Morris,

Secretary.

[FR Doc. E6–18945 Filed 11–8–06; 8:45 am]

BILLING CODE 8011–01–P

[6] 15 U.S.C. 78f(b)(5).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54688; File No. SR–Phlx–2006–62]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to PACE Equity Transaction Charge and NMS Linkage

November 2, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 26, 2006, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Phlx. The Exchange submitted the proposed rule change under Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Equity Transaction Charge (''Charge'') on the Phlx Fee Schedule to extend the application of the Charge to an order, after being delivered to the Exchange by the PACE system,[5] that is executed by the specialist by way of an outbound NMS Linkage order, when such outbound NMS Linkage order reflects the PACE order's clearing information.[6] The Charge will not apply where a PACE order was executed against an inbound NMS Linkage order. The text of the proposed rule change is available on the Exchange's Web site at *http://www.phlx.com*, at the Exchange's Office of the Secretary and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[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)(2).

[5] PACE is the Exchange's automated order routing, delivery, execution and reporting system for equities. *See* Phlx Rule 229.

[6] Since October 1, 2006, the effective date of the ''Plan for the Purpose of Creating and Operating an Intermarket Communications Linkage Pursuant to Section 11A(a)(3)(B) of the Securities Exchange Act of 1934'' (''NMS Linkage Plan''), connectivity between markets is provided pursuant to the Linkage Plan. *See* Securities Exchange Act Release No. 54551 (September 29, 2006), 71 FR 59148 (October 6, 2006) (approving the NMS Linkage Plan).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to treat PACE trades that interact with NMS Linkage orders the same as Intermarket Trading System (''ITS'') commitments with respect to the Exchange's Charge.[7] The NMS Linkage Plan is the successor Plan to the ITS Plan. While there are some operational differences between the two Plans, both Plans facilitate intermarket linkage among market centers trading certain listed securities and the Exchange believes the NMS Linkage Plan is used in a similar manner as the ITS Plan by its members and member organizations. Therefore, the Exchange proposes to apply the Charge to PACE trades that interact with NMS Linkage orders in the identical manner as PACE trades that interact with ITS commitments. This is accomplished by adding the words ''or NMS Linkage order'' to footnote 1 in the Summary of Equity Charges section of the Exchange's Fee Schedule.

2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b) of the Act,[8] in general, and furthers the objectives of Section 6(b)(4) of the Act,[9] in particular, regarding the equitable allocation of reasonable dues, fees, and other charges among exchange members and other persons using exchange facilities.

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 comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[10] and subparagraph (f)(2) of Rule 19b–4 thereunder,[11] because it establishes or changes a due, fee, or other charge imposed by the Phlx. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2006–62 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–Phlx–2006–62. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2006–62 and should be submitted on or before November 30, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Nancy M. Morris,

Secretary.

[FR Doc. E6–18944 Filed 11–8–06; 8:45 am]

BILLING CODE 8011–01–P

[7] *See* Securities Exchange Act Release No. 47245 (January 24, 2003), 68 FR 5069 (January 31, 2003) (adopting the current fee treatment of PACE trades that interact with ITS commitments).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78s(b)(3)(a)(ii).

[11] 17 CFR 240.19b–4(f)(2).

[12] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending October 20, 2006

The following Agreements were filed with the Department of Transportation under the Sections 412 and 414 of the Federal Aviation Act, as amended (49 U.S.C. 1382 and 1384) and procedures governing proceedings to enforce these provisions. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2006–26147.

Date Filed: October 20, 2006.

Parties: Members of the International Air Transport Association.

Subject: TC23/123 Middle East—TC3 Mail Vote 515, Special Passenger Amending Resolution 010d, From Iran to Afganistan (Memo 0310).

Intended Effective Date: 1 November 2006.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. E6–19031 Filed 11–8–06; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending October 13, 2006

The following Agreements were filed with the Department of Transportation

under the Sections 412 and 414 of the Federal Aviation Act, as amended (49 U.S.C. 1382 and 1384) and procedures governing proceedings to enforce these provisions. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2006–26088.

Date Filed: October 11, 2006.

Parties: Members of the International Air Transport Association.

Subject: TC23 Mail Vote 508, Between Europe and South Asian Subcontinent, (Memo 0150),

Intended effective date: 1 November 2006, (Memo 0150).

Docket Number: OST–2006–26089–1.

Date Filed: October 11, 2006.

Parties: Members of the International Air Transport Association.

Subject: TC23/TC123 Europe-South West Pacific, Expedited Resolution 002dp, Between Europe and South Asian Subcontinent, (Memo 0108),

Intended effective date: 1 November 2006.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. E6–19033 Filed 11–8–06; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Approval of Noise Compatibility Program, Columbia Metropolitan Airport, Columbia, SC

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the Noise Compatibility Program submitted by the Richland-Lexington Airport District under the provisions of 49 U.S.C. (the Aviation Safety and Noise Abatement Act, hereinafter referred to as ''the Act)'' and 14 CFR part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96–52 (1980). On July 29, 2005, the FAA determined that the noise exposure maps submitted by the Richland-Lexington Airport District under Part 150 were in compliance with applicable requirements. On September 18, 2006, the FAA approved the Columbia Metropolitan Airport noise compatibility program. Most of the recommendations of the program were approved.

DATES: *Effective Date:* The effective date of the FAA's approval of the Columbia Metropolitan Airport Noise Compatibility Program is September 18, 2006.

FOR FURTHER INFORMATION CONTACT: Bonnie Baskin, Federal Aviation Administration, Atlanta Airports District Office, 1701 Columbia Avenue, Campus Building, Suite 2–260, College Park, Georgia 30337, phone number: 404–305–7152. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the Noise Compatibility Program for Columbia Metropolitan Airport, effective September 18, 2006.

Under Section 47504 of the Act, an airport operator who has previously submitted a Noise Exposure Map may submit to the FAA a Noise Compatibility Program which sets forth the measures taken or proposed by the airport operator for the reduction of existing non-compatible land uses and prevention of additional non-compatible land uses within the area covered by the Noise Exposure Maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) Part 150 is a local program, not a Federal Program. The FAA does not substitute its judgment for that of the airport operator with respect to which measure should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measures according to the standards expressed in FAR Part 150 and the Act, and is limited to the following determinations:

a. The Noise Compatibility Program was developed in accordance with the provisions and procedures of FAR Part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing non-compatible land uses around the airport and preventing the introduction of additional non-compatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types of classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport Noise Compatibility Program are delineated in FAR Part 150 § 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, State, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where Federal funding is sought, requests for project grants must be submitted to the FAA Airports District Office in Atlanta, Georgia.

The Richland-Lexington Airport District submitted to the FAA on April 13, 2005, the Noise Exposure Maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from September 17, 2001, through March 21, 2006. The Columbia Metropolitan Airport Noise Exposure Maps determined by FAA to be in compliance with applicable requirements on July 29, 2005. Notice of this determination was published in the **Federal Register** on July 29, 2005.

The Columbia Metropolitan Airport study contains a proposed Noise Compatibility Program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from March 21, 2006 to the year 2011. It was requested that FAA evaluate and approved this material as a Noise Compatibility Program as described in Section 47504 of the Act. The FAA began its review of the Program on March 22, 2006, and was required by a provisions of the Act to approve or disapprove the program with 180 days (other than the use of new or modified flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained nineteen (19) proposed actions for noise mitigation on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied. The overall program, therefore, was approved by the FAA effective September 18, 2006.

Outright approval was granted for twelve of the specific program elements. One was approved in part. Several measures were disapproved pending submission of additional information to make and informed analysis. One measure was disapproved because it was not a noise mitigation measure.

Operational Measures

OC–1. Flight Track Modifications—Arriving Turbojet and Heavy Turboprop Aircraft

When air traffic, weather, and safety conditions permit, arriving heavy turboprop and turbojet aircraft should be aligned with the runway centerline approximately 3 to 4 miles from the runway end for Runways 11, 29, and 5. This measure is to adjust aircraft flight tracks to reduce the areas that would be exposed to aircraft overflights, especially those operations at low altitudes. The benefits from implementation include a reduction in low altitude close-in approach turns over noise sensitive uses, including Three Fountains, Cedar Estates, and South Congaree. While there would be no change in the size of the noise contour as a result of implementation of this measure, this will help expose a smaller population to individual overflight events that were consistently noted in public meetings as creating significant adverse reaction by area residents. The procedure also places arriving aircraft over airport property to the greatest extent possible. These procedures could be formalized in the form of a published approach procedure that standardizes the specific elements of the procedures, such as in the form of a Standard Terminal Arrival Route (STAR). (NCP, pages 4–8, and 68–69; Figures 5– (from Volume Two, 2–5, 7–2 and 7–3.))

FAA Action: Disapproved for purposes of Part 150 pending submission of additional Information to make an informed analysis. There is insufficient information to determine the number of persons benefited (either by changes to the DNL noise contour or appropriate supplemental metric showing dB noise reduction), versus people that maybe newly added due to changes in flight tracks.

OC–2. Flight Track Modifications—Departing Turbojet and Heavy Turboprop Aircraft

When air traffic, weather and safety conditions permit, turbojet and heavy turboprop aircraft, including military C–17 and C–130 aircraft, departing Runway 29 should maintain runway heading and not initiate turns until after crossing Old Barnwell Road. Turbojet and large turboprop aircraft departing Runway 11 should not initiate turns until crossing Interstate 26. Departures on Runway 23 should maintain runway heading one mile beyond the southern end of Runway 23. The procedure has the aircraft gaining altitude over airport owned property to the greatest extent possible prior to initiating turns. This results in a reduction in low altitude close in departure turns over noise sensitive uses including the residential concentrations of Three Fountains, Cedar Estates, and South Congaree. This will help expose a smaller population to individual overflight events that were consistently noted in public meetings as creating significant adverse reaction by area residents. (NCP, pages 8–11 and 69–70; and Figures 7–3 and 7–4.)

FAA Action: Disapproved for purposes of Part 150 pending submission of additional information to make an informed analysis. There is insufficient information to determine the number of persons benefited (either by changes to the DNL noise contour or appropriate supplemental metric showing dB noise reduction), versus people that may be newly added due to changes in flight tracks.

OC–3. Noise Abatement Departure Profile (NADP)

Turbojet aircraft departing Runway 5 and 23 should utilize the ''Close-in'' NADP. Benefits relate to reduction in noise from aircraft departures within the communities located in close proximity to the ends of Runway 5–23, including Churchill Heights to the north and residences situated in the vicinity of Pine Street to the south. (NCP, pages 11–13, and 70).

FAA Action: Approved as an informal, voluntary measure when air traffic and airspace safety and efficiency and weather conditions permit. Appropriate use of NADPs have been shown to be noise beneficial.

OC–4. Nightime Runway Use Modifications Subject to Airfield Enhancements

To establish a nighttime noise abatement preferential runway use program, it is recommended that a full-length parallel taxiway south of runway 11–29 be approved as an eligible item by the FAA specifically to reduce noise impacts on the sensitive communities located within the 06 DNL contour immediately north of Runway 5–23. Design and construction costs will be determined subject to the approval of this item as part of the NCP. (NEM, Figures 5–11 and 5–12; NCP, pages 13–14, 18, and 71; Figures 7–5A, 7–5B, and 7–6.)

FAA Action: Disapproved for purposes of FAR Part 150. The NCP does not provide noise benefit information on the nighttime preferential use of Runway 11. The graphics referenced are not sufficient to demonstrate a noise benefit. (Different land use base maps, scales, and graphics were not used to compare information, making it difficult to determine the required information.) Additional information on the location of homes and the number of persons benefited, and whether there would be newly impacted noise-sensitive airways, is required. The FAA notes that construction of a full parallel taxiway was proposed in the Airport's master plan for other purposes.

OC–5. Military Flight Training Noise Reduction

(a) It is recommended that the Airport request that military touch and go operations be voluntarily reduced, eliminated, or limited to daylight hours. (b) If the flight training cannot be eliminated altogether, the Airport should provide to the operators of these aircraft the location of noise sensitive uses surrounding the airport. This should help the military operators to conduct training in such a manner that noise sensitive areas are avoided to the extent that it is technically feasible. (c) This procedure would reduce the number of large military aircraft operating patterns over residential areas during day and nighttime hours. (NCP, pages 18–19, and 72.)

FAA Action: Disapproved pending submission of additional information to make an informed analysis. (a) There is no evidence of contact with the military to determine their willingness to carry out this measure on a voluntary basis, as proposed. (Part 150.23(c)) (b) There is no information on where noise sensitive uses would be located in any printed handout information. The extended flight tracks at OC–1 and OC–2 are not approved in this Record of Approval due to insufficient analysis. (c) There is no information on the number of homes/noise-sensitive sites currently within, versus removed from, the flight track corridors as a result of this measure or other noise metric benefits.

OC–6. Construction of Ground Run-Up Enclosures to Reduce Engine Maintenance Noise

Given the routine nighttime maintenance at Columbia Metropolitan Airport, it is recommended that a pen type enclosure be approved as an eligible item by the FAA and that the final decision on whether to construct such an enclosure be made by the Airport following an analysis of the associated costs and benefits, as 54 homes and 125 people will benefit from this measure if implemented. (NCP, pages 21–26, and 72–73; Figures 7–7, 7–8, and 7–9.)

FAA Action: Approved for further study. The study should include information on speech interference and sleep disturbance, and should show benefits in terms of numbers of homes or other noise-sensitive sites benefited versus newly disturbed by the relocation of ground run-ups and aircraft taxiing to a proposed new location. If the study demonstrates, from the cost/benefit analysis, that a pen type enclosure would be beneficial to the surrounding airport community, the Airport may recommend construction of the enclosure in a supplement or amendment to this NCP.

OC–7. Public Relations Programs

This measure is designed to improve communication about the NCP programs to the general public and to those pilots operating at Columbia Metropolitan Airport: 1. The Airport should continue to update the noise information on the Airport's Internet Site and to include information about the current noise complaint procedures; 2. The FAA should approve the purchase of three portable noise monitors. These would be used to monitor aircraft noise at the request of citizens, elected officials, airport tenants or other reasons. Some monitoring may involve indoor-outdoor attenuation information where 2–3 monitors may be needed simultaneously; and 3. The Airport should purchase and install lighted noise abatement procedure reminder signs at each runway end (a total of four signs). This is to inform airport users regarding the recommendations of this study. Sample language may include ''please follow noise abatement procedures.'' (NCP, pages 27–29, and 73.)

FAA Action: Approved. Eligibility for Federal funding of three probable noise monitors will be determined at the time of application. For purposes of aviation safety, this approval does not extend to the use of monitoring equipment for enforcement purposes by in-situ measurement of any pre-set noise thresholds and shall not be used for mandatory enforcement of any voluntary measure. Noise abatement procedure reminder signs must not be construed as mandatory air traffic procedure. The content and location of airfield signs are subject to specific approval by appropriate FAA officials outside of the FAR Part 150 process and are not approved in advance by this determination.

Land Use Measures

LU–1. Comprehensive Planning

Airport staff should strive to be an active participant in the comprehensive planning process for nearby jurisdictions. It is recommended that this Part 150 Study, including its implementation recommendations, either be referenced in each jurisdiction's comprehensive plan or specific elements of the FAR Part 150 be incorporated into the plan to provide the basis for other land use management approaches. During the comprehensive planning process, the determination of future land uses should consider the 2007 noise exposure map developed in this study (NCP, pages 34–36 and 77–78).

FAA Action: Approved. This is within the authority of the local land use jurisdictions; the Federal government does not control local land use.

LU–2. Discretionary Project Review

The use of discretionary project review of development, rezoning, subdividing, special use, conditional use and variance requests is recommended for implementation by nearby jurisdictions. The Airport staff should work with local permitting, zoning, and planning bodies to assist in the evaluation of noise impacts on projects under review. A detailed checklist will be developed for project reviews, (NCP, pages 36–37, and 78–79).

FAA Action: Approved. This is within the authority of the local land use jurisdictions; the Federal government does not control local land use.

LU–3. Noise Overlay Zoning

In the vicinity of Columbia Metropolitan Airport, it is recommended that each jurisdiction without noise overlay zoning (Springdale, Pineridge, South Congaree, West Columbia, and Cayce) implement a noise overlay zone, like Lexington County's modified noise overlay zones at pages 40–42. The Lexington County zones use the NEF metric. NEF 40 is equivalent to DNL 65; NEF–30 is equivalent to DNL 55. Lexington County should revise its current ''Noise Overlay Zone.'' (NCP, pages 38–42, and 79–80; Figure 8–2.)

FAA Action: Approved. This approval is limited to potential noncompatible land uses within the 2007 and 2022 DNL 65 dB and higher noise contours depicted on the accepted NEMs. The Federal government has no authority to control land use. The local governments have the authority to implement this proposed land use measure. Note that while FAA once used the NEF noise metric; FAA has adopted the DNL metric. Therefore, the NEF metric is a local standard. Outside the DNL 65 dB contour, FAA, as a matter of policy, encourages local efforts to prevent new noncompatible development immediately abutting the DNL 65 dB contour and to provide a buffer for possible growth in noise contours beyond the forecast period.

LU–4. Compatible Use Zoning

All jurisdictions should monitor zoning within the 65 DNL contour and in areas off the ends of runways for roughly one mile which are subject to significant arrival and departure overflight activity and prevent any rezoning that allows development of incompatible uses, mainly residential uses, schools, churches, hospitals, nursing homes, auditoriums, and concert halls. A further recommendation included the Airport entering into discussions with the Town of South Congaree to request that they consider expanding the existing commercial node at the intersection of Edmund Highway and Pine Street towards the north along Pine Street and Edmund Highway. These proposed measures would require Airport staff to monitor zoning in nearby areas and to continue to work with officials from all six jurisdictions previously identified in the Study. (NCP, pages 42–44, and 80–82; Figures 2–6 and 9–1; Table 8.2.)

FAA Action: Approved. The Federal government has no authority to control land use. The local governments have the authority to implement this measure. This Part 150 program is limited to potential noncompatible land uses within the DNL 65 dB and higher noise contours. Outside the DNL 65 dB contour, FAA, as a matter of policy, encourages local efforts to prevent new noncompatible development immediately abutting the DNL 65 dB contour and to provide a buffer for possible growth in noise contours beyond the forecast period.

LU–5. Zoning Changes, Residential Density

It is recommended that residential densities be addressed by adjusting individual residential densities in current zoning ordinances if the noise overlay zoning is not enacted. Where vacant land is partially within the DNL 65 dB, and the parcel extends beyond that contour, it is recommended that compatible uses be developed within the DNL 65 dB, and that residential, or public use, or other uses incompatible with higher noise levels be built in the lesser noise contour (Planned Unit Development). This could be extended to areas located beneath and within one-half mile either side of the extended runway centerline out to a distance of one to one and one-half miles from the end of a runway. In combination with the noise overlay zoning recommendation, areas within the NEF–3O/DNL 55 dB to DNL 65 dB, it is recommended lower density noise-sensitive development occur within the areas impacted by the 2007 noise contour (from 10 units per acre to 4 units per acre). Consideration should be given to the potential use of cluster development techniques where appropriate in these same areas and where community support exists. If noise overlay zoning is not implemented, this should be incorporated into existing zoning near the airport for areas inside the 2007 55 DNL contour. (NCP, pages 44–46, and 82.)

FAA Action: Approved. This approval is limited to potential noncompatible land uses within the 2007 and 2022 DNL 65 dB and higher noise contours depicted on the accepted NEMs. The Federal government has no authority to control land use. The local governments have the authority to implement this proposed land use measure. This Part 150 program is limited to potential noncompatible land uses within the DNL 65 dB and higher noise contours. Note that while FAA once used the NEF noise metric, FAA has adopted to DNL metric. Therefore, the NEF metric is a local standard. Outside the DNL 65 dB contour, FAA, as a matter of policy, encourages local efforts to prevent new noncompatible development immediately abutting the DNL 65 dB contour and to provide a buffer for possible growth in noise contours beyond the forecast period.

LU–6. Environmental Zoning

IT is recommended that the Airport support local jurisdictions in the continued use of environmental controls to limit development in nearby environmentally sensitive areas; this primarily includes the floodplain and wetland areas in Lexington County, and South Congaree and Pine Ridge. (NCP, pages 47–48, and 83.)

FAA Action: Disapproved for purposes of FAR Part 150. The NCP describes this as an environmental protection measure, not a noise mitigation measure. Part 150 is strictly a noise compatibility program, not a broader environmental program. Existing controls appear to prohibit development in these areas for other reasons.

LU–7. Subdivision Regulation Changes

As a measure to ensure future land development compatibility, subdivision regulations should require a statement be recorded on the subdivision plat that identifies the potential for aircraft operational activity and possible noise impacts for plats that fall within the 55 DNL or higher on the 2007 NEM or NEF 30 if noise overlay zoning is implemented. It is recommended that the Airport encourage and work through local jurisdictions to consider noise impacts when parcels are being proposed for subdivision. (NCP, pages 48–49, and 83–84.)

FAA Action: Approved. This approval is limited to potential noncompatible land uses within the 2007 and 2022 DNL 65 dB and higher noise contours depicted on the accepted NEMs. The Federal Government has no authority to control land use. The local governments have the authority to implement this proposed land use measure. This Part 150 program is limited to potential noncompatible land uses within the DNL 65 dB and higher noise contours. Note that while FAA once used the NEF noise metric, FAA has adopted the DNL metric. Therefore, the NEF metric is a local standard. Outside the DNL 65 dB contour, FAA as a matter of policy encourages local effects to prevent new noncompatible development immediately abutting the DNL 65 dB contour and to provide a buffer for possible growth in noise contours beyond the forecast period.

LU–8. Dedicated Noise and Avigation Easements

Noise and avigation easements are recommended as a condition of approval for re-zonings, subdivision plats and issuance of building permits on existing zoned and platted property for incompatible residential properties and other noise sensitive uses inside the 2007 65 DNL or within the proposed Airport Noise Overlay Zoning areas. An executed easement is also recommended for any approval zoning variance request that creates a noise incompatibility. (NCP, pages 49–50, and 84.)

FAA Action: Approved. This approval is limited to potential noncompatible land uses within the 2007 and 2022 DNL 65 dB and higher noise contours depicted on the accepted NEMs. FAA's policy is that new noise sensitive land uses should be prevented from developing around airports. In cases where prevention is not feasible because the airport sponsor does not control land uses, they should be rendered compatible with noise exposure levels through measures such as avigation easements during construction. Additionally, the FAA published a policy (See 63 FR 16409–16414, dated April 3, 1998) stating it will fund only preventive mitigation after October 1, 1998. No remedial mitigation would be available for new noise-sensitive structures built after October 1, 1998.

LU–9. Fair Disclosure Regulations

It is recommended that the Airport undertake an informal disclosure program including mailing a realtor notification brochure, publishing results of this Study in local media, and placing copies of this Study at each jurisdiction's administrative office. This program should include information related to the South Carolina Residential Property Condition Disclosure Act. (NCP, pages 51–52, and 84–86; and, Figure 9–2.)

FAA Action: Approved.

LU–10. Fee Simple Acquisition Program

This Study identified two parcels: Parcel A and B (south of Runway 5) as candidates for voluntary acquisition. Parcel A (4.9 acres) has one residential structure. Parcel B is 55 acres and has no noncompatible land use. (NCP pages 52–56, and 87; and, Figure 8–3.)

FAA Action: Disapproved for purposes of FAR Part 150, pending submission of additional Information to make an informed analysis. There is insufficient evidence these parcels are likely to be developed incompatibly. Other measures in the NCP are intended to reduce the likelihood of incompatible development on vacant parcels. It is noted Parcel A is not located within the current conditions DNL 65 contour, and Parcel B is partially impacted by the DNL 65 dB noise contour but its current use is compatible with the airport. The need for this property as part of a future runway extension project may be evaluated outside of the FAR Part 150 process.

LU–11. Voluntary Soundproofing Program

Soundproof residences and public uses buildings on a voluntary basis (where it is cost effective and technically feasible) and it is recommended that in exchange for the property owner executing a noise and avigation easement. Soundproofing program would be based on 2002 NEM until activity meets 2007 N7EM forecasts (map dates represent years 2006 and 2011 respectively per sponsor letter dated 03/21/06). The incompatible areas (including 18 private residences and a commercial day care center) within the 2002 NEM 65 DNL contour should be considered for participation in a federally funded, voluntary soundproofing program. It is recommended that in exchange for soundproofing that the property owner execute a noise and avigation easement. This easement could also be signed in lieu of having improvements made to the home or building on the property. Executing an avigation easement would not be a mandatory requirement of the soundproofing program. A homeowner eligible for the program (within the DNL noise contour) would be permitted to sell a noise and avigation easement to the Airport Sponsor instead of participating in sound attenuation, should they choose not to participate or if their residence does not qualify for participation in the program. (NCP, pages 58–63, and 88–89; and, Figures 8–4, and 8–5.)

FAA Action: Approved. The voluntary sound insulation within the DNL 65 dB noise contour is approved. The specific identification of structures recommended for inclusion in the program and specific definition of the scope of the program will be required prior to approval for Federal funding. This includes a determination of which NEM applies at the time of grant application, and evidence the day care manager holds good title to the building proposed for sound attenuation. Provisions will be included in the scope of work to allow eligible homeowners to sell an easement to the airport sponsor should they not choose sound insulation program or if their residence does not qualify. The FAA's policy is that no structures built after October 1, 1998, are eligible for Federal funding for remedial mitigation (see FAA policy at 63 FR 16409).

LU–12 Noise and Avigation Easement Purchase

It is recommended that the Airport undertake the acquisition of avigation easements in the 2007 noise impact area as a secondary measure to provide those property owners who may not qualify or opt to not participate in the soundproofing program with an option as well as providing the airport with the protection afforded by the easement with non-suit covenant. (NCP, pages 63–64, and 89.)

FAA Action: Approved. This approval is limited to potential noncompatible land uses within the DNL 65 dB higher noise contours. *Disapproved for purposes of Part 150 with respect to Airport Improvement Program (AIP) Funding outside the DN7L 65 dB noise contour.* Section 189 of Public Law 108–176, Vision 100-Century of Aviation Reauthorization Act, December 12, 2003, specifically prohibits FAA approval of Part 150 program measures that require AIP funding to mitigate aircraft noise outside DNL 65 dB—(through Fiscal Year 2007). Section 189 does not preclude the use of airport revenue outside DNL 65 dB. Mitigation within the 2007 NEM 65 dB noise contour area is subject to a showing the NEMs are applicable at the time of grant application. Provisions will be included in the scope of work to allow any homeowner eligible for the program to sell a noise and avigation easement to the Airport Sponsor should they choose not to participate in the sound insulation program or their residence does not qualify for participation in the program. Also, the FAA's policy is that no structures built after October 1, 1998 are eligible for Federal funding for remedial mitigation (see FAA policy at 63 FR 16409).

These determinations are set forth in detail in a Record of Approval signed by the FAA on September 18, 2006. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative office of the Richland-Lexington Airport District. The Record of Approval also will be available on-line at: *http://www.faa.gov/airports_airtraffic/airports/environmental/airport_noise/part_150/states/.*

Issued in Atlanta, Georgia on October 25, 2006.

Scott Seritt,

Manager, Atlanta Airports District Office.

[FR Doc. 06–9122 Filed 11–8–06; 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://www.airweb.faa.gov/rgl.*

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 November 2, 2006.

Terry Allen,

Acting Manager, Production and Airworthiness Division, Aircraft Certification Service.

[FR Doc. 06–9123 Filed 11–8–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Multnomah County, Oregon

AGENCIES: Federal Highway Administration, Department of Transportation.

ACTION: Notice of intent.

SUMMARY: The Federal Highway Administration (FHWA) is issuing this notice of intent to advise agencies and the public that an Environmental Impact Statement (EIS) will be prepared to assess the impacts of proposed repair or replacement of the Sellwood Bridge over the Willamette River in Portland, Oregon.

DATES: Public and Agency meetings will be advertised and held in Portland, Oregon during the development of the EIS.

FOR FURTHER INFORMATION CONTACT: Edward J. DeCleva, Environmental Protection Specialist, Federal Highway Administration, The Equitable Building, Suite 100, 530 Center Street, NE., Salem, OR 97301, (503) 587–4710.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Oregon Department of Transportation (ODOT) and Multnomah County, will prepare an EIS for proposed repair or replacement of the Sellwood Bridge Project across the Willamette River in Portland, Oregon. The existing Sellwood Bridge has been identified by the ODOT Statewide Bridge Inventory as deficient for load and seismic purposes. It has a sufficiency rating of 2 out of 100. The sufficiency rating is a measure of a bridge's structural integrity and transportation function with respect to current design standards. The bridge has narrow travel lanes and no shoulders and one narrow sidewalk, with light poles that intrude in the travel path of the sidewalk. It is currently load limited to 10 tons and restricts freight, emergency vehicle, and bus traffic. The western terminal of the bridge is located on an active slide area. The structure requires ongoing maintenance and repairs. With 30,000 vehicles per day, it has the highest traffic volumes of any two-lane bridge in the state of Oregon.

The FHWA, ODOT and Multnomah County will evaluate potential transportation, environment, social, cultural, and economic impacts of a range of alternatives, including a no build alternative. The project purpose and need and range of alternatives will be identified through consultations with the public, Federal, State and local agencies, and interested federally recognized tribes. ODOT and Multnomah County solicited public comments on the propose project through a public scoping meeting held in Portland, Oregon on October 25, 2006. Federal, State and local agencies, and interested federally recognized tribes will be invited to attend agency scoping meetings in December 2006. Additional public, agency, and tribal meetings will be held during the development of the EIA. A public hearing will also be held. In addition to mailings, meetings and hearing dates, times and locations will be announced on the project Web site accessible at *http://www.sellwoodbridge.org/* and in local and regional newspapers. The draft EIS will be made available for public, agency and tribal review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address above.

(Authority: *23 U.S.C. 315*; 49 CFR 1.48)

Dated: November 3, 2006.

Edward J. DeCleva,

Environmental Protection Specialist, FHWA Oregon Division.

[FR Doc. 06–9149 Filed 11–8–06; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[USCG–2005–21232]

Beacon Port LLC Liquefied Natural Gas Deepwater Port License; Final Environmental Impact Statement

AGENCY: Maritime Administration, DOT.

ACTION: Notice of availability; request for comments.

SUMMARY: The U.S. Coast Guard (USCG) and the Maritime Administration (MARAD) announce the availability of the Final Environmental Impact Statement (FEIS) for the Beacon Port liquefied natural gas deepwater port license application. The application describes a project that would be located in the Gulf of Mexico, in lease block High Island Area 27, on the Outer Continental Shelf (OCS). The main terminal would be located approximately 45 miles south of High Island and 50 miles east-southeast of Galveston, Texas, with a riser platform in lease block West Cameron 167, approximately 27 miles south of Holly Beach and 29 miles south-southeast of Johnson's Bayou, Louisiana.

DATES: Material submitted in response to the request for comments must reach the Docket Management Facility on or before December 11, 2006.

On November 3, 2006 the applicant informed MARAD and the Coast Guard that they are withdrawing the Beacon Port LLC Liquefied Natural Gas Deepwater Port License application. Therefore, public hearings on the Deepwater Port License will not be held since a license will not be granted on the withdrawn application.

In their withdrawal notification the applicant indicated that they may determine at some future date to resubmit the Beacon Port license application (either modified or a new application for this location). In that event this Environmental Impact Statement may be used as the basis for any additional or updated NEPA documentation that would be necessary should the application be resubmitted. For that reason, comments relating to the FEIS are still being solicited.

ADDRESSES: Address docket submissions for USCG–2005–21232 to:

Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001.

The Docket Management Facility accepts hand-delivered submissions, and makes docket contents available for public inspection and copying, at this address, in room PL–401, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Facility's telephone is 202–366–9329, its fax is 202–493–2251, and its Web site for electronic submissions or for electronic access to docket contents is *http://dms.dot.gov*. The docket number is USCG–2005–21232.

FOR FURTHER INFORMATION CONTACT: Mr. Raymond Martin, U.S. Coast Guard, telephone: 202–372–1449, e-mail: *Raymond.W.Martin@uscg.mil*. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, *telephone:* 202–493–0402.

Request for Comments

We request public comments or other relevant information on the FEIS. You can submit material to the Docket Management Facility during the public comment period (see **DATES**). The Coast Guard and MARAD will consider all comments submitted during the public comment period. However, as we stated, no license will be issued on the withdrawn application that this EIS evaluates.

Submissions should include:

- Docket number USCG–2005–21232.
- Your name and address.
- Your reasons for making each comment or for bringing information to our attention.

Submit comments or material using only one of the following methods:

- Electronic submission to DMS, *http://dms.dot.gov.*
- Fax, mail, or hand delivery to the Docket Management Facility (see **ADDRESSES**). Faxed or hand delivered submissions must be unbound, no larger than 8½ by 11 inches, and suitable for copying and electronic scanning. If you mail your submission and want to know when it reaches the Facility, include a stamped, self-addressed postcard or envelope.

Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the DMS Web site (*http://dms.dot.gov*), and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available on the DMS Web site, or the Department of Transportation Privacy Act Statement that appeared in the **Federal Register** on April 11, 2000 (65 FR 19477).

You may view docket submissions at the Docket Management Facility (see **ADDRESSES**), or electronically on the DMS Web site.

Supplementary Information/ Background

Proposed Action

We published a notice of intent to prepare an EIS for the Proposed Beacon Port Deepwater Port at 71 FR 33916, June 10, 2005 and we announced the availability of the Draft EIS at 71 FR 11216, March 6, 2006. The proposed action requiring environmental review is the Federal licensing of the proposed Deepwater Port described in ''Summary of the Application'' below, which is reprinted from previous **Federal Register** notices in this docket.

Alternatives to the Proposed Action

The alternatives to licensing are: (1) Licensing with conditions (including conditions designed to mitigate environmental impact), and (2) denying the application, which for purposes of environmental review is the ''no-action'' alternative. These alternatives are more fully discussed in the FEIS.

Summary of the Application

The application described a Deepwater Port terminal to be located outside State waters in the Gulf of Mexico on the U.S. Outer Continental Shelf (OCS). Beacon Port would consist of a Main Terminal, Riser Platform, and connecting pipelines. The Main Terminal would be located approximately 50 miles (80 km) off the coast, east-southeast of Galveston, TX (approximately 45 miles [72 km] south of High Island, TX) in OCS lease block High Island Area 27 (HIA 27). The Riser Platform would be located approximately 29 miles off the coast south-southeast of Johnson's Bayou, LA (approximately 27 miles south of Holly Beach, LA) in OCS lease block West Cameron 167 (WC 167). Beacon Port would serve as an LNG receiving, storage, and regasification facility. The Main Terminal would be located in water depth of approximately 65 feet (20 m).

The Beacon Port Main Terminal would include: two concrete Gravity Based Structures (GBS) that would contain the LNG storage tanks, LNG carrier berthing provisions, LNG unloading arms, low and high pressure pumps, vaporizers, metering, utility systems, general facilities and accommodations. The Main Terminal would be able to receive LNG carriers with cargo capacities of up to 253,000 cubic meters. LNG carrier arrival frequency would be planned to match specified terminal gas delivery rates. The terminal would have storage capacity for up to 300,000 cubic meters of LNG (150,000 cubic meters per tank) on site.

Regasification of LNG would be accomplished through the use of open rack vaporizers (ORVs). In normal operation, four pumps would operate with a combined flow rate of approximately 167.5 million gallons of sea water per day (26,400 m^3/hr). At peak operation, five pumps would operate with a combined total flow rate of approximately 203 million gallons of sea water per day (32,000 m^3/hr).

Beacon Port proposed the installation of approximately 46 miles of offshore natural gas transmission pipeline on the OCS. A 42-inch diameter pipeline would connect the Main Terminal with the Riser Platform. Three additional pipelines (24-inch, 20-inch, and 12.75-inch diameter) were proposed to connect the Riser Platform with existing gas distribution pipelines in the WC 167 OCS block. The deepwater port would be designed to handle an average delivery of approximately 1.5 billion standard cubic feet per day (Bscfd) with a peak delivery of approximately 1.8 Bscfd.

By Order of the Maritime Administrator.

Dated: November 3, 2006.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. E6–19009 Filed 11–8–06; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[NHTSA Docket No. NHTSA–2006–26249]

Brain Injury Symposium

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Meeting notice.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) announces a two day Brain Injury Symposium to be held in Washington, DC. This notice announces the date, time and location of the Symposium, which will be open to the public with advanced registration on a space-available basis.

DATES: February 26 and 27, 2007 starting at 9 a.m. on Monday, February 26th and ending at 5 p.m. on Tuesday, February 27th, 2007.

ADDRESSES: The meeting will be held at: L'Enfant Plaza Hotel, 480 L'Enfant Plaza, SW., Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Erik Takhounts, Ph.D., Office of Applied Vehicle Safety Research, Human Injury Research Division, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone number (202) 366–4737; E-mail *Erik.Takhounts@dot.gov.*

SUPPLEMENTARY INFORMATION: With head and brain injury still a major factor in frontal crashes, NHTSA has identified a need to determine specific injury mechanisms and create more predictive injury criteria. The chief purpose of this Symposium is to hear the opinions, on an individual basis, of experts on short-, mid-, and long-term research efforts that may be relevant to the establishment of advanced brain/head injury criteria. Distinguished researchers engaged in the area of brain injury biomechanics will make presentations on their latest research efforts during the first day of the Symposium. The second day will be devoted to roundtable discussions of specific subjects such as injury mechanisms, crash dummy development, and future research including computer modeling. NHTSA will post a summary of the information presented during the Symposium on its website and place all relevant materials in the docket. It is anticipated that representatives of industry, academia, and the government from North America, Europe, and Asia will participate in the Symposium.

The meeting will be open to the public with advanced registration on a space-available basis. Individuals wishing to register must provide their name, affiliation, phone number and e-mail address to Erik Takhounts (contact information identified above) no later than December 1st, 2006. To the extent time permits, the public may make statements during the meeting, and file written statements with NHTSA for its consideration. The meeting will be held at a site accessible to individuals with disabilities. Individuals who require accommodations such as sign language interpreters should contact Erik Takhounts by February 1, 2007.

An agenda will be posted on NHTSA's Web site at: *http://www.nhtsa.dot.gov* and placed in the meeting docket at a later date. Meeting minutes and other information received by NHTSA at the Symposium also will be available on NHTSA's Web site and in the meeting docket.

Issued on: November 2, 2006.

Joseph N. Kanianthra,

Associate Administrator for Vehicle Safety Research.

[FR Doc. E6–18919 Filed 11–8–06; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34913]

Genesee & Wyoming Inc.—Continuance in Control Exemption—Chattahoochee Bay Railroad, Inc.

AGENCY: Surface Transportation Board.

ACTION: Notice of exemption.

SUMMARY: The Board grants an exemption, under 49 U.S.C. 10502, from the prior approval requirements of 49 U.S.C. 11323–25 for Genesee & Wyoming Inc. (GWI), a noncarrier, to continue in control of Chattahoochee Bay Railroad, Inc. (CBRR), upon CBRR's becoming a rail carrier in a related transaction involving the acquisition and operation of certain rail assets of H&S Railroad Company, Inc., and Chattahoochee & Gulf Railroad Co., Inc., Class III rail carriers,[1] subject to labor protective conditions. GWI is a holding company that directly or indirectly controls one Class II rail carrier and 23 operating Class III rail carriers. The rail assets acquired by CBRR in the related transaction connect with the rail line of an operating Class III rail carrier controlled by GWI.

DATES: This exemption will be effective on November 24, 2006. Petitions to stay must be filed by November 20, 2006. Petitions to reopen must be filed by December 4, 2006.

ADDRESSES: Send an original and 10 copies of all pleadings, referring to STB Finance Docket No. 34913, to: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, send one copy of pleadings to Kevin M. Sheys, Kirkpatrick & Lockhart Nicholson Graham LLP, 1601 K Street, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Melissa Ziembicki, (202) 565–1604 [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, e-mail or call: ASAP Document Solutions, 9332 Annapolis Rd., Suite 103, Lanham, MD 20706; e-mail *asapdc@verizon.net;* telephone (202) 306–4004. [Assistance for the hearing impaired is available through FIRS at 1–800–877–8339].

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: November 1, 2006.

By the Board, Chairman Nottingham, Vice Chairman Mulvey, and Commissioner Buttrey.

Vernon A. Williams,

Secretary.

[FR Doc. E6–19039 Filed 11–8–06; 8:45 am]

BILLING CODE 4915–01–P

[1] *See Chattahoochee Bay Railroad, Inc.—Acquisition and Operation Exemption—Certain Assets of H&S Railroad Company, Inc., and Chattahoochee & Gulf Railroad Co., Inc.,* STB Finance Docket No. 34912 (STB served Sept. 15, 2006).

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34946]

Portland & Western Railroad, Inc.—Temporary Trackage Rights Exemption—Portland Terminal Railroad Company

Pursuant to a written trackage rights agreement, Portland Terminal Railroad Company (PTRR) has agreed to grant temporary overhead trackage rights to Portland & Western Railroad, Inc. (PNWR), extending between milepost 0.91 on BNSF Railway Company's (BNSF) Fallbridge Subdivision and milepost 0.0 on Union Pacific Railroad Company's (UP) Portland Subdivision, all located near Union Station in Portland, OR, a distance of approximately 1.5 miles.

The transaction was scheduled to be consummated on or after October 30, 2006, and the temporary trackage rights are scheduled to expire on December 30, 2006.

This transaction is related to two concurrently filed notices of exemption in STB Finance Docket No. 34944, *Portland & Western Railroad, Inc.—Temporary Trackage Rights Exemption—BNSF Railway Company*, and STB Finance Docket No. 34945, *Portland & Western Railroad, Inc.—Temporary Trackage Rights Exemption—Union Pacific Railroad Company*. In STB Finance Docket No. 34944, BNSF has agreed to grant temporary overhead trackage rights to PNWR over a 3.6-mile line of railroad extending from the facilities of the Portland Terminal Railroad Company at Portland, OR, to Willbridge, OR, on (a) BNSF main track #1 between milepost 0.69 and milepost 4.32 and (b) BNSF

main track #2 between milepost 0.91 and milepost 4.25 (including use of the crossover). In STB Finance Docket No. 34945, UP has agreed to grant temporary overhead trackage rights to PNWR over a 50-mile line of railroad extending between UP milepost 0.0 on the Portland Subdivision at Portland, OR, and milepost 720.9 on UP's Brooklyn Subdivision at Labish, OR. The trackage rights in these proceedings will connect to make a continuous detour route between Willbridge and Labish, OR, that will allow PNWR to continue to handle traffic while its line is undergoing rehabilitation and reconstruction.

As a condition to this exemption, any employees affected by the acquisition of the temporary trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980), and any employees affected by the discontinuance of those trackage rights will be protected by the conditions set out in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

This notice is filed under 49 CFR 1180.2(d)(8). If it contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34946, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Eric M. Hocky, Gollatz, Griffin & Ewing, P.C., Four Penn Center Plaza, Suite 200, 1600 John F. Kennedy Blvd., Philadelphia, PA 19103–2808.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: November 1, 2006.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. E6–18883 Filed 11–8–06; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34945]

Portland & Western Railroad, Inc.—Temporary Trackage Rights Exemption—Union Pacific Railroad Company

Pursuant to a written trackage rights agreement, Union Pacific Railroad Company (UP) has agreed to grant temporary overhead trackage rights to Portland & Western Railroad, Inc. (PNWR), extending between UP milepost 0.0 on the Portland Subdivision at Portland, OR, and UP milepost 720.9 on the Brooklyn Subdivision at Labish, OR, a distance of approximately 50 miles.

The transaction was scheduled to be consummated on or after October 30, 2006, and the temporary trackage rights are scheduled to expire on December 30, 2006.

This transaction is related to two concurrently filed notices of exemption in STB Finance Docket No. 34944, *Portland & Western Railroad, Inc.—Temporary Trackage Rights Exemption—BNSF Railway Company,* and STB Finance Docket No. 34946, *Portland & Western Railroad, Inc.—Temporary Trackage Rights Exemption—Portland Terminal Railroad Company.* In STB Finance Docket No. 34944, BNSF Railway Company (BNSF) has agreed to grant temporary overhead trackage rights to PNWR over a 3.6-mile line of railroad extending from the facilities of the Portland Terminal Railroad Company at Portland, OR, to Willbridge, OR, on (a) BNSF main track #1 between milepost 0.69 and milepost 4.32 and (b) BNSF main track #2 between milepost 0.91 and milepost 4.25 (including use of the crossover). In STB Finance Docket No. 34946, Portland Terminal Railroad Company has agreed to grant temporary overhead trackage rights to PNWR over a 1.5-mile line of railroad extending between milepost 0.91 on BNSF's Fallbridge Subdivision and milepost 0.0 on UP's Portland Subdivision, all located near Union Station in Portland, OR. The trackage rights in these proceedings will connect to make a continuous detour route between Willbridge and Labish, OR, that will allow PNWR to continue to handle traffic while its line is undergoing rehabilitation and reconstruction.

As a condition to this exemption, any employees affected by the acquisition of the temporary trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980), and any employees affected by the discontinuance of those trackage rights will be protected by the conditions set out in *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979).

This notice is filed under 49 CFR 1180.2(d)(8). If it contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34945, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Eric M. Hocky, Gollatz, Griffin & Ewing, P.C., Four Penn Center Plaza, Suite 200, 1600 John F. Kennedy Blvd., Philadelphia, PA 19103–2808.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: November 1, 2006.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. E6–18863 Filed 11–8–06; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–290 (Sub-No. 284X)]

Norfolk Southern Railway Company—Abandonment Exemption-in Kalamazoo County, MI

Norfolk Southern Railway Company (NSR) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a 1.4-mile line of railroad between milepost CQ 41.3, and milepost CQ 42.7, located in Parchment, Kalamazoo County, MI. The line traverses United States Postal Service Zip Code 49004 and includes the former station of Parchment.

NSR has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Board or with any U.S. District Court or

has been decided in favor of complainant within the 2-year period; and (4) the requirements of 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on December 12, 2006, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by November 20, 2006. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by November 29, 2006, with: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to NSR's representative: James R. Paschall, Senior General Attorney, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

NSR has filed environmental and historic reports which address the effects, if any, of the abandonment on the environment and historic resources. SEA will issue an environmental assessment (EA) by November 17, 2006. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 565–1539. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), NSR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by NSR's filing of a notice of consummation by November 9, 2007, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: November 3, 2006.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. E6–19038 Filed 11–8–06; 8:45 am]

BILLING CODE 4915–01–P

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each OFA must be accompanied by the appropriate filing fee, which was increased to $1,300 effective on April 19, 2006. *See Regulations Governing Fees for Services Performed in Connection with Licensing and Related Services—2006 Update*, STB Ex Parte No. 542 (Sub–No. 13) (STB served Mar. 20, 2006).

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

November 3, 2006.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before December 11, 2006 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1696.

Type of Review: Extension.

Title: Political Organization Report on Contributions and Expenditures.

Form: 8872.

Description: Internal Revenue Code section 527(j) requires certain political organizations to report certain contributions received and expenditures made after July 1, 2000. Every section 527 political organization that accepts a contribution or makes an expenditure for an exempt function during the calendar year must file Form 8872, except for: A political organization that is not required to file Form 8871, or a state or local committee of a political party or political committee of a state or local candidate.

Respondents: Not-for-profit institutions.

Estimated Total Burden Hours: 431,200 hours.

OMB Number: 1545–2025.

Type of Review: Extension.

Title: Clean Renewable Energy Bond Credit and Gulf Bond Credit.

Form: 8912.

Description: Form 8912, Clean Renewable Energy Bond Credit and Gulf Bond Credit, was developed to carry out the provisions of new Internal Revenue Code sections 54 and 1400N(l). The form provides a means for the taxpayer to compute the clean renewable energy bond credit and the Gulf bond credit.

Respondents: Businesses and other for-profit institutions.

Estimated Total Burden Hours: 5,955 hours.

OMB Number: 1545–1440.

Title: Conduit Arrangements Regulations.

Type of Review: Extension.

Description: This document contains regulations relating to when the area director may re-characterize a financing arrangement as a conduit arrangement. Such re-characterization will affect the amount of withholding tax due on financing transactions that are part of the financing arrangement. These regulations will affect withholding agents and foreign investors.

Respondents: Businesses and other for-profit institutions.

Estimated Total Burden Hours: 10,000 hours.

Clearance Officer: Glenn P. Kirkland, (202) 622–3428, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Robert Dahl,

Treasury PRA Clearance Officer.

[FR Doc. E6–19016 Filed 11–8–06; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Thursday,
November 9, 2006

Part II

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Parts 414 and 484

Medicare Program; Home Health Prospective Payment System Rate Update for Calendar Year 2007 and Deficit Reduction Act of 2005 Changes to Medicare Payment for Oxygen Equipment and Capped Rental Durable Medical Equipment; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 414 and 484

[CMS–1304–F]

RIN 0938–AN76

Medicare Program; Home Health Prospective Payment System Rate Update for Calendar Year 2007 and Deficit Reduction Act of 2005 Changes to Medicare Payment for Oxygen Equipment and Capped Rental Durable Medical Equipment; Final Rule

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

ACTION: Final rule.

SUMMARY: This final rule sets forth an update to the 60-day national episode rates and the national per-visit amounts under the Medicare prospective payment system for home health services. In addition, this final rule sets forth policy changes related to Medicare payment for certain durable medical equipment for the purpose of implementing sections 1834(a)(5) and 1834(a)(7) of the Social Security Act, as amended by section 5101 of the Deficit Reduction Act of 2005. This final rule also responds to public comments on the August 3, 2006, proposed rule that pertain to a number of issues including the requirement that home health payments are based on the reporting of specific quality data by home health agencies.

DATES: *Effective Date:* These regulations are effective on January 1, 2007.

FOR FURTHER INFORMATION CONTACT: Randy Throndset, (410) 786–0131, or Sharon Ventura, (410) 786–1985 (for issues related to the home health prospective payment system). Doug Brown, (410) 786–0028 (for issues related to reporting home health quality data). Alexis Meholic, (410) 786–2300 (for issues related to payments for oxygen equipment and capped rental durable medical equipment).

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory Background

The Balanced Budget Act of 1997 (BBA) (Pub. L. 105–33), enacted on August 5, 1997, significantly changed the way Medicare pays for Medicare home health services. Until the implementation of a home health prospective payment system (HH PPS) on October 1, 2000, home health agencies (HHAs) received payment under a cost-based reimbursement system. Section 4603 of the BBA governed the development of the HH PPS.

Section 4603(a) of the BBA provides the authority for the development of a PPS for all Medicare-covered home health services provided under a plan of care that were paid on a reasonable cost basis by adding section 1895, entitled ''Prospective Payment For Home Health Services,'' to the Social Security Act (the Act).

Section 1895(b)(1) of the Act requires the Secretary to establish a PPS for all costs of home health services paid under Medicare.

Section 1895(b)(3)(A) of the Act requires that (1) the computation of a standard prospective payment amount include all costs of home health services covered and paid for on a reasonable cost basis and be initially based on the most recent audited cost report data available to the Secretary, and (2) the prospective payment amounts be standardized to eliminate the effects of case-mix and wage levels among HHAs.

Section 1895(b)(3)(B) of the Act addresses the annual update to the standard prospective payment amounts by the home health applicable increase percentage as specified in the statute.

Section 1895(b)(4) of the Act governs the payment computation. Sections 1895(b)(4)(A)(i) and (b)(4)(A)(ii) of the Act require the standard prospective payment amount to be adjusted for case-mix and geographic differences in wage levels. Section 1895(b)(4)(B) of the Act requires the establishment of an appropriate case-mix adjustment factor that explains a significant amount of the variation in cost among different units of services. Similarly, section 1895(b)(4)(C) of the Act requires the establishment of wage-adjustment factors that reflect the relative level of wages and wage-related costs applicable to the furnishing of home health services in a geographic area compared to the national average applicable level. These wage-adjustment factors may be the factors used by the Secretary for the different area wage levels for purposes of section 1886(d)(3)(E) of the Act.

Section 1895(b)(5) of the Act gives the Secretary the option to grant additions or adjustments to the payment amount otherwise made in the case of outliers because of unusual variations in the type or amount of medically necessary care. Total outlier payments in a given fiscal year cannot exceed 5 percent of total payments projected or estimated.

On February 8, 2006, the Congress enacted the Deficit Reduction Act (DRA) of 2005 (Pub. L. 109–171). This legislation made additional changes to the HH PPS.

Section 5201 of the DRA changed the CY 2006 update from the applicable home health market basket percentage increase minus 0.8 percentage points to a 0 percent update.

Section 5201 of the DRA amended section 421(a) of the MMA. The amended section 421(a) of the MMA requires, for home health services furnished in a rural area (as defined in section 1886(d)(2)(D) of the Act) with respect to episodes and visits beginning on or after January 1, 2006 and before January 1, 2007, that the Secretary increase by 5 percent the payment amount otherwise made under section 1895 of the Act. The statute waives budget neutrality for purposes of this increase as it specifically requires that the Secretary not reduce the standard prospective payment amount (or amounts) under section 1895 of the Act applicable to home health services furnished during a period to offset the increase in payments resulting in the application of this section of the statute.

The 0 percent update to the payment rates and the rural add-on provisions of the DRA were implemented through Pub. 100–20, One Time Notification, Transmittal 211 issued February 10, 2006.

In addition, section 5201(c) of the DRA amends the statute to add section 1895(b)(3)(B)(v) to the Act, requiring HHAs to submit data for purposes of measuring health care quality. This requirement is applicable for 2007 and each subsequent year. For 2007 and each subsequent year, in the case of a HHA that does not submit quality data, the home health market basket percentage increase would be reduced by 2 percentage points.

B. Updates

1. 2000 Final Rule

On July 3, 2000, we published a final rule (65 FR 41128) in the **Federal Register** to implement the HH PPS legislation. That final rule established requirements for a new PPS for HHAs as required by section 4603 of the BBA, and as subsequently amended by section 5101 of the Omnibus Consolidated and Emergency Supplemental Appropriations Act (OCESAA) for Fiscal Year 1999 (Pub. L. 105–277), enacted on October 21, 1998; and by sections 302, 305, and 306 of the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act (BBRA) of 1999 (Pub. L. 106–113), enacted on November 29, 1999. The requirements include the implementation of a PPS for home

health services, consolidated billing requirements, and a number of other related changes. The PPS described in that rule replaced the retrospective reasonable-cost-based system that was used by Medicare for the payment of home health services under Part A and Part B.

2. 2005 Final Rule

On November 9, 2005, we published a final rule (70 FR 68132), which set forth an update to the 60-day national episode rates and the national per-visit amounts under the Medicare prospective payment system for home health services for CY 2006. As part of that final rule, we adopted revised area labor market Metropolitan Statistical Area designations for CY 2006. In implementing the new area labor market designations, we allowed for a 1-year transition period. This transition consists of a blend of 50 percent of the new area labor market designations' wage index and 50 percent of the previous area labor market designations' wage index. In addition, we revised the fixed dollar loss ratio, which is used in the calculation of outlier payments.

C. System for Payment of Home Health Services

Generally, Medicare makes payment under the HH PPS on the basis of a national standardized 60-day episode payment, adjusted for case mix and wage index. For episodes with four or fewer visits, Medicare pays on the basis of a national per-visit amount by discipline, referred to as a low utilization payment adjustment (LUPA). Medicare also adjusts the 60-day episode payment for certain intervening events that give rise to a partial episode payment adjustment (PEP adjustment) or a significant change in condition adjustment (SCIC). For certain cases that exceed a specific cost threshold, an outlier adjustment may also be available. For a complete and full description of the HH PPS as required by the BBA and as amended by OCESAA and BBRA, see the July 3, 2000 HH PPS final rule (65 FR 41128).

D. Changes in Payment for Oxygen and Oxygen Equipment and Other Durable Medical Equipment (Capped Rental Items)

The Medicare payment rules for durable medical equipment (DME) are set forth in section 1834(a) of the Act and 42 CFR part 414, subpart D of our regulations. General payment rules for DME are set forth in section 1834(a)(1) of the Act and § 414.210 of our regulations, and § 414.210 also contains paragraphs relating to maintenance and servicing of items and replacement of items. Specific rules for oxygen and oxygen equipment are set forth in section 1834(a)(5) of the Act and § 414.226 of our regulations, and specific rules for capped rental items are set forth in section 1834(a)(7) of the Act and § 414.229 of our regulations. Rules for determining a period of continuous use for the rental of DME are set forth in § 414.230 of our regulations. The Medicare payment basis for DME is equal to 80 percent of either the lower of the actual charge or the fee schedule amount for the item. The beneficiary coinsurance is equal to 20 percent of either the lower of the actual charge or the fee schedule amount for the item.

In accordance with the rules set forth in section 1834(a)(5) of the Act and § 414.226 of our regulations, since 1989, suppliers have been paid monthly for furnishing oxygen and oxygen equipment to Medicare beneficiaries. Suppliers have also been paid an add-on fee for furnishing portable oxygen equipment to patients when medically necessary. Before the enactment of the DRA, these monthly payments continued for the duration of use of the equipment, provided that Medicare Part B coverage and eligibility criteria were met. Medicare covers three types of oxygen delivery systems: (1) Stationary or portable oxygen concentrators, which concentrate oxygen in room air; (2) stationary or portable liquid oxygen systems, which use oxygen stored as a very cold liquid in cylinders and tanks; and (3) stationary or portable gaseous oxygen systems, which administer compressed oxygen directly from cylinders. Both liquid and gaseous oxygen systems require delivery of oxygen contents.

Medicare payment for furnishing oxygen and oxygen equipment is made on a monthly basis and the fee schedule amounts vary by State. Payment for oxygen contents for both stationary and portable equipment is included in the fee schedule allowances for stationary equipment. Medicare fee schedules for home oxygen equipment are modality neutral; meaning that in a given State, there is one fee schedule amount that applies to all stationary systems and one fee schedule amount that applies to all portable systems.

Effective January 1, 2006, section 5101(b) of the DRA amended the Act at section 1834(a)(5) of the Act, limiting to 36 months the total number of continuous months for which Medicare will pay for oxygen equipment on a rental basis. At the end of the 36-month period, this section mandates that the supplier transfer title to the stationary and portable oxygen equipment to the beneficiary. Section 5101(b) of the DRA does not, however, limit the number of months for which Medicare will pay for oxygen contents for beneficiary-owned stationary or portable gaseous or liquid systems, and payment will continue to be made as long as the oxygen remains medically necessary. Section 5101(b) of the DRA also provides that payment for reasonable and necessary maintenance and servicing of beneficiary-owned oxygen equipment will be made for parts and labor not covered by a supplier's or manufacturer's warranty. In the case of beneficiaries using oxygen equipment on December 31, 2005, the 36-month rental period prescribed by the DRA begins on January 1, 2006.

In accordance with the rules set forth in section 1834(a)(7) of the Act and § 414.229 of our regulations, before the enactment of the DRA, suppliers of capped rental items (that is, other DME not described in paragraphs (2) through (6) of section 1834(a) of the Act) were paid on a rental or purchase option basis. Payment for most items in the capped rental category was made on a monthly rental basis, with rental payments being capped at 15 months or 13 months, depending on whether the beneficiary chose to continue renting the item or to take over ownership of the item through the ''purchase option.'' For all capped rental items, the supplier was required to inform the beneficiary of his or her purchase option, during the 10th rental month, to enter into a purchase agreement under which the supplier would transfer title to the item to the beneficiary on the first day after the 13th continuous month during which payment was made for the rental of the item. Therefore, if the beneficiary chose the purchase option, rental payments to the supplier would continue through the 13th month of continuous use of the equipment, after which time title to the equipment would transfer from the supplier to the beneficiary. Medicare would also make payment for any reasonable and necessary repair or maintenance and servicing of the equipment following the transfer of title. If the beneficiary did not choose the purchase option, rental payments would continue through the 15th month of continuous use. In these cases, suppliers would maintain title to the equipment but would have to continue furnishing the item to the beneficiary as long as medical necessity continued. Beginning 6 months after the 15th month of continuous use in which payment was made, Medicare would also make semi-annual maintenance and servicing payments to suppliers. These payments were approximately equal to 10 percent

of the purchase price for the equipment as determined by the statute. Total Medicare payments made through the 13th and 15th months of rental equal 105 and 120 percent, respectively, of the purchase price for the equipment.

In the case of power-driven wheelchairs, since 1989 payment has also been made on a lump-sum purchase basis at the time that the item is initially furnished to the beneficiary if the beneficiary chooses to obtain the item in this manner. Most beneficiaries choose to obtain power-driven wheelchairs via this lump-sum purchase option.

Effective for items for which the first rental month occurs on or after January 1, 2006, section 5101(a) of the DRA of 2005 amended section 1834(a)(7) of the Act, limiting to 13 months the total number of continuous months for which Medicare will pay for DME in this category. After a 13-month period of continuous use during which rental payments are made, the statute requires that the supplier transfer title to the equipment to the beneficiary. Beneficiaries may still elect to obtain power-driven wheelchairs on a lump-sum purchase agreement basis. In all cases, payment for reasonable and necessary maintenance and servicing of beneficiary-owned equipment will be made for parts and labor not covered by the supplier's or manufacturer's warranty.

E. Requirements for Issuance of Regulations

Section 902 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) amended section 1871(a) of the Act and requires the Secretary, in consultation with the Director of the Office of Management and Budget, to establish and publish timelines for the publication of Medicare final regulations based on the previous publication of a Medicare proposed or interim final regulation. Section 902 of the MMA also states that the timelines for these regulations may vary but shall not exceed 3 years after publication of the preceding proposed or interim final regulation except under exceptional circumstances.

This final rule finalizes provisions set forth in the August 3, 2006 proposed rule. In addition, this final rule has been published within the 3-year time limit imposed by section 902 of the MMA. Therefore, we believe that the final rule is in accordance with the Congress' intent to ensure timely publication of final regulations.

II. Provisions of the Proposed Regulations

We published a proposed rule in the **Federal Register** on August 3, 2006 (71 FR 44081) that set forth a proposed update to the 60-day national episode rates and the national per-visit amounts under the Medicare prospective payment system for home health services. In addition, that proposed rule set forth proposed policy changes related to Medicare payment for certain durable medical equipment for the purpose of implementing sections 1834(a)(5) and 1834(a)(7) of the Social Security Act, as amended by section 5101 of the Deficit Reduction Act of 2005. That proposed rule also invited comments on a number of issues including payments based on reporting quality data, the adoption of health information technology, as well as how to improve data transparency for consumers.

A. National Standardized 60-Day Episode Rate

The Medicare HH PPS has been effective since October 1, 2000. As set forth in the final rule published July 3, 2000 in the **Federal Register** (65 FR 41128), the unit of payment under the Medicare HH PPS is a national standardized 60-day episode rate. As set forth in § 484.220, we adjust the national standardized 60-day episode rate by a case mix grouping and a wage index value based on the site of service for the beneficiary. The proposed CY 2007 HH PPS rates used the same case-mix methodology and application of the wage index adjustment to the labor portion of the HH PPS rates as set forth in the July 3, 2000 final rule. In the October 22, 2004 final rule, we rebased and revised the home health market basket, resulting in a labor-related share of 76.775 percent and a non-labor portion of 23.225 percent (69 FR 62126). We multiply the national 60-day episode rate by the patient's applicable case-mix weight. We divide the case-mix adjusted amount into a labor and non-labor portion. We multiply the labor portion by the applicable wage index based on the site of service of the beneficiary.

As required by section 1895(b)(3)(B) of the Act, we have updated the HH PPS rates annually in a separate **Federal Register** document. Section 484.225 sets forth the specific annual percentage update. To reflect section 1895(b)(3)(B)(v) of the Act, as added by section 5201 of the DRA, we proposed to revise § 484.225, paragraph (g) as follows:

(g) For 2007 and subsequent calendar years, the unadjusted national rate is equal to the rate for the previous calendar year increased by the applicable home health market basket index amount unless the HHA has not submitted quality data in which case the unadjusted national rate is equal to the rate for the previous calendar year increased by the applicable home health market basket index amount minus 2 percentage points.

For CY 2007, we proposed to use again the design and case-mix methodology described in section III.G of the HH PPS July 3, 2000 final rule (65 FR 41192 through 41203). For CY 2007, we will base the wage index adjustment to the labor portion of the PPS rates on the most recent pre-floor and pre-reclassified hospital wage index as discussed in section II.F of the August 3, 2006 proposed rule (not including any reclassifications under section 1886(d)(8)(B) of the Act).

As discussed in the July 3, 2000 HH PPS final rule, for episodes with four or fewer visits, Medicare pays the national per-visit amount by discipline, referred to as a LUPA. We update the national per-visit amounts by discipline annually by the applicable home health market basket percentage. We adjust the national per-visit amount by the appropriate wage index based on the site of service for the beneficiary as set forth in § 484.230. We will adjust the labor portion of the updated national per-visit amounts by discipline used to calculate the LUPA by the most recent pre-floor and pre-reclassified hospital wage index, as discussed in section II.F of the August 3, 2006 proposed rule.

Medicare pays the 60-day case-mix and wage-adjusted episode payment on a split percentage payment approach. The split percentage payment approach includes an initial percentage payment and a final percentage payment as set forth in § 484.205(b)(1) and § 484.205(b)(2). We may base the initial percentage payment on the submission of a request for anticipated payment (RAP) and the final percentage payment on the submission of the claim for the episode, as discussed in § 409.43. The claim for the episode that the HHA submits for the final percentage payment determines the total payment amount for the episode and whether we make an applicable adjustment to the 60-day case-mix and wage-adjusted episode payment. The end date of the 60-day episode as reported on the claim determines which calendar year rates Medicare would use to pay the claim.

We may also adjust the 60-day case-mix and wage-adjusted episode payment based on the information submitted on the claim to reflect the following:

- A low utilization payment provided on a per-visit basis as set forth in § 484.205(c) and § 484.230.
- A partial episode payment adjustment as set forth in § 484.205(d) and § 484.235.
- A significant change in condition adjustment as set forth in § 484.205(e) and § 484.237.
- An outlier payment as set forth in § 484.205(f) and § 484.240.

B. CY 2007 Update to the Home Health Market Basket Index

Section 1895(b)(3)(B) of the Act, as amended by section 5201 of the DRA, requires for CY 2007 that the standard prospective payment amounts be increased by a factor equal to the applicable home health market basket update. The proposed rule contained a home health market basket update of 3.1 percent. Since publication of the proposed rule, we have estimated a new home health market basket update of 3.3 percent for CY 2007.

CY 2007 Adjustments

In calculating the annual update for the CY 2007 60-day episode rates, we first look at the CY 2006 rates as a starting point. The CY 2006 national 60-day episode rate, as modified by section 5201(a)(4) of the DRA (and implemented through Pub. 100–20, One Time Notification, Transmittal 211 issued February 10, 2006) is $2,264.28.

In order to calculate the CY 2007 national 60-day episode rate, we multiply the CY 2006 national 60-day episode rate ($2,264.28) by the estimated home health market basket update of 3.3 percent for CY 2007. The estimated home health market basket percentage increase reflects changes over time in the prices of an appropriate mix of goods and services included in covered home health services. The estimated home health market basket percentage increase is generally used to update the HH PPS rates on an annual basis.

We increase the CY 2006 60-day episode payment rate by the estimated home health market basket update (3.3 percent) ($2,264.28 × 1.033) to yield the updated CY 2007 national 60-day episode rate ($2,339.00) (see Table 1 below). The CY 2007 HH PPS rates apply to episodes ending on or after January 1, 2007, and before January 1, 2008.

TABLE 1.—NATIONAL 60-DAY EPISODE AMOUNTS UPDATED BY THE ESTIMATED HOME HEALTH MARKET BASKET UPDATE FOR CY 2007, BEFORE CASE-MIX ADJUSTMENT

Total CY 2006 Prospective Payment Amount Per 60-day Episode	Multiply by the Estimated Home Health Market Basket Update (3.3 Percent)[1]	CY 2007 Updated National 60-Day Episode Rate
$2,264.28	× 1.033	$2,339.00

[1] The estimated home health market basket update of 3.3 percent for CY 2007 is based on Global Insight, Inc, 3rd Qtr, 2006 forecast with historical data through 2nd Qtr, 2006.

National Per-Visit Amounts Used To Pay LUPAs and Compute Imputed Costs Used in Outlier Calculations

As discussed previously in the August 3, 2006 proposed rule, the policies governing the LUPAs and outlier calculations set forth in the July 3, 2000 HH PPS final rule will continue during CY 2007. In calculating the annual update for the CY 2007 national per-visit amounts we use to pay LUPAs and to compute the imputed costs in outlier calculations, we look again at the CY 2006 rates as a starting point. We then multiply those amounts by the estimated home health market basket update for CY 2007 (3.3 percent) to yield the updated per-visit amounts for each home health discipline for CY 2007 (episodes ending on or after January 1, 2007, and before January 1, 2008) (see Table 2 below).

TABLE 2.—NATIONAL PER-VISIT AMOUNTS FOR LUPAS AND OUTLIER CALCULATIONS UPDATED BY THE ESTIMATED HOME HEALTH MARKET BASKET UPDATE FOR CY 2007

Home health discipline type	Final CY 2006 per-visit amounts per 60-day episode for LUPAs	Multiply by the estimated home health market basket (3.3 percent)[1]	CY 2007 per-visit payment amount per discipline for LUPAs
Home Health Aide	$44.76	× 1.033	$46.24
Medical Social Services	158.45	× 1.033	163.68
Occupational Therapy	108.81	× 1.033	112.40
Physical Therapy	108.08	× 1.033	111.65
Skilled Nursing	98.85	× 1.033	102.11
Speech-Language Pathology	117.44	× 1.033	121.32

[1] The estimated home health market basket update of 3.3 percent for CY 2007 is based on Global Insight, Inc, 3rd Qtr, 2006 forecast with historical data through 2nd Qtr, 2006.

C. Rural Add-On

As stated above, section 5201(b) of the DRA requires, for home health services furnished in a rural area (as defined in section 1886(d)(2)(D) of the Act) with respect to episodes and visits beginning on or after January 1, 2006 and before January 1, 2007, that the Secretary increase by 5 percent the payment amount otherwise made under section 1895 of the Act. The statute waives budget neutrality related to this provision as it specifically states that the Secretary shall not reduce the standard prospective payment amount (or amounts) under section 1895 of the Act applicable to home health services furnished during a period to offset the increase in payments resulting in the application of this section of the statute.

While the rural add-on primarily affects those episodes paid based on CY 2006 rates, it also affects a number of CY 2007 episodes. For example, an episode that begins on December 20, 2006 and ends on February 17, 2007 for services furnished in a rural area, will be paid based on CY 2007 rates because the episode ends on or after January 1, 2007 and before January 1, 2008; and the

episode will also receive the rural add-on because the episode begins on or after January 1, 2006 and before January 1, 2007.

The applicable case-mix and wage index adjustment is subsequently applied to the 60-day episode amount for the provision of home health services where the site of service for the beneficiary is a non-Metropolitan Statistical Area (MSA). Similarly, the applicable wage index adjustment is subsequently applied to the LUPA per-visit amounts adjusted for the provision of home health services where the site of service for the beneficiary is a non-MSA area. We implemented this provision for CY 2006 on February 13, 2006 through Pub. 100–20, One Time Notification, Transmittal 211 issued February 10, 2006. The 5 percent rural add-on is noted in tables 3 and 4 below.

TABLE 3.—PAYMENT AMOUNTS FOR 60-DAY EPISODES BEGINNING IN CY 2006 AND ENDING IN CY 2007 UPDATED BY THE ESTIMATED HOME HEALTH MARKET BASKET UPDATE FOR CY 2007 WITH RURAL ADD-ON, BEFORE CASE-MIX ADJUSTMENT

CY 2007 Total prospective payment amount per 60-day episode	5 Percent rural add-on	CY 2007 Payment amount per 60-day episode beginning in CY 2006 and before January 1, 2007 and ending in CY 2007 for a beneficiary who resides in a non-MSA area
$2,339	× 1.05	$2,455.95

TABLE 4.—PER-VISIT AMOUNTS FOR EPISODES BEGINNING IN CY 2006 AND ENDING IN CY 2007 UPDATED BY THE ESTIMATED HOME HEALTH MARKET BASKET UPDATE FOR CY 2007 WITH RURAL ADD-ON

Home health discipline type	CY 2007 Per-visit amounts	Multiply by the 5 percent rural add-on	CY 2007 per-visit payment amount per discipline for 60-day episodes beginning on or after January 1, in CY 2006 and ending in CY 2007 for a beneficiary who resides in a non-MSA area
Home Health Aide	$46.24	× 1.05	$48.55
Medical Social Services	163.68	× 1.05	171.86
Occupational Therapy	112.40	× 1.05	118.02
Physical Therapy	111.65	× 1.05	117.23
Skilled Nursing	102.11	× 1.05	107.22
Speech-Language Pathology	121.32	× 1.05	127.39

D. Home Health Care Quality Improvement

Section 5201(c)(2) of the DRA added section 1895(b)(3)(B)(v)(II) to the Act, requiring that ''each home health agency shall submit to the Secretary such data that the Secretary determines are appropriate for the measurement of health care quality. Such data shall be submitted in a form and manner, and at a time, specified by the Secretary for purposes of this clause.'' In addition, section 1895(b)(3)(B)(v)(I) of the Act, as also added by section 5201(c)(2) of the DRA, dictates that ''for 2007 and each subsequent year, in the case of a home health agency that does not submit data to the Secretary in accordance with subclause (II) with respect to such a year, the home health market basket percentage increase applicable under such clause for such year shall be reduced by 2 percentage points.''

The Omnibus Budget Reconciliation Act of 1987 (OBRA 87) required the use of a standardized assessment instrument for quality oversight of HHAs. A standardized assessment instrument provides an HHA with a uniform mechanism to assess the needs of their patients and provide CMS with a uniform mechanism to assess the HHA's ability to adequately address those needs. To fulfill the OBRA 87 mandate, CMS required that, as part of their comprehensive assessment process, HHAs collect and report Outcome and Assessment Information Set (OASIS) data and later mandated the submission of this data as a Medicare Condition of Participation for home health agencies at 42 CFR 484.20 and 484.55.

The OASIS data provide consumers and HHAs with ten publicly-reported home health quality measures which have been endorsed by the National Quality Forum (NQF). Reporting this quality data has also required the development of several supporting mechanisms such as the HAVEN software used to encode and transmit data using a CMS standard electronic record layout, edit specifications, and data dictionary. Use of the HAVEN software, which includes the OASIS, has become a standard practice within HHA operations. These early investments in data infrastructure and supporting software that CMS and HHAs have made over the past several years in order to create this quality reporting structure, have made quality reporting and measurement an important component of the HHA industry. The 10 measures are:

(1) Improvement in ambulation/locomotion
(2) Improvement in bathing
(3) Improvement in transferring
(4) Improvement in management of oral medications
(5) Improvement in pain interfering with activity
(6) Acute care hospitalization
(7) Emergent care
(8) Improvement in dyspnea
(9) Improvement in urinary incontinence
(10) Discharge to community

We proposed to use OASIS data and the 10 quality measures based on those data as the appropriate measure of home health quality for CY 2007. Continuing to use the OASIS instrument minimizes

the burden to providers and ensures that costs associated with the development and testing of a new reporting mechanism are not incurred. We believe that the noted 10 quality measures are the most appropriate measure of home health quality. Accordingly, for CY 2007, we proposed to require that the OASIS data, specifically the 10 quality measures, be submitted by HHAs, to meet the requirement that each HHA submit data appropriate for the measurement of health care quality, as determined by the Secretary.

Additionally, section 1895(b)(3)(B)(v)(II) of the Act provides the Secretary with the discretion to require the submission of the required data in a form, manner, and time specified by him. For CY 2007, we proposed to consider OASIS data submitted by HHAs to CMS for episodes beginning on or after July 1, 2005 and before July 1, 2006 as meeting the reporting requirement. This proposed reporting time period would allow a full 12 months of data and provides CMS the time necessary to analyze and make any necessary payment adjustments to the CY 2007 payment rates for HHAs that fail to meet the reporting requirement. HHAs that met the reporting requirement would be eligible for the full home health market basket percentage increase. Using historical data to determine a prospective update is also used for hospital pay for reporting.

As discussed in the August 3, 2006 proposed rule, during the next few years, we noted that we would be pursuing the development of patient level process measures for home health agencies. We also proposed to continue to refine the current OASIS tool in response to recommendations from a Technical Expert Panel conducted to review the data elements that make up the OASIS tool. These process measures would refer to specific care practices that are, or are not, followed by the home health agency for each patient. An example of this type of measure may be: the percentage of patients at risk of falls for whom prevention of falls was addressed in the care plan. We expect to introduce these additional measures over CY 2008 and CY 2009 so as to complement the existing OASIS outcome measures. During the years leading to CY 2010 payments, we will test and refine these measures to determine if they can more accurately reflect the level of quality care being provided at HHAs without being overly burdensome with the data collection instrument. Some process measures are in the very early stages of development. To the extent that evidence-based data are available on which to determine the appropriate measure specifications, and adequate risk-adjustments are made, we anticipate collecting and reporting these measures as part of each agency's home health quality plan. We believe that future modifications to the current OASIS tool including reducing the number of questions on the tool, refining possible responses, as well as adding new process measures will be made. In all cases, we anticipate that any future quality measures should be evidence-based, clearly linked to improved outcomes, and able to be reliably captured with the least burden to the provider. We are also beginning work in order to measure patient experience of care (in the form of a patient satisfaction survey) in the home health setting.

We recognize, however, that the conditions of participation (42 CFR part 484) that require OASIS submission also provide for exclusions from this requirement. Generally, agencies are not subject to the OASIS submission requirement, and thus do not receive Medicare payments, for patients that are not Medicare beneficiaries or for patients that are not receiving Medicare-covered home health services. Under the conditions of participation, agencies are excluded from the OASIS reporting requirement on individual patients if:

- Those patients are receiving only non-skilled services,
- Neither Medicare nor Medicaid is paying for home health care (patients receiving care under a Medicare or Medicaid Managed Care Plan are not excluded from the OASIS reporting requirement),
- Those patients are receiving pre- or post-partum services,
- Those patients are under 18 years of age.

We believe that the rationale behind our proposal to exclude these agencies from submitting OASIS data on patients excluded from OASIS submission as a condition of participation is equally applicable to HHAs for purposes of meeting the DRA quality data reporting requirement. If an agency is not submitting OASIS for patients excluded from OASIS submission as a condition of participation, we believe that the submission of OASIS data for quality measures for Medicare payment purposes is also not necessary. Accordingly, we proposed that HHAs would not need to submit quality measures for DRA reporting purposes for those patients who are excluded from OASIS submission as a condition of participation.

Additionally, we proposed that agencies that are newly certified (on or after May 31, 2006 for payments to be made in CY 2007) would be excluded from the DRA reporting requirement as data submission and analysis would not be possible for an agency certified this late in the reporting time period. In future years, agencies that certify on or after May 31 of the preceding year involved would be excluded from any payment penalty under the DRA for the following calendar year. For example, for purposes of determining compliance with the quality data reporting requirement for CY 2007, if HHA ''X'' were to enroll in the Medicare Program on or before May 30, 2006, CMS would expect HHA ''X'' to submit the required quality data (unless covered by another exclusion protocol) on or before June 30, 2006 (the end of the reporting period for payments effectuated in CY 2007). However, if HHA ''Y'' was to enroll in the Medicare Program on or after May 31, 2006, CMS would automatically exclude HHA ''Y'' from the DRA quality data reporting requirements and the agency would be entitled to the full market basket increase for CY 2007. We note that these proposed exclusions would only affect reporting requirements under the DRA and would not otherwise affect the agency's OASIS reporting responsibilities under the conditions of participation.

We proposed to require that all HHAs, unless covered by these specific exclusions, meet the reporting requirement, or be subject to a 2 percent reduction in the home health market basket percentage increase in accordance with section 1895(b)(3)(B)(v)(I) of the Act. The 2 percent reduction would apply to all episodes ending on or before December 31, 2007. We provide the reduced payment rates in tables 5, 6, 7, and 8 below.

TABLE 5.—FOR HHAS THAT DO NOT SUBMIT THE REQUIRED QUALITY DATA— NATIONAL 60-DAY EPISODE AMOUNT UPDATED BY THE ESTIMATED HOME HEALTH MARKET BASKET UPDATE FOR CY 2007, MINUS 2 PERCENTAGE POINTS, BEFORE CASE-MIX ADJUSTMENT

Total CY 2006 prospective payment amount per 60-day episode	Multiply by the estimated home health market basket update (3.3 Percent [1] minus 2 percent)	CY 2007 updated national 60-day episode rate for HHAs that do not submit required quality data
$2,264.28	× 1.013	$2,293.72

[1]The estimated home health market basket update of 3.3 percent for CY 2007 is based on Global Insight, Inc, 3rd Qtr, 2006 forecast with historical data through 2nd Qtr, 2006.

TABLE 6—FOR HHAS THAT DO NOT SUBMIT THE REQUIRED QUALITY DATA—NATIONAL PER-VISIT AMOUNTS UPDATED BY THE ESTIMATED HOME HEALTH MARKET BASKET UPDATE FOR CY 2007, MINUS 2 PERCENTAGE POINTS

Home health discipline type	Final CY 2006 per-visit amounts per 60-day episode	Multiply by the estimated home health market basket update (3.3 percent [1] minus 2 percent)	CY 2007 per-visit payment amount per discipline for HHAs that do not submit required quality data
Home Health Aide	$44.76	× 1.013	$45.34
Medical Social Services	158.45	× 1.013	160.51
Occupational Therapy	108.81	× 1.013	110.22
Physical Therapy	108.08	× 1.013	109.49
Skilled Nursing	98.85	× 1.013	100.14
Speech-Language Pathology	117.44	× 1.013	118.97

[1]The estimated home health market basket update of 3.3 percent for CY 2007 is based on Global Insight, Inc, 3rd Qtr, 2006 forecast with historical data through 2nd Qtr, 2006.

TABLE 7.—FOR HHAS THAT DO NOT SUBMIT THE REQUIRED QUALITY DATA— PAYMENT AMOUNT FOR 60-DAY EPISODES BEGINNING IN CY 2006 AND ENDING IN CY 2007 UPDATED BY THE ESTIMATED HOME HEALTH MARKET BASKET FOR CY 2007, MINUS 2 PERCENTAGE POINTS, WITH RURAL ADD-ON, BEFORE CASE-MIX ADJUSTMENT

CY 2007 Updated national 60-day episode rate for HHAs that do not submit required quality data	5 Percent rural add-on	CY 2007 Payment amount per 60-day episode beginning in CY 2006 and ending in CY 2007 for a beneficiary who resides in a non-MSA area for HHAs that do not submit required quality data
$2,293.72	× 1.05	$2,408.41

TABLE 8—FOR HHAS THAT DO NOT SUBMIT THE REQUIRED QUALITY DATA— PER-VISIT PAYMENT AMOUNTS FOR EPISODES BEGINNING IN CY 2006 AND ENDING IN CY 2007 UPDATED BY THE ESTIMATED HOME HEALTH MARKET BASKET FOR CY 2007, MINUS 2 PERCENTAGE POINTS, WITH RURAL ADD-ON

Home health discipline type	CY 2007 Per-visit amounts for HHAs that do not submit required quality data	5 Percent rural add-on	CY 2007 Per-visit payment amounts for episodes beginning in CY 2006 and ending in CY 2007 for a beneficiary who resides in a non-MSA area for HHAs that do not submit required quality data
Home Health Aide	$45.34	× 1.05	$47.61
Medical Social Services	160.51	× 1.05	168.54
Occupational Therapy	110.22	× 1.05	115.73
Physical Therapy	109.49	× 1.05	114.96
Skilled Nursing	100.14	× 1.05	105.55
Speech-Language Pathology	118.97	× 1.05	124.92

Section 1895(b)(3)(B)(v)(III) of the Act further requires that the ''Secretary shall establish procedures for making data submitted under subclause (II) available to the public.'' Additionally, the statute requires that ''such procedures shall ensure that a home health agency has the opportunity to review the data that is to be made public with respect to the agency prior to such data being made public.'' To meet the requirement for making such data public, we proposed

to continue to use the CMS *Home Health Compare* Web site whereby HHAs are listed geographically. Currently the 10 proposed quality measures are posted on the CMS *Home Health Compare* Web site. Consumers can search for all Medicare-approved home health providers that serve their city or zip code and then find the agencies offering the types of services they need as well as the required quality measures. See *http://www.medicare.gov/HHCompare*. HHAs would continue to have access (through the *Home Health Compare* contractor) to its own quality data (updated periodically) and we would establish a process by which agencies would receive a report before reporting the data publicly.

Currently, the CMS *Home Health Compare* Web site does not publicly report data when agencies have fewer than 20 episodes of care within a reporting period. In light of the DRA requirements, we recognize the need to provide the required data to the public and would make these statistics available through expansion of the CMS *Home Health Compare* Web site.

In the July 27, 2005 Medicare Payment Advisory Commission (MedPAC) testimony before the U.S. Senate Committee on Finance, MedPAC expressed support for the concept of differential payments for Medicare providers, which could create incentives to improve quality. To support this initiative, MedPAC stated that ''outcome measures from CMS' Outcome-based Quality Indicators'' (currently collected through the OASIS instrument) ''could form the starter set.'' MedPAC further states ''* * * the Agency for Healthcare Research and Quality concur(s) that a set of these measures is reliable and adequately risk adjusted.''

The MedPAC testimony recognizes that while the goal of care for many home health patients is improving health and functioning, for some patients the goal of the HHA is to simply stabilize their conditions and prevent further decline. Additionally, the MedPAC testimony reflects that measures of structure and process could also be considered.

Various home health outcome measures are now in common use and have been studied for some time. A number of these measures have been endorsed by the National Quality Forum (NQF) and are evidence-based, well accepted, and not unduly burdensome. When determining outcome measures that will be most appropriate, it is important to measure aspects of care that providers can control and are adequately risk-adjusted. Home-based care presents particular difficulties for provider control because patient conditions are compounded by a variety of home environment and support system issues.

We are currently pursuing the development of patient-level process measures for HHAs, as well as refining the current OASIS tool in response to recommendations from a Technical Expert Panel conducted to review the data elements that make up the OASIS tool. These additional measures would complement the existing OASIS outcome measures and would assist us in identifying processes of care that lead to improvements for certain populations of patients. These process measures are currently in the very early stages of development. As we stated previously, to the extent that evidence-based data are available on which to determine the appropriate measure specifications, and adequate risk-adjustments are made, we anticipate collecting and reporting these measures as part of our home health quality plan. Possible modifications to the current OASIS tool include reducing the number of questions on the tool, refining possible responses, as well as adding new process measures.

We solicited comments on how to make the outcome measures more useful. We also solicited comments on measures of home health care processes for which there is evidence of improved care to beneficiaries. In all cases, we noted that measures should be evidence-based, clearly linked to improved outcomes, and able to be reliably captured with the least burden to the provider. We also considered measures of patient experience of care in the home health setting, as well as efficiency measures, and solicited comment on the use of these measures and their importance in the home health setting. In the proposed rule, we noted that we would address any changes to the HH PPS quality data submission requirement in future rulemaking.

We also stated our intent to provide guidance on the specifications, definitions, and reporting requirements of any additional measures through the standard protocol for measure development.

We proposed to revise the regulations at § 484.225 to reflect these proposed payment requirements which would require submission of quality data. For CY 2007, we will finalize the requirement to use the 10 OASIS measures as meeting the DRA quality data reporting requirement as discussed in section II.D. of the August 3, 2006 proposed rule and the regulations at § 484.225.

E. Outliers and Fixed Dollar Loss Ratio

Outlier payments are payments made in addition to regular 60-day case-mix and wage-adjusted episode payments for episodes that incur unusually large costs due to patient home health care needs. Outlier payments are made for episodes for which the estimated cost exceeds a threshold amount. The episode's estimated cost is the sum of the national wage-adjusted per-visit payment amounts for all visits delivered during the episode. The outlier threshold for each case-mix group, PEP adjustment, or total SCIC adjustment is defined as the 60-day episode payment amount, PEP adjustment, or total SCIC adjustment for that group plus a fixed dollar loss amount. Both components of the outlier threshold are wage-adjusted.

The wage-adjusted fixed dollar loss (FDL) amount represents the amount of loss that an agency must bear before an episode becomes eligible for outlier payments. The FDL is computed by multiplying the wage-adjusted 60-day episode payment amount by the FDL ratio, which is a proportion expressed in terms of the national standardized episode payment amount. The outlier payment is defined to be a proportion of the wage-adjusted estimated costs beyond the wage-adjusted threshold. The proportion of additional costs paid as outlier payments is referred to as the loss-sharing ratio.

Section 1895(b)(5) of the Act requires that estimated total outlier payments are no more than 5 percent of total estimated HH PPS payments. In response to the concerns about potential financial losses that might result from unusually expensive cases expressed in comments to the October 28, 1999 proposed rule (64 FR 58133), the July 2000 final rule set the target for estimated outlier payments at the 5 percent level. The FDL ratio and the loss-sharing ratio were then selected so that estimated total outlier payments would meet the 5 percent target.

For a given level of outlier payments, there is a trade-off between the values selected for the FDL ratio and the loss-sharing ratio. A high FDL ratio reduces the number of episodes that can receive outlier payments, but makes it possible to select a higher loss-sharing ratio and, therefore, increase outlier payments for outlier episodes. Alternatively, a lower FDL ratio means that more episodes can qualify for outlier payments, but outlier payments per episode must be lower. As a result of public comments on the October 28, 1999 proposed rule, in our July 2000 final rule, we made the decision to attempt to do the former.

In the July 2000 final rule, we chose a value of 0.80 for the loss-sharing ratio, which preserves incentives for agencies to attempt to provide care efficiently for outlier cases. A loss-sharing ratio of 0.80 was also consistent with the loss-sharing ratios used in other Medicare PPS outlier policies. Furthermore, we estimated the value of the FDL ratio that would yield estimated total outlier payments that were 5 percent of total home health PPS payments. The resulting value for the FDL ratio for the July 2000 final rule was 1.13.

Our CY 2005 update to the HH PPS rates (69 FR 62124) changed the FDL ratio from the original 1.13 to 0.70 to allow more home health episodes to qualify for outlier payments and to better meet the 5 percent target of outlier payments to total HH PPS payments. We stated in that CY 2005 update that we planned to continue to monitor the outlier expenditures on a yearly basis and to make adjustments as necessary (69 FR 62129). To do so, we planned on using the best Medicare data available at the time of publication. For the CY 2005 update, we used CY 2003 home health claims data.

Our CY 2006 update to the HH PPS rates (70 FR 68132) changed the FDL ratio from 0.70 to 0.65 to allow even more home health episodes to qualify for outlier payments and to better meet the 5 percent target of outlier payments to total HH PPS payments. For the CY 2006 update, we used CY 2004 home health claims data.

At the time of publication of the August 3, 2006 proposed rule, we did not have more recent data, but we noted that we may update the FDL ratio for CY 2007 depending on the availability of more recent data. We further noted that if we updated the FDL ratio for the CY 2007 update, we would use the same methodology performed in updating the current FDL ratio described in the October 22, 2004 final rule. Subsequent to the publication of the August 3, 2006 proposed rule, we have now obtained more recent data, that is, CY 2005 home health claims data.

Accordingly for this final rule, we have used the same methodology and performed an analysis on the CY 2005 HH PPS analytic data to update the FDL ratio for CY 2007. The results of this analysis indicate that an FDL ratio of 0.67 is consistent with the existing loss-sharing ratio of 0.80 and a projected target percentage of estimated outlier payments of 5 percent. Therefore, we are updating the FDL ratio from the current 0.65 to 0.67 for CY 2007.

Expressed in terms of a fixed dollar loss amount, an FDL ratio of 0.67 indicates that providers would absorb approximately $1,567 of their costs (before wage adjustment), in addition to their loss-sharing portion of the estimated cost in excess of the outlier threshold. This fixed dollar loss amount of approximately $1,567 is computed by multiplying the standard 60-day episode payment amount (2,339.00) by the FDL ratio (0.67). In contrast, using the current FDL ratio (0.65), the fixed dollar loss amount would be approximately $1,520 ($2,339.00 × 0.65)

F. Hospital Wage Index—Revised OMB Definitions for Geographical Statistical Areas

Sections 1895(b)(4)(A)(ii) and (b)(4)(C) of the Act require the Secretary to establish area wage adjustment factors that reflect the relative level of wages and wage-related costs applicable to the furnishing of home health services and to provide appropriate adjustments to the episode payment amounts under the HH PPS to account for area wage differences. We apply the appropriate wage index value to the labor portion (76.775 percent; see 60 FR 62126) of the HH PPS rates based on the geographic area in which the beneficiary received home health services as discussed in section II.A of the August 3, 2006 proposed rule. Generally, we determine each HHA's labor market area based on definitions of Metropolitan Statistical Areas (MSAs) issued by the Office of Management and Budget (OMB).

We acknowledged in our October 22, 2004 final rule that on June 6, 2003, the OMB issued an OMB Bulletin (No. 03–04) announcing revised definitions for MSAs, new definitions for Micropolitan Statistical Areas and Combined Statistical Areas, and guidance on using the statistical definitions. A copy of the Bulletin may be obtained at the following Internet address: *http://www.whitehouse.gov/omb/bulletins/b03–04.html.* At that time, we did not propose to apply these new definitions known as Core-Based Statistical Areas (CBSAs). In the November 9, 2005 final rule, we adopted the OMB-revised definitions and implemented a one-year transition policy consisting of a 50/50 blend of the MSA-based and the new CBSA-based wage indexes.

As discussed previously and set forth in the July 3, 2000 final rule, the statute provides that the wage adjustment factors may be the factors used by the Secretary for purposes of section 1886(d)(3)(E) of the Act for hospital wage adjustment factors. Again, as discussed in the July 3, 2000 final rule, we proposed to use the pre-floor and pre-reclassified hospital wage index data to adjust the labor portion of the HH PPS rates based on the geographic area in which the beneficiary receives the home health services. We believe the use of the pre-floor and pre-reclassified hospital wage index data results in the appropriate adjustment to the labor portion of the costs as required by statute. For the CY 2007 update to the home health payment rates, we proposed to continue using the most recent pre-floor and pre-reclassified hospital wage index available at the time of publication. See Addenda A and B of this final rule, respectively, for the rural and urban hospital wage indexes using the CBSA designations. For the HH PPS rates addressed in the August 3, 2006 proposed rule, we used preliminary 2007 pre-floor and pre-reclassified hospital wage index data. We incorporated updated hospital wage index data for the 2007 pre-floor and pre-reclassified hospital wage index to be used in this final rule (not including any reclassifications under section 1886(d)(8)(B) of the Act).

As implemented under the HH PPS in the July 3, 2000 HH PPS final rule, each HHA's labor market is determined based on definitions of MSAs issued by OMB. In general, an urban area is defined as an MSA or New England County Metropolitan Area (NECMA) as defined by OMB. Under § 412.62(f)(1)(iii), a rural area is defined as any area outside of an urban area. The urban and rural area geographic classifications are defined in § 412.62(f)(1)(ii) and § 412.62(f)(1)(iii), respectively, and have been used under the HH PPS since it was implemented.

Under the HH PPS, the wage index value is based upon the site of service for the beneficiary (defined by section 1861(m) of the Act as the beneficiary's place of residence). As has been our longstanding practice, any area not included in an MSA (urban area) is considered to be nonurban (§ 412.64(b)(1)(ii)(C)) and receives the statewide rural wage index value (see, for example, 65 FR 41173).

For CY 2007, we proposed using 100 percent of the CBSA-based wage area designations for purposes of determining the HH PPS wage index adjustment.

In adopting the CBSA designations, we identified some geographic areas where there were no hospitals, and thus no hospital wage data on which to base the calculation of the CY 2007 home health wage index. For CY 2006, we adopted a policy in the HH PPS final rule (70 FR 68132) of using the CY 2005 pre-floor, pre-reclassified hospital wage index value for rural areas when no rural hospital wage data are available. We also adopted a policy that for urban labor markets without an urban hospital

from which a hospital wage index can be derived, all of the CBSAs within the State would be used to calculate a statewide urban average wage index to use as a reasonable proxy for these areas. We have not received any concerns from the industry regarding our policy to calculate an urban wage index, using an average of all of the urban CBSAs wage index values within the State, for urban labor markets without an urban hospital from which a hospital wage index can be derived. Consequently, in the August 3, 2006 proposed rule, we proposed to continue to apply the average wage index from all urban areas in the state to any urban areas lacking hospital wage data in that state. Currently, the only CBSA that would be affected by this is CBSA 25980 Hinesville, Georgia.

In the August 3, 2006 proposed rule, we again proposed to apply the CY 2005 pre-floor/pre-reclassified hospital wage index to rural areas where no hospital wage data is available. Currently, the only rural areas that would be affected by this are Massachusetts and Puerto Rico. Since publication of the CY 2006 HH PPS final rule, representatives of the home health industry have expressed concerns with this policy, specifically as it applies to Massachusetts. In response to these concerns and in recognition that, in the future, there may be additional rural areas impacted by a lack of hospital wage data from which to derive a wage index, we considered alternative methodologies for imputing a rural wage index for areas where no hospital wage data are available.

We specifically considered imputing a rural wage index by computing a simple average of all of the statewide (rural) wage indexes at the Census Division level. Census Divisions are defined by the U.S. Census Bureau and may be found at *www.census.gov/geo/www/us_regdiv.pdf.* Massachusetts is located in Census Division I, along with Connecticut, Maine, New Hampshire, Vermont and Rhode Island. The Census Bureau states, ''Puerto Rico and the Island Areas are not part of any census region or census division.'' Therefore, we could not compute a rural wage index for Puerto Rico using this alternative methodology.

In the August 3, 2006 proposed rule, we solicited comments on the current methodology and alternative methodologies for determining a wage index for areas without the necessary hospital wage data. Since publication of the August 3, 2006 proposed rule, we have received numerous comments regarding our policy for determining a wage index for rural areas without the necessary hospital wage data. In direct response to these comments, we have decided to revise the methodology for imputing a rural wage index. We discuss the change to the methodology for imputing a rural wage index in section III of this final rule.

G. Payment for Oxygen, Oxygen Equipment and Capped Rental DME Items

As discussed in the August 3, 2006 proposed rule, we would amend our regulations at § 414.226 by revising the payment rules for oxygen and oxygen equipment in paragraph (a), adding a new paragraph (f) that provides that the beneficiary assumes ownership of oxygen equipment on the first day that begins after the 36th continuous month in which rental payments are made, and adding a new paragraph (g) that contains new supplier requirements that we believe are necessary in light of the amendments made to section 1834(a)(5) of the Act by section 5101(b) of the DRA. As discussed in the August 3, 2006 proposed rule, we would amend our regulations at § 414.226 by adding a new paragraph (c) that establishes new classes and national payment amounts for oxygen and oxygen equipment based on our authority in section 1834(a)(9)(D) of the Act. We also proposed to revise paragraph (b) of this section to incorporate the special payment rules for oxygen equipment mandated by section 1834(a)(21) of the Act. The provisions of section 1834(a)(21), which we believe are self-implementing, resulted in adjustments to Medicare payment amounts for oxygen contents and stationary oxygen equipment as well as portable oxygen equipment in 2005, which were implemented through program instructions. We are now seeking to codify these changes to make our regulations consistent with the payment methodology for these items in 2005 and 2006, and because the payment reductions mandated by section 1834(a)(21) are incorporated into our proposal, as more fully discussed in section I of the August 3, 2006 proposed rule, to create new payment classes for oxygen and oxygen equipment. The August 3, 2006 proposed rule indicated that we would redesignate old paragraph (c) of this section as paragraph (d) and would amend this paragraph to indicate under what situations payments would be made for the items and services described in new paragraph (c). Finally, the August 3, 2006 proposed rule indicated that we would redesignate old paragraph (d) of this section as paragraph (e) and would make technical changes to this paragraph so that the cross-references are accurate in light of the other changes we proposed to make to § 414.226.

The August 3, 2006 proposed rule would also amend our regulations at § 414.229 by revising the payment rules for capped rental durable medical equipment (DME) items (also called capped rental items) in paragraph (a), revising paragraph (f) to provide for new payment rules for capped rental items furnished beginning on or after January 1, 2006, revising paragraph (g) to provide for supplier requirements that we believe are necessary in light of the amendments made to section 1834(a)(7)(A) of the Act by section 5101(a) of the DRA, and adding a new paragraph (h) to address the lump-sum purchase option for power-driven wheelchairs furnished on or after January 1, 2006. The language in current paragraphs (f) and (g) of this section is obsolete, and therefore, we proposed to delete this language.

The August 3, 2006 proposed rule indicated that we would amend our regulations at § 414.210 by revising the maintenance and servicing rules in paragraph (e) and the replacement of equipment rules in paragraph (f) to further implement the new supplier requirements that we proposed below.

Finally, we proposed to revise § 414.230(b) to incorporate section 5101(b)(2)(B) of the DRA, which provides that for all beneficiaries receiving oxygen equipment paid for under section 1834(a) on December 31, 2005, the period of continuous use begins on January 1, 2006. We also proposed to revise § 414.230(f), which governs when a new period of continuous use begins if a beneficiary receives new equipment, to account for the fact that oxygen equipment is paid on a modality neutral basis.

Section 5101(a) of the DRA changes the Medicare payment methodology for capped rental equipment to beneficiary ownership after 13 months of continuous use, for those beneficiaries who need the equipment for more than 13 months. This section also makes the transfer of title for the capped rental items a requirement rather than a beneficiary option after 13 months of continuous use. The changes made by this section of the DRA apply to capped rental items, including rented power-driven wheelchairs, for which the first rental month occurs on or after January 1, 2006. We proposed to update § 414.229 of our regulations to reflect these new statutory requirements. However, for capped rental items and rented power-driven wheelchairs for which the first rental month occurred before January 1, 2006, the existing rules in § 414.229 would continue to apply. In

addition, as was the case before enactment of the DRA, beneficiaries may elect to obtain power-driven wheelchairs furnished on or after January 1, 2006, on a lump-sum purchase basis.

Section 5101(b) of the DRA changes the Medicare payment methodology for oxygen equipment from continuous rental to beneficiary ownership after 36 months of continuous use, for those beneficiaries who medically need the oxygen equipment for more than 36 months. For beneficiaries who were receiving oxygen equipment on December 31, 2005 for which payment was made under section 1834(a) of the Act, the 36-month rental period began on January 1, 2006. For beneficiaries who begin to rent oxygen equipment on or after January 1, 2006, the 36-month rental period commences at the time they begin to rent the equipment. We proposed to update § 414.226 of our regulations to incorporate these new requirements.

In light of the changes made by sections 5101(a) and (b) of the DRA, we believe it was necessary to propose additional supplier requirements in order to maintain beneficiary protections and access to oxygen, oxygen equipment, and capped rental DME items under section 1834(a) of the Act. For both capped rental DME items and oxygen equipment, the DRA amendments make the transfer of title from the supplier to the beneficiary a requirement rather than an option after the statutorily-prescribed rental period ends for each category of items. Therefore, suppliers and beneficiaries should be aware that title to these items will automatically transfer to the beneficiary if the medical need for the equipment continues for a period of continuous use that is longer than 36 months for oxygen equipment and 13 months for capped rental items. We are concerned that there may be incentives for suppliers to avoid having to transfer title to equipment to beneficiaries as required by the DRA. For example, we are aware of cases where a supplier has informed beneficiaries that it would decline to accept assignment for capped rental items and would charge beneficiaries who elected the purchase option the full retail price for the item during the 13th rental month (which was right before the supplier would be required to transfer title under the purchase option). In these cases, the beneficiary would become financially liable for the total retail price for the equipment in the 13th month if they elected the purchase option. In our August 3, 2006 proposed rule, we made several proposals relating to the furnishing of oxygen equipment and capped rental items which we believe protect beneficiaries from these types of abusive practices and which we believe are reasonable for a supplier to comply with. Our authority to promulgate these requirements stems from our authority to administer the payment rules at section 1834(a)(5) of the Act for oxygen equipment and section 1834(a)(7) of the Act for capped rental items, as well as the general authority provided in section 1871 of the Act for prescribing regulations necessary for administering the Medicare program. Other than the length of the rental periods, which the DRA made effective beginning on January 1, 2006 for all oxygen equipment and for capped rental items for which the first rental period began on or after that date, we proposed that the requirements presented in this section of the regulations would be effective on January 1, 2007, and would apply to suppliers that furnish oxygen equipment or capped rental items on a rental basis.

We believe that a supplier of an item that is subject to these new payment rules that furnishes the item in the first month for which a rental payment is made has an obligation to continue furnishing the item to the beneficiary for the entire period of medical need in which payments are made, up to and including the time when title to the equipment transfers to the beneficiary. We believe it is reasonable for the beneficiary to have an expectation that he or she will not be forced to change equipment or suppliers during the period of medical need unless he or she wants to. Therefore, we proposed that unless an exception applies, the supplier that furnishes oxygen equipment or a capped rental item for the first month of the statutorily prescribed rental period must continue to furnish the oxygen equipment or the capped rental item for as long as the equipment remains medically necessary, up to and including the last month for which a rental payment is made by Medicare. We believe that this proposal was necessary to ensure beneficiary access to equipment during a period of medical need, which we believe could be jeopardized if suppliers have the option to take back the rented equipment just before the rental period expires in order to retain title to that equipment. We proposed that this requirement would be subject to the following exceptions: (1) Cases where the item becomes subject to a competitive acquisition program implemented in accordance with section 1847(a) of the Act; (2) cases where a beneficiary relocates on either a temporary or permanent basis to an area that is outside the normal service area of the initial supplier; (3) cases where the beneficiary chooses to obtain equipment from a different supplier; and (4) other cases where CMS or the carrier determine that an exception is warranted. We have proposed rules in connection with the first exception in our Notice of Proposed Rulemaking for Competitive Acquisition for Certain Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) and Other Issues. These proposed rules are addressed beginning on page 25662 of the May 1, 2006 proposed rule (71 FR 25654). If the second exception applies, we proposed that the supplier or beneficiary would need to arrange for another supplier in the new area to furnish the item on either a temporary or permanent basis. This proposed exception is consistent with what currently happens when beneficiaries move outside a supplier's service area on either a temporary or permanent basis. The third exception is intended to protect a beneficiary's right to obtain the equipment from the supplier of his or her choice. Finally, we proposed to allow other exceptions to this proposed requirement on a case-by-case basis at the discretion of CMS or the Medicare contractor. CMS will be monitoring the case-by-case determinations made by the Medicare contractor.

We are concerned that there might be potential incentives for a supplier to replace more valuable or newer equipment used by the beneficiary with less valuable or older equipment from its inventory at some point before the 36th rental month for oxygen equipment or 13th rental month for capped rental DME expires in order to avoid losing title to the more valuable equipment. In order to avoid such potential situations, we proposed that the supplier may not provide different equipment from that which was initially furnished to the beneficiary at any time during the 36-month period for oxygen equipment or 13th rental month for capped rental DME unless one of the following exceptions applies: (1) The equipment is lost, stolen, or irreparably damaged; (2) the equipment is being repaired while loaner equipment is in use; (3) there is a change in the beneficiary's medical condition such that the equipment initially furnished is no longer appropriate or medically necessary; or (4) the carrier determines that a change in equipment is warranted. However, we proposed that a change from one oxygen equipment modality to another

without physician documentation that such a change is medically necessary for the individual would not be considered a change in equipment that is warranted under the fourth exception stated above since there is no medical basis for the change. In those cases where the equipment is replaced, we proposed that the replacement item must be equipment that is, at minimum, in the same condition as the equipment being replaced. That proposal was intended to safeguard beneficiary access to quality oxygen equipment and capped rental items throughout the duration of the rental period.

Under Medicare, suppliers who furnish items of DME can accept assignment on all claims for Medicare services or on a claim-by-claim basis. Assignment is an agreement between the supplier and the beneficiary under which the supplier agrees to request direct payment from Medicare for the item, to accept 80 percent of the Medicare allowed payment amount for the item from the carrier, and to charge the beneficiary not more than the remaining 20 percent of the Medicare approved payment amount, plus any unmet deductible. If a supplier elects not to accept assignment, Medicare pays the beneficiary 80 percent of the Medicare allowed payment amount, after subtracting any unmet deductible, and there is no limit under Title XVIII of the Act on the amount the supplier can charge the beneficiary for rental of the DME item. The beneficiary, in these situations, is financially responsible for the difference between 80 percent of the Medicare allowed payment amount and the amount the supplier charges for the rental of the DME item.

Section 1842(h) allows suppliers to sign a participation agreement where the supplier agrees voluntarily, before a calendar year, to accept assignment for all Medicare items and services furnished to a beneficiary for the following calendar year. Current supplier participation agreements are renewable annually. However, the agreements do not apply for a full period of medical need for specific beneficiaries in cases where such need extends for more than a calendar year. Nor do current participation agreements apply to periods of medical need where such a period overlaps calendar years. In the latter case, while a supplier may renew its participation agreement annually, a beneficiary would not know before choosing a supplier whether the supplier would be willing to accept assignment of all claims during the 13-month or 36-month rental period.

In order for the beneficiary to make an informed choice, we proposed that before furnishing the oxygen equipment or a capped rental item, the supplier must disclose to the beneficiary its intentions regarding whether it will accept assignment of all monthly rental claims for the equipment during the period of medical necessity, up to and including the 36th month of continuous use for oxygen equipment or the 13th rental month of continuous use for capped rental DME in which rental payments could potentially be made. We believe that it is reasonable for the supplier to disclose to each beneficiary its intentions regarding assignment of claims for all months during a rental period as this decision has a direct financial effect on the beneficiary. A supplier's intentions could be expressed in the form of a written agreement between the supplier and a beneficiary. This proposal would require suppliers to give beneficiaries advance notice of the possible extent of their financial liability during the period of medical need in which monthly rental payments are made for the equipment, so that they can use this information to help select a supplier. Additionally, to promote informed beneficiary choices, we plan to post information on a CMS and/or CMS contractor Web site(s) indicating supplier specific information on oxygen equipment and capped rental items such as (1) the percentage of beneficiaries for whom each supplier accepted assignment during a prior period of time (for example, a quarter), and/or (2) the percentage of cases in which the supplier accepted assignment during the beneficiary's entire rental period. We believe that those proposals create reasonable rules for suppliers that furnish oxygen equipment and capped rental items and ensure that beneficiaries have information necessary to make informed choices that could have significant financial consequences for them.

H. Payment for Oxygen Contents for Beneficiary-Owned Oxygen Equipment

Section 1834(a)(5) of the Act, as amended by section 5101(b)(1) of the DRA, requires that Medicare continue to make monthly payments for the delivery and refilling of oxygen contents for the period of medical need after beneficiaries own their own gaseous or liquid oxygen stationary or portable equipment. Before the enactment of the DRA, Medicare made monthly payments for the delivery and refilling of oxygen contents for beneficiaries who own their own stationary and/or portable equipment (equipment they obtained on a purchase basis before June 1, 1989, out-of-pocket, or before they enrolled in Medicare Part B). In accordance with the DRA, we proposed that after the supplier transfers title to the stationary and/or portable oxygen equipment to the beneficiary, Medicare would continue to make separate monthly payments for gaseous or liquid oxygen contents until medical necessity ends. We also proposed that if the beneficiary-owned equipment is replaced, and Medicare pays for the replacement in accordance with proposed revised § 414.210(f) (see section K of this final rule for a more complete discussion of our proposed oxygen equipment replacement policies), a new 36-month rental period start and the payment for oxygen contents would be included in the monthly rental payments. We proposed that all oxygen content payment amounts would be based on new rates developed in accordance with our proposal to establish new payment classes, as discussed in section I below.

In transferring title to gaseous or liquid oxygen equipment used during the 36-month rental period, we proposed that suppliers must transfer title for all equipment that will meet the beneficiary's continued medical need, including those oxygen cylinders or vessels that are refilled at the supplier's place of business. Customary practice by suppliers for refilling oxygen contents is to deliver to the beneficiary cylinders filled with contents and take back the empty cylinders to the supplier's place of business to refill the oxygen contents. Under our proposal, title would transfer for both sets of cylinders, meaning the ones that are being used by the beneficiary for the month and the ones that the supplier refills in its business location and delivers for use during the next subsequent month. This policy would apply to both gaseous and liquid oxygen stationary equipment and portable systems. Similarly, in those cases where the beneficiary uses an oxygen equipment system which includes a compressor which fills portable gaseous cylinders in the beneficiary's home, we proposed that suppliers must transfer title for this equipment to the beneficiary.

Concerns have been raised regarding beneficiary access to, and safety issues associated with, the delivery of oxygen contents for beneficiary-owned stationary and portable gaseous or liquid equipment. We believe that these concerns are based on the misconception that beneficiaries become responsible for filling their own cylinders. To the contrary, there are numerous State and Federal regulations governing the safe handling, filling, and transport of oxygen and those regulations are unaffected by the DRA oxygen provisions. We expect that

suppliers will continue to furnish replacement contents for beneficiary-owned gaseous and liquid systems in the same way that they have furnished replacement contents for beneficiary-owned equipment in the past. For example, suppliers that deliver a 1 month supply of gaseous cylinders to a beneficiary's home at the same time that they are picking up empty cylinders that the beneficiary used during the previous month could continue this practice under section 5101(b) of the DRA.

I. Classes of Oxygen and Oxygen Equipment

Based on information from paid Medicare claims with dates of service in calendar year 2004, distribution of usage among the four general categories of oxygen systems was: (a) 69 percent of beneficiaries used both a stationary concentrator (which does not require delivery of oxygen contents) and a portable system that requires delivery of gaseous or liquid oxygen, (b) 5 percent of beneficiaries used a stationary system that requires delivery of gaseous or liquid oxygen and a portable system that requires delivery of gaseous or liquid oxygen, (c) 24 percent of beneficiaries used a stationary concentrator system only, and (d) 2 percent of beneficiaries used only a stationary system that requires delivery of liquid or gaseous oxygen. The prevalent use of stationary concentrator systems is due, in part, to the fact that this system is the most cost-effective and dependable of the stationary oxygen modalities. The main reason that the concentrator system is the most cost-effective system is that the oxygen is concentrated from room air, and therefore, the high cost of delivering contents to the beneficiary's residence is removed when this system is used. Medicare's current payment structure results in two separate payments for beneficiaries using both stationary and portable systems, both of which are modality neutral, meaning that the payment amount does not differ depending on the type of oxygen delivery system (gaseous, liquid, or concentrator) that is furnished. One payment, hereinto referred to as the ''stationary payment,'' includes payment for the rental of stationary equipment, delivery of stationary oxygen contents (for gaseous or liquid systems), and delivery of portable oxygen contents (for gaseous or liquid systems). A separate add-on payment, hereinto referred to as the ''portable add-on,'' is also made in cases where the beneficiary is renting portable oxygen equipment. As a result of this payment methodology which has been in place since 1989, suppliers have a financial incentive to furnish low cost concentrator systems as opposed to more expensive gaseous or liquid systems because the monthly payment is the same regardless of which system is used. Finally, in implementing section 1834(a)(5) and (9) of the Act, monthly payment amounts were established through regulations at § 414.226 for (1) stationary and portable oxygen contents (for beneficiaries who use stationary and, if applicable, portable equipment), and (2) portable oxygen contents only (for beneficiaries who only use portable oxygen equipment). The current average statewide monthly payment amounts are:

Equipment & Contents		Oxygen Contents Only	
Stationary Pmt	$199	Stationary & Portable	$156
Portable Add-on	32	Portable Only	21

Based on our data, 36 percent of Medicare beneficiaries continue using oxygen equipment for more than 3 years, that is, beyond the 36th month after which title for the equipment would transfer to the beneficiary in accordance with the DRA.

We have heard concerns about the appropriateness of the current payment structure for oxygen and oxygen equipment in light of changes in the technologies for oxygen delivery systems that have occurred since 1989, and these concerns have been amplified in light of the recent changes made by the DRA. The specific concerns pertain to beneficiary access to (1) portable oxygen contents after title to the equipment transfers to the beneficiary, (2) devices that allow a beneficiary to fill portable tanks at home (otherwise referred to in the oxygen equipment industry as transfilling systems), and (3) portable oxygen concentrators. As we implement the DRA provisions for oxygen equipment and promulgate additional supplier requirements, we want to ensure that the Medicare payment methodology results in payments for oxygen and oxygen equipment that are accurate, do not impede beneficiary access to innovations in technology, and do not create inappropriate incentives for suppliers.

Some believe that Medicare's stationary payment for equipment and contents (average of $199) is ''too high'' and that Medicare's payment for portable oxygen contents only for beneficiary-owned portable equipment (average of $21) is ''too low''. While some contend that the overall payment (stationary payment plus portable add-on) for oxygen and oxygen equipment is adequate as long as the beneficiary continues to rent the equipment, they are concerned about the adequacy of Medicare's $21 monthly payment for furnishing oxygen contents for beneficiary-owned portable equipment. Some believe that Medicare's current average monthly payment of $156 for oxygen contents, which includes payment for both stationary and portable systems, is high enough to create an incentive for suppliers to furnish stationary oxygen systems that require the ongoing delivery of oxygen contents, rather than stationary concentrator systems that do not require delivery of oxygen contents.

Some technologies provide an attachment to a stationary oxygen concentrator that allows beneficiaries to fill their own portable tanks at home. Delivery of portable oxygen contents to the beneficiary's home is, therefore, not necessary since this equipment refills the beneficiary's rented or owned portable oxygen tanks. This transfilling technology eliminates the need for frequent and costly trips by a supplier to a beneficiary's home to refill portable oxygen tanks and would save the Medicare program and beneficiaries who use portable equipment the expense of paying for delivery of portable oxygen contents. We note that we are not aware that a similar ''transfilling'' technology has been developed that would be capable of filling stationary tanks in the beneficiary's home. Therefore, there remains a need for ongoing delivery of gaseous or liquid oxygen contents for stationary equipment. In accordance with the DRA, after 36 months of continuous use, title for the transfilling equipment and accompanying portable oxygen tanks would transfer to the beneficiary who would then own a portable equipment system that self-generates oxygen in their home. However, some are concerned that current Medicare payment rules that

allow payment for oxygen contents for stationary equipment creates an incentive for suppliers to furnish stationary oxygen equipment that require liquid or gaseous oxygen deliveries, rather than concentrators and transfilling equipment that self-generate oxygen in the beneficiary's home. In addition, portable oxygen concentrators are now available that meet both the beneficiary's stationary and portable oxygen needs. Some have raised concern about whether the combination of the Medicare stationary payment and portable add-on payment (approximately $231 per month), which is what is currently paid for portable oxygen concentrators, is sufficient to facilitate use of this new technology which, like a transfilling system, eliminates the need for delivery of oxygen contents, but is more expensive than a ''standard'' or ''non-portable'' concentrator.

In light of these concerns, we proposed regulatory changes to address the Medicare payment rates for oxygen and oxygen equipment. We proposed to address these issues by using our authority under section 1834(a)(9)(D) of the Act to establish separate classes and monthly payment rates for items of oxygen and oxygen equipment. Specifically, there are two changes we proposed for oxygen and oxygen equipment:

1. We proposed to establish a new class and monthly payment amount for oxygen generating portable oxygen equipment (for example, portable concentrators and transfilling systems).

2. We proposed to establish separate classes and monthly payment amounts for gaseous and liquid oxygen contents that must be delivered for beneficiary-owned stationary and portable oxygen equipment.

The first change involves creating a new separate class for portable oxygen systems that generate their own oxygen and therefore eliminate the need for delivery of oxygen contents (for example, portable concentrator systems or transfilling systems). A higher monthly payment amount would be allowed, as described below, for these systems to account for the increased, up-front costs to the supplier of furnishing these more expensive concentrator or transfilling systems, which would be partially offset by the reduced payments that the supplier would receive from the Medicare program and beneficiaries due to the fact that these systems do not require the delivery of oxygen contents.

The second change involves creating two separate classes (stationary contents only and portable contents only) and monthly payment rates for furnishing oxygen contents for beneficiary-owned stationary and portable systems. Currently, the combined average monthly payment amount of $156 for furnishing oxygen contents for beneficiary-owned stationary and portable systems includes payment for both stationary contents and portable contents. The current fee schedule amounts for oxygen contents are based on calendar year data from 1986 for the combined average Medicare monthly payment for both stationary and portable contents divided by number of rental months for stationary liquid and gaseous oxygen equipment. As a result, the current combined stationary/portable contents payment results in Medicare payments for portable contents even in those cases where the beneficiary does not use portable oxygen equipment. Under our proposal to create one payment class for oxygen contents used for stationary equipment, and a separate class for oxygen contents used for portable equipment, new national monthly payment amounts for stationary contents delivery and portable contents delivery would be established by splitting the combined payment of $156 into two new payments as explained below. This change would increase the monthly payment for furnishing portable oxygen contents and would address the concerns that the monthly payment rate of $21 is too low for the delivery and filling of portable tanks after the beneficiary assumes ownership of the equipment in accordance with the DRA.

In order to achieve budget neutrality for the new classes of oxygen and increase payment amounts for furnishing portable contents, we would need to reduce other Medicare oxygen payment rates. Budget neutrality would require that Medicare's total spending for all modalities of stationary and portable systems, including contents, be the same under the proposed change as they would be without the change.

We proposed to achieve budget neutrality by reducing the current monthly payment amounts (the stationary payment) for stationary oxygen equipment and oxygen contents (for stationary or portable equipment) made during the rental period. This reduction in payment is necessary to offset increased payments for the changes identified above and to meet the requirement in section 1834(a)(9)(D)(ii) that the classes and payments be established in a budget neutral fashion. In most cases, suppliers furnish Medicare beneficiaries with stationary oxygen concentrators. These devices can be purchased for $1,000 or less and the current, average Medicare payment of $199 pays suppliers $1,990 over 10 months. We believe that these facts indicate that making a reduction (from $199 on average to $177) in Medicare payment for this relatively inexpensive oxygen equipment in order to pay oxygen suppliers adequately for furnishing portable oxygen contents and more expensive portable oxygen equipment technologies is warranted. With this approach, the proposed new classes, as well as proposed new national monthly payment rates, would be as follows:

1. Stationary Payment: $177.
2. Portable Add-On: $32.
3. Oxygen Generating Portable Equipment Add-On (portable concentrators or transfilling systems): $64.
4. Stationary Contents Delivery: $101.
5. Portable Contents Delivery: $55.

We provide a detailed discussion of the payment rate calculations/adjustments in the paragraphs that follow. Under the proposed new oxygen and oxygen equipment class structure described above, in those cases where the beneficiary needs both stationary and portable oxygen, monthly payments of $241 or $209 (proposed revised stationary payment of $177 plus one of two proposed portable equipment payments, $32 or $64) would be made during rental months 1 through 36. The stationary payment (which includes payment for stationary equipment, as well as oxygen contents for stationary and portable systems) of $177 would be made during rental months 1 through 36 for beneficiaries who only need stationary oxygen and oxygen equipment. Monthly payments of $101 for stationary oxygen contents and/or $55 for portable oxygen contents would be made in cases where beneficiaries own their stationary and/or portable oxygen equipment. As explained in more detail in the paragraphs that follow, the $101 payment is for stationary oxygen contents only and is derived from the current payment of $156, which is made for both stationary and portable oxygen contents. The $55 payment for portable oxygen contents only is also derived from the current payment of $156 that is made for both stationary and portable oxygen contents and would replace the current statewide portable oxygen contents fees (average of $21), which was based on a relatively small number of claims and allowed services compared to the number of claims and allowed services that were used in computing the statewide fees (average of $156) for a combination of stationary and portable oxygen contents.

As noted above, the proposed national payment rates for delivery of oxygen contents for beneficiary-owned gaseous/liquid equipment were derived from the current average payment for a combined oxygen contents delivery of $156. We proposed to establish $101, or 65 percent of $156, as the monthly payment rate for delivery of larger, heavier, beneficiary-owned stationary gaseous oxygen cylinders or liquid oxygen vessels and $55, or 35 percent of $156, as the monthly payment rate for delivery of smaller, lighter, beneficiary-owned portable gaseous oxygen cylinders or liquid oxygen vessels. The 65/35 split is based on our understanding that there are higher costs associated with delivering stationary tanks (cylinders of gaseous oxygen and vessels of liquid oxygen) which are approximately twice as large as the portable tanks. Such costs include supplier overhead costs, including the costs to purchase, maintain, and dispatch trucks, obtain insurance, and purchase fuel. The 65/35 split is intended to account for the difference in costs associated with the size of the tanks. Larger tanks take up more space on the trucks, take longer to fill, are harder to move, and result in increased fuel costs.

We estimate that the increase from $21 to $55 in the monthly payment rate for delivery of oxygen contents for beneficiary-owned portable equipment will result in increased expenditures of approximately $22 million over a 24 month period, or $11 million annually. This figure is based on current data on utilization of portable oxygen by Medicare beneficiaries.

The add-on payment amount of $64 for the oxygen generating portable equipment class was calculated based on data indicating long term savings generated from use of equipment that eliminated the need for payment of $55 per month for portable oxygen contents. The first step in calculating the proposed $64 payment for oxygen generating portable equipment involves the computation of a national, enhanced, modality neutral monthly payment amount of $241 for new technology systems (stationary concentrators and transfilling systems, as well as portable concentrators), which was derived from the sum of the current average stationary payment ($199), the current average portable add-on payment ($32), and an additional $10 to pay suppliers for furnishing more expensive equipment that eliminates the need for delivery of portable oxygen contents. Specifically, we calculated the modality neutral increased payment (that is, $10 above the current combination of the stationary payment and portable add-on payment) by estimating potential savings that the Medicare program would realize as a result of not having to pay for delivery of oxygen contents for beneficiary-owned portable oxygen systems in the fourth and fifth years of use. We calculated the increased payment to be equal to potential savings from not delivering oxygen contents. In calculating this increased payment, we were only factoring in savings from the fourth and fifth years of use since we assume that most beneficiaries will elect to obtain replacement equipment after the 5-year reasonable useful lifetime for their equipment has expired. Since our data indicate that 35.8 percent of beneficiaries will use oxygen equipment for more than 3 years, and that approximately 74 percent of these beneficiaries use portable equipment, the $10 amount is calculated based on the following formula, and is rounded to the nearest dollar:

$$\frac{((.358 \times \$55) \times 24 \text{ months}) \times .74}{36 \text{ months}}$$

We estimate that the additional $10 payment per month for oxygen generating portable equipment (transfilling units and portable concentrators) will result in increased expenditures of approximately $15 million over a 36 month period, or $5 million annually. This figure is based on current data on utilization of stationary and portable oxygen by Medicare beneficiaries over 36 months.

The second step in calculating the proposed $64 add-on payment for the proposed new class of oxygen generating portable equipment involves subtracting the proposed new stationary payment. Therefore, the national monthly payment of $241 computed in the first step above would be reduced by $177, the proposed new adjusted stationary payment amount, to arrive at the proposed add-on payment of $64 for just the oxygen generating portable equipment. In addition, to offset the increased annual payments of approximately $16 million that will result from increased payments for portable oxygen contents ($11 million) and newer technology oxygen generating portable equipment ($5 million), we proposed to decrease the current stationary payment by $22 ($199–$177). We estimated that this offset would result in annual Medicare savings of approximately $16 million, and would therefore offset the increased payments for new technology oxygen generating portable equipment and delivery of oxygen contents for other beneficiary-owned portable equipment. We proposed that these fees be established on a nationwide basis due to the fact that the variation in the current statewide fee schedule amounts for oxygen and oxygen equipment, as well as the portable equipment add-on payment, are currently only 3 percent and 5 percent, respectively.

We proposed that the $64 add-on payment would be made for oxygen generating portable equipment only if the equipment eliminates the need for delivery or portable oxygen contents. However, if transfilling equipment is used in connection with a stationary oxygen concentrator (whether as an integrated system component or as a separate part) to both deliver stationary oxygen and fill portable oxygen tanks, Medicare would make both a $177 stationary payment for the stationary oxygen concentrator and stationary oxygen contents, and a separate $64 oxygen generating portable equipment payment for the portable oxygen transfilling equipment.

There are also portable oxygen transfilling products that are not part of or used in conjunction with a stationary oxygen concentrator. These products are only used to fill portable oxygen tanks in the beneficiary's home. If the beneficiary is using one of these products, Medicare would make a $64 oxygen generating portable equipment payment. If the patient is also renting any type of stationary oxygen equipment (gaseous, liquid, or concentrator), Medicare would make a separate, additional $177 stationary equipment payment for that equipment.

If a portable oxygen concentrator is furnished, Medicare would make the $64 oxygen generating portable equipment add-on payment if the portable oxygen concentrator is used as both the beneficiary's stationary oxygen equipment and portable oxygen equipment. In this case, the portable oxygen concentrator equipment would fall under both the stationary oxygen equipment class and the oxygen generating portable equipment class. Therefore, the $177 stationary payment would also be made in this situation, since the equipment being furnished meets the beneficiary's needs for both stationary and portable oxygen equipment. In this case, it would be necessary for the supplier to use two HCPCS codes to bill for this device since it is being used as both the stationary and portable oxygen equipment for the beneficiary. If the beneficiary owns any type of stationary equipment (concentrator, liquid, or gaseous), and is also furnished with a portable oxygen concentrator, only the

oxygen generating payment of $64 would be made (that is, the supplier would not also receive the $177 payment) and the portable oxygen concentrator equipment would fall under the oxygen generating portable equipment class because it is only being used to meet the beneficiary's need for portable oxygen equipment. Finally, if, the beneficiary is renting any type of stationary equipment (concentrator, liquid, or gaseous), and is also furnished with a portable oxygen concentrator, the oxygen generating add-on payment of $64 would be paid for the portable oxygen concentrator and the stationary payment of $177 would be paid separately for the stationary oxygen equipment and contents.

In summary, we proposed new payment classes for oxygen contents for beneficiary-owned stationary equipment, oxygen contents for beneficiary-owned portable equipment, and oxygen generating portable equipment. Payments for oxygen contents for beneficiary-owned portable equipment and oxygen generating portable equipment would exceed what is currently paid for these items to ensure access to portable oxygen regardless of the type of equipment used. These increased payments would be offset by a reduction in the stationary payment. The six broad categories of oxygen equipment used by beneficiaries are as follows:

A. Concentrator and liquid or gaseous portable equipment.

B. Concentrator and/or oxygen generating portable equipment.

C. Liquid or gaseous stationary equipment and liquid or gaseous portable equipment.

D. Liquid or gaseous stationary equipment and oxygen generating portable equipment.

E. Concentrator only.

F. Liquid or gaseous stationary equipment only.

Based on our proposed new payment classes, Medicare payment under these six categories would be as follows:

Category	Equipment rental and contents	Contents for beneficiary-owned equipment
A	$209 ($177 + $32)	$55
B	$241 ($177 + $64)	$0
C	$209 ($177 + $32)	$156 ($101 + $55)
D	$241 ($177 + $64)	$101
E	$177	$0
F	$177	$101

We proposed to revise our regulations in order to implement these new payment classes and payment amounts, effective for claims with dates of service on or after January 1, 2007.

J. Payment for Maintenance and Servicing of Oxygen and Oxygen Equipment and Capped Rental Items

Immediately following passage of the DRA, concerns were raised regarding the ability of a beneficiary to obtain maintenance and servicing of his or her DME once he or she has taken title to it. We believe that these concerns are largely based on misconceptions that the beneficiary will ''be on his or her own'' in terms of maintenance and servicing of equipment and submission of claims for payment for these services. We believe that these concerns are unfounded because Medicare payment has traditionally been made for reasonable and necessary repair and maintenance of beneficiary-owned DME. In addition, section 1834(a)(5)(F)(ii)(II)(bb) of the Act, as amended by section 5101(b)(1)(B) of the DRA, and Section 1834(a)(7)(A)(iv) of the Act, as amended by Section 5101(A)(1) of the DRA, require that Medicare continue to pay for reasonable and necessary maintenance and servicing for parts and labor not covered under a manufacturer's or supplier's warranty in amounts determined to be appropriate by the Secretary.

Medicare has also traditionally paid for loaner equipment used while the beneficiary's equipment is being repaired, or in some cases, when the beneficiary does not have access to the equipment (for example, in cases when a natural disaster such as a hurricane forces the beneficiary to be evacuated from his or her home). We proposed to continue Medicare payment for such loaner equipment.

We are not aware of instances where beneficiaries have encountered problems in finding suppliers to provide maintenance and servicing of beneficiary-owned DME. Section 414.210(e) of our regulations currently provides that reasonable and necessary charges for maintenance and servicing of DME are those charges made for parts and labor not otherwise covered under a manufacturer's or supplier's warranty. This definition has been applied in paying claims for maintenance and servicing of beneficiary-owned DME for several years, and the wording of this regulatory definition is parallel to that used in amended sections 1834(a)(7)(A)(iv) and (a)(5)(F)(ii)(II)(bb) of the Act in describing the ''maintenance and servicing'' payments that are permitted for capped rental DME and oxygen equipment after title has transferred to the beneficiary. We proposed to continue use of this existing regulatory definition to define ''maintenance and servicing'' in section 5101 of the DRA. We, however, also proposed to apply our existing policy of not covering certain routine maintenance or periodic servicing of purchased equipment, such as testing, cleaning, regulating, changing filters, and general inspection of beneficiary-owned DME that can be done by the beneficiary or caregiver, to beneficiary-owned oxygen equipment and to continue that policy for beneficiary-owned capped rental equipment. As specified in current program instructions at section 110.2.B of chapter 15 of the Medicare Benefit Policy Manual (Pub 100–02), ''the owner [of the equipment] is expected to perform such routine maintenance rather than a retailer or some other person who charges the beneficiary.'' We expect that the supplier, when transferring title to the equipment to the beneficiary, would also provide to the beneficiary any operating manuals published by the manufacturer which describe the servicing an owner may perform to properly maintain the equipment. We also believe that these owner manuals are commonly available at the various manufacturer Web sites. In addition, the Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) supplier standards at § 424.57(c)(12) require suppliers to provide the beneficiary with necessary information and instructions on how to use DME items safely and effectively. We believe that after receiving this information, and after becoming familiar with the equipment during the 13 or 36 month rental period, the beneficiary and/or caregiver should be very knowledgeable regarding the routine

maintenance required for the item. All non-routine maintenance of beneficiary-owned oxygen equipment and capped rental items which would need to be performed by authorized technicians would be covered as reasonable and necessary maintenance and servicing. Examples of the types of maintenance that would be covered are currently listed in program instructions at section 110.2.B of chapter 15 of the Medicare Benefit Policy Manual (Pub 100–02) and include ''breaking down sealed components and performing tests which require specialized testing equipment not available to the beneficiary.''

We proposed that maintenance and servicing of beneficiary-owned oxygen equipment and capped rental items would be reasonable and necessary if it is non-routine maintenance and servicing necessary to make the equipment serviceable. Payment is currently made under the Medicare program for parts and labor associated with repairing beneficiary-owned DME. Medicare allowed payment amounts for replacement parts are currently paid based on the carrier's individual consideration of the item. With regard to replacement parts for beneficiary-owned oxygen equipment or capped rental equipment, we proposed that the carrier pay for the parts in a lump sum amount based on its consideration of the cost of the item, as is consistent with what our carriers currently do when evaluating maintenance and servicing claims for other beneficiary-owned DME. Currently, payment for labor is based on 15-minute increments in amounts that are established by the carriers and updated on an annual basis by the same factor specified in section 1834(a)(14) of the Act, which is used to update fee schedule amounts for DME. We proposed that the carriers use the same fee for labor that is currently used in paying for labor associated with repairing, maintaining, and servicing other beneficiary-owned DME, as we are not aware of any past problems associated with access to these services paid at these rates. We believe that the current methods and fees used by carriers in paying for maintenance and servicing of beneficiary-owned DME are reasonable given that we are not aware of any past problems associated with access to these services paid at these rates. In most cases, neither the Medicare program nor the beneficiary actually pays the full amount for repairing or maintaining an item since manufacturer warranties that cover all or part of these costs are widespread. For example, some manufacturers of commonly used oxygen concentrators offer full warranties that cover all parts and labor for 5 years. Rules in § 414.210(f) regarding replacement of DME that has been in continuous use for the equipment's reasonable useful lifetime provide that the beneficiary can elect to obtain replacement equipment after the reasonable useful lifetime for the equipment has expired. Therefore, we believe that the beneficiary should incur little, if any, expense for repair or maintenance of necessary equipment in cases where manufacturer warranties exist that cover parts and labor necessary to repair a new item during a 5-year period.

K. Payment for Replacement of Beneficiary-Owned Oxygen Equipment, Capped Rental Items, and Associated Supplies and Accessories

Medicare has traditionally paid for replacement beneficiary-owned DME after the expiration of the equipment's useful lifetime (see § 414.210(f) and § 414.229(g) of our regulations), and for replacement supplies and accessories used in conjunction with beneficiary-owned DME when these supplies and accessories are necessary for the effective use of the DME (see § 110.3 of Chapter 15 of the Medicare Benefit Policy Manual (pub. 100–02)). Examples of supplies include drugs and administration sets used with infusion pumps. Examples of accessories include masks and tubing used with respiratory equipment. We proposed to apply these policies to beneficiary-owned oxygen equipment, as well as the supplies and accessories used in conjunction with this equipment, and to continue to apply these policies to beneficiary-owned capped rental items, as well as the supplies and accessories used in conjunction with these items.

Specifically, we proposed to update § 414.210(f) and § 414.229(g) of our regulations to reflect that payment may be made for the replacement of beneficiary-owned oxygen equipment and capped rental DME in cases where the item is lost, stolen, or irreparably damaged, or in cases where the item has been in continuous use for its reasonable useful lifetime. We proposed that payment for the replacement be made on a rental basis in accordance with the payment rules in § 414.226 for oxygen equipment and § 414.229 for capped rental items. We also proposed to revise § 414.229 to reflect that these proposed changes to the replacement policy for beneficiary-owned capped rental items only apply to those items for which the first rental month occurs on or after January 1, 2007 since the DRA does not apply to capped rental items for which the first rental month occurs before January 1, 2006. The current rules will remain in place for capped rental items to which the DRA does not apply.

We are aware that some manufacturer warranties may cover replacement of oxygen or capped rental equipment within a certain time period after the item is furnished. As was our policy before the enactment of DRA (see § 110.2.C of Chapter 15 of the Medicare Benefit Policy Manual (pub. 100–02)), we proposed that Medicare not pay for the replacement of beneficiary-owned oxygen equipment or capped rental items covered by a manufacturer's or supplier's warranty. In cases where equipment replacement is not covered by a manufacturer's or supplier's warranty, we proposed that the supplier must still replace beneficiary-owned oxygen equipment or beneficiary-owned capped rental items at no cost to the beneficiary or to the Medicare program if: (1) The total accumulated costs, as illustrated in the example below, to repair the item after transfer of title to the beneficiary exceed 60 percent of the replacement cost; and (2) the item has been in continuous use for less than its reasonable useful lifetime, as established in accordance with the procedures set forth in proposed revised § 414.210(f). For example, a capped rental item that can be replaced for $1,000 (total of fee schedule payments after 13 rental months) and for which title has transferred to the beneficiary in accordance with section 1834(a)(7)(A)(ii) of the Act can be used to illustrate what we mean when we use the term ''accumulated costs'' above. In this example, if Medicare has paid a total of $500 for 3 repairs necessary to make the item functional, and a fourth repair costing $200 is needed in order to make the item functional, the accumulated costs for repair in this case will equal $700, which exceeds $600 or 60 percent of the $1,000 cost to replace the item. In this case, the supplier would be required to furnish a replacement item. The greater than 60 percent of cost threshold for replacement is consistent with the threshold repair costs that can result in the replacement of prosthetics (artificial limbs) in accordance with section 1834(h)(1)(G) of the Act. We believe this threshold should apply to oxygen equipment and capped rental items as well, because artificial limbs, like these items, are built to withstand repeated use.

We proposed that the supplier be responsible for the cost of the replacement equipment because we believe that the item in this case did not last for the entire reasonable useful

lifetime. After the beneficiary acquires title to the item, the supplier that transferred title would be responsible for furnishing the replacement item. We proposed this provision to safeguard the beneficiary from receiving, and the Medicare program from paying for, substandard equipment, and to avoid creating an incentive for suppliers to increase the number of claims submitted for repairs in an effort to recover revenue lost as a result of DRA section 5101. We believe that this requirement is not unreasonable since suppliers should be furnishing items in good working order and are otherwise bound by regulations at § 424.57(c)(15) to accept returns from beneficiaries of substandard items. Exceptions to this rule may be granted by CMS or the carrier as appropriate (for example, the supplier would not be responsible for replacing an item in need of repair due to beneficiary neglect or abuse).

L. Periods of Continuous Use

Rules that apply in determining a period of continuous use for rental of DME are found at § 414.230 of our regulations. We proposed that these rules would continue to apply in implementing section 5101 of the DRA, with one exception. The rules in § 414.230(f) provide that a new period of continuous use begins for new or additional equipment prescribed by a physician and found to be medically necessary, even if the new or additional equipment is similar to the old equipment.

Medicare payments for stationary and portable oxygen and oxygen equipment are currently modality neutral, which means that the same payment amounts apply to the different types of oxygen equipment furnished to Medicare beneficiaries. Since there is no distinction made between oxygen equipment modalities for payment purposes under the Medicare program, we do not believe that it is necessary or appropriate to begin a new period of continuous use when the beneficiary changes from one oxygen equipment modality to another. We proposed to revise § 414.230(f) of our regulations to designate the existing language in this section as paragraph (f)(1) and to add a new paragraph (f)(2) to reflect this exception, effective for oxygen equipment furnished on or after January 1, 2007. We also proposed to revise § 414.230(b) to incorporate section 5101(b)(2)(B) of the DRA, which provides that for all beneficiaries receiving oxygen equipment paid for under section 1834(a) on December 31, 2005, the period of continuous use begins on January 1, 2006.

M. Other Issues: Health Care Information Transparency, Health Information Technology, and Medicare Payment Structures

Both Medicare's payment structures and the actual delivery of post acute care have evolved significantly over the past decade. Before the BBA, HHAs and other post-acute settings such as inpatient rehabilitation facilities (IRFs) and skilled nursing facilities (SNFs) were paid on the basis of cost. Since that time, we have implemented various legislative mandates that established prospective payment systems in these settings. The PPS methodologies used in these settings rely on patient-level clinical information to provide pricing, support the provision of high quality services, and encourage the efficient delivery of care. CMS is exploring refinements to the existing provider-oriented ''silos'' to create a more seamless system for payment and delivery of post-acute care (PAC) under Medicare. This new model could feature more consistent payments for the same type of care across different sites of service, value based purchasing incentives, and the collection of uniform clinical assessment information to support quality and discharge planning functions.

CMS is considering a demonstration to determine whether incentive payments to HHAs impact improvements in the quality of care of Medicare beneficiaries.

Section 5008 of the Deficit Reduction Act of 2005 (DRA) provides for a demonstration on uniform assessment and data collection across different sites of service. This 3-year demonstration project is to be established by January 1, 2008. We are in the early stages of developing a standard, comprehensive assessment instrument to be completed at hospital discharge and ultimately integrated with PAC assessments. The demonstration will enable us to test the usefulness of this instrument, and analyze cost and outcomes across different PAC sites. The lessons learned from this demonstration will inform efforts to improve the post-acute payment systems.

We have evaluated the existing assessment instruments that managed care and other insurers use. These instruments will form the basis of our efforts to create a discharge assessment tool that can serve to facilitate post-hospital placement decisions; enhance the safety and quality of care during patient transfers through transmission of core information to a receiving provider; and provide baseline information for longitudinal follow-up of health and function.

In the April 25, 2006 Inpatient Prospective Payment System proposed rule (71 FR 23996), we discussed in detail the Health Care Information Transparency Initiative and our efforts to promote effective use of Health Information Technology (HIT) as a means to help improve health care quality and improve efficiency. Specifically, with regard to the transparency initiative, we discussed several potential options for making pricing and quality information available to the public (71 FR 24120 through 24121). We solicited comments on ways the Department can encourage transparency in health care quality and pricing whether through its leadership on voluntary initiatives or through regulatory requirements. We also sought comments on the Department's statutory authority to impose such requirements. In addition, we discussed the potential for HIT to facilitate improvements in the quality and efficiency of health care services (71 FR 24100 through 24101). We solicited comments on our statutory authority to encourage the adoption and use of HIT. The 2007 Budget states that ''the Administration supports the adoption of Health Information Technology (HIT) as a normal cost of doing business to ensure patients receive high quality care.'' We also sought comments on the appropriate role of HIT in potential value-based purchasing programs, beyond the intrinsic incentives of a PPS to provide efficient care, encourage the avoidance of unnecessary costs, and increase quality of care. In addition, we sought comments on promotion of the use of effective HIT and how CMS can encourage its use in HHAs.

We intend to consider both the health care information transparency initiative and the use of HIT as we refine and update all Medicare payment systems. Therefore, we sought comments on these initiatives as applied to the HH PPS in the August 3, 2006 proposed rule, including the Department's statutory authority to impose any such requirements. We stated that we may address these initiatives in the final HH PPS rule. For example, a HIT proposal could include adding a requirement that HHAs use HIT that is compliant with and certified by the Certification Commission for Health Information Technology (CCHIT) in the areas in which the technology is available. As noted previously, the CMS *Home Health Compare* Web site contains home health quality information. We note that we are in the process of seeking input on these initiatives in various proposed Medicare

payment rules being issued this year. In particular, we intend to consider both the health care information initiative and the use of HIT as we refine and update all Medicare payment systems.

III. Analysis of and Responses to Public Comments

We received approximately 106 comments on the August 3, 2006 proposed rule.

General

Comment: Several commenters raised concerns about combining several unrelated matters into a single public notice. The commenters believed the style to be confusing and counter to CMS' initiatives for better public communication.

Response: We recognize the commenters concern and note that we make every attempt to provide sufficient information in the **Federal Register** document to clearly and specifically state the contents of the **Federal Register** document. We note that we targeted a similarly situated audience in that suppliers of oxygen equipment, DME suppliers, and HHAs all provide services in the post-acute care setting.

Comment: Several commenters requested that telehealth services be directly funded. These commenters believe that utilization of telehealth services would save Medicare money by reducing hospitalization and decreasing the use of multiple medical services.

Response: Telehealth services are not a recognized visit or service under the HH PPS. Specifically, in section 1895(e)(1)(B) of the Act, telecommunications services are not considered a home health visit for the purposes of eligibility or payment under this title.

Comment: A commenter stated that CMS should indefinitely retain the 5 percent rural add-on. Other commenters recognized that it would take congressional action to extend the 5 percent rural add-on for rural providers. Nonetheless, these commenters supported an extension of the rural add-on period. In addition, commenters recommended that CMS examine the differences between the cost of providing home health services in a rural setting and those costs of providing home health services in an urban area.

Response: The rural add-on was a temporary add-on established by the DRA. Specifically, section 5201 of the DRA required, for home health services furnished in a rural area with respect to episodes and visits beginning on or after January 1, 2006 and before January 1, 2007, that we increase by 5 percent the payment amount that otherwise would be made for the services. The statute does not provide for a continuation of the rural add-on. We will continue to monitor the HH PPS to help ensure that home health providers continue to receive appropriate reimbursement for the services they provide.

Market Basket

Comment: Several commenters believe that the proposed market basket update falls short of increased costs in the delivery of home health services. Specifically, they state that labor costs have risen significantly with the continuing shortage of nursing and therapy staff, transportation costs skyrocketed in 2005–2006 at a rate far greater than the estimated 2.2 percent that was set out in the 2006 rate setting rule, technology costs, and costs associated with regulatory compliance have grown. Some of these commenters believe the problem with the estimated market basket increase appears to stem from two weaknesses in the calculation formula: The use of FY 2000 cost reports and the accuracy of the projection. These commenters believe the FY 2000 cost reports are inaccurate because they only contained a portion of the operational changes that have occurred since the onset of the prospective payment system.

Response: The home health market basket is a fixed-weight Laspeyres-type price index, which measures the average change in the price of goods and services purchased by HHAs in providing an efficient level of home health care services. Furthermore, the projected estimated HH market basket has been fairly consistent with the actual market basket determination. Since the inception of the PPS in FY 2001 including years through CY 2005, the forecasted average annual increase of the home health market basket has been 3.3 percent while the actual average annual increase of the home health market basket has been 3.2 percent.

With respect to the use of the FY 2000 cost reports, they represent the most recent and complete cost reports available at the time of the most recent rebasing of the home health market basket presented in the CY 2005 proposed rule. Our recent analysis of Medicare cost report data for 2001 through 2003 shows very similar cost weights, including those associated with compensation, to the FY 2000 based market basket. Therefore, we believe the use of the FY 2000 cost reports continue to accurately reflect a proxy of home health weights.

We further note that for the final rule, we are using the 2006 3rd quarter forecast with historical data through 2006, 2nd quarter, which results in a forecast for the home health market basket for CY 2007 of 3.3 percent. This projection includes a higher forecast for the CPI for private transportation (2.2 percent) and higher forecast for the price of compensation (3.5 percent) compared to the forecast in the proposed rule of 0.3 percent and 3.4 percent, respectively.

Comment: One commenter suggested that CMS move away from using the CPI for private transportation to proxy price changes associated with transportation costs and substitute it with a more accurate reflection of home health care transportation experience.

Response: We believe the CPI for private transportation is an accurate proxy for the price changes associated with home health care agencies' transportation costs. This CPI measures the price changes of new and used motor vehicles, motor fuels, motor vehicle parts and equipment, maintenance and repair, and insurance costs. We believe that home health agencies incur all of these transportation costs.

Comment: One commenter suggested that the market basket weights assigned to each input should be re-examined every 2 years using cost report data that are less than 2 years old. The commenter also suggests that the validity of the weights should be periodically tested using audited cost report data.

Response: We rebase the home health market basket on a periodic basis. When we rebase a market basket, we examine the costs for each year since the most recent rebasing. In general, cost weights remain stable from year to year and become less so over a longer time period, such as 5 or more years. Additionally, we always use the most recent and complete cost report data at the time of rebasing. For the CY 2005 proposed rule, the most recent and complete cost report data available was for the year 2000. We are also confident in the validity of the Medicare cost report data received by the industry. Thus, we believe a formal audit is not required. However, as part of the standard rebasing methodology in calculating the cost report weights, we trim the data to remove the impact of outliers.

Comment: One commenter recommended that the shortfalls in annual cost increase projections be added to succeeding year inflation updates. The commenter stated, for example, the under-projection in

transportation cost increases in 2006 should be reflected in 2007 and 2008.

Response: We believe that the accuracy of the market basket updates has been reasonable, as evidenced by the last several years which contained average forecasted updates of 3.3 percent while actual average annual increase of the home health market basket has been 3.2 percent.

Comment: One commenter suggested that projections should be thoroughly evaluated and validated. The commenter is aware that CMS uses a proprietary system, Global Insights, Inc. (GII), in determining its projections and believes this system should be examined by a CMS Technical Expert Panel in the immediate future.

Response: GII is an independent firm that forecasts price proxies and other economic indicators. We believe that the projections we use are unbiased and consistent across all GII customers, both private and government. Moreover, we continue to work closely with GII to continually monitor the reasonableness of its projections.

Comment: Other commenters expressed support for a market basket update of 3.1 percent and a 15 percent adjustment to the standardized rates for dually eligible beneficiaries.

Response: We appreciate the support for the proposed market basket increase. Section 1895(b)(3)(B) of the Act requires the unadjusted national rate for CY 2007 to be increased by the applicable home health market basket index amount. The home health market basket for CY 2007 is forecasted to be 3.3 percent. We do not, however, have the statutory authority to establish a 15 percent adjustment to the standardized rates for dually eligible beneficiaries.

Comment: One commenter stated that home care providers should receive their full Medicare market basket update for 2007 and each subsequent year.

Response: HHAs will receive payments based on a full market basket update for services provided to Medicare beneficiaries for CY 2007 and subsequent years as provided at section 1895(b)(3)(B)(v) of the Act, subject to submitting the required quality measures and other possible legislative mandates.

Quality/Pay for Reporting

Comment: A commenter recommended that CMS make the penalty for not submitting the required quality data budget neutral and thus increase the national standardized episode amount. This would provide a small reward for the majority of agencies that already comply with the data submission requirement.

Response: Section 1895(b)(3)(B)(V)(I) of the Act, added by section 5201(c)(2) of the DRA, stipulates that the market basket percentage increase be reduced by 2 percentage points for HHAs who fail to submit required data. The statute does not provide that the reduction in the market basket percentage increase be budget neutral.

Comment: Several commenters supported CMS' proposed and continued use of the OASIS instrument and reporting infrastructure in response to the DRA requirements.

Response: We appreciate the commenters' support for this decision. One of our goals is to allow HHAs to fulfill the DRA's quality data reporting requirements in the most efficient and least burdensome way possible.

Comment: Several commenters believe that CMS needs to continue to refine and enhance the OASIS assessment instrument and associated quality measures.

Response: As we stated previously, we intend to refine the current OASIS instrument and associated quality measures. We will also continue improving the assessment instrument's accuracy in reflecting both the health status and improvements in condition of our beneficiaries.

Comment: Several commenters confused the various HH Conditions of Participation requirements, that is, the completion, completeness, and accuracy of the OASIS assessment, with the reporting requirements established by the DRA.

Response: The proposed rule dealt solely with the requirements of section 5201(c)(2) of the DRA to specify the health quality data needed for quality measurements under the HH PPS. To meet the requirements established in the DRA, we proposed to rely on the data submitted by home health providers through the OASIS instrument. The regulations surrounding completion, completeness, timeliness or other rules associated with the OASIS were not affected by the HH PPS proposed rule.

Comment: A few commenters were concerned that the reporting timeframe established in the proposed rule is over before publication of the final rule. The commenters noted that prior notification of payment penalties associated with the DRA quality measures requirement could not be known before the reporting period commenced.

Response: We acknowledge the commenters' concern, but we believe our proposed approach adequately addresses these issues. Section 5201(c)(2) of the DRA amends the Act to such that ''each home health agency shall submit to the Secretary such data that the Secretary determines are appropriate for the measurement of health care quality. Such data shall be submitted in a form and manner, and at a time, specified by the Secretary.'' In considering how to best implement this provision while still obtaining the needed quality measures, our approach was to use processes and mechanisms that were already in place and functioning, as the most efficient and appropriate way to meet the statutory requirements. Using historical data to determine the prospective update is similar to the methodology used for hospital pay for reporting. In this manner, by utilizing an existing system, we were able to provide the least burdensome measures on the providers, and would penalize only those providers who were not otherwise meeting the OASIS submission requirement under the home health Conditions of Participation.

Comment: One commenter supported CMS' initiative to refine the home health quality measures and to complement those measures with health information technology. This commenter stated that the proper use of new quality measures in certain areas coupled with the appropriate use of health information technology will help to promote quality care, efficiency, save Federal dollars, and satisfy the needs of our beneficiaries.

Response: We appreciate the commenter's support and will continue to pursue using health information technology to further the goals of providing appropriate payments for quality services under the HH PPS.

Outlier Payments and Fixed Dollar Loss Ratio

Comment: A commenter expressed concerns with CMS' proposal to update the fixed dollar loss ratio in the final rule if current data become available. The commenter believes that CMS has an obligation to modify PPS outlier criteria each year until the 5 percent set aside is realized. Commenters urged CMS to ensure that data is available before the final rule is published. The commenter recommended that CMS provide an opportunity for review and comment before implementation of any change that reduces the likely number of episodes qualifying for outlier payments. Another commenter urged CMS to retain or increase the current outlier payment structure.

Response: Section 1895(b)(5) of the Act states that the ''Secretary may provide for an addition or adjustment to the payment amount otherwise made in the case of outliers * * * [t]he total

amount * * * may not exceed 5 percent of the total payments projected or estimated to be made based on the'' HH PPS. The statute makes clear that to the extent the Secretary chooses to provide for an outlier adjustment in HH PPS, such adjustment may not be more than 5 percent of the projected or estimated HH PPS payments. The statute does not provide for an outlier adjustment of 5 percent.

At the time of publication of the August 3, 2006 proposed rule, we did not have more recent data, but noted that we may update the FDL ratio for CY 2007 depending on the availability of more recent data. We stated that depending on the availability of more recent data at the time of publication of the HH PPS final rule for CY 2007, we may, if necessary, implement an update to the FDL ratio for the CY 2007 update to the HH PPS rates. Subsequent to the publication of the August 3, 2006 proposed rule, we have now obtained more recent data, that is, CY 2005 home health claims data. Accordingly, for this final rule, we have used the same methodology and performed analysis using the CY 2005 data to update the FDL ratio for CY 2007. For CY 2007, we are not only retaining the current outlier payment structure but also increasing the FDL ratio to allow more episodes to qualify for outlier payments. This new FDL ratio is 0.67.

Home Health Wage Index

Comment: Several commenters expressed serious concerns about the use of the pre-floor, pre-reclassified hospital wage index for adjusting for geographic variation in wages. These commenters believe that CMS has the regulatory authority to take immediate steps to implement a wage index that secures a reasonable level of parity with hospitals in the geographic areas served by HHAs. Specific recommendations include applying the State-specific rural floor to all urban areas and implementing a reclassification value proxy for HHAs operating in areas where hospitals have been reclassified. Commenters also made recommendations that CMS consider a wholesale revision and reform of the home health wage index.

Response: These commenters are referring to the rural floor and geographic reclassification applicable to hospital payments. The rural floor provision is provided at section 4410 of Public Law 105–33 and is specific to hospitals. The reclassification provision provided at section 1886(d)(10) of the Act is also specific to hospitals. Because these floors and reclassifications apply only to hospitals, and not to HHAs, we believe the use of the most recent available pre-floor and pre-reclassified hospital wage index data results in the appropriate adjustment to the labor portion of home health costs as required at 1895(b)(4)(C). As to the revision and reform of the home health wage index, we further note that CMS has, along with the industry, explored the feasibility of developing a home health specific wage index. Because of the volatility of the home health wage data and the significant amount of resources that would be required to improve the quality of those data, we do not expect to propose a home health specific wage index until we can demonstrate that a home health specific wage index would be more reflective of the wages and salaries paid in a specific area, that it would significantly improve our ability to determine payment for HHAs, and that we can justify the resources required to collect the data, as well as the increased burden on providers.

Comment: One commenter was concerned about the wage index for CBSA 12940 ''East Baton Rouge, Ascension, Livingston, West Baton Rouge, Louisiana.'' The commenter stated that the proposed ''wage index reflects a decrease from .8593 in CY 2006 to .8099 in CY 2007, a decrease of nearly 6%.'' The commenter believes this must be the result of an error and that this wage index should be reviewed for accuracy.

Response: First, the wage index that is applied to payments for services furnished to home health patients in CY 2006 in CBSA 12940 is not 0.8593. In CY 2006, we apply a transition wage index of either 0.7967 or 0.8618 (depending on the State and county code where the beneficiary resides) to payments for home health services provided in CBSA 12940. This is clearly noted in Addendum A of the CY 2006 HH PPS final rule (70 FR 68161). The wage index value of 0.8593 would have been applied to payments for home health services rendered in CBSA 12940 had we not implemented a transition policy for CY 2006. As noted in the CY 2006 final rule (70 FR 68138), we implemented a transition policy based on the concern about the potential negative financial impact of moving to a CBSA-based wage index. The final wage index value for CBSA 12940 will be 0.8084 for CY 2007.

Second, the change in the wage index value for CBSA 12940 is also due in part to the inclusion of wage data from the following counties: East and West Feliciana Counties, Iberville County, Pointe Coupee County, and St. Helena County. These five counties were previously classified as rural. However, under the CBSA designations, which we implemented beginning in CY 2006, they are now part of CBSA 12940.

We further note that we employ processes to review the accuracy of the wage index. The home health wage index is derived from the pre-floor, pre-reclassified hospital wage index which is calculated based on cost report data from hospitals paid under the hospital inpatient prospective payment system (IPPS). All IPPS hospitals must complete the wage index survey (Worksheet S–3, Parts II and III) as part of their Medicare cost reports. Cost reports will be rejected if Worksheet S–3 is not completed. Additionally, intermediaries perform desk reviews on all hospitals' Worksheet S–3 wage data, and we run edits on the wage data to further ensure the accuracy and validity of the wage data. In addition, HHAs have the opportunity to submit comments on the hospital wage index data during the annual IPPS rulemaking period. Therefore, we believe our review processes result in an accurate reflection of the applicable wages for the areas given.

Comment: A commenter expressed concern because implementation of a CBSA-based wage index places Lake County, Illinois in the same CBSA as Racine, Wisconsin rather than in the CBSA-based wage index that includes Chicago. The commenter states that Lake County, Illinois draws from the same employment pool as does the Chicago metro area. The commenter further states that this situation requires dual licensure in order for HHAs in Illinois to hire nurses from Wisconsin.

Response: Lake County, Illinois is not included in the same CBSA with Racine, Wisconsin. Racine County is in CBSA 39540 and has a CY 2007 wage index of 0.9356. Lake County, Illinois is included with Kenosha County, Wisconsin in CBSA 29404. Lake County and Kenosha County are adjacent counties in the States of Illinois and Wisconsin, respectively. The CY 2007 wage index for CBSA 29404 is 1.0570. OMB considers Lake County and Kenosha County to be part of the same Metropolitan Division. OMB defines a ''metropolitan division'' as ''a county or group of counties within a core-based statistical area that contains a core with a population of at least 2.5 million. A metropolitan division consists of one or more main counties that represent an employment center or centers, plus adjacent counties associated with the main county or counties through commuting ties.'' This information is available at the following Web address: *http://www.whitehouse.gov/omb/bulletins/b03–04.html.* We believe that

the OMB geographic designations generally reflect the general labor market.

State participation in the Nurse Licensure Compact alleviates the need for nurses to be licensed in multiple states. The state of Wisconsin participates in the Nurse Licensure Compact but Illinois does not. Illinois' participation in the Nurse Licensure Compact would alleviate the need for nurses to be licensed in both states.

Comment: Other commenters had issues with the decreases in wage index that they will experience in the move to a full CBSA-based wage index in CY 2007.

Response: We appreciate the detailed concerns sent by the commenters regarding the impact of the wage index update for their specific areas. We note that there will always be some areas that experience an increase in wage index values while others experience a decrease in wage index values. Variability in wage index values occurs each year as wage index values fluctuate from year to year based on the changes to the hospital wage data. As a result, wage index values within the system increase or decrease. We are aware of the changes to wage index values may be due in part to the adoption of the revised OMB designations, and in light of these concerns, we provided a one-year transition period for CY 2006. As to the appropriateness of what CBSA a particular area has been designated into, CBSA designations are determined by the Office of Management and Budget (OMB). We continue to believe that OMB's CBSA designations reflect the most recent available geographic classifications and are a reasonable and appropriate way to define geographic areas for purposes of determining wage index values.

Comment: One commenter recommended that CMS apply a transition policy that would phase in large and unexpected wage index reductions over a two-year period, similar to the transition CMS applied for the IPPS conversion to CBSAs.

Response: As noted previously, we implemented a one-year transition policy as a means to gradually introduce the changes and impact of a CBSA-based wage index to the HH PPS. We believe that the transitional one-year period was appropriate and do not agree that a longer transition period is necessary or appropriate. We again note that fluctuations in each wage index would be expected even if we did not adopt the revised OMB designations.

Comment: Commenters raised concerns with CMS' proposal to continue to use the CY 2005 rural wage index for areas where there is no rural hospital data to compute a wage index.

Commenters also raised concerns with the alternative methodology that we discussed, that is, basing the imputed rural wage index on data from the state's Census Division. Commenters believe that this type of situation highlights the need to move away from using pre-floor, pre-reclassified hospital wage data for the home health wage index. Commenters recommended a number of alternative methodologies for imputing a wage index value for areas where there are no rural hospital data to compute a wage index value. The commenters all believe that an imputed proxy should be reflective of the most local data available. Almost all of these comments specifically refer to the wage index for rural Massachusetts.

Response: As noted above, several commenters recommended alternative methodologies for imputing a rural wage index. One recommended alternative was to use CAH data to impute a wage index for rural Massachusetts. However, CAHs are not required to submit the cost reporting worksheets that we use to compute the hospital wage index. Requiring CAHs to do so would impose an additional data collection burden on them. Additionally, those data would then need to be collected and audited. Therefore, we believe this option would be unduly burdensome and inefficient.

Another alternative that was recommended was to use the rural wage index from the single state closest to the Massachusetts rural area. Rhode Island is the closest State to the Massachusetts rural area, but Rhode Island has no rural areas. The commenter acknowledged this and proposed using the wage index for Connecticut. We do not believe that using the rural wage index from the closest State is appropriate because this methodology is not easy to apply to other states where this situation could arise.

Another alternative that was recommended was to use the same methodology that we use to calculate an ''imputed rural floor'' for PPS hospitals with no rural areas (69 FR 49111). This methodology compares the three States that lack rural hospital wage data (Rhode Island, New Jersey, and Massachusetts) to those three States as a class. As the commenter recognized, this approach does not match the criterion for using rural data. The commenter also recognized that since it uses data from hospitals in New Jersey, it does not meet the criterion of using the most local data available. We agree with the commenter that this is not the optimum alternative for imputing a rural wage index for the HH PPS.

A fourth alternative that was recommended was to use the average wage index from contiguous CBSAs as an acceptable proxy for a rural wage index.

A fifth alternative that was suggested was to use BLS wage data to derive a ratio of rural wages to wages in an urban MSA within the State. That ratio could then be multiplied by the wage index from the urban MSA to derive an estimated wage index for the rural area. We do not believe that using the BLS data to impute a rural wage index is the best alternative as it does not meet our criterion of using pre-floor, pre-reclassified hospital data. Also, using the BLS wage data would require a determination as to which health sector occupations to consider. This alternative methodology would also not weight the occupations appropriately. In contrast, the pre-floor, pre-reclassified hospital wage data encompasses wages and hours, that is, actual utilization per occupation.

Using OMB's geographic classification system, the entire rural Massachusetts area, consists of Dukes and Nantucket Counties. Both of these counties are islands. This creates a unique set of circumstances to consider.

As we stated in the August 3, 2006 proposed rule, we also believe that an imputed proxy should (1) use pre-floor, pre-reclassified hospital data, (2) use rural wage data, (3) be easy to evaluate, and (4) be easily updatable from year-to-year. After a thorough review of the comments received and a further review of the needs and concerns inherent in this situation, we agree with the commenters that an additional criterion should be added, that is, that the most ''local'' data available should be used to impute a rural wage index. We have re-evaluated our proposed method of imputing a rural wage index, (that is, using the CY 2005 wage index) and have decided that a more appropriate proxy is needed. Although our proposed methodology uses local, rural pre-floor, pre-reclassified hospital wage data, this method is not updateable from year-to-year. In addition, we now believe that the alternative methodology noted in the August 3, 2006 proposed rule (that is, using an average of the wage indexes in the Census Division) is not optimal because although it uses pre-floor, pre-reclassified hospital wage data from rural areas, it does not use the most local data available.

We believe that the alternative methodology of using the wage index from contiguous CBSAs best meets our criteria for imputing a rural wage index and represents an appropriate wage index proxy for rural areas without

hospital wage data. While it does not use rural data, it does use pre-floor, pre-reclassified hospital wage data, it is easy to evaluate, it is updateable from year to year, and it uses the most local data available. Therefore, we are revising our methodology for imputing a wage index for rural areas without hospital wage data. We will use the average wage index from all CBSAs that are contiguous to that rural area if the rural area does not have rural hospital wage data.

In determining an imputed rural wage index, we interpret ''contiguous'' as sharing a border. In the case of Massachusetts, the entire rural area consists of Dukes and Nantucket Counties. We determined that the borders of Dukes and Nantucket Counties are ''contiguous'' with Barnstable and Bristol Counties. The wage indexes for Barnstable (1.2539) and Bristol (1.0783) are averaged resulting in an imputed rural wage index of 1.1661 for rural Massachusetts for CY 2007. While we believe that this policy could be readily applied to other rural areas that lack hospital wage data (possibly due to hospitals converting to a different provider type (such as a CAH) that does not submit the appropriate wage data), should a similar situation arise in the future, we may re-examine this policy.

However, we do not believe that this final policy is appropriate for Puerto Rico. As noted in the August 3, 2006 proposed rule, there are sufficient economic differences between the hospitals in the United States and those in Puerto Rico, including the fact that hospitals in Puerto Rico are paid on blended Federal/Commonwealth-specific rates that a separate distinct policy for Puerto Rico is necessary. Consequently, any alternative methodology for imputing a wage index for rural Puerto Rico would need to take into account those differences. Our policy of imputing a rural wage index based on the wage index(es) of CBSAs contiguous to that rural area does not recognize the unique circumstances of Puerto Rico. We received neither comments on our proposed approach to impute a wage index for rural areas in Puerto Rico nor any alternative suggestions. While we have not yet identified an alternative methodology for imputing a wage index for rural Puerto Rico, we will continue to evaluate the feasibility of using existing hospital wage data and, possibly, wage data from other sources.

Accordingly, we will continue to use the most recent wage index previously available for Puerto Rico, that is, the wage index from 2004, which is 0.4047.

Health Care Information Transparency and Health Information Technology

Comment: One commenter addressed our discussion of health care information transparency and health information technology. The commenter disagreed with our implication that public comment was previously solicited from the home health community via the 2006 IPPS proposed rule published on August 25, 2006. However, the commenter is pleased that CMS has initiated a public dialogue in this area. The commenter suggests that CMS conduct a technology inventory in home health services to determine utilization and perceived roadblocks to expanded utilization. The commenter also believes that any such mandate must be accompanied by adjustments in payments. Additional commenters raised concerns about the potential impact of health information technology. Commenters do not believe that CMS has sufficiently supported the significant investments agencies have had to make in the past several years to establish and maintain HIT capabilities. Commenter concerns focused on the potential financial impact on providers who have invested significantly in HIT. Commenters believe that HIT requires a shared investment between providers and purchasers of care, to include CMS.

Response: As explained in the proposed rule, we intend to consider both the health care information transparency initiative and the use of HIT as we refine and update all Medicare payment systems. As previously stated, the 2007 Budget states that ''the Administration supports the adoption of health information technology (HIT) as a normal cost of doing business to ensure patients receive high quality care.'' We are not including specific recommendations in this final rule. However, we appreciate the input and recommendations provided in the use of HIT and welcome further comments on this important topic from HHAs.

Comment: One commenter stated that the public does not understand how Medicare's HH PPS works. The commenter believes that a prospective system is a ''soft'' reimbursement methodology, as payment rates have little relationship to home health pricing noting that in some instances the HH PPS payment far exceeds charges and in other instances the payment falls short of charges.

Response: We are actively pursuing the goal of price and quality transparency generally in the health care system. We have already released payment information on inpatient services and ambulatory surgical centers and are considering how to do so in other care settings. We agree that any pricing information released publicly should be clearly understood by the public, both consumers and patients. We recognize that Medicare payment for home health services captures a wide variety of costs and that payment rates may not always exactly match the costs for specific patients. However, as a prospective payment system, HH PPS payments estimate the average cost of providing services and are designed to recognize the higher costs associated with care for more severely ill patients. As such, the information could be of great interest to individual patients and the general public when they consider treatment options. It may also be important for patients and their families to understand what services the payment covers, to assist in planning for their health care needs.

The price of home health care is also an important component of price information in broader episodes of care. For example, a patient hospitalized with congestive heart failure may have a variety of post-acute care options, including being discharged home without home health services. The ability to identify the cost of different services, including home health, in a total episode of care allows patients, providers, and the Medicare program to be better educated about the value of different mixes of services. This type of analysis, including knowing the price of home health services, could provide valuable data such as re-admission information and indicating the value of specific care sites to patients.

We are not including specific recommendations in this final rule. However, we will continue to identify price and quality information that could be publicly released to help inform patient and consumer health care decisions and encourage higher value health care. We welcome further comments on this important topic from HHAs.

Consolidated Billing and Supply Issues

Comment: One commenter requested that CMS exclude HCPCS Code A7043 (vacuum drainage bottle and tubing for use with implanted catheter) from the HH PPS. The commenter believes that the regulations authorize CMS to exclude prosthetic devices and items related to prosthetic devices that are covered under Part B from the HH PPS. The commenter stated that the Pleurx pleural catheter and vacuum drainage bottle meet the definition of a prosthetic device because they replace the malfunctioning pleura by artificially

draining the pleura. Additionally, the commenter believes that the HH PPS rates do not adequately compensate HHAs when they care for beneficiaries requiring the Pleurx pleural catheter and vacuum drainage bottle.

Response: We addressed consolidated billing requirements in the Final Rule for the HH PPS published on July 3, 2000 (65 FR 41139). Medical supplies are a covered home health service and are bundled into the payment rate under the HH PPS. Section 1861(m)(5) specifically includes catheters and catheter supplies as a covered home health service. Therefore, vacuum drainage bottles and tubing for use with an implanted catheter are bundled medical supplies while the patient is under a home health episode of care.

Moreover, as we have consistently noted in responding to comments, the statute does not provide for an exception or carve-out of medical supplies from the PPS rate for patients under a plan of care under the HH PPS. The costs of all such supplies are included in the HH PPS rate (see 65 FR 41139).

We disagree with the commenter that the HH PPS rates do not adequately compensate HHAs when they care for beneficiaries requiring vacuum drainage bottles and tubing for use with the implanted catheter because this medical supply was included within the original list of 199 non-routine medical codes subject to home health consolidated billing effective October 1, 2000. While the HCPCS code for vacuum drainage bottles has changed, the cost of vacuum drainage bottles was included in the original case-mix weights used to determine the HH PPS rates (65 FR 41138).

Comment: Several commenters raised concerns about being unable to obtain the same brand of single-use urinary catheter from their HHA that they received directly from a DMEPOS supplier prior to receiving home health. These commenters believed that excluding HCPCS code A4353, which includes single-use catheters, would allow them to receive their catheters directly from the DMEPOS supplier. A number of commenters also request that HHAs be allowed to omit a patient's chronic urinary condition from the patient's specific home health plan of care which they say will allow the patient to continue to obtain the same name brand of single-use catheter they were using prior to receiving home health.

Response: As noted above, medical supplies are bundled into the HH PPS payment rate and cannot be excluded from that rate. As to this specific item under HCPCS code A4353, that item is considered to be a medical supply and accordingly bundled into the HH PPS payment rate.

We remind the commenters that if they believe that a product is not adequately described in the existing HCPCS Level II code set, they may submit an application to CMS to revise the code set, using the format and guidance provided on CMS' HCPCS Web site at *www.cms.hhs.gov/medhcpcsgeninfo.*

We note that under consolidated billing, the billing for those medical supplies is the responsibility of the HHA. If the patient's physician determines that a particular feature of a given supply is medically necessary for the patient, the physician may specify the designated feature in the physician's order for the supply and in the plan of care. If the HHA determines that there exists an appropriate substitute for the supply ordered by the physician, it may provide that patient with the appropriate substitute supply. If the home health patient does not agree with the HHA that the substitute supply is appropriate, the patient should contact us through the Medicare Hotline at 1–800–MEDICARE (1–800–633–4227). This toll-free helpline is available 24 hours a day, 7 days a week to answer questions. Beneficiaries can speak to a customer service representative in English or Spanish. TTY users should call 1–877–486–2048.

We disagree with the request that a HHA omit a medical condition from a plan of care in order to allow the patient to obtain desired medical supplies outside of the plan of care. The regulations at 42 CFR 484.18 require that the plan of care covers all pertinent diagnoses, including types of services and equipment required. In addition to calling 1–800-MEDICARE, if the home health patient believes that she is not receiving the necessary Medicare covered supplies, she may call the Regional Home Health Intermediary (RHHI) or CMS regional office. Under the Contacts section of our Web site at *http://www.cms.hhs.gov/center/hha.asp* we provide information on how to contact the RHHIs and CMS regional offices.

HH PPS Refinements

Comment: One commenter urged CMS to undertake a review of the HH PPS and make appropriate adjustments to the case-mix weights before 2008. Another commenter requested that there be a review of LUPA rates, and to subsequently increase the LUPA rates to ensure that they cover the costs of providing care to those patients. One commenter recommended that an ''add-on'' to the HH PPS payment be made for dually eligible beneficiaries in order to recognize the added costs incurred by such patients. The same commenter also believes that the costs associated with wound care are not adequately paid for in the current case-mix system.

Response: Our ongoing research agenda on the HH PPS refinements encompasses review of case-mix adjustment and other payment adjustment provisions under the HH PPS. Our continuing work also includes review of overall system performance to the extent data permit analysis of this topic. We intend to address certain aspects of the HH PPS, which could include LUPA rates, when we initiate a refinement regulation. We also note it is common with new payment systems for providers to go through a period of adaptation. The adaptation process influences the data we use to study refinements, and those data lag by up to a year from the time a service is rendered to when the claim is submitted and processed into a standard analytical file. Our study results will be more effective and provide a better basis for policy proposals when the data used in the studies reflect the ''end point'' of the adaptation period. Assuming that the necessary data files will become complete, we believe that the end point of the adaptation period will allow us to pursue a refinement rule in the near future.

Comment: A commenter recommended that CMS establish a home health technical advisory group to regularly review and update the multitude of component parts of the HH PPS reimbursement methodology.

Response: We appreciate the comment; however, we do not believe such a group is necessary at this time. We have always received input from the industry on various aspects of our Medicare payment systems, and we anticipate this practice will continue into the future. Additionally, for the past few years, we have conducted ''open-door'' forums to provide the public with an opportunity to provide input and comment on the HH PPS and related issues. Finally, as part of ongoing refinement research, a technical expert panel (TEP) addressed the various aspects of the HH PPS for possible refinements to the system. We strongly believe that specific refinements to the HH PPS, if appropriate, should be addressed in a single refinement regulation. In doing so, the causes and effects that any particular refinement would have on the rest of the system could be taken into effect, eliminating the risk of

implementing any one refinement in a vacuum and resulting in a complete and responsible refinement to the system.

Classes of Oxygen and Oxygen Equipment

Statutory Authority

Comment: One commenter asserted that the statute does not give authority for CMS to create new classes for these items and that payments must be made at the rate set by statute.

Response: We disagree. Section 1834(a)(9)(D) of the Act provides authority to create separate classes and payment amounts for any item of oxygen and oxygen equipment as long as they are budget neutral, that is, the separate classes and payment amounts do not result in expenditures for any year to be more or less than expenditures that would otherwise have been made if the classes had not been established.

New Oxygen Generating Portable Equipment Technology

Comment: One commenter commended CMS for recognizing the many benefits that oxygen generating portable equipment (OGPE) can provide. Some commenters urged that the proposed payment rate for OGPE be increased to provide adequate compensation for suppliers and to encourage suppliers to invest in the new technologies. Two commenters asked CMS to reconsider the proposed payment rates for OGPE to accurately reflect the cost of the equipment; which is claimed to range from $2,500 to $3,500. Some commenters recommended that CMS should not implement the proposed payment rates changes at this time and that setting new payment rates should be delayed until sufficient data is gathered to identify the costs of oxygen services.

Response: We appreciate the support for our proposal to create a new payment category for OGPE. We do not agree with the commenters who suggested delaying the new categories because we are concerned that maintaining the current system could create incentives for suppliers to utilize older technology rather than newer technology that may be more appropriate for certain beneficiaries. We believe that it is appropriate and necessary to implement a new payment class for OGPE in order to ensure access to these items; therefore, we will finalize a new payment category for OGPE.

In the proposed rule, we explained that there are currently two different types of OGPE: transfilling units that work independently or in conjunction with standard, stationary oxygen concentrators to fill portable oxygen canisters in the home; or portable oxygen concentrators that meet both the patient's stationary and portable oxygen needs. In both cases, the supplier can bill for both the monthly payment for oxygen and oxygen equipment (currently averaging $199.84) and the portable equipment add-on (currently averaging $31.79). In establishing the new payment rate for OGPE, we proposed to consider the savings that would be generated from use of these new technologies. The savings would come from not having to make payments for portable oxygen contents for beneficiary owned portable systems that generate their own oxygen. The new, enhanced monthly payment for OGPE would be paid in conjunction with the monthly payment for stationary equipment. The combined monthly payments for stationary oxygen equipment and OGPE would provide extra payments to suppliers of the newer technology portable oxygen equipment, with the extra payments being directly linked to the savings generated for the program by eliminating the need to make future payments for portable oxygen contents.

The proposed add-on for OGPE of $64 was derived using a multiple step process described in section I of the provisions of the proposed regulation. As explained above, this process would involve determining savings generated from not having to pay proposed monthly payments of $55 for portable oxygen contents during the beneficiary ownership period and applying the savings evenly over the 36-month OGPE rental period. A total payment of $241 was proposed for stationary equipment ($177) plus the OGPE add-on payment ($64). The final process for calculating the OGPE add-on payment, like the proposed process, involved determining savings generated from not having to pay final monthly payments of $77.45 for portable oxygen contents during the beneficiary ownership period and applying the savings evenly over the 36-month OGPE rental period. To determine these savings we multiplied $77.45 by 24 months (number of months in the equipment ownership period) to get $1,858.80. We divided $1,858.80 by the 36 months of the rental period to get the OGPE add-on of $51.63 per month. However, as explained above in the discussion of the final methodology necessary to assure annual budget neutrality of the new classes of oxygen and oxygen equipment, distribution of use of items in the various classes over five years is factored into the calculation used to determine the budget neutrality adjustment factor. Therefore, the final payment rates for the new classes are based on current utilization and an assumption of the number of beneficiaries that will be using OGPE in the future. The total payment for stationary equipment and OGPE for 2007 is $250.03 ($198.40 for stationary + $51.63 for OGPE). The total payment for stationary equipment and OGPE is estimated to be $250.03 in 2008, $244.84 in 2009, and $241.02 in 2010; this compares to the total payment in the proposed rule of $241.

We also note that in response to comments on the budget neutrality of our proposal, the final national limited monthly payment rates for each oxygen class were computed using weighted average fee schedule amounts instead of straight average fee schedule amounts. As a result, we have used slightly different numbers in our responses to comments than we used in the proposed rule. Our revised budget neutrality analysis is discussed in full below.

Comment: One commenter stated that CMS needs to provide assurance that payment rates will not decrease, except in the case of competitive bidding, and that each year the rates will be increased by the percentage change in the Consumer Price Index for Urban Consumers (CPI–U), the covered item update factor that is generally established as the annual update for DME, unless otherwise indicated.

Response: We cannot provide assurance that oxygen payment rates will never be decreased in the future or that rates will always be increased by the CPI–U update. CMS is required to implement provisions of law passed by Congress, including the covered item updates to the fee schedule amounts for oxygen and oxygen equipment. Further, in order to maintain annual budget neutrality for the oxygen payment classes as required by Section 1834(a)(9)(D)(ii) of the Act, CMS may need to adjust the payment amounts as appropriate.

Definition of Modality

Comment: Many commenters asked us to clarify the definition of ''modality.'' The commenters stated that the definition should be based on clinical characteristics of the beneficiary rather than physical characteristics of the device such that: a stationary oxygen class of patients who are moribund, bed bound with limited need to leave the home; a portable oxygen class of patients who require oxygen at night only and have limited mobility; and an ambulatory oxygen class of patients

whose oxygen needs include support for frequent ambulation. The commenters state that the HCPCS code should be modified to ensure that each respective clinical class can be identified.

Response: Medicare currently pays for two classes of oxygen equipment, stationary and portable. For the stationary class, there are three modalities that Medicare pays the same ''modality neutral'' payment rate for: concentrators, liquid cylinders and gaseous tanks. For the portable class, Medicare makes a modality neutral payment for all types of portable equipment. For the final rule, we are adding a new payment class for OGPE and new separate payment classes for delivery of stationary and portable oxygen contents. As has always been the case, a physician may order a specific oxygen equipment modality based on the clinical needs of the patient, and the supplier is bound by that order. However, there is currently no Medicare national coverage determination (NCD) that establishes medical necessity criteria for different oxygen modalities. Therefore, at this time, we do not believe it is necessary or appropriate to separate oxygen and oxygen equipment into different classes based on the clinical characteristics of different beneficiary populations.

Comment: A few commenters asked us to clarify the medical policy that defines the criteria allowing patients to switch from one modality of oxygen equipment to another modality. The commenters also asked CMS to create a payment policy to pay suppliers for this type of equipment change. Some commenters recommended that CMS instruct its DME program safeguard contractor (PSC) to incorporate specific medical necessity coverage requirements in a local coverage determination (LCD) that specifies under what circumstances or diagnoses a beneficiary could change from one modality of equipment to another, how suppliers will be paid for furnishing a new equipment modality to a beneficiary, and specific documentation requirements for both the supplier and physician for a change in modality.

Response: A physician prescription for home oxygen is required for coverage for home oxygen equipment. Generally, the physician prescribes the units of oxygen the patient needs and the beneficiary works with the supplier in deciding the modality of the oxygen equipment. In the final rule, we are allowing beneficiaries the option to change modalities during their rental period (this policy modification is discussed below); however, as we proposed in section L of the proposed rule, a new 36-month rental period would not begin in order to comply with the modality neutral payment rules for oxygen and oxygen equipment that we developed in accordance with sections 1834(a)(5) and (9) of the Act. Even if Medicare coverage rules and medical necessity criteria for different modalities of oxygen equipment were established in an NCD or LCD, there would be no effect on Medicare payments for specific types of items furnished under each payment class. It is important to note, however, that Medicare coverage and medical necessity for oxygen and oxygen equipment is outside the scope of this rulemaking effort.

Stationary and Portable Oxygen Contents

Comment: One commenter asked for justification of the 65 percent and 35 percent apportionment of the payment for oxygen contents. We also received comments recommending the same payment rate for all types of oxygen contents because oxygen contents are the same regardless of the weight of the container. One commenter recommended we keep the reduction of approximately $22 to stationary equipment (from $199 to $177) and reallocate the excess savings to (a) portable gaseous oxygen contents and/or equipment, increasing the rates to $75 to $80 and applying the increased rate to portable gaseous oxygen equipment furnished during the equipment rental period and portable gaseous oxygen contents furnished after the equipment rental period and (b) portable liquid oxygen contents and/or equipment, increasing the rates to $90 to $95 and applying the increased rate to portable liquid oxygen equipment furnished during the equipment rental period and portable liquid oxygen contents furnished after the equipment rental period.

Response: In the proposed rule, we proposed to apportion the current oxygen contents rate of $156 per month by 65 percent and 35 percent based on the weight of the containers and other factors that might make delivery of stationary oxygen contents more expensive than delivery of portable oxygen contents. Stationary oxygen containers are larger and heavier than the portable oxygen containers; therefore, we proposed to apportion a greater amount of the payment to delivery of stationary oxygen contents. We received comments indicating that the average monthly costs of furnishing both types of oxygen contents are the same despite the fact that stationary oxygen contents are bulkier than portable oxygen contents. This is because stationary oxygen contents are delivered and refilled at a lower frequency than portable oxygen contents. Therefore, we are modifying the proposed payment rates for the two types of oxygen contents based on an even (that is, 50–50 percent) split in the current $154.90 weighted average payment amount for both stationary and portable oxygen contents. As a result, we will be paying the same monthly rate of $77.45 for delivery of each of stationary oxygen contents and portable oxygen contents. We will therefore continue to pay $154.90 in cases where both stationary and portable oxygen contents are medically necessary and are delivered. A payment of $77.45 per month rather than $55 per month for delivery of portable oxygen contents will further ensure that beneficiaries will receive necessary contents for their portable oxygen systems and is consistent with a suggestion from one commenter that payment for delivery of portable gaseous oxygen contents should be from $75 to $80. Most patients currently use gaseous portable oxygen systems as opposed to liquid portable gaseous systems or portable concentrators. A very small number of beneficiaries use stationary liquid or gaseous systems, and, in most cases, the supplier that delivers stationary oxygen contents for beneficiaries who use both stationary and portable liquid or gaseous systems would also be the supplier of the portable oxygen contents as well. Therefore, we believe that reducing the proposed payment for stationary oxygen contents from $101 to $77.45 is appropriate in light of the increased payment for portable oxygen contents.

Comment: One commenter suggested that CMS establish a delivery fee for each time a supplier delivers oxygen.

Response: The longstanding Medicare policy for payment for delivery of DME and other supplier expenses is that payment for these costs are included in the single payment made for furnishing the equipment. This policy is based on section 1834(a)(5) of the Act, which provides that a monthly payment amount recognized under section 1834(a)(9) be paid for oxygen and oxygen equipment, and section 1834(a)(9), which mandates that monthly payment (or fee schedule) amounts be calculated based on payments made in 1986 under the reasonable charge payment methodology. The reasonable charges that were used to calculate the fee schedule payment amounts included delivery costs and all other costs for furnishing the equipment. Therefore,

the cost associated with the delivery of oxygen contents is included in the fee schedule payment amounts for stationary and portable oxygen contents. Furthermore, section 1834(a)(9)(D)(i) of the Act requires that monthly payment rates are to be established for each class of oxygen and oxygen equipment. Since total Medicare expenditures under the new classes and payment amounts will be the same as they would have been under the old classes and fee schedule amounts, we believe that the new payment rates incorporate the delivery costs that made up part of the old fee schedule amounts.

Comment: One commenter was concerned that the payment rate for delivery of oxygen contents for beneficiary-owned portable oxygen equipment would not be enough to cover the number of tanks or cylinders needed for each beneficiary. The commenter indicated that under the previous payment methodology where monthly payments for oxygen and oxygen equipment were made as long as medical necessity continued, suppliers were able to offset costs associated with delivering portable oxygen contents with the payment made for the stationary oxygen and oxygen equipment. The commenter expressed concern that the proposed $55 monthly payment for delivery of portable oxygen contents will not cover the costs of delivering more than 11 portable tanks per month. In addition, the commenter stated that this figure does not include the cost of delivery. Another commenter noted that the current fee schedule amount of approximately $21 per month would not cover the costs of one delivery per month of portable oxygen contents, and that this will force suppliers to adopt a policy whereby the beneficiary must pick up tanks from the supplier's store.

Response: We agree with the commenters that the payment rate for portable oxygen contents of $21 is insufficient as a monthly payment for the delivery of portable oxygen contents, and therefore; we are finalizing our proposal to increase it in this final rule. We are dividing $154.90, the current weighted average payment amount for both stationary and portable oxygen contents evenly so that the payment rate for portable oxygen contents will be increased from the current weighted average payment amount of $20.77 to $77.45 per month. The revised payment rate for stationary oxygen contents will also be $77.45 per month. These monthly payment rates include delivery of tanks and cylinders, a service that the supplier is required to perform in order to be in compliance with standards set forth at § 424.57(c)(12). Based on comments received on this issue, we believe that the finalized payment rate of $77.45 will adequately pay suppliers for delivery of stationary or portable oxygen contents. We are therefore confident that the payment rate adequately covers the supplier's costs of delivering oxygen contents.

Comment: One commenter asked for clarification on payment if there is a change in equipment due to medical necessity. For example, the commenter asked whether a new 36-month rental period starts when there is an increase in the patient's oxygen volume that would require delivery of more portable oxygen tanks.

Response: As we discuss more fully below, suppliers can furnish another capped rental item or type of oxygen equipment with a physician prescription or if the beneficiary would like newer technology or an upgraded item. However, unless the change in equipment is based on medical necessity, a new rental period will not start. In addition, because there is no distinction made between oxygen equipment modalities for payment purposes under the Medicare program, we would not consider a change from one modality to another to be a change in the type of equipment furnished to a beneficiary. Accordingly, a new period of continuous use would not start in those circumstances.

Budget Neutrality

Comment: Several commenters claimed that the proposed rates were not budget neutral. They claimed that the calculation of decreased expenditures that would result from a $22 reduction in payment for stationary equipment is underestimated and that such payment reduction translates to savings ranging from $239 million to $260 million. One commenter stated that the proposed rule was not budget neutral for each year as required by statute. Another commenter pointed out that the 2004 data did not have specific utilization rates for portable concentrators or transfilling systems since separate HCPCS codes did not exist for these services at that time.

Response: We have revised the offset/budget neutrality calculations that we proposed based on comments received and have modified the payment rates for the classes of oxygen accordingly.

First, in response to the commenter that expressed concern with our use of 2004 data, we have updated our analysis by using the latest available data from the SADMERC on the number of beneficiaries for which claims were received from July 1, 2006 through September 30, 2006, for HCPCS codes E0424, E0431, E0434, E0439, E1390, E1391, and E1392 to determine the distribution of beneficiaries among the categories of stationary and portable oxygen equipment. This data is used to count the number of beneficiaries using items in each equipment class. The number and percent distribution of beneficiaries using the different categories of equipment are shown in table 10. These latest data show 0.3 percent of beneficiaries using portable concentrators. While using these later claims gives us data on users of portable concentrators, we do not have data on beneficiaries using transfilling systems since the code for such equipment began on October 1, 2006. Thus, for purposes of calculating rates, we had to make an assumption about the percent of beneficiaries who will use OGPE equipment (which include both portable concentrators and transfilling systems) after the new classes and payment rates go into effect. From comments received, we assumed a shift of 5 percent of beneficiaries towards OGPE for our budget neutrality calculations. We will revisit this assumption on an annual basis and make adjustments through program instructions to rates applicable to years after 2007 if actual utilization of oxygen equipment by beneficiaries is different from our assumptions.

TABLE 10.—CATEGORIES OF OXYGEN USERS

Equipment/Modality	Number of beneficiaries	Percent of users (percent)
Stationary Equipment Only	327,863	31.3
Liquid/Gas Stationary AND Portable Equipment	57,950	5.5
Concentrator AND Portable Equipment	657,948	62.8

TABLE 10.—CATEGORIES OF OXYGEN USERS—Continued

Equipment/Modality	Number of beneficiaries	Percent of users (percent)
Stationary AND Oxygen Generating Portable Equipment	3,248	0.3
Total Number of Beneficiaries	1,047,009	100.0

As in the proposed rule, we used a five year period for determining the rate changes because the reasonable useful lifetime policy for DME equipment allows beneficiaries to elect to obtain a new item after five years of use. Therefore, we assumed that Medicare would make three years of rental payments and two years of payment for oxygen contents.

To calculate budget neutral rates, as in the proposed rule, we compared estimates of Medicare spending for oxygen equipment and contents based on current classes of items and payment rates with estimates of the spending that Medicare would make based on the new classes and payment rates outlined in this final rule. In order to further address the concerns of commenters that the payment rates for the new classes be budget neutral, we compared the payment rates for the new classes to the current, weighted average monthly payment amounts for oxygen and oxygen equipment (for example, $199.84 for stationary equipment), as opposed to comparing them to the straight average monthly payment amounts rounded to the nearest dollar (for example, $199 for stationary equipment). Based on the concerns expressed by commenters regarding the importance of assuring the budget neutrality of the new classes of oxygen and oxygen equipment, we are using the average of the current monthly payments per State weighted by actual utilization by State to establish a more precise average Medicare payment for each class of oxygen and oxygen equipment. To estimate total expenditures for oxygen and oxygen equipment for a given year, we multiplied the monthly payment rate for each category of equipment by the total number of users of each such category, then by the percent of users at the midpoint of each of three equipment rental years, then by 12 for the number of months in a year. Then, we multiplied the monthly payment rate for each category of oxygen contents by the total number of users of each such category, then by the percent of users at the midpoint of each of two beneficiary ownership years, then by 12 for the number of months in a year. We added the estimated spending for equipment and contents to obtain the five year total of payments for equipment and contents. We used data from the September 2006 OIG report, entitled ''Medicare Home Oxygen Equipment: Cost and Servicing'' (OEI–09–04–00420), on the distribution of the number of beneficiaries using stationary concentrators by the number of months rented that showed the following percentages of oxygen users at the midpoint of each year: 61 percent for the first year, 36 percent for the second year, 26 percent for the third year, 19 percent for the fourth year, and 14 percent for the fifth year. We then used this same methodology to estimate Medicare spending incorporating the payment rate changes in this final rule. Since spending is greater under the payment rate changes in this final rule, we applied a budget neutrality adjustment to the monthly payment amount for stationary equipment in order to achieve the same expenditures that would be spent under payment rates without the changes in the final rule.

In response to comments received about our proposed methodology not being budget neutral annually, we calculated budget-neutral rates for a five-year period from 2006 to 2010, applying the methodology described above. The complete, detailed budget neutrality analysis, data, and payment rate calculations are available at the following internet website: *http://www.cms.hhs.gov/DMEPOSFeeSched/*. This results in smaller budget-neutrality adjustments in the early years and larger ones in the later years because the increased expenditures in the first three years results primarily from the OGPE add-on payment. The full effect of the higher payments for portable oxygen contents will not be realized until 2010, which will be the second year of the equipment ownership for beneficiaries who have been renting oxygen equipment on a continuous basis since 2006.

Table 11 shows the 2007 budget neutral monthly payment rates and our estimates of the budget neutral monthly payment rates for 2008 through 2010 for the five classes of oxygen and oxygen equipment, in addition to the combined rates for stationary and portable oxygen contents. The rates for stationary equipment decrease by year to offset the new OGPE class and the increase in the portable contents rate. Table 12 shows the 2007 monthly payment rates and our estimates of the monthly payment rates for 2008 through 2010 for four of the most common combinations of oxygen equipment.

TABLE 11.—CURRENT WEIGHTED AVERAGE MONTHLY PAYMENT AMOUNTS COMPARED TO PROPOSED AND FINAL MONTHLY PAYMENT RATES FOR CLASSES OF OXYGEN AND OXYGEN EQUIPMENT

Oxygen class	Current	Proposed	Final 2007	2008*	2009*	2010*
During Equipment Rental Period (36 Months)						
Stationary Equipment (offset needed)	$199.84	$177.00 (−22.84)	$198.40 (−1.44)	$198.40 (−1.44)	$193.21 (−6.63)	$189.39 (−10.45)
Portable Add-on	31.79	32.00	31.79	31.79	31.79	31.79
OGPE Add-on	N/A	64.00	51.63	51.63	51.63	51.63

Oxygen class	Current	Proposed	Final 2007	2008	2009	2010
Contents Payments After Equipment Ownership						
Stationary & Portable Contents	154.90	156.00	154.90	154.90	154.90	154.90
Portable Contents Only	20.77	55.00	77.45	77.45	77.45	77.45
Stationary Contents Only	N/A	$101.00	$77.45	$77.45	$77.45	$77.45

*Rates for 2008 and beyond are budget-neutral based on assumed OGPE utilization of 5 percent. Actual OGPE utilization will be reviewed on an annual basis and rates will be adjusted, if necessary, through program instructions to ensure annual budget neutrality.

TABLE 12.—PAYMENTS FOR VARIOUS COMBINATIONS OF OXYGEN EQUIPMENT

[Estimated for calendar years 2008 thru 2010]

Categories of equipment	During rental period	Contents after ownership
Concentrator only:		
2007/2008	$198.40	$0
2009	193.21	0
2010	189.39	0
Concentrator + gaseous portable:		
2007/2008	230.19 (198.40 + 31.79)	77.45
2009	225.00 (193.21 + 31.79)	77.45
2010	221.18 (189.39 + 31.79)	77.45
Concentrator + OGPE:		
2007/2008	250.03 (198.40 + 51.63)	0
2009	244.84 (193.21 + 51.63)	0
2010	241.02 (189.39 + 51.63)	0
Liquid stationary & portable:		
2007/2008	230.19 (198.40 + 31.79)	154.90 (77.45 × 2)
2009	225.00 (193.21 + 31.79)	154.90 (77.45 × 2)
2010	221.18 (189.39 + 31.79)	154.90 (77.45 × 2)

These estimates assume that 5 percent of oxygen users will use OGPE equipment in all years. However, we will monitor actual use and, as part of our annual budget-neutrality determination, we will revise rates through program instructions under the methodology specified in this final rule if actual OGPE usage is different from our assumption. We also plan to revise the payment rates in the future based on updated data on the distribution of beneficiaries using oxygen equipment and the number of months they use the equipment. These rates apply to all beneficiaries who use oxygen equipment on or after January 1, 2007, including both new and existing users.

Comment: Some expressed concern that the proposed payment amounts for portable oxygen equipment and portable oxygen contents are not sufficient to offset the cost of providing these systems. The commenters recommend reallocating the savings that comes from the proposed reduction of the stationary class to upwardly adjust the monthly payment for portable equipment and contents. Some commenters strongly urged CMS to offset any future cuts in home oxygen concentrator payments with appropriate increases in other classes of oxygen specifically portable and ambulatory classes.

Response: We have changed the payment amounts based on comments received and have increased portable contents payment amount from approximately $20.77 to $77.45 per month and have increased the add-on rate for OGPE from approximately $31.79 (the current portable add-on rate during the rental period) to $51.63 per month. We have also recalculated the offsets for budget neutrality and in order to maintain budget neutrality, and will not be reducing stationary payments from approximately $199.84 to $177 as proposed. The stationary equipment payment will be $198.40 in 2007, and is projected to be $198.40 in 2008, $193.21 in 2009, and $189.39 in 2010, based on current calculations discussed above. The fees for 2008 and later would be adjusted on an annual basis, if necessary, to ensure the annual budget neutrality of the change in payment classes and rates. We will annually reevaluate the actual distribution of oxygen equipment and make any adjustment in the payment amounts through program instructions that are necessary to maintain annual budget neutrality as required by section 1834(a)(9)(D)(ii) of the Act.

Data

Comment: A few commenters were concerned about the lack of data provided that established the budget neutrality proposal and asked CMS to release the data and assumptions. A few commenters stated that the proposed rule did not conform to the requirements of the Data Quality Act (DQA) that require Agencies to provide information on sources of the disseminated information as well as supporting data and models in a scientific, financial, or statistical context so the public may question the objectivity of the data and source.

Response: The DQA requires agencies to, among other things, issue guidelines to ensure and maximize the quality, objectivity, utility, and integrity of information disseminated by the agency. While the DQA applies to a wide variety of information dissemination activities and all types of media, it has not been established that the DQA applies to rulemaking. Nevertheless, we are providing extensive details in this final rule about the data and methodology used to calculate budget neutrality. Consistent with our guidelines for information quality assurance, the information upon which we relied is from a reliable source that uses accepted methods for data collection and analysis, and we reviewed the quality of the information before using it. Where CMS is responsible for disseminating influential information (that is, information that will have a substantial impact on important public policies or important private sector decisions), we ensure that there is a high degree of transparency about the data and methods to facilitate its reproducibility by qualified third parties. To the extent

the data upon which we rely is not confidential, our guidelines call for identification and documentation of data sets in producing estimates and projections, and for clear descriptions of the methods used.

Transition

Comment: Some commenters asked CMS to allow for a grace period during which suppliers could transfer patients, with their consent, to other modalities. Many commenters urged CMS to allow for a grandfathering process so that those who began renting oxygen on January 1, 2006 would be under former payment rates and policies. These commenters argued that the final rule should only apply prospectively.

Response: The final rule, including the new oxygen payment classes and rates, will be effective on January 1, 2007. However, as explained above and illustrated in table 11, the new payment rates will be annually adjusted if necessary to ensure budget neutrality. We disagree with the comment that we allow for a grandfathering provision whereby beneficiaries who began renting equipment on January 1, 2006 be allowed to continue under the former payment rates and policies. Such an approach would deny such beneficiaries the opportunity to obtain access to the new technology equipment. We will periodically reevaluate actual distribution and make any adjustment in payment amounts through program instructions that are necessary to maintain annual budget neutrality as required by statute. Adjustments in payment amounts will be determined based on the model we are using to ensure annual budget neutrality as explained above. As we discuss below, we will allow for changes in modalities during the rental period if the beneficiary requests an upgrade or if the physician provides a new order for the equipment modality.

Comment: One commenter strongly urged CMS to adopt a blended rate during a three-year transition policy. Traditionally CMS has established blended rates by taking 75 percent of the original rate and 25 percent of the new rate during the first year; 50 percent and 50 percent in the second year; and 25 percent and 75 percent in the third year.

Response: As explained above, we have revised the calculation of the budget-neutral oxygen equipment payment amounts in response to comments. Our revised approach calculates the budget-neutral rates that will apply for the first five years based on our estimates of the number of beneficiaries that will use specific types of equipment during each of these years. We have also determined that we may need to adjust the rates on an annual basis after the fifth year to ensure that budget neutrality is maintained. Based on our calculations, we do not believe that the blended percentages recommended by the commenter would result in budget neutral payment amounts.

Deficit Reduction Act Requirements

Rental Cap

Comment: Numerous commenters were concerned that the 36-month rental period for oxygen equipment will not help beneficiaries and will create undue hardship for them because they will lose services that they have valued for years. Moreover, they stated that current Medicare benefit guidelines, as well as guidelines issued by all major national insurance companies, State Medicaid programs and all home care industry accreditation organizations, have always classified oxygen equipment as ''high maintenance equipment needing frequent maintenance service which is not recommended or advisable for patients to own.'' Other commenters predicted that hospital admissions will likely be increased as a result of the cap. These commenters argued that capping home oxygen services would direct patients toward the most expensive part of our health care system, which is hospitalization. Another commenter felt it was inappropriate to transfer title to this equipment to a patient because medical oxygen is a prescribed drug. The commenter believes that allowing beneficiaries to assume ownership is akin to giving them the source of a controlled substance.

Response: The Congress mandated in section 1834(a)(5)(F)(ii)(I) of the Act (added by section 5101(b)(1) of the DRA) that on the first day that begins after the 36th continuous month during which payment is made for rented oxygen equipment, title to the oxygen equipment must transfer to the beneficiary. Section 1834(a)(5)(F)(ii)(II) provides that the Secretary must make reasonable and necessary maintenance and servicing payments for the equipment after the beneficiary assumes ownership of it and we are planning to do so, as detailed in the provisions of this final rule and in response to comments received regarding maintenance and servicing of beneficiary-owned equipment. Suppliers will be paid on a monthly basis for the delivery of oxygen contents in tanks and cylinders in accordance with the requirements of section 1834(a)(5)(F)(ii)(II) of the Act. As part of this ongoing service, we expect suppliers to deliver tanks and cylinders in proper working condition. As a result, we believe that beneficiary-owned equipment will be properly maintained and that beneficiaries will not suffer undue hardship as a result of the title transfer provisions. We also do not see how the title transfer provisions will affect how much oxygen beneficiaries use, since oxygen must be prescribed by a physician and delivered by a supplier in accordance with that prescription.

Comment: Several commenters remarked that, as beneficiaries, they cannot afford to take care of their oxygen equipment once title to the equipment has transferred to them and request that we reconsider the rule. One commenter noted that his/her portable equipment must be replaced at least a couple of times a year due to malfunctions.

Response: Although section 1834(a)(5)(F) of the Act requires beneficiary ownership of oxygen equipment after 36 continuous rental payments are made, this subparagraph also mandates that payment be made for reasonable and necessary maintenance and servicing of the beneficiary-owned equipment. The provisions of this final rule describe the changes we are making in the regulations to ensure that the beneficiary will continue to have access to equipment that will function for the entire reasonable useful lifetime established for the equipment. In accordance with existing regulations, if the equipment has been in continuous use for the equipment's useful lifetime, the beneficiary may elect to obtain new equipment. However, we note that a beneficiary would not be required to obtain new oxygen equipment as long as the equipment continued to function properly. In addition, as we discuss below, we are finalizing a provision under which a supplier may be required to replace the item at no charge to the beneficiary if the equipment does not function for the entire useful lifetime. In addition to meeting the annual Part B deductible, for assigned claims, the beneficiary is only responsible for paying 20 percent of the allowed charge for reasonable and necessary maintenance and servicing of beneficiary-owned equipment. We believe that these policies will help limit beneficiary costs once title to oxygen equipment has transferred.

Comment: One commenter expressed concern about the 13-month rental period for capped rental DME and recommended that CMS reconsider the assignment of certain products to the capped rental category, particularly

those that sell for under $250.00 or rent for under $25.00 per month. The commenter argued that the expense of submitting and processing claims for 13 months exceeds any savings from short-term rentals.

Response: The statute only allows for purchase of DME that is: inexpensive or routinely purchased (section 1834(a)(2)(A) of the Act); a power-driven wheelchair (section 1834(a)(7)(A)(iii) of the Act); or customized (section 1834(a)(4) of the Act). In accordance with the statute, inexpensive DME includes equipment having a purchase price of $150 or less and routinely purchased DME is equipment that is acquired at least 75 percent of the time by purchase. In accordance with section 1834(a)(7) of the Act, capped rental DME is DME not described in any of the other payment categories in paragraphs (2) through (6) of section 1834(a) of the Act. We do not have authority to redefine these categories because they are statutorily based.

Transfer of Title

Comment: A commenter noted that the loss of title to the oxygen equipment will serve as a disincentive for suppliers to invest in advancing oxygen equipment technology. As a result, manufacturers will shift their research and development efforts away from the development of smaller, longer-lasting portable systems and instead, focus on the development of cheaper devices.

Response: We are obligated to implement section 1834(a)(5)(F)(ii)(I) of the Act, which requires that on the first day that begins after the 36th continuous month in which rental payments are made for oxygen equipment, the supplier transfer title to the equipment to the beneficiary. However, we disagree with the commenter that this rule will act to stymie advancements in oxygen equipment technology and are finalizing policies in this rule that we believe will properly incentivize suppliers to invest in new oxygen technology. In the case of portable oxygen equipment, the purpose of establishing an additional payment class for OGPE is to increase payments for the newer, more efficient, but more expensive OGPE technologies. In addition, as discussed below, we are clarifying in this final rule that beneficiaries may select newer technology items or upgraded items during the equipment rental period by agreeing to sign an Advanced Beneficiary Notification (ABN).

Comment: Several commenters were concerned about the development of a secondary market for oxygen equipment resulting from individuals interested in selling their used equipment. They stated that the sale of these medical devices would not be monitored to ensure the condition of the device being sold, patient safety or clinical effectiveness. Several commenters requested that we work with the FDA to develop standardized guidelines that apply specifically to the public's resale of used medical devices.

Response: We are aware that there may be safety issues associated with the resale of used oxygen equipment, and our regulations would not supersede any other Federal or State laws that govern these transactions. However, section 1834(a)(5)(F)(ii)(I) specifically mandates beneficiary ownership of both stationary and portable oxygen equipment after 36 months of continuous use. It has long been common practice for suppliers to pick up beneficiary-owned DME after medical necessity ends, in cases where the beneficiary or relatives of the beneficiary make such a request. In order to minimize the possibility that beneficiaries will incorrectly dispose of oxygen equipment that is no longer medically necessary, we will encourage suppliers to advise beneficiaries that they can pick-up and store the beneficiary's oxygen equipment if the beneficiary no longer needs it. Suppliers would be paid for picking up and storing oxygen tanks and cylinders that are no longer medically necessary (see below for a full discussion of this modification to our maintenance and servicing proposal). We will also note in the final regulations that in cases where suppliers have picked up beneficiary-owned oxygen equipment under these circumstances and the beneficiary's medical necessity for the equipment subsequently resumes, the supplier must return to the beneficiary similar equipment of equal or greater value to the beneficiary-owned equipment that was picked up, unless the beneficiary elects to obtain new equipment because the reasonable useful lifetime for the previous equipment has expired, or unless a different oxygen modality is prescribed and the beneficiary signs an advanced beneficiary notice (ABN) (see below for a full discussion of this policy modification).

Comment: Several commenters urged that CMS and the Food and Drug Administration (FDA) discuss the ability of suppliers of oxygen contents for beneficiary-owned equipment to comply with 21 CFR 210 and 211. Further, the commenters stated that CMS must outline the process for reimbursing suppliers for any in-home services they would need to perform in the event of an FDA recall after the beneficiary takes title to the device. Another commenter noted that once the beneficiary takes ownership, many devices will no longer be trackable for recall purposes. Several commenters recommended that CMS develop safety standards that can be applied to beneficiary owned equipment. Standards would help ensure that beneficiaries/caregivers comply with Department of Transportation (DOT), FDA and the Compressed Gas Association oxygen guidelines as well as ensure that they do not inappropriately handle or dispose of cylinders. One commenter observed that the proposed rule provided no clarification on how many cylinders Medicare expects to be transferred in ownership to the patient. There are several factors that can influence the number of cylinders a patient receives, such as oxygen liter flow, activity level of the patient, and distance from the patient's residence to the supplier's warehouse. Given these variables, the commenter noted that a patient could receive from 2–6 cylinders at the time of set-up. Additionally, beneficiaries may receive more cylinders temporarily to accommodate travels outside of the supplier's service area. One commenter questioned how CMS will address instances where beneficiaries require more or less portable cylinders post title transfer. Another commenter requested that Medicare not require suppliers to transfer title to oxygen tanks to beneficiaries since it would be burdensome and unmanageable for suppliers to keep track of virtually identical tanks. Under the current regulatory framework for oxygen as a medical gas, one commenter noted that suppliers are not permitted to label oxygen containers with the beneficiary's name which makes it difficult to develop tracking systems to ensure that each patient's cylinders can be identified. One commenter estimated that beneficiaries use anywhere from 2 to 10 or more tanks of oxygen per week. Another commenter recommended that we not require transfer of title for both sets of cylinder vessels, but rather only those that are in use in the home and not the ones that the supplier refills in its business location. One commenter recommended that we retain the current, efficient approach where the supplier owns all the cylinders because this allows the supplier to use different cylinders with the same patient. Several commenters noted that our proposal to transfer title to both the oxygen cylinder that is being filled and the one in the beneficiary's home is unworkable given

its impact on supplier's operations and the regulatory framework for oxygen as a medical gas. The FDA guidance defines the custody, control and management of filling liquid container to be in compliance when the filling company owns the liquid containers. When the patient owns the liquid containers after 36 months, the company would no longer be able to fill the container without extensive testing prior to filling because the containers would be considered by FDA to be out of the filler's control. In addition, the filling company would no longer be assured that the container was maintained in accordance with the manufacturer's specification. The DOT requires that the filling company have access to service and maintenance records in order to determine which inspections and tests to perform and at what frequency. If this information is not available to the filler, then the FDA mandates additional testing which requires more sophisticated testing equipment than the typical supplier of home medical oxygen has available. Similarly, in accordance with DOT regulations, a cylinder filled with a hazardous material may not be offered for transportation unless it was filled by the owner of the cylinder or with the owner's consent. This requires that the manufacturer of the medical oxygen, that is, the company that fills the oxygen container under FDA regulations, to have the equipment owner's permission prior to refilling the container. After the patient owns the oxygen equipment, compliance with this regulation will be very difficult for the supplier, especially if the transfilling is done by a third-party. The new supplier has no knowledge of how the compressed gas cylinders have been stored and maintained and how or when federally-mandated hydrostatic testing has been performed. The commenter predicted that it is likely that the new supplier will decline to service the cylinders for fear of employee injury and subsequent liability. Several commenters urged us to confer with the FDA about the application of FDA regulations to patient owned cylinders.

Response: We are aware that oxygen tanks and cylinders must be handled in accordance with Federal statutes and regulations and expect that suppliers' equipment will meet the requirements set forth in these statutes and regulations before they transfer title to the equipment to the beneficiaries. Once title transfers, the supplier will still be required to deliver refilled oxygen contents in tanks and cylinders. We are also aware that beneficiaries might not know about other Federal laws that govern the disposal and resale of oxygen equipment. Although CMS doesn't administer or enforce these laws, we believe it is appropriate to take steps to ensure that beneficiaries are made aware of them. Therefore, we are adding a provision to the final rule that would require suppliers to educate beneficiaries at the time of title transfer about safety issues associated with disposing of oxygen equipment that is no longer medically necessary, and to advise beneficiaries that they must comply with any applicable Federal, State, and local laws that govern the disposal or resale of oxygen equipment. In addition, as we stated above, we would encourage suppliers to advise beneficiaries that they can pick-up and store the tanks once they are no longer medically necessary, and Medicare would pay for this service (discussed below). Further, suppliers could offer to buy the tanks back from the beneficiary.

In the proposed rule, we proposed that the title to two sets of cylinders or tanks would be transferred to the beneficiary after 36 months of continuous rental. That is, title would transfer for one set of cylinders or tanks that the beneficiary would use at home, and title would transfer for a second set that would be refilled at the supplier's location. The number of tanks or cylinders is dependent on how many tanks or cylinders a beneficiary uses and how many tank or cylinder deliveries a supplier makes during a given month. After considering the comments, we have concluded that it is unrealistic and inappropriate to require suppliers to comply with a policy where beneficiaries own specific tanks that must be refilled by suppliers for specific beneficiaries. Therefore, we are changing this policy in this final rule. Even though the beneficiary owns the equipment, the supplier may switch out the tanks or cylinders with their tank and cylinder supply, similar to how propane tanks are refilled in the market today. Just as owners of propane tanks receive different tanks each time they need replacement contents, we are clarifying in this final rule that this propane tank model will be the practice under Medicare with delivery and refilling of oxygen contents for beneficiary-owned oxygen tanks and cylinders. Because this policy modification will enable suppliers to continue swapping tanks and cylinders for beneficiaries, as they currently do, we believe that suppliers should also be able to handle recall situations as they currently do. In the case of other beneficiary-owned oxygen equipment such as concentrators, we expect suppliers to handle recalls in the same way manner that they currently handle recalls of other beneficiary-owned DME, such as power-driven wheelchairs. The decision regarding whether such services would be considered reasonable and necessary maintenance and servicing would be made by the Medicare contractor. For example, if suppliers currently bill and are paid by Medicare contractors for labor and parts when performing in-home services needed in the event of an FDA recall after the beneficiary takes title to a DME device such as a power wheelchair, then they should continue this practice. If the supplier has never furnished DME paid on a purchase basis by Medicare or capped rental items, they should consult with the Medicare contractor to determine if these services would be considered reasonable and necessary maintenance and servicing.

Comment: One commenter stated that the OIG study on oxygen entitled ''Medicare Home Oxygen Equipment: Cost and Servicing,'' is flawed and presents an inaccurate representation of Medicare ''equipment and servicing.''

Response: The commenter provides no factual information to support their claim that the findings of this study are flawed. Although none of the policies of this final rule are based solely on the findings in this report, we do believe that the information in the report is credible and provides useful information regarding the maintenance and servicing of and costs of oxygen concentrators as reported by suppliers. Since we did not author the OIG study on oxygen, any concerns or comments about the contents of this report should be addressed to the Department of Health and Human Services, Office of the Inspector General.

Comment: A commenter requested access to the Medicare Common Working File (CWF), the system that houses beneficiary specific information regarding Medicare eligibility and past claims history, in order to obtain beneficiary specific information such as whether the beneficiary has received the ''same or similar'' equipment from another supplier in the past. The commenter stated that suppliers must also be able to access historical usage data so that they may understand whether they will be paid for the equipment and services they are being asked to provide within 2 to 4 hours of the typical referral. Another commenter suggested that if access to information in the CWF was not possible, CMS must establish criteria for using ABNs to notify the beneficiaries of their financial

responsibility if there is ''same or similar'' medical equipment.

Response: The request for access to the CWF is outside the scope of this rulemaking process. We note that general criteria for use of the ABN can be found in Chapter 30 of the Medicare Claims Processing Manual, located at *http://www.cms.hhs.gov/Manuals/IOM/list.asp*.

Comment: Several commenters questioned whether Medicare would require suppliers to transfer title to capped rental items and oxygen equipment to beneficiaries who have not paid their coinsurance or deductibles under Part B. One commenter recommended that we provide an exception to the title transfer requirement if a beneficiary has failed to pay his or her coinsurance for a significant period (such as more than 6 months) across the course of the 36-month rental period. The commenter also suggested that we could take responsibility, once the title transfers, for attempting to collect the amount of missed coinsurance payments from the beneficiary or pay the supplier's bad debt for unpaid deductibles and coinsurance. Several commenters urged that we clarify this provision in the final rule and recommended that title to the equipment should not transfer to the patient until payment is made in full for all services rendered through the 36th month. (Medicare typically pays the 36th month's rate approximately 30 days later).

Response: Section 5101 of the DRA is clear that the title to equipment transfers from the supplier to the beneficiary on the first day that begins after the 13th continuous month in which payment is made for capped rental items and on the first day that begins after the 36th continuous month in which payment is made for oxygen equipment. The statute mandates that ownership transfer after the 13th and 36th continuous month for capped rental items and oxygen equipment, and does not make transfer of ownership contingent on payment of beneficiary coinsurance. We believe that suppliers have a sufficient period of time to collect any outstanding beneficiary coinsurance during the rental period before title is required to be transferred. In addition, our rules would not preclude a supplier from seeking unpaid coinsurance or deductible amounts from a beneficiary after title has transferred. CMS or the carrier will have the discretion to review cases that allow suppliers to stop furnishing an item to a beneficiary, if warranted.

Comment: Some commenters are concerned that the proposed rule does not provide sufficient clarity and specificity for stakeholders and Medicare beneficiaries alike to fully recognize the impact the final rule will have on beneficiaries when it becomes effective. The commenters predicted that the complexity of oxygen equipment, as well as the fact that each different type of equipment carries with it different safety and routine maintenance requirements, will be overwhelming for the average Medicare beneficiary.

Response: We recognize that equipment maintenance may be overwhelming for some beneficiaries and, as we explain in more detail below, we are revising the final rule to allow for payment every six months for general maintenance and servicing of certain beneficiary-owned oxygen equipment. These payments would be made in addition to payment for any reasonable and necessary replacement parts and repairs that are non-routine and not covered by the manufacturer's warranty. We intend to monitor the implementation of these provisions to ensure beneficiary safety.

Back Up Equipment

Comment: Some suppliers furnish backup oxygen equipment for use by beneficiaries in the event of power failures or malfunction of primary oxygen equipment. Several commenters requested that the final rule state that since Medicare has not made any rental payments for backup oxygen equipment, title to this equipment should not transfer to the beneficiary. The commenters believe that title to backup equipment does not transfer under the coverage rules established under Medicare contractor local coverage determinations (LCDs) for oxygen equipment.

Response: We agree with the commenters that the title for backup oxygen equipment would not transfer to the beneficiary after 36 months because Medicare does not make rental payments for this equipment. In addition, the LCDs referred to by the commenters correctly reflect Medicare's policy that equipment is not medically necessary if it is identical or similar to equipment already in use by the beneficiary and is used to meet the same set of medical needs. That is, backup equipment is a second piece of equipment used for precautionary reasons to deal with an emergency in case the primary piece of equipment malfunctions rather than to meet a different set of medical needs. Therefore, the beneficiary-ownership provision would not apply to backup oxygen equipment.

Payment for Oxygen, Oxygen Equipment and Capped Rental DME

Comment: Several commenters requested that a new rental period begin whenever a change in supplier takes place, regardless of the reason. One commenter indicated that now that payments for oxygen equipment will be limited to 36 months of continuous use, the administrative burden on suppliers, such as ascertaining how many Medicare rental payments have already been made for specific items used by specific beneficiaries, will increase. The new suppliers will need additional resources to complete a thorough screening of all new patients to determine the amount of Medicare payments that may be made for specific items.

Response: Longstanding policy found in § 414.230(g) regarding a change in suppliers during a period of continuous use of rented DME indicates that a change in supplier will not result in a new rental episode. In accordance with the amendments made by section 5101 of the DRA to section 1834(a)(7)(A) of the Act, and section 1834(a)(5) of the Act, payment may not extend over a period of continuous use of longer than 13 or 36 months, respectively, for capped rental items and oxygen equipment. For the reasons indicated below, we are applying the policy in § 414.230(g) to all beneficiary-owned capped rental items and oxygen equipment.

Comment: One commenter requested that we acknowledge those situations in which the title is not held by a supplier that rents oxygen equipment or cylinders to beneficiaries. The commenter indicated that it is common practice for a supplier to rent equipment from a manufacturer and never hold title to the equipment, but stated that the 36-month rental cap for oxygen equipment fails to address this common problem.

Response: We understand that in some instances, suppliers furnish oxygen equipment to beneficiaries that they themselves have rented from manufacturers or leasing companies. However, under section 1834(a)(5)(F)(ii)(I) of the Act (added by section 5101(b)(1)(B) of the DRA), suppliers are required to transfer title of oxygen equipment to beneficiaries on the first day that begins after the 36th month during which payment is made for the equipment. In addition, under section 1834(a)(7)(A)(ii) of the Act (added by section 5101(a)(1) of the DRA), suppliers are required to transfer title of capped rental equipment to beneficiaries on the first day that begins

after the 13th month during which payment is made for the equipment. Therefore, regardless of what arrangements a supplier might make with a manufacturer or leasing company, the supplier must be in a position to transfer title to the equipment in accordance with these statutory provisions.

Payment for Maintenance and Servicing

Comment: One commenter requested that during the period of continuous use, suppliers be permitted to continue the current practice of replacing equipment in need of service or repair with equipment of the same type that is in good working order. The commenter further requested that the rule build in the added costs of administration and delivery if the original piece of equipment must be delivered to the patient.

Response: We recognize that under current practice, suppliers sometimes choose to replace oxygen or capped rental equipment, rather than repair it, during the rental period, and as we discuss below, we have decided to allow this practice to continue. However, as discussed in detail in the proposed rule, we continue to be concerned that beneficiaries be protected from situations where equipment may be replaced with equipment of lesser value prior to the transfer of title to the equipment. Therefore, we would require that the replacement equipment must be in the same or better condition as the equipment being replaced. Delivery of the equipment is included in the monthly rental payment amount.

Comment: Several commenters stated that the proposed rule does not address the service components that are currently provided to beneficiaries which may require trained and qualified personnel to administer. These services include: Verifying oxygen purity, oxygen dose verification, verification of alarm system functions, cleaning and replacement of filters, disposable oxygen accessories, 24-hour, 7-day per week on-call and emergency support, patient training, and clinical professional support. The proposed rule also does not address that some manufacturers require equipment maintenance, which requires disassembly of the device, to be performed every 5,000 hours and this must be performed at the supplier's facility. This additional equipment maintenance requires suppliers to incur the additional costs of picking up the equipment and providing loaner equipment. One commenter stated that regular maintenance takes place in the patient's home, on average, every 90 days. Another commenter provided a statistic from the June 2006 Morrison Informatics Inc. study, which demonstrated that non-equipment costs comprise 72 percent of suppliers' total costs. Commenters also noted that the new quality standards confirm that the non-equipment professional and administrative services cost categories reported in the Morrison study are legitimate costs that should be recognized in the Medicare payment for home oxygen. Further, the rule does not address reimbursement for licensed respiratory therapists who conduct in-home clinical patient assessments according to written or verbal physician orders for beneficiaries who own oxygen equipment. The commenters urged CMS to allow patients to continue receiving these assessments, but note that this activity will only be sustainable if CMS establishes a new HCPCS code and appropriate reimbursement rate. The commenter noted that suppliers cannot provide these assessments without fair reimbursement rates because it could constitute an illegal inducement and raise other fraud and abuse concerns. Commenters stated that we need to establish regular and ongoing payment after ownership transfers to support beneficiary access to necessary clinical, support, and other services.

Response: Section 1834(a)(5)(F)(ii)(II) of the Act requires CMS to pay separately for any reasonable and necessary maintenance and servicing after the beneficiary assumes ownership of oxygen equipment, and section 1834(a)(7)(A)(iv) of the Act requires the same in the case of capped rental DME items. We proposed to use the standard in § 414.210(e) of our regulations to define the ''maintenance and servicing'' for which Medicare would make payment under section 5101 of the DRA. We also proposed to apply our existing policy of not covering certain routine or periodic servicing of purchased equipment, such as testing, cleaning, regulating, changing filters, and general inspection, that could be done by the beneficiary or caregiver, and referred to chapter 15, section 110.2B of the Medicare Benefit Policy Manual for further guidance on what types of routine maintenance would not be covered. After considering comments that raise concerns regarding a beneficiary's ability to properly maintain his or her oxygen equipment, as well as safety issues that could arise if the equipment is not properly maintained, we have decided to revise our policy in the final rule under which, beginning 6 months after title to oxygen equipment transfers to the beneficiary, the supplier may bill for general maintenance and servicing of certain beneficiary-owned oxygen equipment once every 6 months. We believe that allowing payment every 6 months is reasonable based on findings by the Department of Health and Human Services, Office of the Inspector General, in a September 2006 report entitled ''Medicare Home Oxygen Equipment: Cost and Servicing,'' that the current frequency of suppliers in checking concentrators (every four months, on average) exceeds the guidelines of the two major manufacturers that accounted for two-thirds of the concentrators rented by beneficiaries sampled for purposes of the report. In addition, according to guidelines from two major concentrator manufacturers, comprehensive preventative maintenance need only performed annually or after several thousand hours of use. Under this policy, suppliers could bill for general maintenance and servicing of all oxygen equipment except liquid or gaseous equipment (stationary and portable) because these types of systems consist primarily of tanks or cylinders, as well as replacement supplies and accessories (for example, masks and tubing) which we proposed to pay for separately, and we would expect that as a part of the tank and cylinder filling process, suppliers would check to ensure that the tanks and cylinders were functioning properly. However, we will make payment for the pick-up and storage or disposal of tanks and cylinders that are no longer medically needed by the beneficiary. We are also specifying that the general maintenance and servicing payments for oxygen equipment other than liquid and gaseous equipment would not begin until at least 6 months after the date that title to the equipment transfers because suppliers should only be transferring title to equipment that is in good working order and that has been routinely maintained. Payment for general maintenance and servicing would be limited to 30 minutes of labor, which we believe will adequately compensate suppliers based on findings by the OIG in the same September 2006 report that many routine maintenance activities performed by suppliers on concentrators could be performed in less than 5 minutes. Finally, as we explained above, these payments for general maintenance and servicing would be made in addition to payment for reasonable and necessary repairs of beneficiary-owned oxygen equipment. Suppliers would be able to bill for such

non-routine maintenance, to the extent that the parts and labor are not covered by the manufacturer's warranty, beginning immediately after the beneficiary assumes ownership of the equipment, and as we proposed, payment would be made for the parts in a lump sum amount based on the carrier's consideration of the cost for the item because this is consistent with how we currently pay for replacement parts for other beneficiary-owned DME. We would also make an additional labor payment if such non-routine maintenance is performed at the same time as general maintenance, as long as the non-routine repair takes longer than 30 minutes. In addition, we are finalizing our proposal to pay on a purchase basis for all supplies and accessories (*e.g.*, tubing, masks, cannulas, etc.) necessary for the effective use of beneficiary-owned oxygen equipment.

In addition, to further limit the possibility raised by commenters that beneficiaries will incorrectly dispose of tanks and cylinders, we are modifying our proposal to allow suppliers to submit a bill for picking up beneficiary-owned oxygen tanks and cylinders that are no longer medically necessary should a beneficiary request such a pick-up. The supplier could submit this bill any time after the beneficiary has acquired ownership to the tanks or cylinders. This pick-up allowance would not apply to other types of oxygen equipment, such as concentrators, because beneficiary storage of such equipment does not raise safety concerns.

In-home clinical patient assessments by licensed respiratory therapists fall outside the scope of the Medicare Part B benefit for DME.

Comment: Several commenters requested that Medicare develop standard protocols for routine maintenance of oxygen equipment and reimburse suppliers for providing this service. Several commenters requested that the non-routine maintenance include: inspection of internal components for dust, debris, wear; internal filter changes; oxygen purity testing that requires an oxygen analyzer device; coil cleaning and any maintenance that requires breaking internal seals. Several commenters requested that ''routine maintenance'' and ''non-routine maintenance'' be clearly defined in the final rule, specifically for oxygen and capped rental DME. Several commenters proposed that routine maintenance be defined as follows: wiping down outside surfaces of oxygen devices, changing the external cabinet filter, changing oxygen tubing and cleaning and replacing oxygen humidifier bottles.

Response: As we explained above, we are modifying our maintenance and servicing proposal for oxygen equipment to allow for general maintenance and servicing of oxygen equipment other than liquid or gaseous oxygen equipment. Medicare will pay for up to 30 minutes of labor spent performing general, routine maintenance during each of these maintenance calls. Medicare will also pay separately for any replacement parts that are necessary to properly service the equipment during these calls, and for labor associated with any non-routine maintenance required as part of the visit if it takes longer than the 30 minutes we are already paying for under the general maintenance and servicing policy. However, to the extent that a supplier services beneficiary-owned oxygen equipment more often than every six months, or services beneficiary-owned capped rental items at any time, Medicare will only make payments for non-routine maintenance and servicing. In the proposed rule, we stated that examples of the types of maintenance and servicing that would be covered as non-routine maintenance of oxygen equipment and capped rental DME can be found in section 110.2.B of Chapter 15 of the Medicare Benefit Policy Manual (Pub. 100–02). This policy has been in the manual for many years and we have never experienced any major problems associated with interpretation of these guidelines on what constitutes reasonable and necessary maintenance and servicing. We also believe that the examples provided in the manual represent good, general guidance that will enable beneficiaries and suppliers to discern what types of maintenance and servicing would be covered. We therefore do not believe that it is necessary to provide a listing of every service that constitutes routine and non-routine maintenance.

Comment: Several commenters recommended that we develop a methodology to provide for emergency services for beneficiary-owned equipment. Commenters also requested that this emergency mechanism, including after-hours care, in-home assessments, patient education and adherence monitoring, take into account the value of the therapists' time, mileage reimbursement expense and related costs. One commenter noted that patients rely on the 24-hour, 7-day-a-week on-call service to answer major and minor questions related to their equipment. A large percentage of these calls result in an in-home visit after hours and on the weekend.

Response: Payment will be made for any reasonable and necessary maintenance and servicing of beneficiary-owned DME, including emergency situations. In addition, consistent with current Medicare policies, payment for rental of loaner equipment would be made while repairs of beneficiary-owned equipment are provided. In-home clinical patient assessments by licensed respiratory therapists fall outside the scope of the Medicare Part B benefit for DME.

Comment: One commenter predicts that a number of beneficiaries may hire a third party to perform routine maintenance tasks that the beneficiary would otherwise be responsible for performing once he or she takes title to oxygen equipment to ensure that there is no chance for error. As a result, these beneficiaries may likely pay more for home oxygen therapy than they are paying under the current provisions.

Response: As we discussed above, we are allowing payment for general maintenance and servicing of beneficiary-owned oxygen equipment other than liquid or gaseous oxygen equipment. In addition, a liquid or gaseous system consists of only tanks or cylinders, which we would expect a supplier to maintain as part of the filling process, and supplies, which we will pay for separately. As a result, we expect that a beneficiary's maintenance costs will not be significantly higher under this rule than it was under the previous rules.

Comment: One commenter recommended that we conduct a study in a clearly-defined marketplace to ascertain the level of hospitalizations, emergency room visits, physician office visits, or other Part A/B expenses incurred by beneficiaries as a result of their being unable to access a qualified supplier after they assume ownership of the medical equipment under the new rules.

Response: We disagree that such a study is necessary. As described in detail above, we have provided for appropriate payments for maintenance, servicing, and repairs of beneficiary-owned equipment. Therefore, we believe that beneficiaries will have sufficient access to qualified suppliers after assuming ownership of equipment.

Comment: A few commenters noted that the proposed rule does not provide any guidelines or timetable as to how often Medicare will pay to replace the disposable supplies associated with home oxygen therapy, such as cannulas, oxygen tubing, humidification bottles, adaptors, and filters. These components

require frequent replacement and are currently included in the monthly Medicare rental fee. As the proposed rule is currently drafted, suppliers would be required to provide replacements of necessary supplies for free and commenters believe that this will lead to a reduction in the number of suppliers that furnish oxygen.

Response: Medicare has traditionally paid for supplies and accessories that are necessary to use in conjunction with the beneficiary-owned DME item. This policy can be found in section 110.3 of Chapter 15 of the Medicare Benefit Policy Manual (Pub. 100–02). We proposed to apply this policy to supplies and accessories used in conjunction with beneficiary-owned oxygen equipment and capped rental items and did not receive comments opposing this proposal. Therefore, we are finalizing our proposal to pay separately for these supplies and accessories as often as is reasonable and necessary.

Comment: Several commenters are concerned that serious health problems could affect a Medicare beneficiary's ability to understand and take responsibility for routine maintenance and servicing of his or her oxygen equipment. Commenters noted that some beneficiaries are physically and mentally unable to perform the necessary routine maintenance on equipment, and it is simply unsafe to impose the responsibility for maintaining this equipment on beneficiaries. Another commenter noted that even the OIG's September 2006 Oxygen Report, entitled ''Medicare Home Oxygen Equipment: Cost and Servicing'' (OEI–09–04–00420), reinforced the point that a certain percentage of patients will not be able to perform routine maintenance by stating that ''50 percent of the service visits conducted through the surveyed patients included what has been describes routine maintenance.'' Other commenters noted that transferring the burden of maintenance and repair of sophisticated oxygen technologies to the beneficiary and, therefore, the total management of their home oxygen therapy regimen, presents serious risk to patient safety and care. Commenters also indicated that oxygen and oxygen equipment are more technically complex than other types of DME and can cause serious injury if improperly maintained and serviced.

Response: Although we believe that the one commenter misquoted the OIG report and took their data out of context, we agree with the commenters' general concerns regarding the ability of beneficiaries to properly maintain their oxygen equipment once they acquire title to it and are revising the rule to permit payments for general maintenance and servicing of certain beneficiary-owned equipment as explained above.

Comment: Several commenters suggested that we establish HCPCS codes to adequately describe the parts and repair services that will be covered and reimbursed for beneficiary-owned oxygen equipment. Another commenter requested that we implement a national policy and fee schedule for repair parts and labor that is eligible for either a Consumer Price Index (CPI) or Medicare Economic Index (MEI) adjustment annually. The fee schedule should reflect the fully-loaded costs of providing repair, not just repair parts and labor. A standardized approach will address those instances where a supplier goes out of business and is unable to assist in maintaining equipment. Another commenter indicated that services that are currently included as part of the monthly bundled rate for oxygen and equipment would no longer be provided after the 36th month unless a HCPCS code and allowable is developed.

Response: We have generally given the carrier discretion to determine rates for labor and parts with respect to the non-routine repair of beneficiary-owned equipment based on reasonable charges and believe that this methodology results in adequate reimbursement to suppliers. However, should these commenters wish to make specific requests or recommendations for addition of specific codes for replacement parts, we would encourage them to participate in the HCPCS editorial process, which is described online at: *http://www.cms.hhs.gov/MedHCPCSGenInfo/.*

Comment: Several commenters request that we provide guidance on the type of documentation that CMS expects suppliers to obtain to support repair claims. They stated that DME MACs and CMS must have clear policies outlining when Medicare will pay for repairs and the documentation it will require to support those claims.

Response: In accordance with the rules at § 414.210(e), Medicare carriers have long had discretion to require any documentation from suppliers that is necessary to enable them to make determinations regarding whether maintenance and servicing of beneficiary-owned DME is reasonable and necessary. The carriers provide guidance to suppliers regarding the specific documentation that is needed for these purposes.

Comment: Several commenters requested that ''labor'' be redefined to start when the technician leaves the facility and ends when he or she returns to the shop. The labor time charge should not be just for technician time in the home or shop. The commenters noted that the current parts and labor fees do not take into consideration any travel time or time to evaluate the equipment.

Response: Medicare payment for labor is based on 15-minute increments for time when the technician is working on the equipment. Separate payment is not allowed for delivery and service charges for DME such as travel time to and from the beneficiary's home. Such payment is included in the payment for the item or service. This policy has been in place for many years and we have not encountered serious problems with access to repair of beneficiary-owned DME. However, this policy does allow for additional payment for extraordinary expenses in rare or unusual circumstances as specified in current program instructions. This policy can be found in section 60 of Chapter 20 of the Medicare Claims Processing Manual (Pub. 100–04). This payment determination for travel is at the discretion of the carrier.

Payment for Replacement of Equipment

Comment: Many commenters expressed concern about our equipment replacement proposal. Numerous commenters believed that this provision places an unreasonable economic burden on suppliers. Commenters indicated that we should specify that, once ownership shifts to the patient, it becomes the patient's responsibility to maintain and repair the equipment. Some commenters believe that, given the 5-year useful life of the equipment, the circumstances that would require equipment to be replaced may be so far removed from the date that title transferred that there would be no plausible connection between the supplier's actions and a conclusion that the supplier delivered substandard equipment. Commenters noted that the proposed rule does not allow for the supplier to receive a new continuous rental period for replacement equipment which is not yet patient-owned, so it is inequitable to require a supplier to replace free of charge the patient-owned equipment that prematurely fails because the patient did not maintain it in accordance with the manufacturer's guidelines. This situation should be remedied by providing for a new continuous rental should the beneficiary's action during the ownership useful lifetime period result

in the premature failure of the equipment. Commenters also complained that routine maintenance often must be performed by the user and that the supplier has no means to ensure when or if this was done or done correctly. Several commenters indicated that manufacturer warranties for oxygen equipment are void if the title is transferred. Therefore, requiring that the supplier that furnished the oxygen equipment replace at no cost items that, under Medicare rules, did not last for the entire reasonable useful lifetime would subject suppliers to undue financial burden.

Response: We expect that equipment furnished by the supplier will function for the entire period established under Medicare regulations and program instructions as the equipment's reasonable useful lifetime. If this is not the case, then the supplier has not furnished a quality item of durable medical equipment for which they have been paid. If suppliers have information or data that proves that specific types of DME do not routinely last for 5 years, they can furnish this information to CMS for consideration in possibly establishing a new reasonable useful lifetime for equipment.

Comment: A commenter stated that suppliers are financially unable to furnish additional equipment in the event it needs to be replaced after the title is transferred. Another commenter noted that once the title is transferred, patients may find it difficult to locate an oxygen supplier that is willing or able to provide them with a loaner unit on short notice.

Response: We expect that oxygen equipment and capped rental items furnished by the supplier will function for the entire period established under Medicare regulations and program instructions as the reasonable useful lifetime. As long as suppliers are furnishing items that meet this standard, they should not generally need to replace beneficiary-owned items and should not suffer the kind of financial hardship envisioned by the commenter. In addition, we believe that the modifications to our maintenance and servicing policy will limit the possibility that oxygen equipment will not be properly maintained after the beneficiary acquires title to it. Accordingly, we are finalizing our proposal to require that suppliers replace malfunctioning oxygen equipment that does not last for its reasonable useful lifetime, however, as explained more fully below, we are modifying it to allow carriers greater discretion in determining when a supplier must replace the item at no charge to the beneficiary or the Medicare program. We are also finalizing the same proposal with respect to capped rental DME. The replacement item must be equipment of equal or greater value to the equipment being replaced. We have never encountered major problems associated with beneficiaries obtaining servicing of equipment. Due to the current abundance of oxygen suppliers, we believe that this will also be the case with regard to servicing of beneficiary-owned oxygen equipment.

Comment: A commenter noted that our current definition of ''useful life'' exceeds the warranty that manufacturers typically provide on most of the current oxygen technologies, and expressed concern that forcing a supplier to be financially responsible for a device beyond the manufacturer's warranty period would impose a significant financial burden on suppliers. The commenter stated that Medicare should modify its definition of ''useful life'' and develop technology or equipment-specific definitions. Another commenter noted that it is unclear in the rule if we are basing ''lifetime'' on manufacturer warranty or some other basis. The commenter stated that basing our definition of ''lifetime'' on the manufacturer warranty could be problematic since an equipment's ''lifetime'' varies widely by manufacturer and type of equipment.

Response: Under § 414.220(f) of our regulations, the reasonable useful lifetime of durable medical equipment is either the period established through program instructions or, in the absence of program instructions, the period determined by our carriers (at least five years). These periods are not based on manufacturer warranties. If suppliers have information or data that proves that specific types of durable medical equipment do not routinely last for five years, they can furnish this information to CMS for consideration in possibly establishing a new reasonable useful lifetime for equipment. In addition, consistent with how we currently measure the reasonable useful lifetime for capped rental items, we would measure the reasonable useful lifetime for oxygen equipment beginning on the date that the equipment is furnished to the beneficiary.

Comment: Several commenters requested that we not adopt the proposal that a supplier be required to replace equipment once accumulated repair costs exceed 60 percent of the cost to replace the equipment. Although the commenters acknowledged that the 60 percent threshold was based on a similar replacement provision for artificial limbs, the commenters do not believe that the proposal is appropriate since unlike oxygen, artificial limbs do not require regular maintenance or additional supplies that must be regularly replaced in order to function properly. The commenters also noted that the proposed rule does not define ''replacement cost'' and how such cost would be calculated in determining the 60 percent threshold. According to the commenters, the proposal is not clear regarding whether the ''replacement cost'' is the original cost to Medicare of the equipment being replaced, the Medicare fee schedule amount, or the fair market value of the item. Several commenters requested that we eliminate the 60 percent analysis and reimburse at the cost of each incident of repair rather than the accumulation of repairs. Several commenters noted that given the 5-year useful lifetime of the equipment, the circumstances that would require equipment to be replaced may be so far removed from the date that title transferred that there would be no plausible connection between the supplier's actions and a conclusion that the supplier delivered substandard equipment. Several commenters requested that responsibility for the equipment shift to the patient once the title transfers because the supplier will not have any record of routine maintenance in years four and five, placing the supplier in the position of having to replace equipment that may not have been properly maintained. One commenter suggested that we could establish a supplier responsibility period of 30 days following transfer of title that would require replacement if the repair costs were 60 percent of the replacement cost. Some commenters indicated that we appear to be trying to balance appropriate coverage for needed non-warranty repairs with beneficiary protection from receiving poor quality equipment via the proposed rule that covers repairs until they accumulate to 60 percent of the replacement cost. Some commenters indicated that some equipment, such as semi-electric hospital beds and power wheelchairs, have component parts that can be quite expensive to repair/replace and that these costs could easily exceed the 60 percent trigger but still be in the equipment's useful lifetime. Repairs of such equipment are often a function of active use, not poor quality of defective equipment.

One commenter remarked that there are areas of the proposed rule that present legal concerns because Medicare does not have statutory authority to implement these requirements. The

commenter is unaware of any statutory requirement for the repair or replacement of patient-owned equipment or for the use of a 60 percent threshold. Moreover, CMS has not conducted any independent laboratory studies or manufacturer surveys of DME or oxygen equipment to determine if the 5-year ''average useful life'' is accurate or current before making it subject to such a provision.

Response: We agree with the commenters that the proposed 60 percent threshold may not be pertinent in all cases and have revised the final rule to reflect a more general policy. Equipment furnished must function for the entire period established under Medicare regulations and program instructions as the reasonable useful lifetime. We are modifying our proposal to permit our contractors to use the 60 percent repair threshold at their discretion when making case-by-case determinations on whether a supplier must replace equipment that does not function during the reasonable useful lifetime. However, we continue to believe that the 60 percent threshold is a useful factor for our carriers to consider because it is probative of whether the beneficiary has been furnished with, and the Medicare program has paid for, a substandard item.

The replacement item must be equipment of equal or greater value to the equipment being replaced. Under § 414.210(f) of our regulations, the reasonable useful lifetime for DME is five years, unless we determine otherwise. For a capped rental DME item, § 414.229(b) of our regulations specifies that the monthly fee schedule amount for rental of the item equals ten percent of the purchase price for the item; therefore, the replacement cost of the item is equal to the rental fee schedule amount multiplied by ten. For oxygen equipment, there is no established purchase price for Medicare purposes, so the replacement cost of an item will be established by the carrier on an individual, case-by-case basis using information such as invoices to determine the replacement cost of the item. With respect to beneficiary-owned oxygen equipment, ''repair'' costs will not include the costs of labor associated with general maintenance and servicing of the equipment.

Comment: One commenter requested that we provide information about how equipment failures due to beneficiary neglect or abuse will be determined. Another commenter questioned who is responsible for providing the replacement equipment in the event that there is more than one supplier involved, for example, if the beneficiary moves.

Response: We are finalizing a policy that would allow CMS or the carrier to make determinations if replacement equipment is warranted. We will be monitoring the number of replacement equipment provided to a beneficiary. In the case that a beneficiary is abusing or neglecting the equipment, CMS or the carrier may determine that the supplier is not responsible for furnishing replacement equipment.

Comment: One commenter suggested that in lieu of prohibiting the replacement of equipment during the period of continuous use, CMS can require that the beneficiary receive title to equipment that is of comparable quality to the equipment delivered at the beginning of the period of continuous use.

Response: As we explained above, we have decided to modify our proposal and allow suppliers to furnish different equipment during the rental period as long as the equipment is of equal or greater value as the equipment being replaced.

Comment: Several commenters questioned that under the proposed regulations, a new period of continuous use would begin only when beneficiary-owned equipment is lost, stolen or irreparably damaged. The commenter requested that a new period of continuous use begin when a supplier furnishes replacement equipment during the period of continuous use. Otherwise, suppliers replacing lost equipment will be forced to transfer title to two devices, but receive payment only for one. Alternatively, commenters suggested allowing the carriers to make the determination whether to initiate a new period of continuous use on a case-by-case basis. Two commenters stated that while they agree with the proposed provision that a new period of continuous use would begin when beneficiary-owned equipment is lost, stolen, or irreparably damaged, they questioned our decision to apply this exception only to beneficiary-owned equipment. The commenters noted that when equipment is lost, stolen, or irreparably damaged during the period of continuous use and a supplier furnishes replacement equipment, a new period of continuous use should begin; otherwise, the regulation would impose a patently unfair result when rented equipment is lost or damaged through no fault of the supplier. The commenters suggested if this is the case, CMS should allow carriers to make the determination whether to initiate a new period of continuous use on a case-by-case basis to ensure a more balanced application of the requirement to transfer equipment ownership to beneficiaries.

Response: Current rules regarding replacement of capped rental items located at § 414.229(g) allow for replacement of rented items if the carrier determines that the item is lost or irreparably damaged. In the proposed rule, we inadvertently deleted this text when we proposed to revise § 414.229(g), although we never intended to change this longstanding policy, which reflects our belief that suppliers should be compensated for furnishing a new rental item if the item is needed as a result of circumstances beyond the supplier's control. Therefore, as part of this final rule, we will reincorporate this policy in our regulations but will move it to § 414.210(f), the general section on replacement of equipment, so that the policy applies to all rented items. To be consistent with what we proposed in the context of beneficiary-owned items, we will also specify that this policy would also apply if an item is stolen.

However, we continue to believe that a new period of continuous use should not automatically begin whenever the beneficiary changes equipment (that is, from equipment falling under one HCPCS code to different but similar equipment described by another HCPCS code). This is consistent with longstanding policy relating to payment for DME. This policy can be found in section 30.5.4 of Chapter 20 of the Medicare Claims Processing Manual (Pub. 100–04). In no case can a new rental period begin for a change in equipment from one product within a HCPCS code to another product within the same HCPCS code or from one oxygen modality within a payment class to another oxygen modality within a payment class. Items falling within the same HCPCS code and paid based on the same payment rules and fee schedule amounts are considered the same item or service for Medicare purposes. Likewise, oxygen modalities falling under the same payment class and paid based on the same payment rules and fee schedule amounts are considered the same item or service for Medicare purposes. Oxygen modality changes are generally done for the convenience of the beneficiary, and not because they are medically necessary. The Medicare NCD and contractor LCDs establish medical necessity criteria for oxygen and oxygen equipment, but do not establish separate medical necessity criteria for different types or modalities of stationary or portable oxygen equipment. We also note that beneficiaries who wish to exchange

equipment or oxygen modalities during the rental period for reasons other than medical necessity can be required to sign an ABN.

Periods of Continuous Use

Comment: Several commenters requested that we clarify how a ''break in service'' applies to short-term or intermittent usage of home oxygen therapy. They stated that patients that fall within the Group II oxygen coverage guidelines may not be sufficiently hypoxemic to require ongoing oxygen therapy and their short-term use should not be included in the 36-month continuous rental period. They also stated that other ''breaks in service'' that should not count towards the period include skilled nursing facility stays or acute care admissions any longer than a month. The commenters noted that current rules at § 414.230(c) state that an interruption in the use of the equipment of not longer than 60 consecutive days plus the days remaining in the rental month in which use ceases is temporary, regardless of the reason for the interruption. Current Medicare program instructions indicate that a new rental period begins in cases where the interruption is greater than 60 days plus the days remaining in the rental month in which use ceases if it is supported by new medical necessity documentation. The commenters believe that there is no basis for CMS to apply different break-in-service rules to oxygen.

One commenter stated that beneficiary enrollment/disenrollment in Medicare managed care plans further complicates our proposals on switching equipment and consistent assignment during the rental period. The commenter indicated that a single beneficiary may be in traditional Medicare, enroll in one HMO, disenroll and go back on transitional Medicare, then enroll in a different HMO all in one rental period. The commenter questioned how these scenarios can possibly be addressed in a reasonable manner under the proposed rule.

Response: The rules for defining a period of continuous use for which we make payments for DME were first adopted in an October 9, 1991 interim final rule with comment (56 FR 50821). In that rule, we stated that we believed certain language in the House Committee Report accompanying section 4062(b)(1) of the Omnibus Reconciliation Act of 1987 (Pub. L. 100–203) (which authorized the implementation of the DME fee schedules) indicated that Congress did not intend for a period of continuous use to automatically terminate each time there was a break in service. Therefore, we stated that an interruption in the rental period of not longer than 60 days plus the days remaining in the rental month in which the use ceases would be considered a temporary suspension of the period of continuous use pending resumption of medical need. This precedent, which we finalized in a December 3, 1992 final rule (57 FR 57109), has now become longstanding Medicare policy, has worked well throughout the years and has addressed all of the situations highlighted by the commenters (e.g., short term use of DME, breaks-in-service, etc.). Therefore, we believe that these rules should continue to apply. In accordance with § 414.230(c) and current program instructions found in section 30.5.4 of Chapter 20 of the Medicare Claims Processing Manual (Pub. 100–04), if the interruption is less than 60 consecutive days plus the days remaining in the rental month in which use ceases, contractors will not begin a new rental period. Also, when an interruption continues beyond the end of the rental month in which the use ceases, contractors will not make payment for additional rental until use of the item resumes. Contractors will establish a new date of service when use resumes. Unpaid months of interruption do not count toward the 15-month limit. These policies will apply to beneficiary-owned oxygen equipment and capped rental DME. In addition, because Medicare makes payment for a rental item on the date of delivery of the item, and payment for each subsequent rental month on the same day, or ''anniversary date'' for that month, if the break in service is short, the supplier would still be paid for that rental month.

Comment: Several commenters were concerned about the impact and interaction of the proposed DRA policy and payment changes and the competitive bidding provisions. One commenter noted that certain DRA provisions and planned competitive bidding provisions overlap and conflict. The commenters requested that we clarify the conflicts in both final rules. The commenter stated that, for example, a rule conflict exists when a contract supplier is forced to accept an oxygen patient with only 6 months rental left in the 36-month rental period. To address this conflict, the commenter suggested that we allow the 36-month period to start over again whenever a patient switches suppliers if less than 36 months of continuous use have transpired.

Response: We will address issues that pertain to the Medicare DMEPOS Competitive Bidding Program in the final rule for that program.

Comment: Several commenters requested that we clarify which supplier's equipment transfers to the beneficiary if the beneficiary has two residences in different areas and uses a local supplier in each area. They stated that ''snow birds'' may face hurdles in maintaining access to equipment unless a new period of continuous use begins when they change suppliers. The commenters suggested that extended travel outside of the supplier's service area should not be counted toward the period of continuous use to the extent the supplier is not paid for furnishing the oxygen equipment during that period. Another commenter noted that the proposed rule does not address how suppliers that coordinate services for patients who travel after they have purchased the equipment will be reimbursed. Another commenter indicated that the proposed rule was unclear on the methodology for those who have two homes during different times of the year. The supplier in the new area will not have the full 36 months to collect reimbursement.

Response: We expect that travel arrangements for beneficiaries with oxygen equipment would be handled by suppliers in the same manner that such instances are currently arranged for beneficiaries with capped rental items. Capped rental items have been paid under these circumstances and addressed through program instructions since 1989. The capped rental policies that apply when a beneficiary changes suppliers are listed in section 30.5.4 of chapter 20 of the Medicare Claims Processing Manual (Pub. 100–04) and indicate that if a beneficiary changes suppliers during or after the rental period, this does not result in new rental episode. The equipment furnished to the beneficiary at the time that transfer of title is required by the statute and this final rule is the equipment for which the beneficiary would receive title to.

Beneficiary Safeguards

Comment: One commenter stated that we should add an additional safeguard to protect beneficiaries if their initial supplier decides to discontinue service once title of the oxygen equipment transfers to the beneficiary. The commenter recommended that we add a new paragraph in § 414.226(g) requiring the supplier that furnishes the oxygen equipment throughout the rental period to notify the beneficiary no later than 3 months before the end of the rental period that the supplier will no longer continue to provide services once the transfer of title takes place. The commenter believes this will give the

beneficiary adequate notice and time to find another comparable supplier and will not leave a gap in their service once ownership takes place. The commenter noted that current DME Quality Standards establish certain ''consumer services,'' but they do not address this issue.

Response: We agree with this comment but believe that 2 months is a more reasonable period of time in terms of how much advance notice should be given to beneficiaries in these situations. We have revised § 414.226(g) to require the supplier to notify the beneficiary no later than 2 months before the end of the rental period if the supplier will no longer continue to maintain and service the equipment, and/or deliver oxygen contents, once the transfer of title takes place. Likewise, in order to be consistent with our policies, we are revising § 414.229(g) to require the supplier of a capped rental item to disclose no later than two months before title transfers whether it will continue to maintain and service the item. Because we recognize that there may be isolated cases where a supplier cannot satisfy this requirement (such as if the supplier goes out of business), we (or our carriers) will also allow for exceptions on a case-by-case basis.

Comment: One commenter stated that we should require suppliers to re-train beneficiaries (and/or their caregivers) on the services they will need to perform on oxygen equipment at the time the suppliers transfer ownership and to verify in writing that the beneficiary/caregiver has actually performed the tasks for which they will be responsible to ensure that they are capable of doing so. The commenter recommended that we add an additional safeguard in § 414.226(g) that would require the supplier at the time of transfer to re-train the beneficiary and/or caregiver with respect to information regarding preparation of formulas, features, routine use, troubleshooting, cleaning, maintenance, safety conditions, and infection control. The commenter stated that although these requirements are currently contained in the DME Quality Standards, their supplier is only required to verify that the beneficiary received the instructions and information at the time of setup, not that he or she understood them or could perform them. The commenter believes that re-training and verification in writing by the supplier that the beneficiary and/or caregiver can actually carry out the tasks could prevent serious injuries and life-threatening situations in the future.

Response: We do not believe that it is necessary to revise § 414.226(g) as recommended. The DRA requires CMS to pay separately for any reasonable and necessary maintenance and servicing of capped rental or oxygen equipment after title transfers to the beneficiary. We proposed to continue our longstanding policy of paying for reasonable and necessary repairs and non-routine maintenance and servicing that a beneficiary cannot perform. In response to comments, we have also decided to add an exception in the final rule under which, beginning 6 months after title to oxygen equipment transfers to the beneficiary, the supplier may bill for general maintenance and servicing of certain beneficiary-owned oxygen equipment once every 6 months. As for routine maintenance that may be necessary beyond what Medicare will pay for, we also note, as we did in the proposed rule, that by the time title transfers for oxygen equipment and capped rental items, beneficiaries and/or their caregivers should be very familiar with their equipment and the routine maintenance that is required to maintain it. In addition, we note that we would expect that at the time of title transfer, suppliers would provide beneficiaries with operating manuals describing their equipment and the servicing that must be done to maintain it. Beneficiaries could also access many of these manuals on manufacturer Web sites.

Comment: One commenter was concerned that if the beneficiary safeguards are imposed at the same time as reduced reimbursement, the viability of many oxygen suppliers will be threatened, thus affecting patient access to oxygen equipment and contents.

Response: We appreciate the comment. However, we believe that the provisions discussed in the proposed rule and in this final rule with respect to oxygen equipment, oxygen contents, and capped rental DME items are necessary to ensure that our beneficiaries receive the appropriate equipment and service both during the rental period and after they assume title to the item. In addition, the beneficiary safeguards that we are implementing with this final rule reflect what we believe to be fair business practices, are consistent with our DMEPOS Quality Standards, and should not impose undue burdens on the suppliers. We have clarified our proposals in a number of places after considering all of the comments received in order to reduce the burden on suppliers.

Comment: One commenter recommended that in conjunction with this rule, we should impose safeguards (for instance, limits on the number of times a beneficiary can switch suppliers) that prevent beneficiaries from gaming the system.

Response: We do not agree that having no limits on the number of times that a beneficiary can switch suppliers will encourage gaming because under this rule, changing suppliers does not result in a new period of continuous use. Although we cannot envision every conceivable gaming scenario, we believe that we have fully considered the needs of beneficiaries in adopting this rule and that the protections we are implementing will strongly discourage gaming by unscrupulous suppliers.

Comment: One commenter agreed with our proposed beneficiary safeguards since suppliers should be furnishing items in good working order and are otherwise bound by regulations at § 424.57(c)(15) to accept returns from beneficiaries of substandard items.

Response: We appreciate the support of our proposed beneficiary safeguards. We believe that these changes in concert with the implementation of the DMEPOS quality standards will ensure that beneficiaries receive quality equipment and appropriate services throughout the rental period and after title transfer.

Comment: We received numerous comments regarding our continuity of equipment proposal. Commenters stated that our attempt to ensure that suppliers do not substitute substandard equipment to patients just before the required transfer of title is too restrictive. Several commenters recommended that suppliers be allowed to exchange and/or change a beneficiary's equipment during the period of medical need, provided this exchange/change is documented. However, commenters were concerned that the proposed rule does not define a change in medical condition or provide enough detail to understand how and when patients will be entitled to switch oxygen modalities, or how it will be documented so that suppliers will be paid appropriately and promptly. Commenters also asked for additional clarity regarding our interpretation of ''modality'' and asked for specific circumstances when patients may be changed from one type of equipment to another. Commenters recommended that we allow suppliers to judiciously exchange or change a patient's equipment during the period of medical need provided that this exchange or change is sufficiently documented and that the supplier certifies that the new equipment is not a lesser-quality device. Commenters also recommended that we instruct our DME

Program Safeguard Contractor (PSC) medical directors to incorporate specific medical necessity coverage and documentation requirements in the revised Oxygen and Oxygen Equipment LCD before the proposed January 1, 2007 implementation date of this regulation. Specifically, the revised LCD should address: (a) Under what circumstances or diagnoses it is medically necessary to change from one oxygen modality or equipment type to another; (b) how suppliers will be reimbursed for changing equipment; and (c) specific documentation requirements for both the supplier and the physician to ensure that the contractors can make appropriate coverage determination.

Commenters also raised concerns about the potential impact the continuity of equipment proposals could have on beneficiary access to new oxygen technology. They stated that there are fairly common circumstances where a supplier must exchange equipment in order to best serve the beneficiary. For example, if suppliers cannot exchange equipment, they may have to perform a complex repair in the patient's home. Suppliers should not be placed in a situation where they have to choose between not being able to provide service to the beneficiary at the time of need versus providing a higher level of equipment and taking a financial loss over the remaining rental period if they are unable to switch to the prescribed level of equipment. Commenters recommended that the proposed rule be modified to clarify that it is acceptable for a supplier to exchange equipment if (a) the exchange is for same or similar equipment; or (b) the exchange is to equipment that better matches a physician's order.

Commenters also stated that it is unreasonable to mandate a supplier to continue to service a beneficiary if the beneficiary is non-compliant with the supplier's instruction on the safe and appropriate use of the medical equipment. They recommended that the oxygen supplier be responsible for transferring title for the total number of liquid oxygen vessels or oxygen cylinders that would be present in the patient's home at one time.

Response: We appreciate the concerns presented by the commenters. Medicare pays for two classes of equipment, stationary and portable. For the stationary class, there are three modalities that Medicare pays the same ''modality neutral'' payment rate for: concentrator, liquid cylinders, and gaseous tanks. For the portable class, Medicare makes a modality neutral payment for all types of portable equipment. As we explained above, we are finalizing our proposal to add a new payment class for oxygen-generating portable equipment and separate classes for delivery of stationary and portable oxygen contents. As has always been the case, a physician may order a specific oxygen equipment modality based on the clinical needs of the patient; and the supplier is bound by that order. In addition, there is currently no Medicare national coverage determination (NCD) that establishes medical necessity criteria for different oxygen modalities. The carrier would still maintain the ability to determine that a change in equipment is warranted for reasons other than those described above. Instructions for the DME PSC contractors are not part of rulemaking, and will be handled under local carrier coverage policies.

After considering all of the comments, we are finalizing a policy that would allow for four general exceptions to the rule that a supplier may not exchange equipment during the rental period. We believe that these exceptions are flexible enough to allow beneficiaries and suppliers to exchange equipment where appropriate, but limited enough to protect beneficiaries from a situation where their equipment could be replaced with less valuable equipment just prior to the date when they acquire ownership of it. In all cases, the replacement item must be equipment of equal or greater value to the equipment being replaced.

(1) The supplier replaces an item with the same, or equivalent, make and model of equipment because the item initially furnished was lost, stolen, irreparably damaged, is being repaired, or no longer functions.

(2) The physician orders different equipment for the beneficiary. If the need for different equipment is based on medical necessity, then the order must indicate why the equipment initially furnished is no longer medically necessary, and the supplier must retain this order in the beneficiary's medical record.

(3) The beneficiary chooses to obtain a newer technology item or upgraded item and signs an ABN.

(4) CMS or its carriers determine that a change in equipment is warranted.

Comment: We received numerous comments regarding our proposal to require that a supplier that furnishes rented oxygen equipment or capped rental items to the beneficiary must continue to furnish that item throughout the whole rental period except in certain situations. These comments focused on varying scenarios where patients move or choose to switch suppliers due to dissatisfaction with their service. Commenters were concerned that patients in these situations will experience an access-to-care issue as few suppliers will accept such a patient if he/she has only a few months left on the rental schedule but would be expected to provide oxygen equipment, including the back-up and other un-reimbursed equipment. This will create inequities as a supplier might be required to provide a brand new piece of equipment to a beneficiary for 10 months of the 36 months, as an example, and this de facto diminished reimbursement could deter suppliers from offering services to Medicare beneficiaries and diminish beneficiary access to oxygen supplies. Commenters recommended that we specify that a new 36-month period begins in conjunction with this provision.

Response: In an October 9, 1991 interim final rule with comment period (56 FR 50821), we first adopted our policy that precludes a new period of continuous use from beginning when a beneficiary changes suppliers. In adopting that policy, we looked to the House Committee Report that accompanied the enactment of the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100–203), which authorized implementation of the fee schedules for DME. The House report stated that a change in suppliers during an otherwise uninterrupted period should be considered continuous. Therefore, we adopted § 414.230(g), which provides that if the beneficiary changes suppliers during or after the equipment rental period, that change would not result in a new rental period. Since we first adopted this policy, we believe that suppliers have been able to adequately accommodate beneficiaries who change suppliers, and we see no reason to change this policy now.

After reviewing the comments on this issue, we have maintained our proposal requiring a supplier who furnishes rented oxygen equipment/capped rental for the first month for which payment is made to continue to furnish that item throughout the 36/13-month period of continuous use for as long as it is medically necessary, except in the following cases:

- The item becomes subject to a competitive acquisition program;
- A beneficiary relocates on either a temporary or permanent basis to an area that is outside the normal service area of the initial supplier;
- The beneficiary chooses to obtain equipment from a different supplier; or
- Other cases in which CMS or the carrier determine that an exception is warranted.

We continue to believe that these policies are necessary to ensure that beneficiaries have adequate access to oxygen equipment and capped rental items because they protect beneficiaries from a situation in which an unscrupulous supplier could try to take back the equipment just before the rental period expires in order to retain title to it. We note, however, that our rules would not require a supplier to accept a beneficiary as a customer simply because a beneficiary chooses to change suppliers. In addition, we note that we are considering certain policies that would address how contract suppliers are reimbursed if they must begin furnishing items to beneficiaries midway through the rental period under a competitive bidding program, and we expect to fully address this issue in the final rule that implements the Medicare DMEPOS Competitive Bidding Program.

Comment: One commenter noted that our literal interpretation of the DRA would require suppliers to track equipment by serial number in order to make sure the beneficiary receives title to the equipment that the supplier furnished originally. The commenter stated that this will be very difficult for suppliers to accomplish and suggested that during the period of continuous use, suppliers be permitted to continue the current practice of simply replacing equipment in need of service or repair with equipment of the same type that is in good working order. This practice will allow suppliers to streamline their operations and serve beneficiaries more efficiently equipment that must be repaired or serviced at the supplier's facility. The commenter further stated that we can address this issue simply by requiring that the beneficiary receive title to equipment that is of comparable quality to the equipment delivered at the beginning of the period of continuous use. Another commenter stated that we should not impede service delivery by restricting replacement of equipment during the capped rental period. The commenter indicated the equipment requirement would limit the ability of the new patient to try new or different equipment/enhanced technology.

Response: Suppliers have access to and frequently use current inventory tracking technology that allows them to easily track specific items they take from their inventory and furnish to a patient in their home. This is a normal part of the supplier's business. As explained above, suppliers of oxygen tanks and cylinders do not need to track specific tanks and cylinders belonging to beneficiaries. In addition, as explained above, this final rule allows the suppler to replace equipment during the rental period in certain situations.

Comment: One commenter remarked that the proposed rule states that the current supplier or beneficiary is responsible for finding a new supplier if a beneficiary needs to relocate from one service area to another service area during the rental period. The commenter indicated that this should be limited to the beneficiary since it is the choice of the beneficiary to relocate and not that of the supplier.

Response: While the proposal states that the supplier or beneficiary would need to arrange for another supplier in the new area to furnish the item, it does not mandate that the supplier, rather than the beneficiary, must make these arrangements. In cases where the supplier elects not to provide this service to the beneficiary, the beneficiary or caregiver for the beneficiary would need to make these arrangements. This proposal is consistent with current practice and is being adopted as part of this final rule.

Assignment

Comment: We received numerous comments on the Medicare assignment proposal. Some commenters requested clarification of our notice requirements about Medicare assignment to ensure it is consistent with the general rule that participating suppliers agree to accept assignment on an annual basis and can modify their status as a participating supplier as well. They also requested clarification that suppliers disclose to beneficiaries their intent to accept assignment on all claims for the duration of the rental period, and stated that the supplier should be able to clarify under what circumstances assignment would no longer be appropriate, such as if the beneficiary is no longer eligible for coverage. Some commenters noted that we do not have the authority to change Medicare assignment terms and should not require suppliers to disclose their intentions regarding assignment for the entire duration of the rental periods. Commenters indicated that current Medicare supplier standards require a supplier to inform patients of whether or not it will accept assignment for one month at a time (per claim) and that it is unreasonable for us to expect a supplier to commit to accepting assignment for the entire rental period when policies, payment levels or other things could change by the end of the first year. Some commenters requested that we not adopt our proposal to post assignment statistics for each supplier on our website, but that if we proceed with publication, we should coordinate this effort with suppliers to ensure correct information is distributed to the public. Some commenters observed that we do not indicate how often we will make web postings and how we will verify the accuracy of postings. This could result in an inaccurate picture of a supplier's assignment history since suppliers could choose not to accept assignment for a variety of reasons, which a basic percentage will not demonstrate. If we intend to post assignment information, commenters believe that we should give suppliers 30 days notice, as well as an opportunity to review information prior to posting and to correct erroneous information or identify the risks posed by erroneous information. Commenters indicated that we cannot require suppliers to enter into private contracts for the duration of the period of continuous use. Finally, commenters stated that we must clarify in the final regulation whether a supplier may accept assignment for a portion of the rental period, since allowing this type of assignment arrangement would still further the stated intent to create a reasonable rule for suppliers and ensure that beneficiaries have the information necessary to make informed choices.

Response: Under Medicare, DME suppliers can accept assignment on a claim-by-claim basis. If a supplier accepts assignment, the supplier agrees to request direct payment from Medicare for the item, to accept 80 percent of the Medicare allowed payment amount for the item from the carrier, and to charge the beneficiary not more than the remaining 20 percent of the Medicare approved payment amount, plus any unmet deductible. If a supplier elects not to accept assignment, Medicare pays the beneficiary 80 percent of the Medicare allowed payment amount, after subtracting any unmet deductible, and there is no limit under Title XVIII of the Act on the amount the supplier can charge the beneficiary for rental of the DME item. The beneficiary, in these situations, is financially responsible for the difference between 80 percent of the Medicare allowed payment amount and the amount the supplier charges for the rental of the DME item.

Suppliers can also sign a participation agreement where they agree voluntarily, before a calendar year, to accept assignment for all Medicare items and services furnished to a beneficiary for the following calendar year. Current supplier participation agreements are renewable annually.

In the proposed rule, we did not propose to change the current voluntary

participation agreement. Nor did we propose to change acceptance of assignment on a claim-by-claim basis for suppliers who do not sign participation agreements. However, we did point out that the calendar year participation agreements do not coincide with a beneficiary's full period of medical need in cases where such need extends for more than a calendar year or where such a period overlaps calendar years. While a supplier may renew its participation agreement annually, a beneficiary would not know, before choosing a supplier, the intentions of the supplier regarding acceptance of assignment of all claims during the 13-month or 36-month rental period.

We proposed to require suppliers to give beneficiaries advance notice of the possible extent of their financial liability during the period of medical need in which monthly rental payments are made for the equipment so that they can use this information to make an informed choice of supplier. We proposed that before furnishing the oxygen equipment or a capped rental item, the supplier must disclose to the beneficiary its intentions regarding whether it will accept assignment of all monthly rental claims for the equipment during the period of medical need, up to and including the 36th month of continuous use for oxygen equipment or the 13th rental month of continuous use for capped rental DME in which rental payments could potentially be made. We indicated that we believe it is reasonable for the supplier to disclose to each beneficiary its intentions regarding acceptance of assignment as this decision has a direct financial effect on the beneficiary.

While we proposed to require an up-front declaration on assignment intentions, a supplier would not be bound by such declaration unless the supplier chooses to do so. For example, a supplier who routinely signs participation agreements and intends to accept assignment for all months during a beneficiary's period of medical need may choose to let such information be known to the beneficiary. Such supplier might want to use such information as a marketing advantage. A supplier's declaration could indicate that the supplier intends to accept assignment for a portion of the period of medical need. A beneficiary could use such information from such supplier and compare it with the declaration from another supplier who intends to accept assignment for the entire period of medical need and make a selection between such two suppliers.

While we proposed that a supplier's intentions could be expressed in the form of a written agreement between the supplier and a beneficiary, we did not propose to require a binding written agreement. A supplier could select the form of the declaration. If a supplier chose to offer a written agreement, the nature of such agreement would be between the supplier and the beneficiary. We believe that the required declaration is consistent with and complements the voluntary participation agreement because they represent different things; the former is a beneficiary-specific declaration of intentions applicable to the beneficiary's period of medical need but is not binding, while the latter is a voluntary agreement that applies to claims for all beneficiaries served for a calendar year and is binding.

Assignment applies with respect to covered-Medicare services. Thus, a supplier's declaration of assignment acceptance would only apply to covered-Medicare services.

In the proposed rule, we indicated that in order to promote informed beneficiary choices, we plan to post information on a CMS and/or CMS contractor Web site(s) indicating supplier specific information on oxygen equipment and capped rental items such as (1) the percentage of beneficiaries for whom each supplier accepted assignment during a prior period of time (for example, a quarter), and/or (2) the percentage of cases in which the supplier accepted assignment during the beneficiary's entire rental period. We do not agree with the commenters who asked that we not post information about assignment statistics for each supplier. We believe that such information is necessary to promote informed beneficiary choices of suppliers. It would not be possible to promote more informed beneficiary choices among suppliers if we did not publish such information. Publication of such information is consistent with the Agency's goal of promoting transparency. We expect that the supplier-specific assignment information that we post would be derived from Medicare paid claims data. We plan to give suppliers the opportunity to review information prior to posting the first time we post information. After a period of time, we believe that the assignment information for a supplier is likely to be relatively stable. Thus, rather than delaying the posting of information on an ongoing basis by providing an opportunity to review information prior to each posting, we would post the information and allow a supplier to contact us or the carrier if a supplier believes that erroneous information was posted. We have not decided how often we would post assignment statistics.

Comment: One commenter asked for clarification on whether or not in-home clinical assessments will be part of patient care after they have received home oxygen therapy for 36 months. The commenter strongly encouraged us to allow patients to continue to receive these assessments according to physician orders. The commenter noted that this activity is sustainable only if we establish a new code and an appropriate reimbursement rate.

Response: In-home clinical assessments are the responsibility of the physician, not the supplier and are therefore outside the scope of the DME benefit. It is the obligation of the physician to ensure that beneficiaries continue to be evaluated, as medically necessary.

IV. Provisions of the Final Regulations

In this final rule, we generally adopt the provisions of the August 3, 2006 proposed rule. We have, however, changed the methodology we will use to impute a wage index for rural areas. We will calculate a rural wage index by averaging the wage indexes from all CBSAs that we believe are contiguous to that rural area if that rural area lacks rural hospital wage data. In addition, we are revising the fixed-dollar loss ratio used in the calculation of the outlier payment to reflect the most recent available data.

We are finalizing a policy regarding change of equipment during a rental period to allow for changes under four general scenarios: (1) The supplier replaces an item with the same, or equivalent, make and model of equipment because the item initially furnished was lost, stolen, irreparably damaged, is being repaired, or no longer functions; (2) the physician orders different equipment for the beneficiary. If the need for different equipment is based on medical necessity, then the order must indicate why the equipment initially furnished is no longer medically necessary and the supplier must retain this order in the beneficiary medical record; (3) the beneficiary chooses to obtain a newer technology item or upgraded item and signs an advanced beneficiary notice (ABN); or (4) CMS or the carrier determines that a change in equipment is warranted. The Medicare contractor can also determine that a change in equipment is warranted for additional reasons.

We reincorporated a policy that we inadvertently deleted from section 414.229(g) of our current regulations in the proposed rule with regard to replacement of equipment to allow for

replacement of rented capped rental items in cases where the item is lost or irreparably damaged. We stated that we would be continuing that policy, applying it to all rented items, and also applying it to cases where an item has been stolen. We also stated that we would move that policy from § 414.229(g) to § 414.210(f) since it would now apply to all rented items.

We have revised the policy that requires suppliers to replace beneficiary-owned equipment that they furnished that fails to function for the full period established as the reasonable useful lifetime for the equipment. The need for the replacement of the equipment will not automatically be mandated merely because the repair costs are greater than 60 percent of the cost to replace the item. Rather, the determination regarding the need for replacement will be made by the Medicare contractor on an individual case-by-case basis.

We added a provision to require suppliers to provide information to beneficiaries at the time of title transfer for oxygen equipment on how to safely dispose of oxygen equipment that is no longer medically necessary and advise that beneficiaries must comply with all Federal, State, and local laws that apply to the disposal, transport, and resale of oxygen equipment.

We have revised the policy for maintenance and servicing of beneficiary-owned oxygen equipment so that beginning 6 months after title to oxygen equipment transfers to the beneficiary, the supplier may bill for general maintenance and servicing of beneficiary-owned oxygen equipment once every 6 months. Payment for each of these general maintenance calls would be limited to 30 minutes of labor, plus the reasonable cost for any replacement parts. Under this policy, suppliers could bill for general maintenance and servicing of all oxygen equipment except liquid or gaseous oxygen equipment (stationary and portable). We are also specifying that these general maintenance and servicing payments would not begin until at least 6 months after the date that title to the equipment transfers. Finally, we will make these payments for general maintenance and servicing in addition to payment for any non-routine repairs needed for beneficiary-owned oxygen equipment. Suppliers would be able to bill for such non-routine maintenance beginning immediately after the beneficiary assumes ownership of the equipment.

We have revised the provisions regarding transfer of title for oxygen tanks to clarify that, although Medicare payments for oxygen equipment are limited to 36 months and the statute requires transfer of ownership after 36 months, the arrangement between the supplier and beneficiary allows the supplier to replace the beneficiary-owned tanks with new or different tanks of equal or greater value when the supplier picks up empty tanks to be refilled with oxygen contents and delivers refilled tanks back to the beneficiary. We have also revised the provisions to allow for a servicing payment when suppliers pick up tanks that are no longer medically necessary. We have also made several clarifying changes to the regulation text.

We have also added a provision that would require a supplier to disclose at least 2 months before the date that the beneficiary will assume ownership of oxygen equipment or a capped rental item whether the supplier can maintain and service the item after the title transfers and, in the case of oxygen equipment, whether the supplier can deliver oxygen contents. We or our carriers would have discretion to make exceptions to this requirement on a case-by-case basis.

V. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 30-day notice in the **Federal Register** and solicit public comment when 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 414.2267 Oxygen and Oxygen Equipment

This section requires the supplier to disclose to the beneficiary, prior to the furnishing of oxygen equipment, whether or not it will accept assignment of all monthly rental claims for the duration of the rental period.

The burden associated with this requirement is the time and effort put forth by the supplier to educate the beneficiary and to disclose information regarding its intent to accept assignment. While this information collection is subject to the PRA, we believe this requirement meets the requirements of 5 CFR 1320.3(b)(2), and as such, the burden associated with this requirement is exempt from the PRA.

This section requires a supplier to retain the physician's order submitted for a different type of equipment in the patient's medical record and to disclose to the beneficiary its intentions regarding whether it will accept assignment of all monthly rental claims for the duration of the rental period.

The burden associated with this requirement is the time and effort put forth by the supplier to retain and disclose the required information. While this information collection is subject to the PRA, we believe this requirement meets the requirements of 5 CFR 1320.3(b)(2), and as such, the burden associated with this requirement is exempt from the PRA.

Section 414.229 Other Durable Medical Equipment—Capped Rental Items

This section requires a supplier to retain the physician's order submitted for a different type of equipment in the patient's medical record and to disclose to the beneficiary its intentions regarding whether it will accept assignment of all monthly rental claims for the duration of the rental period.

The burden associated with this requirement is the time and effort put forth by the supplier to retain and disclose the required information. While this information collection is subject to the PRA, we believe this requirement meets the requirements of 5 CFR 1320.3(b)(2), and as such, the burden associated with this requirement is exempt from the PRA.

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, Division of Regulations Development, Attn: Melissa Musotto, [CMS–1304–F], 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–1304–F, *carolyn_lovett@omb.eop.gov*. Fax (202) 395–6974.

VI. Regulatory Impact Analysis

A. Overall Impact

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

Executive Order 12866 (as amended by Executive Order 13258, which merely reassigns 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 1 year). This final rule will be a major rule, as defined in Title 5, United States Code, section 804(2), because we estimate the impact to the Medicare program, and the annual effects to the overall economy, will be more than $100 million. The update set forth in this final rule will apply to Medicare payments under the HH PPS in CY 2007. Accordingly, the following analysis describes the impact in CY 2007 only. We estimate that there will be an additional $440 million in CY 2007 expenditures attributable to the CY 2007 estimated home health market basket update of 3.3 percent. We estimate that the effect of the wage index update will bring CY 2007 expenditures to $410 million.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small government agencies. 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, approximately 75 percent of HHAs are considered small businesses according to the Small Business Administration's size standards with total revenues of $11.5 million or less in any 1 year. Individuals and States are not included in the definition of a small entity. As stated above, this final rule will provide an update to all HHAs for CY 2007 as required by statute. This final rule will have a significant positive effect upon small entities that are HHAs.

Based on our analysis of 2003 claims data, we also estimate that approximately 90 percent of registered DME suppliers are considered small businesses according to the Small Business Administration's size standards. The size standard for NAICS code, 532291, Home Health Equipment Rental is $6 million. (*see http://www.sba.gov/size/sizetable2002.html,* read May 9, 2005.) This final rule will reduce payments for oxygen equipment and capped rental items and, therefore, will have a significant negative effect upon small entities that are DME suppliers overall. However, as explained in detail below, we believe that Medicare payments will still be adequate for the items affected by this rule and that suppliers whose primary line of business involves furnishing these items will remain profitable.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. We have determined that this final rule will not have a significant economic impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditures in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $120 million. We believe this final rule will not mandate expenditures in that amount.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have reviewed this rule under the threshold criteria of Executive Order 13132, Federalism. We have determined that this final rule will not have substantial direct effects on the rights, roles, and responsibilities of States.

B. Anticipated Effects

1. Home Health PPS

This final rule will update the HH PPS rates contained in Pub. 100–20, One Time Notification, Transmittal 211, published February 10, 2006. We updated the rates in the CY 2006 final rule (70 FR 68132, November 9, 2005) through Transmittal 211 to take account of the DRA changes, specifically the 0 percent update and the rural add-on. The impact analysis of this final rule presents the projected effects of the change from the CY 2006 transition wage index (50/50 blend of MSA-based and CBSA-based designations) to the CY 2007 CBSA-based designations in determining the wage index used to calculate the HH PPS rates for CY 2007. We estimate the effects by estimating payments while holding all other payment variables constant. We use the best data available, but we do not attempt to predict behavioral responses to these changes, and we do not make adjustments for future changes in such variables as days or case-mix.

This analysis incorporates the latest estimates of growth in service use and payments under the Medicare home health benefit, based on the latest available Medicare claims from 2004. We note that certain events may combine to limit the scope or accuracy of our impact analysis, because such an analysis is future-oriented and, thus, susceptible to forecasting errors due to other changes in the forecasted impact time period. Some examples of such possible events are newly-legislated general Medicare program funding changes made by the Congress, or changes specifically related to HHAs. In addition, changes to the Medicare program may continue to be made as a result of the BBA, the BBRA, the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000, the MMA, the DRA, or new statutory provisions. Although these changes may not be specific to the HH PPS, the nature of the Medicare program is such that the changes may interact, and the complexity of the interaction of these changes could make it difficult to predict accurately the full scope of the impact upon HHAs.

Our discussion for this final rule will focus on the impact of changes in the wage index, most notably the adoption of the full CBSA designations. The impacts of the updated wage data are shown in Table 13 below. The breakdown of the various impacts displayed in the table follows.

The rows display the estimated effect of the changes on different categories. The first row of figures represents the

estimated effects on all facilities. The next 2 rows show the effect on urban and rural facilities. This is followed, in the next 4 rows, by impacts on urban and rural facilities based on whether they are a hospital-based or freestanding facility. The next 20 rows show the effect on urban and rural facilities based on the census region in which they are located.

The first column shows the breakdown of all HHAs by urban or rural status, hospital-based or freestanding status, and census division.

The second column in the table shows the number of facilities in the impact database. A facility is considered urban if it is located in a CBSA and, conversely, rural if it is not located in a CBSA.

The third column of the table shows the effect of the annual update to the wage index. This represents the effect of using the most recent wage data available to determine the estimated home health market basket update. The total impact of this change is −0.2 percent; however, there are distributional effects of the change.

The fourth column of the table shows the effect of all the changes on the CY 2007 payments. The estimated market basket update of 3.3 percentage points is constant for all providers and is included in this column. Although the market basket increase for CY 2007 is 3.3 percent, fluctuations in the wage index impact the projected payments as well. The total impact of the wage index update is −0.2 percent. Therefore, including effects of the wage index, we project that total aggregate payments will increase by 3.1 percent, assuming that facilities do not change their care delivery and billing practices in response.

As can be seen from this table, the combined effects of all of the changes, including the updated wage index and the market basket increase of 3.3 percent, will vary by specific types of providers and by location. For example, HHAs in the rural Pacific show the largest estimated increase in payment at 11.0 percent, while HHAs in the rural Mountain census division show the smallest increase in payments at 0.5 percent. Rural HHAs do somewhat better than urban HHAs, seeing an estimated increase in payments of 3.6 percent and 3.1 percent respectively. Amongst the different type of facility categories, freestanding rural HHAs do best, with an estimated increase in payments of 3.8 percent. Hospital-based urban HHAs are next with an estimated increase in payments of 3.4 percent, followed by hospital-based rural and freestanding urban HHAs following with estimated increases of 3.2 percent and 3.0 percent respectively.

TABLE 13.—PROJECTED IMPACT OF CY 2007 UPDATE TO THE HH PPS

	Number of facilities	Updated wage data (percent)	Total CY 2007 change (percent)
Total	7,370	−0.2	3.1
Urban	5,273	−0.2	3.1
Rural	2,097	0.3	3.6
Hospital based urban	1,988	0.1	3.4
Freestanding urban	3,285	−0.3	3.0
Hospital based rural	1,201	−0.1	3.2
Freestanding rural	896	0.5	3.8
Urban by Region			
New England	254	−1.2	2.1
Middle Atlantic	423	−0.2	3.1
South Atlantic	913	−0.4	2.8
East North Central	886	0.4	3.7
East South Central	222	−0.6	2.7
West North Central	304	0.1	3.4
West South Central	1,300	−0.8	2.5
Mountain	281	1.6	4.9
Pacific	649	0.4	3.7
Outlying	41	−4.2	1.0
Rural by Region			
New England	43	−1.1	2.2
Middle Atlantic	82	0.1	3.4
South Atlantic	239	−0.7	2.6
East North Central	284	1.6	5.0
East South Central	215	0.1	3.4
West North Central	488	0.2	3.5
West South Central	475	−0.4	2.8
Mountain	173	−2.7	0.5
Pacific	88	7.5	11.0
Outlying	10	8.9	12.5

The impact of the wage index for CY 2007 is shown in Addendum C to this document. Addendum C to this document shows a side-by-side comparison, by State and county code, of the CY 2006 transition wage index, which was a 50/50 blend of MSA-based and CBSA-based pre-floor, pre-reclassified hospital wage indexes, and pre-floor, pre-reclassified hospital wage index for the CY 2007 HH PPS update. In the last column of Addendum C to this document, we show the percentage change in the wage index from CY 2006 to the wage index for CY 2007. We estimate that there will be an additional $410 million in CY 2007 expenditures attributable to the CY 2007 estimated

market basket increase of 3.3 percent and the wage index update of −0.2 percent. Thus, the anticipated expenditures outlined in this final rule will exceed the $100 million annual threshold for a major rule as defined in 5 U.S.C. section 804(2).

This final rule will have a positive effect on providers of Medicare home health services by increasing their Medicare payment rates. We anticipate that very few HHAs will not submit the quality data required by section 1895(b)(3)(B)(v)(II) of the Act necessary to receive the full market basket percentage increase. Submission of OASIS data is a Medicare condition of participation for HHAs. Therefore, we expect that very few HHAs would be subject to the 2 percent reduction in payments in CY 2007. As indicated in the rule, most HHAs that do not report OASIS provide pediatric, non-Medicare, or personal care only. However, CMS is aware of instances of non-compliance among a very small portion of HHAs with regard to OASIS submission.

For the purposes of the CY 2007 impact analysis, we anticipate that less than 1 percent of HHAs, involving less than 1 percent of total Medicare HH payments, would fail to submit quality data and hence will be subject to the 2 percent reduction. This is not enough to impact the estimated $410 million in additional expenditures. Finally, we do not believe there is a differential impact due to the aggregate nature of the update. We do not anticipate specific effects on other providers.

2. Oxygen and Oxygen Equipment Provisions

As mandated by the DRA of 2005, this final rule limits to 36 months the total number of continuous months for which Medicare will pay for oxygen equipment, after which the title to the oxygen equipment will be transferred from the supplier to the beneficiary. Since Medicare currently pays for oxygen equipment on a monthly basis for as long as it is medically necessary, this change will result in savings to Medicare. In addition, the DRA mandates that Medicare continue to make monthly payments for furnishing contents for beneficiary-owned oxygen equipment, as well as payments for reasonable and necessary maintenance and servicing of beneficiary-owned oxygen equipment.

Approximately one million beneficiaries now receive oxygen therapy. Although monthly rental payments already have been reduced by 30 percent by section 4552 of the Balanced Budget Act of 1997 and approximately 10 percent by section 302(c)(2) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Medicare allowed charges rose to $2.72 billion by 2005, a 68 percent increase since 1998 that reflects the growing use. Before the amendments to section 1834(a)(5) of the Act made by the DRA, Medicare continued to make rental payments for as long as medical necessity continued, even when the total payments greatly exceeded the cost of purchasing the equipment and the supplier retained title to the equipment. We believe the DRA amendments to the Act will result in a loss of revenue to suppliers that will no longer receive payments for oxygen equipment after the 36th month of continuous use.

Based on data for items furnished in calendar year 2005, oxygen concentrators accounted for approximately 94 percent of Medicare utilization for stationary oxygen systems, in terms of both allowed charges and allowed services. Since oxygen concentrators can typically be purchased for $1,000 or less, we believe that 36 months of payment at approximately $200 per month will ensure the supplier is reimbursed for its cost for furnishing the equipment. The $200 allowed payment amount may be re-adjusted in the future to assure that payments are adequate, but not excessive. This could be accomplished though the competitive acquisition programs mandated by section 1847 of the Act or in accordance with our authority for adjusting fee schedule amounts at section 1842(b)(8) and (9) of the Act. Based on data gathered by the OIG in the course of developing their September 2006 report (OEI–09–04–00420), approximately 22 percent of Medicare beneficiaries rented oxygen equipment for 36 months or longer and approximately 16 percent of Medicare beneficiaries rented oxygen equipment for 48 months or longer. In section IV, ''Provisions of the Final Regulation'' section of this preamble, we are allowing beneficiaries to obtain replacement oxygen equipment in cases where their equipment has been in continuous use for the reasonable useful lifetime of the equipment. Unless CMS or its carriers establish a specific reasonable useful lifetime for oxygen equipment, the default lifetime for DME of 5 years will apply. The main effect of this rule on suppliers is that they will not be able to receive payment for the equipment beyond 36 months for approximately 22 percent of Medicare patients. They will also not be able to receive payment for furnishing the same item to subsequent patients in these cases since they lose title to the equipment. In the case of oxygen concentrator systems and portable oxygen transfilling systems, delivery of oxygen contents is not necessary, and therefore, payment will not be made for the furnishing of contents for these types of beneficiary owned equipment. Under the old payment rules, payment for oxygen concentrators used for stationary equipment purposes would have continued at approximately $200 per month for the entire period of medical need. Section 5101(b) of the DRA mandates that payment for oxygen equipment end and that title to the equipment transfer after 36 months of continuous use.

In the case of liquid and gaseous oxygen systems, suppliers will continue to be paid for furnishing oxygen contents for beneficiary-owned systems. The current statewide monthly payment amounts for oxygen and oxygen equipment that would be paid during the 36-month period of continuous use for beneficiaries who only use stationary equipment range from $194.48 to $200.41, with the weighted average statewide fee being $199.84. The current statewide monthly payment amount for furnishing oxygen contents for beneficiary owned equipment range from $137.54 to $198.12, with the weighted average statewide fee being $154.90. The average decrease in Medicare fee schedule amounts that may result from the DRA changes for liquid and gaseous systems after the 36-month period (that is, shift from monthly payments for equipment and contents to monthly payments for contents only), is expected to be $44.94 ($199.84–$154.90). Therefore, this is the level of monthly reimbursement that would be lost after the 36-month period for suppliers that furnish oxygen and oxygen equipment to beneficiaries in these situations and who continue to furnish contents to these beneficiaries. Based on current fee schedule amounts for all oxygen and oxygen equipment, this equates to an average reduction in payment (from $199.84 to $154.90) of approximately 22 percent.

At the current monthly statewide fee schedule rates, which range from $194.48 to $200.41, suppliers of oxygen equipment are expected to be paid from $7,001.28 to $7,214.76 over 36 months. By comparison, a medical center operated by the Department of Veterans Affairs (VA) in Tampa, Florida, is the largest VA center in terms of number of veterans on oxygen therapy and services approximately 1,000 patients on oxygen by contracting with a locally based manufacturer to purchase the oxygen concentrators for $895 each. The medical center contracts with a local

supplier for $90 to deliver and set up the concentrator to the patient's home. This local supplier also provides service and maintenance of the equipment at any time throughout the year for $48 per service episode. If the equipment needs to be replaced, the local supplier will furnish another concentrator for a $90 fee. The VA total payments over 5 years for an oxygen concentrator used by a veteran in this center plus payment for 10 episodes of maintenance and servicing, assuming servicing every 6 months, will be $1,435, compared to total Medicare allowed charges of $7,164, on average, for a Medicare beneficiary. Based on this comparison, the Medicare payment amounts and methodology appear to be more than adequate.

We do not anticipate that transfer of ownership for oxygen equipment to the beneficiary after 36 months of continuous use will be a significant financial burden to suppliers because the effect is limited to a maximum of 36 percent of a supplier's Medicare business and because suppliers of oxygen equipment primarily furnish lower cost oxygen concentrators. We also do not anticipate a significant change in the rate of assignment of claims for oxygen equipment based on our belief that suppliers will be adequately reimbursed for furnishing the oxygen equipment.

In accordance with the statute and this final rule, suppliers will also receive payments for reasonable and necessary maintenance and servicing of beneficiary-owned oxygen equipment, including a general maintenance and servicing payment for certain oxygen equipment every 6 months, beginning 6 months after the date that the beneficiary assumes ownership of the equipment.

Finally, the new oxygen and oxygen equipment classes and national payment amounts that are established as part of this final rule, will likely result in a shift in utilization between the various oxygen equipment modalities, which could impact supplier revenues and sales volume for certain oxygen equipment manufacturers. However, since the payment amounts will be budget-neutral in accordance with section 1834(a)(9)(D)(ii) of the Act, there will not be a significant impact on overall Medicare payments to suppliers.

3. Capped Rental DME

This final rule, which limits to 13 months the total number of continuous months for which Medicare would pay for capped rental DME, after which the ownership of the capped rental item would be transferred from the supplier to the beneficiary, will result in significant savings for the Medicare program. Savings will be realized through: (1) The gradual elimination of rental payments for the 14th and 15th months of continuous use; and (2) changing the semi-annual payment for maintenance and servicing to payment only when reasonable and necessary maintenance and servicing is needed. We anticipate that suppliers may lose money due to the loss of 1 to 2 months rental in cases where beneficiaries need the item for more than 13 months and would not have otherwise selected the purchase option currently described in § 414.229(d). The average of the 2006 fee schedule amounts for all capped rental items for months 14 and 15 is approximately $152. We do not believe suppliers will suffer financially as a result of this provision based on data which show that in 2004, 97 percent of suppliers accepted assignment for beneficiaries who chose the purchase option (§ 414.229(d)) in the 10th month of a capped rental period. This is an indication that suppliers were willing to accept the Medicare payment as payment in full for the capped rental item, even though they had been informed that the beneficiary will take over ownership of the item after the 13th month of continuous use. Therefore, we do not anticipate that transfer of ownership for capped rental equipment to the beneficiary after 13 months of continuous use will be a significant financial burden to suppliers.

For items for which the first rental payment falls on or after January 1, 2006, Medicare will only pay for maintenance and servicing as necessary. In a June 2002 report (OEI–03–00–00410), the Office of Inspector General (OIG) indicated that only 9 percent of the capped rental equipment with a June 2000 service date actually received any servicing between June and December 2000. Out of the $7.3 million Medicare paid for maintenance services from June 2000, OIG estimated that $6.5 million was paid for equipment that received no actual servicing. The OIG recommended to CMS in 2002 that we eliminate the semi-annual maintenance payment currently allowed for capped rental equipment and pay only for repairs when needed.

The combination of these two factors provides strong evidence that the Medicare rules for paying for maintenance and servicing of capped rental equipment furnished before January 1, 2006, were not cost-effective.

Impact on Beneficiaries

The DRA provisions and this final rule will result in savings for Medicare beneficiaries using oxygen equipment and capped rental items. For capped rental items, Medicare payments will be made for 13 continuous months and for oxygen equipment, payments will be made for 36 continuous months. After the rental period for each category of equipment expires, ownership of the equipment will transfer from the suppliers to the beneficiaries. Beneficiaries will continue to be financially responsible for a 20 percent coinsurance payment during the 13- or 36-month rental periods for capped rental items and oxygen equipment, respectively. However, even though beneficiaries will still be required to make a 20 percent coinsurance payment in connection with each maintenance and servicing call, beneficiaries will no longer have to make a monthly 20 percent coinsurance payment for oxygen equipment after they own it, or a 20 percent coinsurance payment every 6 months for maintenance and servicing of beneficiary-owned capped rental items, even if maintenance and servicing is not needed. This will result in significant savings to beneficiaries.

For example, before the DRA, Medicare and the beneficiary made continuous payments for the rental of oxygen equipment that totaled about $200 per month. Of this amount, the beneficiary paid coinsurance of $40 which will equal $480 for a single year's rental, $1,440 over 36 months, and $2,400 over 5 years. After the DRA, beneficiaries will only pay a coinsurance amount for up to 36 months for the rental of oxygen equipment, after which time they will own the equipment. Thus, the DRA oxygen provisions result in savings of approximately $480 if beneficiaries use the equipment for 4 years, and $960 if they use the equipment for 5 years. As a result of the provision of this final rule that allows for a general maintenance and servicing call every 6 months, beneficiaries could pay approximately $6 in coinsurance payments for assigned claims, and more for unassigned claims for supplier labor associated with these services. However, the beneficiary can elect not to have these services performed if they feel that their equipment is not in need of servicing.

For capped rental items, beneficiaries will save coinsurance by not being responsible for any equipment payment after the 13th rental month or the automatic semi-annual maintenance and servicing payment that was approximately equal to 10 percent of the

purchase price for the equipment. Before the DRA, Medicare and the beneficiary would pay up to 15 months for capped rental items, and Medicare and the beneficiary would also pay for maintenance and servicing every 6 months. Thus, beneficiaries will save coinsurance payments related to both the equipment itself and the maintenance and servicing of that equipment.

This final rule will assure beneficiaries that unless certain prescribed exceptions apply, suppliers that furnish the equipment for the first month will continue to furnish the equipment for the entire 36-month period of continuous use for oxygen equipment or the 13-month period of continuous use for capped rental.

Beneficiaries will also be assured that their oxygen and capped rental equipment would not be impermissibly swapped by the supplier at any time during the rental period. Under the final rule, we require that a supplier may not provide different rented equipment to the beneficiary at any time during the 36 rental months for oxygen equipment or the 13 rental months for capped rental DME unless one of the following three exceptions apply: (1) The supplier replaces an item with the same, or equivalent, make and model of equipment because the item initially furnished was lost, stolen, irreparably damaged, is being repaired, or no longer functions; (2) The physician orders a different equipment for the beneficiary. If the need for different equipment is based on medical necessity, the order must indicate why the equipment initially furnished is no longer appropriate or medically necessary, and the supplier must retain this order in the beneficiary's medical record; (3) The beneficiary chooses to obtain a newer technology item or upgraded item and signs an ABN; or (4) CMS or the carrier determines that a change in equipment is warranted.

We are requiring that suppliers inform beneficiaries whether they intend to accept or not accept assignment on all monthly rental claims during the 13-month rental period for capped rental items or the 36-month rental period for oxygen equipment in an upfront manner.

This final rule will also assure beneficiaries that following the transfer of title, the supplier must replace an item at no cost to the beneficiary in cases where the carrier determines that the item furnished by the supplier will not last for the entire reasonable useful lifetime established for the equipment. In making this determination, the carrier may consider whether the accumulated costs of repair exceed 60 percent of the cost to replace the item.

C. Accounting Statement

As required by OMB Circular A–4 (available at *http://www.whitehouse.gov/omb/circulars/a004/a-4.pdf*), in Table 14 below, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of this final rule. This table provides our best estimate of the increase in Medicare payments under the HH PPS as a result of the changes presented in this final rule based on the data for 7,370 HHAs in our database. All expenditures are classified as transfers to Medicare providers (that is, HHAs).

TABLE 14.—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES, FROM CY 2006 TO CY 2007

[In millions]

Category	Transfers
Annualized Monetized Transfers.	$410
From Whom to Whom?.	Federal Government to HHAs.

In Table 15 below, we have prepared an accounting statement showing the classification of the expenditures associated with the DME provisions of this final rule. This table provides our best estimate of the decrease in Medicare payments under the DME benefit as a result of the changes presented in this final rule based on the 2004 allowed charge data for oxygen and capped rental DME in our database. All expenditures are classified as transfers to the Medicare program and its beneficiaries.

TABLE 15.—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES

[In millions]

Category	Transfers
Monetized Transfers in FY 2007.	$80
Monetized Transfers in FY 2008.	$130
Monetized Transfers in FY 2009.	$170
Monetized Transfers in FY 2010.	$220
Monetized Transfers in FY 2011.	$280
From Whom to Whom?.	Suppliers to Federal Government and beneficiaries.

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

List of Subjects

42 CFR Part 414

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 484

Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR chapter IV as set forth below:

PART 414—PAYMENT FOR PART B MEDICAL AND OTHER HEALTH SERVICES

Subpart D—Payment for Durable Medical Equipment and Prosthetic and Orthotic Devices

■ 1. The authority citation for part 414 continues to read as follows:

Authority: Secs. 1102, 1871, and 1881(b)(1) of the Social Security Act (42 U.S.C. 1302, 1395(hh), and 1395rr(b)(1)).

■ 2. Amend § 414.210 as follows:
■ A. Revise paragraph (e).
■ B. Revise the introductory text to paragraph (f).
■ C. Revise paragraph (f)(2).
■ D. Add new paragraphs (f)(3) and (f)(4).

The revisions read as follows:

§ 414.210 General payment rules.

* * * * *

(e) *Maintenance and servicing*—(1) *General rule*. Except as provided in paragraph (e)(2) of this section, the carrier pays the reasonable and necessary charges for maintenance and servicing of beneficiary-owned equipment. Reasonable and necessary charges are those made for parts and labor not otherwise covered under a manufacturer's or supplier's warranty. Payment is made for replacement parts in a lump sum based on the carrier's consideration of the item. The carrier establishes a reasonable fee for labor associated with repairing, maintaining, and servicing the item. Payment is not made for maintenance and servicing of a rented item other than the maintenance and servicing fee for other durable medical equipment as described in § 414.229(e).

(2) *Additional maintenance and servicing payment for certain*

beneficiary-owned oxygen equipment. In addition to the maintenance and servicing payments described in paragraph (e)(1) of this section, the carrier makes a maintenance and servicing payment for oxygen equipment other than liquid and gaseous equipment (stationary and portable) as follows:

(i) For the first 6-month period following the date on which title to the equipment transfers to the beneficiary in accordance with § 414.226(f), no payments are to be made.

(ii) During each succeeding 6-month period, payment may be made for 30 minutes of labor for general maintenance and servicing of the equipment.

(3) *Additional payment for picking up oxygen tanks and cylinders.* The carrier pays the reasonable and necessary charges for a supplier to pick up and store or dispose of beneficiary-owned oxygen tanks and cylinders that are no longer medically necessary.

(4) *Exception to Maintenance and Servicing Payments.* For items purchased on or after June 1, 1989, no payment is made under the provisions of paragraph (e)(1) of this section for the maintenance and servicing of:

(i) Items requiring frequent and substantial servicing, as defined in § 414.222(a);

(ii) Capped rental items, as defined in § 414.229(a), that are not beneficiary-owned in accordance with § 414.229(d), § 414.229(f)(2), or § 414.229(h); and

(iii) Oxygen equipment, as described in § 414.226, that is not beneficiary-owned in accordance with § 414.226(f).

(5) *Supplier replacement of beneficiary-owned equipment based on accumulated repair costs.* A supplier that transfers title to oxygen equipment or a capped rental item to a beneficiary in accordance with § 414.226(f) or § 414.229(f)(2) is responsible for furnishing replacement equipment at no cost to the beneficiary or to the Medicare program if the carrier determines that the item furnished by the supplier will not last for the entire reasonable useful lifetime established for the equipment in accordance with § 414.210(f)(1). In making this determination, the carrier may consider whether the accumulated costs of repair exceed 60 percent of the cost to replace the item.

(f) *Payment for replacement of equipment.* If an item of DME or a prosthetic or orthotic device paid for under this subpart has been in continuous use by the patient for the equipment's reasonable useful lifetime or if the carrier determines that the item is lost, stolen, or irreparably damaged, the patient may elect to obtain a new piece of equipment.

* * * * *

(2) If the beneficiary elects to obtain replacement oxygen equipment, payment is made in accordance with § 414.226(a).

(3) If the beneficiary elects to obtain a replacement capped rental item, payment is made in accordance with § 414.229(a)(2) or (a)(3).

(4) For all other beneficiary-owned items, if the beneficiary elects to obtain replacement equipment, payment is made on a purchase basis.

■ 3. Amend § 414.226 by—

■ A. Revising paragraph (a) and the heading of paragraph (b).

■ B. Revising paragraph (b)(3).

■ C. Adding paragraphs (b)(4) and (b)(5).

■ D. Redesignating paragraph (d) as paragraph (e).

■ E. Redesignating paragraph (c) as paragraph (d).

■ F. Revising newly redesignated paragraph (d).

■ G. Adding a new paragraph (c).

■ H. Revising newly redesignated paragraph (e)(1) introductory text.

■ I. Revising newly redesignated paragraph (e)(1)(i).

■ J. Revising newly redesignated paragraph (e)(2)(i).

■ K. Revising newly redesignated paragraph (e)(2)(ii).

■ L. Adding new paragraphs (f) and (g).

The revisions and additions read as follows:

§ 414.226 Oxygen and oxygen equipment.

(a) *Payment rules*—(1) *Oxygen equipment.* Payment for rental of oxygen equipment is made based on a monthly fee schedule amount during the period of medical need, but for no longer than a period of continuous use of 36 months. A period of continuous use is determined under the provisions in § 414.230.

(2) *Oxygen contents.* Payment for purchase of oxygen contents is made based on a monthly fee schedule amount until medical necessity ends.

(b) *Monthly fee schedule amount for items furnished prior to 2007.*

* * * * *

(3) For 1991 through 2006, the fee schedule amounts for items described in paragraphs (b)(1)(iii) and (iv) of this section are determined using the methodology contained in § 414.220(d), (e), and (f).

(4) For 1991 through 2006, the fee schedule amounts for items described in paragraphs (b)(1)(i) and (ii) of this section are determined using the methodology contained in § 414.220(d), (e), and (f).

(5) For 2005 and 2006, the fee schedule amounts determined under paragraph (b)(4) of this section are reduced using the methodology described in section 1834(a)(21)(A) of the Act.

(c) *Monthly fee schedule amount for items furnished for years after 2006.* (1) For 2007, national limited monthly payment rates are calculated and paid as the monthly fee schedule amounts for the following classes of items:

(i) Stationary oxygen equipment (including stationary concentrators) and oxygen contents (stationary and portable).

(ii) Portable equipment only (gaseous or liquid tanks).

(iii) Oxygen generating portable equipment only.

(iv) Stationary oxygen contents only.

(v) Portable oxygen contents only.

(2) The national limited monthly payment rate for items described in paragraph (c)(1)(i) of this section is equal to the weighted average fee schedule amount established under paragraph (b)(5) of this section reduced by $1.44.

(3) The national limited monthly payment rate for items described in paragraph (c)(1)(ii) of this section is equal to the weighted average of the fee schedule amounts established under paragraph (b)(5) of this section.

(4) The national limited monthly payment rate for items described in paragraph (c)(1)(iii) of this section is equal to the national limited monthly payment rate established under paragraph (c)(5) of this section, multiplied by 24, and divided by 36.

(5) The national limited monthly payment rate for items described in paragraphs (c)(1)(iv) and (c)(1)(v) of this section is equal to 50 percent of the weighted average fee schedule amounts established under paragraph (b)(3) of this section for items described in paragraph (b)(1)(iii) of this section.

(6) Beginning in 2008, CMS makes an annual adjustment to the national limited monthly payment rates for each class of items described in paragraph (c)(1) of this section to ensure that such payment rates do not result in expenditures for any year that are more or less than the expenditures that would have been made if such classes had not been established.

(d) *Application of monthly fee schedule amounts.* (1) The fee schedule amount for items described in paragraph (c)(1)(i) of this section is paid when the beneficiary rents stationary oxygen equipment.

(2) Subject to the limitation set forth in paragraph (e)(2) of this section, the fee schedule amount for items described

in paragraphs (c)(1)(ii) and (c)(1)(iii) of this section is paid when the beneficiary rents portable oxygen equipment.

(3) The fee schedule amount for items described in paragraph (c)(1)(iv) of this section is paid when the beneficiary owns stationary oxygen equipment that requires delivery of gaseous or liquid oxygen contents.

(4) The fee schedule amount for items described in paragraph (c)(1)(v) of this section is paid when the beneficiary owns portable oxygen equipment described in paragraph (c)(1)(ii) of this section, or rents portable oxygen equipment described in paragraph (c)(1)(ii) of this section and does not rent stationary oxygen equipment.

(e) *Volume adjustments.* (1) The fee schedule amount for an item described in paragraph (c)(1)(i) of this section is adjusted as follows:

(i) If the attending physician prescribes an oxygen flow rate exceeding four liters per minute, the fee schedule amount is increased by 50 percent, subject to the limit in paragraph (e)(2) of this section.

* * * * *

(2) * * *

(i) The sum of the monthly fee schedule amount for the items described in paragraphs (c)(1)(i) and (c)(1)(ii) or (c)(1)(iii) of this section; or

(ii) The adjusted fee schedule amount described in paragraph (e)(1)(i) of this section.

* * * * *

(f) *Ownership of equipment.* On the first day that begins after the 36th continuous month in which payment is made for oxygen equipment under paragraph (a)(1) of this section, the supplier must transfer title to the oxygen equipment to the beneficiary. At the time of title transfer, the supplier must provide information to the beneficiary on how to safely dispose of oxygen equipment that is no longer medically necessary and advise that the beneficiary must comply with all Federal, State, and local laws that apply to the disposal, transport, and resale of oxygen equipment.

(g) *Additional supplier requirements for rentals that begin on or after January 1, 2007.* (1) The supplier that furnishes oxygen equipment for the first month during which payment is made under this section must continue to furnish the equipment until medical necessity ends, or the 36-month period of continuous use ends, whichever is earlier, unless—

(i) The item becomes subject to a competitive acquisition program implemented in accordance with section 1847(a) of the Act;

(ii) The beneficiary relocates to an area that is outside the normal service area of the supplier that initially furnished the equipment;

(iii) The beneficiary elects to obtain oxygen equipment from a different supplier prior to the expiration of the 36-month rental period; or

(iv) CMS or the carrier determines that an exception should apply in an individual case based on the circumstances.

(2) Oxygen equipment furnished under this section may not be replaced by the supplier prior to the expiration of the 36-month rental period unless:

(i) The supplier replaces an item with the same, or equivalent, make and model of equipment because the item initially furnished was lost, stolen, irreparably damaged, is being repaired, or no longer functions;

(ii) A physician orders different equipment for the beneficiary. If the order is based on medical necessity, then the order must indicate why the equipment initially furnished is no longer medically necessary and the supplier must retain this order in the beneficiary's medical record;

(iii) The beneficiary chooses to obtain a newer technology item or upgraded item and signs an advanced beneficiary notice (ABN); or

(iv) CMS or the carrier determines that a change in equipment is warranted.

(3) Before furnishing oxygen equipment, the supplier must disclose to the beneficiary its intentions regarding whether it will accept assignment of all monthly rental claims for the duration of the rental period. A supplier's intentions could be expressed in the form of a written agreement between the supplier and the beneficiary.

(4) No later than two months before the date on which the supplier must transfer title to oxygen equipment to the beneficiary, the supplier must disclose to the beneficiary—

(i) Whether it can maintain and service the equipment after the beneficiary acquires title to it; and

(ii) Whether it can continue to deliver oxygen contents to the beneficiary after the beneficiary acquires title to the equipment.

■ 4. Amend § 414.229 by—

■ A. Revising paragraphs (a), (f) and (g).

■ B. Adding paragraph (h).

The revisions and additions read as follows:

§ 414.229 Other durable medical equipment-capped rental items.

(a) *General payment rule.* Payment is made for other durable medical equipment that is not subject to the payment provisions set forth in § 414.220 through § 414.228 as follows:

(1) For items furnished prior to January 1, 2006, payment is made on a rental or purchase option basis in accordance with the rules set forth in paragraphs (b) through (e) of this section.

(2) For items other than power-driven wheelchairs furnished on or after January 1, 2006, payment is made in accordance with the rules set forth in paragraph (f) of this section.

(3) For power-driven wheelchairs furnished on or after January 1, 2006, payment is made in accordance with the rules set forth in paragraphs (f) or (h) of this section.

* * * * *

(f) *Rules for capped rental items furnished beginning on or after January 1, 2006.* (1) For items furnished on or after January 1, 2006, payment is made based on a monthly rental fee schedule amount during the period of medical need, but for no longer than a period of continuous use of 13 months. A period of continuous use is determined under the provisions in § 414.230.

(2) The supplier must transfer title to the item to the beneficiary on the first day that begins after the 13th continuous month in which payments are made under paragraph (f)(1) of this section.

(3) Payment for maintenance and servicing of beneficiary-owned equipment is made in accordance with § 414.210(e).

(g) *Additional supplier requirements for capped rental items that are furnished beginning on or after January 1, 2007.* (1) The supplier that furnishes an item for the first month during which payment is made using the methodology described in paragraph (f)(1) of this section must continue to furnish the equipment until medical necessity ends, or the 13-month period of continuous use ends, whichever is earlier, unless—

(i) The item becomes subject to a competitive acquisition program implemented in accordance with section 1847(a) of the Act;

(ii) The beneficiary relocates to an area that is outside the normal service area of the supplier that initially furnished the equipment;

(iii) The beneficiary elects to obtain the equipment from a different supplier prior to the expiration of the 13-month rental period; or

(iv) CMS or the carrier determines that an exception should apply in an individual case based on the circumstances.

(2) A capped rental item furnished under this section may not be replaced by the supplier prior to the expiration of the 13-month rental period unless:

(i) The supplier replaces an item with the same, or equivalent, make and model of equipment because the item initially furnished was lost, stolen, irreparably damaged, is being repaired, or no longer functions;

(ii) A physician orders different equipment for the beneficiary. If the need for different equipment is based on medical necessity, then the order must indicate why the equipment initially furnished is no longer medically necessary and the supplier must retain this order in the beneficiary's medical record;

(iii) The beneficiary chooses to obtain a newer technology item or upgraded item and signs an advanced beneficiary notice (ABN); or

(iv) CMS or the carrier determines that a change in equipment is warranted.

(3) Before furnishing a capped rental item, the supplier must disclose to the beneficiary its intentions regarding whether it will accept assignment of all monthly rental claims for the duration of the rental period. A supplier's intentions could be expressed in the form of a written agreement between the supplier and the beneficiary.

(4) No later than two months before the date on which the supplier must transfer title to a capped rental item to the beneficiary, the supplier must disclose to the beneficiary whether it can maintain and service the item after the beneficiary acquires title to it. CMS or its carriers may make exceptions to this requirement on a case-by-case basis.

(h) *Purchase of power-driven wheelchairs furnished on or after January 1, 2006.* Suppliers must offer beneficiaries the option to purchase power-driven wheelchairs at the time the equipment is initially furnished. Payment is made on a lump-sum purchase basis if the beneficiary chooses this option.

■ 5. Amend § 414.230 by—

■ A. Revising paragraph (b).

■ B. Revising paragraph (f).

The revisions read as follows:

§ 414.230 Determining a period of continuous use.

* * * * *

(b) *Continuous use.* (1) A period of continuous use begins with the first month of medical need and lasts until a beneficiary's medical need for a particular item of durable medical equipment ends.

(2) In the case of a beneficiary receiving oxygen equipment on December 31, 2005, the period of continuous use for the equipment begins on January 1, 2006.

* * * * *

(f) *New equipment.* (1) If a beneficiary changes equipment or requires additional equipment based on a physician's prescription, and the new or additional equipment is found to be necessary, a new period of continuous use begins for the new or additional equipment. A new period of continuous use does not begin for base equipment that is modified by an addition.

(2) A new period of continuous use does not begin when a beneficiary changes from one stationary oxygen equipment modality to another or from one portable oxygen equipment modality to another.

* * * * *

PART 484—HOME HEALTH SERVICES

■ 6. The authority citation for part 484 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395(hh)) unless otherwise indicated.

■ 7. Amend § 484.225 as follows:

■ A. Revise paragraph (f).

■ B. Redesignate paragraph (g) as paragraph (h).

■ C. Add new paragraph (g).

■ D. Revise newly redesignated paragraph (h).

■ E. Add new paragraph (i).

The revisions and additions read as follows:

§ 484.225 Annual update of the unadjusted national prospective 60-day episode payment rate.

* * * * *

(f) For calendar year 2005, the unadjusted national prospective 60-day episode payment rate is equal to the rate from the previous calendar year, increased by the applicable home health market basket minus 0.8 percentage points.

(g) For calendar year 2006, the unadjusted national prospective 60-day episode payment rate is equal to the rate from calendar year 2005.

(h) For 2007 and subsequent calendar years, in the case of a home health agency that submits home health quality data, as specified by the Secretary, the unadjusted national prospective 60-day episode rate is equal to the rate for the previous calendar year increased by the applicable home health market basket index amount.

(i) For 2007 and subsequent calendar years, in the case of a home health agency that does not submit home health quality data, as specified by the Secretary, the unadjusted national prospective 60-day episode rate is equal to the rate for the previous calendar year increased by the applicable home health market basket index amount minus 2 percentage points. Any reduction of the percentage change will apply only to the calendar year involved and will not be taken into account in computing the prospective payment amount for a subsequent calendar year.

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

Dated: October 20, 2006.

Leslie V. Norwalk,

Acting Administrator, Centers for Medicare & Medicaid Services.

Approved: October 31, 2006.

Michael O. Leavitt,

Secretary.

Note: The following addenda will not be published in the Code of Federal Regulations.

ADDENDUM A.—CY 2007 WAGE INDEX FOR RURAL AREAS BY CBSA; APPLICABLE PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX

CBSA code	Nonurban area	Wage index
01	Alabama	0.7591
02	Alaska	1.0661
03	Arizona	0.8908
04	Arkansas	0.7307
05	California	1.1454
06	Colorado	0.9325
07	Connecticut	1.1709
08	Delaware	0.9705
10	Florida	0.8594
11	Georgia	0.7593
12	Hawaii	1.0448
13	Idaho	0.8120
14	Illinois	0.8320
15	Indiana	0.8538
16	Iowa	0.8681
17	Kansas	0.7998
18	Kentucky	0.7768
19	Louisiana	0.7438
20	Maine	0.8443
21	Maryland	0.8926
22	Massachusetts [1]	1.1661
23	Michigan	0.9062
24	Minnesota	0.9153

ADDENDUM A.—CY 2007 WAGE INDEX FOR RURAL AREAS BY CBSA; APPLICABLE PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX—Continued

CBSA code	Nonurban area	Wage index
25	Mississippi	0.7738
26	Missouri	0.7927
27	Montana	0.8590
28	Nebraska	0.8677
29	Nevada	0.8944
30	New Hampshire	1.0853
31	New Jersey [2]	.....
32	New Mexico	0.8332
33	New York	0.8232
34	North Carolina	0.8588
35	North Dakota	0.7215
36	Ohio	0.8658
37	Oklahoma	0.7629
38	Oregon	0.9753
39	Pennsylvania	0.8320
40	Puerto Rico [3]	0.4047
41	Rhode Island [2]	.....
42	South Carolina	0.8566
43	South Dakota	0.8480
44	Tennessee	0.7827
45	Texas	0.7965
46	Utah	0.8140

ADDENDUM A.—CY 2007 WAGE INDEX FOR RURAL AREAS BY CBSA; APPLICABLE PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX—Continued

CBSA code	Nonurban area	Wage index
47	Vermont	0.9744
48	Virgin Islands	0.8467
49	Virginia	0.7940
50	Washington	1.0263
51	West Virginia	0.7607
52	Wisconsin	0.9553
53	Wyoming	0.9295
65	Guam	0.9611

[1] There are no short-term, acute care hospitals located in rural areas in Massachusetts from which to calculate a wage index for CY07. Therefore, the rural wage index for Massachusetts will be imputed using the methodology discussed in Section III of this rule.

[2] All counties within the State are classified as urban.

[3] There are no short-term, acute care hospitals located in rural areas in Puerto Rico from which to calculate a wage index for CY07. Therefore, we will continue to use the wage index from CY05 which was the last year in which we had ''rural'' hospital data.

ADDENDUM B.—CY 2007 WAGE INDEX FOR URBAN AREAS BY CBSA; APPLICABLE PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX

CBSA code	Urban area (constituent counties)	Wage index
10180	Abilene, TX.	0.8000
	Callahan County, TX.	
	Jones County, TX.	
	Taylor County, TX.	
10380	Aguadilla-Isabela-San Sebastián, PR	0.3915
	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
	Portage County, OH.	
	Summit County, OH.	
10500	Albany, GA	0.8991
	Baker County, GA.	
	Dougherty County, GA.	
	Lee County, GA.	
	Terrell County, GA.	
	Worth County, GA.	
10580	Albany-Schenectady-Troy, NY	0.8720
	Albany County, NY.	
	Rensselaer County, NY.	
	Saratoga County, NY.	
	Schenectady County, NY.	
	Schoharie County, NY.	
10740	Albuquerque, NM	0.9458
	Bernalillo County, NM.	
	Sandoval County, NM.	
	Torrance County, NM.	
	Valencia County, NM.	
10780	Alexandria, LA	0.8006
	Grant Parish, LA.	
	Rapides Parish, LA.	
10900	Allentown-Bethlehem-Easton, PA-NJ	0.9947

ADDENDUM B.—CY 2007 WAGE INDEX FOR URBAN AREAS BY CBSA; APPLICABLE PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX—Continued

CBSA code	Urban area (constituent counties)	Wage index
	Warren County, NJ.	
	Carbon County, PA.	
	Lehigh County, PA.	
	Northampton County, PA.	
11020	Altoona, PA	0.8812
	Blair County, PA.	
11100	Amarillo, TX	0.9169
	Armstrong County, TX.	
	Carson County, TX.	
	Potter County, TX.	
	Randall County, TX.	
11180	Ames, IA	0.9760
	Story County, IA.	
111260	Anchorage, AK	1.2023
	Anchorage Municipality, AK.	
	Matanuska-Susitna Borough, AK.	
11300	Anderson, IN	0.8681
	Madison County, IN.	
11340	Anderson, SC	0.9017
	Anderson County, SC.	
11460	Ann Arbor, MI	1.0826
	Washtenaw County, MI.	
11500	Anniston-Oxford, AL	0.7770
	Calhoun County, AL.	
11540	Appleton, WI	0.9455
	Calumet County, WI.	
	Outagamie County, WI.	
11700	Asheville, NC	0.9216
	Buncombe County, NC.	
	Haywood County, NC.	
	Henderson County, NC.	
	Madison County, NC.	
2020	Athens-Clarke County, GA	0.9856
	Clarke County, GA.	
	Madison County, GA.	
	Oconee County, GA.	
	Oglethorpe County, GA.	
12060	Atlanta-Sandy Springs-Marietta, GA	0.9762
	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
	Atlantic County, NJ.	
2220	Auburn-Opelika, AL	0.8096
	Lee County, AL.	

ADDENDUM B.—CY 2007 WAGE INDEX FOR URBAN AREAS BY CBSA; APPLICABLE PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX—Continued

CBSA code	Urban area (constituent counties)	Wage index
12260	Augusta-Richmond County, GA-SC	0.9667
	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
	Bastrop County, TX.	
	Caldwell County, TX.	
	Hays County, TX.	
	Travis County, TX.	
	Williamson County, TX.	
12540	Bakersfield, CA	1.0725
	Kern County, CA.	
12580	Baltimore-Towson, MD	1.0088
	Anne Arundel County, MD.	
	Baltimore County, MD.	
	Carroll County, MD.	
	Harford County, MD.	
	Howard County, MD.	
	Queen Anne's County, MD.	
	Baltimore City, MD.	
12620	Bangor, ME	0.9711
	Penobscot County, ME.	
12700	Barnstable Town, MA	1.2539
	Barnstable County, MA.	
12940	Baton Rouge, LA	0.8084
	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
	Calhoun County, MI.	
13020	Bay City, MI	0.9251
	Bay County, MI.	
13140	Beaumont-Port Arthur, TX	0.8595
	Hardin County, TX.	
	Jefferson County, TX.	
	Orange County, TX.	
13380	Bellingham, WA	1.1104
	Whatcom County, WA.	
13460	Bend, OR	1.0743
	Deschutes County, OR.	
13644	Bethesda-Frederick-Gaithersburg, MD	1.0903
	Frederick County, MD.	
	Montgomery County, MD.	
13740	Billings, MT	0.8712
	Carbon County, MT.	
	Yellowstone County, MT.	
13780	Binghamton, NY	0.8786
	Broome County, NY.	
	Tioga County, NY.	
13820	Birmingham-Hoover, AL	0.8894
	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
	Burleigh County, ND.	
	Morton County, ND.	
13980	Blacksburg-Christiansburg-Radford, VA	0.8213

ADDENDUM B.—CY 2007 WAGE INDEX FOR URBAN AREAS BY CBSA; APPLICABLE PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX—Continued

CBSA code	Urban area (constituent counties)	Wage index
	Giles County, VA.	
	Montgomery County, VA.	
	Pulaski County, VA.	
	Radford City, VA.	
14020	Bloomington, IN	0.8533
	Greene County, IN.	
	Monroe County, IN.	
	Owen County, IN.	
14060	Bloomington-Normal, IL	0.8944
	McLean County, IL.	
14260	Boise City-Nampa, ID	0.9401
	Ada County, ID.	
	Boise County, ID.	
	Canyon County, ID.	
	Gem County, ID.	
	Owyhee County, ID.	
14484	Boston-Quincy, MA	1.1679
	Norfolk County, MA.	
	Plymouth County, MA.	
	Suffolk County, MA.	
14500	Boulder, CO	1.0350
	Boulder County, CO.	
14540	Bowling Green, KY	0.8148
	Edmonson County, KY.	
	Warren County, KY.	
14740	Bremerton-Silverdale, WA	1.0913
	Kitsap County, WA.	
14860	Bridgeport-Stamford-Norwalk, CT	1.2659
	Fairfield County, CT.	
15180	Brownsville-Harlingen, TX	0.9430
	Cameron County, TX.	
15260	Brunswick, GA	1.0164
	Brantley County, GA.	
	Glynn County, GA.	
	McIntosh County, GA.	
15380	Buffalo-Niagara Falls, NY	0.9424
	Erie County, NY.	
	Niagara County, NY.	
15500	Burlington, NC	0.8674
	Alamance County, NC.	
15540	Burlington-South Burlington, VT	0.9474
	Chittenden County, VT.	
	Franklin County, VT.	
	Grand Isle County, VT.	
15764	Cambridge-Newton-Framingham, MA	1.0970
	Middlesex County, MA.	
5804	Camden, NJ	1.0392
	Burlington County, NJ.	
	Camden County, NJ.	
	Gloucester County, NJ.	
15940	Canton-Massillon, OH	0.9031
	Carroll County, OH.	
	Stark County, OH.	
15980	Cape Coral-Fort Myers, FL	0.9342
	Lee County, FL.	
16180	Carson City, NV	1.0025
	Carson City, NV.	
16220	Casper, WY	0.9145
	Natrona County, WY.	
16300	Cedar Rapids, IA	0.8888
	Benton County, IA.	
	Jones County, IA.	
	Linn County, IA.	
16580	Champaign-Urbana, IL	0.9644
	Champaign County, IL.	
	Ford County, IL.	
	Piatt County, IL.	
16620	Charleston, WV	0.8542
	Boone County, WV.	
	Clay County, WV.	

ADDENDUM B.—CY 2007 WAGE INDEX FOR URBAN AREAS BY CBSA; APPLICABLE PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX—Continued

CBSA code	Urban area (constituent counties)	Wage index
	Kanawha County, WV.	
	Lincoln County, WV.	
	Putnam County, WV.	
16700	Charleston-North Charleston, SC	0.9145
	Berkeley County, SC.	
	Charleston County, SC.	
	Dorchester County, SC.	
16740	Charlotte-Gastonia-Concord, NC-SC	0.9554
	Anson County, NC.	
	Cabarrus County, NC.	
	Gaston County, NC.	
	Mecklenburg County, NC.	
	Union County, NC.	
	York County, SC.	
16820	Charlottesville, VA	1.0125
	Albemarle County, VA.	
	Fluvanna County, VA.	
	Greene County, VA.	
	Nelson County, VA.	
	Charlottesville City, VA.	
16860	Chattanooga, TN-GA	0.8948
	Catoosa County, GA.	
	Dade County, GA.	
	Walker County, GA.	
	Hamilton County, TN.	
	Marion County, TN.	
	Sequatchie County, TN.	
16940	Cheyenne, WY	0.9060
	Laramie County, WY.	
16974	Chicago-Naperville-Joliet, IL	1.0751
	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
	Butte County, CA.	
17140	Cincinnati-Middletown, OH-KY-IN	0.9601
	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
	Christian County, KY.	
	Trigg County, KY.	
	Montgomery County, TN.	
	Stewart County, TN.	
17420	Cleveland, TN	0.8109
	Bradley County, TN.	
	Polk County, TN.	
17460	Cleveland-Elyria-Mentor, OH	0.9400
	Cuyahoga County, OH.	
	Geauga County, OH.	
	Lake County, OH.	
	Lorain County, OH.	
	Medina County, OH.	

ADDENDUM B.—CY 2007 WAGE INDEX FOR URBAN AREAS BY CBSA; APPLICABLE PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX—Continued

CBSA code	Urban area (constituent counties)	Wage index
17660	Coeur d'Alene, ID	0.9344
	Kootenai County, ID.	
17780	College Station-Bryan, TX	0.9045
	Brazos County, TX.	
	Burleson County, TX.	
	Robertson County, TX.	
17820	Colorado Springs, CO	0.9701
	El Paso County, CO.	
	Teller County, CO.	
17860	Columbia, MO	0.8542
	Boone County, MO.	
	Howard County, MO.	
17900	Columbia, SC	0.8933
	Calhoun County, SC.	
	Fairfield County, SC.	
	Kershaw County, SC.	
	Lexington County, SC.	
	Richland County, SC.	
	Saluda County, SC.	
17980	Columbus, GA-AL	0.8239
	Russell County, AL.	
	Chattahoochee County, GA.	
	Harris County, GA.	
	Marion County, GA.	
	Muscogee County, GA.	
18020	Columbus, IN	0.9318
	Bartholomew County, IN.	
18140	Columbus, OH	1.0107
	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
	Aransas County, TX.	
	Nueces County, TX.	
	San Patricio County, TX.	
18700	Corvallis, OR	1.1546
	Benton County, OR.	
19060	Cumberland, MD-WV	0.8446
	Allegany County, MD.	
	Mineral County, WV.	
19124	Dallas-PlanoIrving, TX	1.0075
	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
	Murray County, GA.	
	Whitfield County, GA.	
19180	Danville, IL	0.9266
	Vermilion County, IL.	
19260	Danville, VA	0.8451
	Pittsylvania County, VA.	
	Danville City, VA.	
19340	Davenport-Moline-Rock Island, IA-IL	0.8846
	Henry County, IL.	
	Mercer County, IL.	
	Rock Island County, IL.	
	Scott County, IA.	
19380	Dayton, OH	0.9037
	Greene County, OH.	
	Miami County, OH.	

ADDENDUM B.—CY 2007 WAGE INDEX FOR URBAN AREAS BY CBSA; APPLICABLE PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX—Continued

CBSA code	Urban area (constituent counties)	Wage index
	Montgomery County, OH.	
	Preble County, OH.	
19460	Decatur, AL	0.8159
	Lawrence County, AL.	
	Morgan County, AL.	
19500	Decatur, IL	0.8172
	Macon County, IL.	
19660	Deltona-Daytona Beach-Ormond Beach, FL	0.9263
	Volusia County, FL.	
19740	Denver-Aurora, CO	1.0930
	Adams County, CO.	
	Arapahoe County, CO.	
	Broomfield County, CO.	
	Clear Creek County, CO.	
	Denver County, CO.	
	Douglas County, CO.	
	Elbert County, CO.	
	Gilpin County, CO.	
	Jefferson County, CO.	
	Park County, CO.	
19780	Des Moines, IA	0.9214
	Dallas County, IA.	
	Guthrie County, IA.	
	Madison County, IA.	
	Polk County, IA.	
	Warren County, IA.	
19804	Detroit-Livonia-Dearborn, MI	1.0281
	Wayne County, MI.	
20020	Dothan, AL	0.7381
	Geneva County, AL.	
	Henry County, AL.	
	Houston County, AL.	
20100	Dover, DE	0.9847
	Kent County, DE.	
20220	Dubuque, IA	0.9133
	Dubuque County, IA.	
20260	Duluth, MN-WI	1.0042
	Carlton County, MN.	
	St. Louis County, MN.	
	Douglas County, WI.	
20500	Durham, NC	0.9826
	Chatham County, NC.	
	Durham County, NC.	
	Orange County, NC.	
	Person County, NC.	
20740	Eau Claire, WI	0.9630
	Chippewa County, WI.	
	Eau Claire County, WI.	
20764	Edison, NJ	1.1190
	Middlesex County, NJ.	
	Monmouth County, NJ.	
	Ocean County, NJ.	
	Somerset County, NJ.	
20940	El Centro, CA	0.9076
	Imperial County, CA.	
21060	Elizabethtown, KY	0.8697
	Hardin County, KY.	
	Larue County, KY.	
21140	Elkhart-Goshen, IN	0.9426
	Elkhart County, IN.	
21300	Elmira, NY	0.8240
	Chemung County, NY.	
21340	El Paso, TX	0.9053
	El Paso County, TX.	
21500	Erie, PA	0.8827
	Erie County, PA.	
21604	Essex County, MA	1.0418
	Essex County, MA.	
21660	Eugene-Springfield, OR	1.0876
	Lane County, OR.	

ADDENDUM B.—CY 2007 WAGE INDEX FOR URBAN AREAS BY CBSA; APPLICABLE PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX—Continued

CBSA code	Urban area (constituent counties)	Wage index
21780	Evansville, IN-KY	0.9071
	Gibson County, IN.	
	Posey County, IN.	
	Vanderburgh County, IN.	
	Warrick County, IN.	
	Henderson County, KY.	
	Webster County, KY.	
21820	Fairbanks, AK	1.1059
	Fairbanks North Star Borough, AK.	
21940	Fajardo, PR	0.4036
	Ceiba Municipio, PR.	
	Fajardo Municipio, PR.	
	Luquillo Municipio, PR.	
22020	Fargo, ND-MN	0.8250
	Cass County, ND.	
	Clay County, MN.	
22140	Farmington, NM	0.8589
	San Juan County, NM.	
22180	Fayetteville, NC	0.8945
	Cumberland County, NC.	
	Hoke County, NC.	
22220	Fayetteville-Springdale-Rogers, AR-MO	0.8865
	Benton County, AR.	
	Madison County, AR.	
	Washington County, AR.	
	McDonald County, MO.	
22380	Flagstaff, AZ	1.1601
	Coconino County, AZ.	
22420	Flint, MI	1.0969
	Genesee County, MI.	
22500	Florence, SC	0.8388
	Darlington County, SC.	
	Florence County, SC.	
22520	Florence-Muscle Shoals, AL	0.7843
	Colbert County, AL.	
	Lauderdale County, AL.	
22540	Fond du Lac, WI	1.0063
	Fond du Lac County, WI.	
22660	Fort Collins-Loveland, CO	0.9544
	Larimer County, CO.	
22744	Fort Lauderdale-Pompano Beach-Deerfield Beach, FL	1.0133
	Broward County, FL.	
22900	Fort Smith, AR-OK	0.7731
	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
	Okaloosa County, FL.	
23060	Fort Wayne, IN	0.9517
	Allen County, IN.	
	Wells County, IN.	
	Whitley County, IN.	
23104	Fort Worth-Arlington, TX	0.9569
	Johnson County, TX.	
	Parker County, TX.	
	Tarrant County, TX.	
	Wise County, TX.	
23420	Fresno, CA	1.0943
	Fresno County, CA.	
23460	Gadsden, AL	0.8066
	Etowah County, AL.	
23540	Gainesville, FL	0.9277
	Alachua County, FL.	
	Gilchrist County, FL.	
23580	Gainesville, GA	0.8958
	Hall County, GA.	
23844	Gary, IN	0.9334
	Jasper County, IN.	

ADDENDUM B.—CY 2007 WAGE INDEX FOR URBAN AREAS BY CBSA; APPLICABLE PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX—Continued

CBSA code	Urban area (constituent counties)	Wage index
	Lake County, IN.	
	Newton County, IN.	
	Porter County, IN.	
24020	Glens Falls, NY	0.8324
	Warren County, NY.	
	Washington County, NY.	
24140	Goldsboro, NC	0.9171
	Wayne County, NC.	
24220	Grand Forks, ND-MN	0.7949
	Polk County, MN.	
	Grand Forks County, ND.	
24300	Grand Junction, CO	0.9668
	Mesa County, CO.	
24340	Grand Rapids-Wyoming, MI	0.9455
	Barry County, MI.	
	Ionia County, MI.	
	Kent County, MI.	
	Newaygo County, MI.	
24500	Great Falls, MT	0.8598
	Cascade County, MT.	
24540	Greeley, CO	0.9602
	Weld County, CO.	
24580	Green Bay, WI	0.9787
	Brown County, WI.	
	Kewaunee County, WI.	
	Oconto County, WI.	
24660	Greensboro-High Point, NC	0.8866
	Guilford County, NC.	
	Randolph County, NC.	
	Rockingham County, NC.	
24780	Greenville, NC	0.9432
	Greene County, NC.	
	Pitt County, NC.	
24860	Greenville, SC	0.9804
	Greenville County, SC.	
	Laurens County, SC.	
	Pickens County, SC.	
25020	Guayama, PR	0.3235
	Arroyo Municipio, PR.	
	Guayama Municipio, PR.	
	Patillas Municipio, PR.	
25060	Gulfport-Biloxi, MS	0.8915
	Hancock County, MS.	
	Harrison County, MS.	
	Stone County, MS.	
25180	Hagerstown-Martinsburg, MD-WV	0.9038
	Washington County, MD.	
	Berkeley County, WV.	
	Morgan County, WV.	
25260	Hanford-Corcoran, CA	1.0282
	Kings County, CA.	
25420	Harrisburg-Carlisle, PA	0.9402
	Cumberland County, PA.	
	Dauphin County, PA.	
	Perry County, PA.	
25500	Harrisonburg, VA	0.9073
	Rockingham County, VA.	
	Harrisonburg City, VA.	
25540	Hartford-West Hartford-East Hartford, CT	1.0894
	Hartford County, CT.	
	Litchfield County, CT.	
	Middlesex County, CT.	
	Tolland County, CT.	
25620	Hattiesburg, MS	0.7430
	Forrest County, MS.	
	Lamar County, MS.	
	Perry County, MS.	
25860	Hickory-Lenoir-Morganton, NC	0.9010
	Alexander County, NC.	
	Burke County, NC.	

ADDENDUM B.—CY 2007 WAGE INDEX FOR URBAN AREAS BY CBSA; APPLICABLE PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX—Continued

CBSA code	Urban area (constituent counties)	Wage index
	Caldwell County, NC.	
	Catawba County, NC.	
25980[1]	Hinesville-Fort Stewart, GA	0.9178
	Liberty County, GA.	
	Long County, GA.	
26100	Holland-Grand Haven, MI	0.9163
	Ottawa County, MI.	
26180	Honolulu, HI	1.1096
	Honolulu County, HI.	
26300	Hot Springs, AR	0.8782
	Garland County, AR.	
26380	Houma-Bayou Cane-Thibodaux, LA	0.8082
	Lafourche Parish, LA.	
	Terrebonne Parish, LA.	
26420	Houston-Baytown-Sugar Land, TX	1.0008
	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, WVKYOH	0.8997
	Boyd County, KY.	
	Greenup County, KY.	
	Lawrence County, OH.	
	Cabell County, WV.	
	Wayne County, WV.	
26620	Huntsville, AL	0.9007
	Limestone County, AL.	
	Madison County, AL.	
26820	Idaho Falls, ID	0.9088
	Bonneville County, ID.	
	Jefferson County, ID.	
26900	Indianapolis, IN	0.9895
	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
	Johnson County, IA.	
	Washington County, IA.	
27060	Ithaca, NY	0.9928
	Tompkins County, NY.	
27100	Jackson, MI	0.9560
	Jackson County, MI.	
27140	Jackson, MS	0.8271
	Copiah County, MS.	
	Hinds County, MS.	
	Madison County, MS.	
	Rankin County, MS.	
	Simpson County, MS.	
27180	Jackson, TN	0.8853
	Chester County, TN.	
	Madison County, TN.	
27260	Jacksonville, FL	0.9165
	Baker County, FL.	
	Clay County, FL.	
	Duval County, FL.	
	Nassau County, FL.	
	St. Johns County, FL.	

ADDENDUM B.—CY 2007 WAGE INDEX FOR URBAN AREAS BY CBSA; APPLICABLE PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX—Continued

CBSA code	Urban area (constituent counties)	Wage index
27340	Jacksonville, NC	0.8231
	Onslow County, NC.	
27500	Janesville, WI	0.9655
	Rock County, WI.	
27620	Jefferson City, MO	0.8332
	Callaway County, MO.	
	Cole County, MO.	
	Moniteau County, MO.	
	Osage County, MO.	
≤27740	Johnson City, TN	0.8043
	Carter County, TN.	
	Unicoi County, TN.	
	Washington County, TN.	
27780	Johnstown, PA	0.8620
	Cambria County, PA.	
27860	Jonesboro, AR	0.7662
	Craighead County, AR.	
	Poinsett County, AR.	
27900	Joplin, MO	0.8605
	Jasper County, MO.	
	Newton County, MO.	
28020	Kalamazoo-Portage, MI	1.0704
	Kalamazoo County, MI.	
	Van Buren County, MI.	
28100	Kankakee-Bradley, IL	1.0083
	Kankakee County, IL.	
28140	Kansas City, MOKS	0.9495
	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
	Benton County, WA.	
	Franklin County, WA.	
28660	Killeen-TempleFort Hood, TX	0.8901
	Bell County, TX.	
	Coryell County, TX.	
	Lampasas County, TX.	
28700	Kingsport-Bristol-Bristol, TNVA	0.7985
	Hawkins County, TN.	
	Sullivan County, TN.	
	Bristol City, VA.	
	Scott County, VA.	
	Washington County, VA.	
28740	Kingston, NY	0.9367
	Ulster County, NY.	
28940	Knoxville, TN	0.8249
	Anderson County, TN.	
	Blount County, TN.	
	Knox County, TN.	
	Loudon County, TN.	
	Union County, TN.	
29020	Kokomo, IN	0.9669
	Howard County, IN.	
	Tipton County, IN.	
29100	La Crosse, WIMN	0.9426
	Houston County, MN.	
	La Crosse County, WI.	
29140	Lafayette, IN	0.8931

ADDENDUM B.—CY 2007 WAGE INDEX FOR URBAN AREAS BY CBSA; APPLICABLE PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX—Continued

CBSA code	Urban area (constituent counties)	Wage index
	Benton County, IN.	
	Carroll County, IN.	
	Tippecanoe County, IN.	
29180	Lafayette, LA	0.8289
	Lafayette Parish, LA.	
	St. Martin Parish, LA.	
29340	Lake Charles, LA	0.7914
	Calcasieu Parish, LA.	
	Cameron Parish, LA.	
29404	Lake County-Kenosha County, IL-WI	1.0570
	Lake County, IL.	
	Kenosha County, WI.	
29460	Lakeland, FL	0.8879
	Polk County, FL.	
29540	Lancaster, PA	0.9589
	Lancaster County, PA.	
29620	Lansing-East Lansing, MI	1.0088
	Clinton County, MI.	
	Eaton County, MI.	
	Ingham County, MI.	
29700	Laredo, TX	0.7811
	Webb County, TX.	
29740	Las Cruces, NM	0.9273
	Dona Ana County, NM.	
29820	Las Vegas-Paradise, NV	1.1430
	Clark County, NV.	
29940	Lawrence, KS	0.8365
	Douglas County, KS.	
30020	Lawton, OK	0.8065
	Comanche County, OK.	
30140	Lebanon, PA	0.8679
	Lebanon County, PA.	
30300	Lewiston, ID-WA	0.9853
	Nez Perce County, ID.	
	Asotin County, WA.	
30340	LewistonAuburn, ME	0.9126
	Androscoggin County, ME.	
30460	Lexington-Fayette, KY	0.9181
	Bourbon County, KY.	
	Clark County, KY.	
	Fayette County, KY.	
	Jessamine County, KY.	
	Scott County, KY.	
	Woodford County, KY.	
30620	Lima, OH	0.9042
	Allen County, OH.	
30700	Lincoln, NE	1.0092
	Lancaster County, NE.	
	Seward County, NE.	
30780	Little Rock-North Little Rock, AR	0.8890
	Faulkner County, AR.	
	Grant County, AR.	
	Lonoke County, AR.	
	Perry County, AR.	
	Pulaski County, AR.	
	Saline County, AR.	
30860	Logan, UT-ID	0.9022
	Franklin County, ID.	
	Cache County, UT.	
30980	Longview, TX	0.8788
	Gregg County, TX.	
	Rusk County, TX.	
	Upshur County, TX.	
31020	Longview, WA	1.0011
	Cowlitz County, WA.	
31084	Los Angeles-Long Beach-Glendale, CA	1.1760
	Los Angeles County, CA.	
31140	Louisville, KY-IN	0.9118
	Clark County, IN.	
	Floyd County, IN.	

ADDENDUM B.—CY 2007 WAGE INDEX FOR URBAN AREAS BY CBSA; APPLICABLE PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX—Continued

CBSA code	Urban area (constituent counties)	Wage index
	Harrison County, IN.	
	Washington County, IN.	
	Bullitt County, KY.	
	Henry County, KY.	
	Jefferson County, KY.	
	Meade County, KY.	
	Nelson County, KY.	
	Oldham County, KY.	
	Shelby County, KY.	
	Spencer County, KY.	
	Trimble County, KY.	
31180	Lubbock, TX	0.8613
	Crosby County, TX.	
	Lubbock County, TX.	
31340	Lynchburg, VA	0.8694
	Amherst County, VA.	
	Appomattox County, VA.	
	Bedford County, VA.	
	Campbell County, VA.	
	Bedford City, VA.	
	Lynchburg City, VA.	
31420	Macon, GA	0.9519
	Bibb County, GA.	
	Crawford County, GA.	
	Jones County, GA.	
	Monroe County, GA.	
	Twiggs County, GA.	
31460	Madera, CA	0.8154
	Madera County, CA.	
31540	Madison, WI	1.0840
	Columbia County, WI.	
	Dane County, WI.	
	Iowa County, WI.	
31700	Manchester-Nashua, NH	1.0243
	Hillsborough County, NH.	
	Merrimack County, NH.	
31900	Mansfield, OH	0.9271
	Richland County, OH.	
32420	Mayagüez, PR	0.3848
	Hormigueros Municipio, PR.	
	Mayagüez Municipio, PR.	
32580	McAllen-Edinburg-Pharr, TX	0.8773
	Hidalgo County, TX.	
32780	Medford, OR	1.0818
	Jackson County, OR.	
32820	Memphis, TN-MS-AR	0.9373
	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
	Merced County, CA.	
33124	Miami-Miami Beach-Kendall, FL	0.9812
	Miami-Dade County, FL.	
33140	Michigan City-La Porte, IN	0.9118
	LaPorte County, IN.	
33260	Midland, TX	0.9786
	Midland County, TX.	
33340	Milwaukee-Waukesha-West Allis, WI	1.0218
	Milwaukee County, WI.	
	Ozaukee County, WI.	
	Washington County, WI.	
	Waukesha County, WI.	
33460	Minneapolis-St. Paul-Bloomington, MN-WI	1.0946
	Anoka County, MN.	
	Carver County, MN.	

ADDENDUM B.—CY 2007 WAGE INDEX FOR URBAN AREAS BY CBSA; APPLICABLE PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX—Continued

CBSA code	Urban area (constituent counties)	Wage index
	Chisago County, MN.	
	Dakota County, MN.	
	Hennepin County, MN.	
	Isanti County, MN.	
	Ramsey County, MN.	
	Scott County, MN.	
	Sherburne County, MN.	
	Washington County, MN.	
	Wright County, MN.	
	Pierce County, WI.	
	St. Croix County, WI.	
33540	Missoula, MT	0.8928
	Missoula County, MT.	
33660	Mobile, AL	0.7913
	Mobile County, AL.	
33700	Modesto, CA	1.1729
	Stanislaus County, CA.	
33740	Monroe, LA	0.7997
	Ouachita Parish, LA.	
	Union Parish, LA.	
33780	Monroe, MI	0.9707
	Monroe County, MI.	
33860	Montgomery, AL	0.8009
	Autauga County, AL.	
	Elmore County, AL.	
	Lowndes County, AL.	
	Montgomery County, AL.	
34060	Morgantown, WV	0.8423
	Monongalia County, WV.	
	Preston County, WV.	
34100	Morristown, TN	0.7933
	Grainger County, TN.	
	Hamblen County, TN.	
	Jefferson County, TN.	
34580	Mount Vernon-Anacortes, WA	1.0517
	Skagit County, WA.	
34620	Muncie, IN	0.8562
	Delaware County, IN.	
34740	Muskegon-Norton Shores, MI	0.9941
	Muskegon County, MI.	
34820	Myrtle Beach-Conway-North Myrtle Beach, SC	0.8810
	Horry County, SC.	
34900	Napa, CA	1.3374
	Napa County, CA.	
34940	Naples-Marco Island, FL	0.9941
	Collier County, FL.	
34980	Nashville-Davidson-Murfreesboro, TN	0.9847
	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
	Nassau County, NY.	
	Suffolk County, NY.	
35084	Newark-Union, NJ-PA	1.1892
	Essex County, NJ.	
	Hunterdon County, NJ.	
	Morris County, NJ.	
	Sussex County, NJ.	
	Union County, NJ.	
	Pike County, PA.	

ADDENDUM B.—CY 2007 WAGE INDEX FOR URBAN AREAS BY CBSA; APPLICABLE PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX—Continued

CBSA code	Urban area (constituent counties)	Wage index
35300	New Haven-Milford, CT	1.1953
	New Haven County, CT.	
35380	New Orleans-Metairie-Kenner, LA	0.8831
	Jefferson Parish, LA.	
	Orleans Parish, LA.	
	Plaquemines Parish, LA.	
	St. Bernard Parish, LA.	
	St. Charles Parish, LA.	
	St. John the Baptist Parish, LA.	
	St. Tammany Parish, LA.	
35644	New York-Wayne-White Plains, NY-NJ	1.3177
	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
	Berrien County, MI.	
35980	Norwich-New London, CT	1.1932
	New London County, CT.	
36084	Oakland-Fremont-Hayward, CA	1.5819
	Alameda County, CA.	
	Contra Costa County, CA.	
36100	Ocala, FL	0.8867
	Marion County, FL.	
36140	Ocean City, NJ	1.0472
	Cape May County, NJ.	
36220	Odessa, TX	1.0073
	Ector County, TX.	
36260	Ogden-Clearfield, UT	0.8995
	Davis County, UT.	
	Morgan County, UT.	
	Weber County, UT.	
36420	Oklahoma City, OK	0.8843
	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
	Thurston County, WA.	
36540	Omaha-Council Bluffs, NE-IA	0.9450
	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, FL	0.9452
	Lake County, FL.	
	Orange County, FL.	
	Osceola County, FL.	
	Seminole County, FL.	
36780	Oshkosh-Neenah, WI	0.9315
	Winnebago County, WI.	
36980	Owensboro, KY	0.8748
	Daviess County, KY.	
	Hancock County, KY.	
	McLean County, KY.	
37100	Oxnard-Thousand Oaks-Ventura, CA	1.1546

ADDENDUM B.—CY 2007 WAGE INDEX FOR URBAN AREAS BY CBSA; APPLICABLE PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX—Continued

CBSA code	Urban area (constituent counties)	Wage index
	Ventura County, CA.	
37340	Palm Bay-Melbourne-Titusville, FL	0.9443
	Brevard County, FL.	
37460	Panama City-Lynn Haven, FL	0.8027
	Bay County, FL.	
37620	Parkersburg-Marietta, WV-OH	0.7977
	Washington County, OH.	
	Pleasants County, WV.	
	Wirt County, WV.	
	Wood County, WV.	
37700	Pascagoula, MS	0.8215
	George County, MS.	
	Jackson County, MS.	
37860	Pensacola-Ferry Pass-Brent, FL	0.8000
	Escambia County, FL.	
	Santa Rosa County, FL.	
37900	Peoria, IL	0.8982
	Marshall County, IL.	
	Peoria County, IL.	
	Stark County, IL.	
	Tazewell County, IL.	
	Woodford County, IL.	
37964	Philadelphia, PA	1.0996
	Bucks County, PA.	
	Chester County, PA.	
	Delaware County, PA.	
	Montgomery County, PA.	
	Philadelphia County, PA.	
38060	Phoenix-Mesa-Scottsdale, AZ	1.0287
	Maricopa County, AZ.	
	Pinal County, AZ.	
38220	Pine Bluff, AR	0.8383
	Cleveland County, AR.	
	Jefferson County, AR.	
	Lincoln County, AR.	
38300	Pittsburgh, PA	0.8674
	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
	Berkshire County, MA.	
38540	Pocatello, ID	0.9400
	Bannock County, ID.	
	Power County, ID.	
38660	Ponce, PR	0.4842
	Juana Díaz Municipio, PR.	
	Ponce Municipio, PR.	
	Villalba Municipio, PR.	
38860	Portland-South Portland-Biddeford, ME	0.9908
	Cumberland County, ME.	
	Sagadahoc County, ME.	
	York County, ME.	
38900	Portland-Vancouver-Beaverton, OR-WA	1.1416
	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
	Martin County, FL.	
	St. Lucie County, FL.	
39100	Poughkeepsie-Newburgh-Middletown, NY	1.0911
	Dutchess County, NY.	
	Orange County, NY.	

ADDENDUM B.—CY 2007 WAGE INDEX FOR URBAN AREAS BY CBSA; APPLICABLE PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX—Continued

CBSA code	Urban area (constituent counties)	Wage index
39140	Prescott, AZ	0.9836
	Yavapai County, AZ.	
39300	Providence-New Bedford-Fall River, RI-MA	1.0783
	Bristol County, MA.	
	Bristol County, RI.	
	Kent County, RI.	
	Newport County, RI.	
	Providence County, RI.	
	Washington County, RI.	
39340	Provo-Orem, UT	0.9537
	Juab County, UT.	
	Utah County, UT.	
39380	Pueblo, CO	0.8753
	Pueblo County, CO.	
39460	Punta Gorda, FL	0.9405
	Charlotte County, FL.	
39540	Racine, WI	0.9356
	Racine County, WI.	
39580	Raleig-hCary, NC	0.9864
	Franklin County, NC.	
	Johnston County, NC.	
	Wake County, NC.	
39660	Rapid City, SD	0.8833
	Meade County, SD.	
	Pennington County, SD.	
39740	Reading, PA	0.9622
	Berks County, PA.	
39820	Redding, CA	1.3198
	Shasta County, CA.	
39900	Reno-Sparks, NV	1.1963
	Storey County, NV.	
	Washoe County, NV.	
40060	Richmond, VA	0.9177
	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
	Riverside County, CA.	
	San Bernardino County, CA.	
40220	Roanoke, VA	0.8647
	Botetourt County, VA.	
	Craig County, VA.	
	Franklin County, VA.	
	Roanoke County, VA.	
	Roanoke City, VA.	
	Salem City, VA.	
40340	Rochester, MN	1.1408
	Dodge County, MN.	
	Olmsted County, MN.	
	Wabasha County, MN.	
40380	Rochester, NY	0.8994
	Livingston County, NY.	
	Monroe County, NY.	

ADDENDUM B.—CY 2007 WAGE INDEX FOR URBAN AREAS BY CBSA; APPLICABLE PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX—Continued

CBSA code	Urban area (constituent counties)	Wage index
	Ontario County, NY.	
	Orleans County, NY.	
	Wayne County, NY.	
40420	Rockford, IL	0.9989
	Boone County, IL.	
	Winnebago County, IL.	
40484	Rockingham County-Strafford County, NH	1.0159
	Rockingham County, NH.	
	Strafford County, NH.	
40580	Rocky Mount, NC	0.8854
	Edgecombe County, NC.	
	Nash County, NC.	
40660	Rome, GA	0.9193
	Floyd County, GA.	
40900	Sacramento—Arden-Arcade—Roseville, CA	1.3372
	El Dorado County, CA.	
	Placer County, CA.	
	Sacramento County, CA.	
	Yolo County, CA.	
40980	Saginaw-Saginaw Township North, MI	0.8874
	Saginaw County, MI.	
41060	St. Cloud, MN	1.0362
	Benton County, MN.	
	Stearns County, MN.	
41100	St. George, UT	0.9265
	Washington County, UT.	
41140	St. Joseph, MO-KS	1.0118
	Doniphan County, KS.	
	Andrew County, MO.	
	Buchanan County, MO.	
	DeKalb County, MO.	
41180	St. Louis, MO-IL	0.9005
	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
	Marion County, OR.	
	Polk County, OR.	
41500	Salinas, CA	1.4337
	Monterey County, CA.	
41540	Salisbury, MD	0.8953
	Somerset County, MD.	
	Wicomico County, MD.	
41620	Salt Lake City, UT	0.9402
	Salt Lake County, UT.	
	Summit County, UT.	
	Tooele County, UT.	
41660	San Angelo, TX	0.8362
	Irion County, TX.	
	Tom Green County, TX.	
41700	San Antonio, TX	0.8844
	Atascosa County, TX.	
	Bandera County, TX.	
	Bexar County, TX.	
	Comal County, TX.	
	Guadalupe County, TX.	

ADDENDUM B.—CY 2007 WAGE INDEX FOR URBAN AREAS BY CBSA; APPLICABLE PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX—Continued

CBSA code	Urban area (constituent counties)	Wage index
	Kendall County, TX.	
	Medina County, TX.	
	Wilson County, TX.	
41740	San Diego-Carlsbad-San Marcos, CA	1.1354
	San Diego County, CA.	
41780	Sandusky, OH	0.9302
	Erie County, OH.	
41884	San Francisco-San Mateo-Redwood City, CA	1.5165
	Marin County, CA.	
	San Francisco County, CA.	
	San Mateo County, CA.	
41900	San Germán-Cabo Rojo, PR	0.4885
	Cabo Rojo Municipio, PR.	
	Lajas Municipio, PR.	
	Sabana Grande Municipio, PR.	
	San Germán Municipio, PR.	
41940	San Jose-Sunnyvale-Santa Clara, CA	1.5543
	San Benito County, CA.	
	Santa Clara County, CA.	
41980	San Juan-Caguas-Guaynabo, PR	0.4452
	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
	San Luis Obispo County, CA.	
42044	Santa Ana-Anaheim-Irvine, CA	1.1473
	Orange County, CA.	
42060	Santa Barbara-Santa Maria-Goleta, CA	1.1091
	Santa Barbara County, CA.	
42100	Santa Cruz-Watsonville, CA	1.5457
	Santa Cruz County, CA.	
42140	Santa Fe, NM	1.0824

ADDENDUM B.—CY 2007 WAGE INDEX FOR URBAN AREAS BY CBSA; APPLICABLE PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX—Continued

CBSA code	Urban area (constituent counties)	Wage index
	Santa Fe County, NM.	
42220	Santa Rosa-Petaluma, CA	1.4464
	Sonoma County, CA.	
42260	Sarasota-Bradenton-Venice, FL	0.9868
	Manatee County, FL.	
	Sarasota County, FL.	
42340	Savannah, GA	0.9351
	Bryan County, GA.	
	Chatham County, GA.	
	Effingham County, GA.	
42540	Scranton-Wilkes-Barre, PA	0.8347
	Lackawanna County, PA.	
	Luzerne County, PA.	
	Wyoming County, PA.	
42644	Seattle-Bellevue-Everett, WA	1.1434
	King County, WA.	
	Snohomish County, WA.	
42680	Sebastian-Vero Beach, FL	0.9573
43100	Sheboygan, WI	0.9026
	Sheboygan County, WI.	
43300	Sherman-Denison, TX	0.8502
	Grayson County, TX.	
43340	Shreveport-Bossier City, LA	0.8865
	Bossier Parish, LA.	
	Caddo Parish, LA.	
	De Soto Parish, LA.	
43580	Sioux City, IA-NE-SD	0.9200
	Woodbury County, IA.	
	Dakota County, NE.	
	Dixon County, NE.	
	Union County, SD.	
43620	Sioux Falls, SD	0.9559
	Lincoln County, SD.	
	McCook County, SD.	
	Minnehaha County, SD.	
	Turner County, SD.	
43780	South Bend-Mishawaka, IN-MI	0.9842
	St. Joseph County, IN.	
	Cass County, MI.	
43900	Spartanburg, SC	0.9174
	Spartanburg County, SC.	
44060	Spokane, WA	1.0447
	Spokane County, WA.	
44100	Springfield, IL	0.8890
	Menard County, IL.	
	Sangamon County, IL.	
44140	Springfield, MA	1.0079
	Franklin County, MA.	
	Hampden County, MA.	
	Hampshire County, MA.	
44180	Springfield, MO	0.8469
	Christian County, MO.	
	Dallas County, MO.	
	Greene County, MO.	
	Polk County, MO.	
	Webster County, MO.	
44220	Springfield, OH	0.8593
	Clark County, OH.	
44300	State College, PA	0.8784
	Centre County, PA.	
44700	Stockton, CA	1.1442
	San Joaquin County, CA.	
44940	Sumter, SC	0.8083
	Sumter County, SC.	
45060	Syracuse, NY	0.9691
	Madison County, NY.	
	Onondaga County, NY.	
	Oswego County, NY.	
45104	Tacoma, WA	1.0789
	Pierce County, WA.	

ADDENDUM B.—CY 2007 WAGE INDEX FOR URBAN AREAS BY CBSA; APPLICABLE PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX—Continued

CBSA code	Urban area (constituent counties)	Wage index
45220	Tallahassee, FL	0.8942
	Gadsden County, FL.	
	Jefferson County, FL.	
	Leon County, FL.	
	Wakulla County, FL.	
45300	Tampa-St. Petersburg-Clearwater, FL	0.9144
	Hernando County, FL.	
	Hillsborough County, FL.	
	Pasco County, FL.	
	Pinellas County, FL.	
45460	Terre Haute, IN	0.8765
	Clay County, IN.	
	Sullivan County, IN.	
	Vermillion County, IN.	
	Vigo County, IN.	
45500	Texarkana, TX-Texarkana, AR	0.8104
	Miller County, AR.	
	Bowie County, TX.	
45780	Toledo, OH	0.9586
	Fulton County, OH.	
	Lucas County, OH.	
	Ottawa County, OH.	
	Wood County, OH.	
45820	Topeka, KS	0.8730
	Jackson County, KS.	
	Jefferson County, KS.	
	Osage County, KS.	
	Shawnee County, KS.	
	Wabaunsee County, KS.	
45940	Trenton-Ewing, NJ	1.0835
	Mercer County, NJ.	
46060	Tucson, AZ	0.9202
	Pima County, AZ.	
46140	Tulsa, OK	0.8103
	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
	Greene County, AL.	
	Hale County, AL.	
	Tuscaloosa County, AL.	
46340	Tyler, TX	0.8811
	Smith County, TX.	
46540	Utica-Rome, NY	0.8396
	Herkimer County, NY.	
	Oneida County, NY.	
46660	Valdosta, GA	0.8369
	Brooks County, GA.	
	Echols County, GA.	
	Lanier County, GA.	
	Lowndes County, GA.	
46700	Vallejo-Fairfield, CA	1.5137
	Solano County, CA.	
47020	Victoria, TX	0.8560
	Calhoun County, TX.	
	Goliad County, TX.	
	Victoria County, TX.	
47220	Vineland-Millville-Bridgeton, NJ	0.9832
	Cumberland County, NJ.	
47260	Virginia Beach-Norfolk-Newport News, VA-NC	0.8790
	Currituck County, NC.	
	Gloucester County, VA.	
	Isle of Wight County, VA.	
	James City County, VA.	
	Mathews County, VA.	
	Surry County, VA.	

ADDENDUM B.—CY 2007 WAGE INDEX FOR URBAN AREAS BY CBSA; APPLICABLE PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX—Continued

CBSA code	Urban area (constituent counties)	Wage index
	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
	Tulare County, CA.	
47380	Waco, TX	0.8633
	McLennan County, TX.	
47580	Warner Robins, GA	0.8380
	Houston County, GA.	
47644	Warren-Farmington Hills-Troy, MI	1.0054
	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
	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
	Black Hawk County, IA.	
	Bremer County, IA.	
	Grundy County, IA.	
48140	Wausau, WI	0.9722
	Marathon County, WI.	
48260	Weirton-Steubenville, WV-OH	0.8063
	Jefferson County, OH.	
	Brooke County, WV.	
	Hancock County, WV.	
48300	Wenatchee, WA	1.0346
	Chelan County, WA.	
	Douglas County, WA.	
48424	West Palm Beach-Boca Raton-Boynton Beach, FL	0.9649
	Palm Beach County, FL.	
48540	Wheeling, WV-OH	0.7010
	Belmont County, OH.	
	Marshall County, WV.	
	Ohio County, WV.	
48620	Wichita, KS	0.9063
	Butler County, KS.	
	Harvey County, KS.	
	Sedgwick County, KS.	
	Sumner County, KS.	
48660	Wichita Falls, TX	0.8311
	Archer County, TX.	
	Clay County, TX.	

ADDENDUM B.—CY 2007 WAGE INDEX FOR URBAN AREAS BY CBSA; APPLICABLE PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX—Continued

CBSA code	Urban area (constituent counties)	Wage index
	Wichita County, TX.	
48700	Williamsport, PA	0.8139
	Lycoming County, PA.	
48864	Wilmington, DE-MD-NJ	1.0684
	New Castle County, DE.	
	Cecil County, MD.	
	Salem County, NJ.	
48900	Wilmington, NC	0.9835
	Brunswick County, NC.	
	New Hanover County, NC.	
	Pender County, NC.	
49020	Winchester, VA-WV	1.0091
	Frederick County, VA.	
	Winchester City, VA.	
	Hampshire County, WV.	
49180	Winston-Salem, NC	0.9276
	Davie County, NC.	
	Forsyth County, NC.	
	Stokes County, NC.	
	Yadkin County, NC.	
49340	Worcester, MA	1.0722
	Worcester County, MA.	
49420	Yakima, WA	0.9847
	Yakima County, WA.	
49500	Yauco, PR	0.3854
	Guánica Municipio, PR.	
	Guayanilla Municipio, PR.	
	Peñuelas Municipio, PR.	
	Yauco Municipio, PR.	
49620	York-Hanover, PA	0.9397
	York County, PA.	
49660	Youngstown-Warren-Boardman, OH-PA	0.8802
	Mahoning County, OH.	
	Trumbull County, OH.	
	Mercer County, PA.	
49700	Yuba City, CA	1.0730
	Sutter County, CA.	
	Yuba County, CA.	
49740	Yuma, AZ	0.9109
	Yuma County, AZ.	

[1] At this time, there are no hospitals in these urban areas on which to base a wage index. Therefore, the urban wage index value is based on the average wage index of all urban areas within the State.

ADDENDUM C.—COMPARISON OF HH PPS TRANSITION WAGE INDEX FOR CY 2006 AND PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX FOR CY 2007

SSA state/county code	County name	CBSA No.	CY 2006 HH PPS transition wage index	CY2007 CBSA-based wage index	Percent change CY2006–CY2007
01000	Autauga County, Alabama	33860	0.8618	0.8009	−7.07
01010	Baldwin County, Alabama	99901	0.7654	0.7591	−0.82
01020	Barbour County, Alabama	99901	0.7439	0.7591	2.04
01030	Bibb County, Alabama	13820	0.8196	0.8894	8.52
01040	Blount County, Alabama	13820	0.8980	0.8894	−0.96
01050	Bullock County, Alabama	99901	0.7439	0.7591	2.04
01060	Butler County, Alabama	99901	0.7439	0.7591	2.04
01070	Calhoun County, Alabama	11500	0.7682	0.7770	1.15
01080	Chambers County, Alabama	99901	0.7439	0.7591	2.04
01090	Cherokee County, Alabama	99901	0.7439	0.7591	2.04
01100	Chilton County, Alabama	13820	0.8196	0.8894	8.52
01110	Choctaw County, Alabama	99901	0.7439	0.7591	2.04
01120	Clarke County, Alabama	99901	0.7439	0.7591	2.04
01130	Clay County, Alabama	99901	0.7439	0.7591	2.04
01140	Cleburne County, Alabama	99901	0.7439	0.7591	2.04
01150	Coffee County, Alabama	99901	0.7439	0.7591	2.04
01160	Colbert County, Alabama	22520	0.8272	0.7843	−5.19
01170	Conecuh County, Alabama	99901	0.7439	0.7591	2.04

ADDENDUM C.—COMPARISON OF HH PPS TRANSITION WAGE INDEX FOR CY 2006 AND PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX FOR CY 2007—Continued

SSA state/county code	County name	CBSA No.	CY 2006 HH PPS transition wage index	CY2007 CBSA-based wage index	Percent change CY2006–CY2007
01180	Coosa County, Alabama	99901	0.7439	0.7591	2.04
01190	Covington County, Alabama	99901	0.7439	0.7591	2.04
01200	Crenshaw County, Alabama	99901	0.7439	0.7591	2.04
01210	Cullman County, Alabama	99901	0.7439	0.7591	2.04
01220	Dale County, Alabama	99901	0.7574	0.7591	0.22
01230	Dallas County, Alabama	99901	0.7439	0.7591	2.04
01240	De Kalb County, Alabama	99901	0.7439	0.7591	2.04
01250	Elmore County, Alabama	33860	0.8618	0.8009	−7.07
01260	Escambia County, Alabama	99901	0.7439	0.7591	2.04
01270	Etowah County, Alabama	23460	0.7938	0.8066	1.61
01280	Fayette County, Alabama	99901	0.7439	0.7591	2.04
01290	Franklin County, Alabama	99901	0.7439	0.7591	2.04
01300	Geneva County, Alabama	20020	0.7577	0.7381	−2.59
01310	Greene County, Alabama	46220	0.8039	0.8542	6.26
01320	Hale County, Alabama	46220	0.8039	0.8542	6.26
01330	Henry County, Alabama	20020	0.7577	0.7381	−2.59
01340	Houston County, Alabama	20020	0.7711	0.7381	−4.28
01350	Jackson County, Alabama	99901	0.7439	0.7591	2.04
01360	Jefferson County, Alabama	13820	0.8980	0.8894	−0.96
01370	Lamar County, Alabama	99901	0.7439	0.7591	2.04
01380	Lauderdale County, Alabama	22520	0.8272	0.7843	−5.19
01390	Lawrence County, Alabama	19460	0.8469	0.8159	−3.66
01400	Lee County, Alabama	12220	0.8100	0.8096	−0.05
01410	Limestone County, Alabama	26620	0.9146	0.9007	−1.52
01420	Lowndes County, Alabama	33860	0.8025	0.8009	−0.20
01430	Macon County, Alabama	99901	0.7439	0.7591	2.04
01440	Madison County, Alabama	26620	0.9146	0.9007	−1.52
01450	Marengo County, Alabama	99901	0.7439	0.7591	2.04
01460	Marion County, Alabama	99901	0.7439	0.7591	2.04
01470	Marshall County, Alabama	99901	0.7439	0.7591	2.04
01480	Mobile County, Alabama	33660	0.7876	0.7913	0.47
01490	Monroe County, Alabama	99901	0.7439	0.7591	2.04
01500	Montgomery County, Alabama	33860	0.8618	0.8009	−7.07
01510	Morgan County, Alabama	19460	0.8469	0.8159	−3.66
01520	Perry County, Alabama	99901	0.7439	0.7591	2.04
01530	Pickens County, Alabama	99901	0.7439	0.7591	2.04
01540	Pike County, Alabama	99901	0.7439	0.7591	2.04
01550	Randolph County, Alabama	99901	0.7439	0.7591	2.04
01560	Russell County, Alabama	17980	0.8560	0.8239	−3.75
01570	St Clair County, Alabama	13820	0.8980	0.8894	−0.96
01580	Shelby County, Alabama	13820	0.8980	0.8894	−0.96
01590	Sumter County, Alabama	99901	0.7439	0.7591	2.04
01600	Talladega County, Alabama	99901	0.7439	0.7591	2.04
01610	Tallapoosa County, Alabama	99901	0.7439	0.7591	2.04
01620	Tuscaloosa County, Alabama	46220	0.8705	0.8542	−1.87
01630	Walker County, Alabama	13820	0.8196	0.8894	8.52
01640	Washington County, Alabama	99901	0.7439	0.7591	2.04
01650	Wilcox County, Alabama	99901	0.7439	0.7591	2.04
01660	Winston County, Alabama	99901	0.7439	0.7591	2.04
02013	Aleutians County East, Alaska	99902	1.1933	1.0661	−10.66
02016	Aleutians County West, Alaska	99902	1.1933	1.0661	−10.66
02020	Anchorage County, Alaska	11260	1.1840	1.2023	1.55
02030	Angoon County, Alaska	99902	1.1933	1.0661	−10.66
02040	Barrow-North Slope County, Alaska	99902	1.1933	1.0661	−10.66
02050	Bethel County, Alaska	99902	1.1933	1.0661	−10.66
02060	Bristol Bay Borough County, Alaska	99902	1.1933	1.0661	−10.66
02068	Denali County, Alaska	99902	1.1933	1.0661	−10.66
02070	Bristol Bay County, Alaska	99902	1.1933	1.0661	−10.66
02080	Cordova-Mc Carthy County, Alaska	99902	1.1933	1.0661	−10.66
02090	Fairbanks County, Alaska	21820	1.1648	1.1059	−5.06
02100	Haines County, Alaska	99902	1.1933	1.0661	−10.66
02110	Juneau County, Alaska	99902	1.1933	1.0661	−10.66
02120	Kenai-Cook Inlet County, Alaska	99902	1.1933	1.0661	−10.66
02122	Kenai Peninsula Borough, Alaska	99902	1.1933	1.0661	−10.66
02130	Ketchikan County, Alaska	99902	1.1933	1.0661	−10.66
02140	Kobuk County, Alaska	99902	1.1933	1.0661	−10.66
02150	Kodiak County, Alaska	99902	1.1933	1.0661	−10.66
02160	Kuskokwin County, Alaska	99902	1.1933	1.0661	−10.66

ADDENDUM C.—COMPARISON OF HH PPS TRANSITION WAGE INDEX FOR CY 2006 AND PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX FOR CY 2007—Continued

SSA state/county code	County name	CBSA No.	CY 2006 HH PPS transition wage index	CY2007 CBSA-based wage index	Percent change CY2006–CY2007
02164	Lake and Peninsula Borough, Alaska	99902	1.1933	1.0661	−10.66
02170	Matanuska County, Alaska	11260	1.1892	1.2023	1.10
02180	Nome County, Alaska	99902	1.1933	1.0661	−10.66
02185	North Slope Borough, Alaska	99902	1.1933	1.0661	−10.66
02188	Northwest Arctic Borough, Alaska	99902	1.1933	1.0661	−10.66
02190	Outer Ketchikan County, Alaska	99902	1.1933	1.0661	−10.66
02200	Prince Of Wales County, Alaska	99902	1.1933	1.0661	−10.66
02201	Prince of Wales-Outer Ketchikan Census Area,AK	99902	1.1933	1.0661	−10.66
02210	Seward County, Alaska	99902	1.1933	1.0661	−10.66
02220	Sitka County, Alaska	99902	1.1933	1.0661	−10.66
02230	Skagway-Yakutat County, Alaska	99902	1.1933	1.0661	−10.66
02231	Skagway-Yakutat-Angoon Census Area, Alaska	99902	1.1933	1.0661	−10.66
02232	Skagway-Hoonah-Angoon Census Area, Alaska	99902	1.1933	1.0661	−10.66
02240	Southeast Fairbanks County, Alaska	99902	1.1933	1.0661	−10.66
02250	Upper Yukon County, Alaska	99902	1.1933	1.0661	−10.66
02260	Valdz-Chitna-Whitier County, Alaska	99902	1.1933	1.0661	−10.66
02261	Valdex-Cordove Census Area, Alaska	99902	1.1933	1.0661	−10.66
02270	Wade Hampton County, Alaska	99902	1.1933	1.0661	−10.66
02280	Wrangell-Petersburg County, Alaska	99902	1.1933	1.0661	−10.66
02282	Yakutat Borough, Alaska	99902	1.1933	1.0661	−10.66
02290	Yukon-Koyukuk County, Alaska	99902	1.1933	1.0661	−10.66
03000	Apache County, Arizona	99903	0.8907	0.8908	0.01
03010	Cochise County, Arizona	99903	0.8907	0.8908	0.01
03020	Coconino County, Arizona	22380	1.1969	1.1601	−3.07
03030	Gila County, Arizona	99903	0.8907	0.8908	0.01
03040	Graham County, Arizona	99903	0.8907	0.8908	0.01
03050	Greenlee County, Arizona	99903	0.8907	0.8908	0.01
03055	La Paz County, Arizona	99903	0.8907	0.8908	0.01
03060	Maricopa County, Arizona	38060	1.0127	1.0287	1.58
03070	Mohave County, Arizona	99903	0.9962	0.8908	−10.58
03080	Navajo County, Arizona	99903	0.8907	0.8908	0.01
03090	Pima County, Arizona	46060	0.9007	0.9202	2.16
03100	Pinal County, Arizona	38060	1.0127	1.0287	1.58
03110	Santa Cruz County, Arizona	99903	0.8907	0.8908	0.01
03120	Yavapai County, Arizona	39140	0.9457	0.9836	4.01
03130	Yuma County, Arizona	49740	0.9126	0.9109	−0.19
04000	Arkansas County, Arkansas	99904	0.7605	0.7307	−3.92
04010	Ashley County, Arkansas	99904	0.7605	0.7307	−3.92
04020	Baxter County, Arkansas	99904	0.7605	0.7307	−3.92
04030	Benton County, Arkansas	22220	0.8661	0.8865	2.36
04040	Boone County, Arkansas	99904	0.7605	0.7307	−3.92
04050	Bradley County, Arkansas	99904	0.7605	0.7307	−3.92
04060	Calhoun County, Arkansas	99904	0.7605	0.7307	−3.92
04070	Carroll County, Arkansas	99904	0.7605	0.7307	−3.92
04080	Chicot County, Arkansas	99904	0.7605	0.7307	−3.92
04090	Clark County, Arkansas	99904	0.7605	0.7307	−3.92
04100	Clay County, Arkansas	99904	0.7605	0.7307	−3.92
04110	Cleburne County, Arkansas	99904	0.7605	0.7307	−3.92
04120	Cleveland County, Arkansas	38220	0.8212	0.8383	2.08
04130	Columbia County, Arkansas	99904	0.7605	0.7307	−3.92
04140	Conway County, Arkansas	99904	0.7605	0.7307	−3.92
04150	Craighead County, Arkansas	27860	0.7911	0.7662	−3.15
04160	Crawford County, Arkansas	22900	0.8238	0.7731	−6.15
04170	Crittenden County, Arkansas	32820	0.9407	0.9373	−0.36
04180	Cross County, Arkansas	99904	0.7605	0.7307	−3.92
04190	Dallas County, Arkansas	99904	0.7605	0.7307	−3.92
04200	Desha County, Arkansas	99904	0.7605	0.7307	−3.92
04210	Drew County, Arkansas	99904	0.7605	0.7307	−3.92
04220	Faulkner County, Arkansas	30780	0.8747	0.8890	1.63
04230	Franklin County, Arkansas	22900	0.7987	0.7731	−3.21
04240	Fulton County, Arkansas	99904	0.7605	0.7307	−3.92
04250	Garland County, Arkansas	26300	0.8375	0.8782	4.86
04260	Grant County, Arkansas	30780	0.8246	0.8890	7.81
04270	Greene County, Arkansas	99904	0.7605	0.7307	−3.92
04280	Hempstead County, Arkansas	99904	0.7605	0.7307	−3.92
04290	Hot Spring County, Arkansas	99904	0.7605	0.7307	−3.92
04300	Howard County, Arkansas	99904	0.7605	0.7307	−3.92
04310	Independence County, Arkansas	99904	0.7605	0.7307	−3.92

ADDENDUM C.—COMPARISON OF HH PPS TRANSITION WAGE INDEX FOR CY 2006 AND PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX FOR CY 2007—Continued

SSA state/county code	County name	CBSA No.	CY 2006 HH PPS transition wage index	CY2007 CBSA-based wage index	Percent change CY2006–CY2007
04320	Izard County, Arkansas	99904	0.7605	0.7307	−3.92
04330	Jackson County, Arkansas	99904	0.7605	0.7307	−3.92
04340	Jefferson County, Arkansas	38220	0.8680	0.8383	−3.42
04350	Johnson County, Arkansas	99904	0.7605	0.7307	−3.92
04360	Lafayette County, Arkansas	99904	0.7605	0.7307	−3.92
04370	Lawrence County, Arkansas	99904	0.7605	0.7307	−3.92
04380	Lee County, Arkansas	99904	0.7605	0.7307	−3.92
04390	Lincoln County, Arkansas	38220	0.8212	0.8383	2.08
04400	Little River County, Arkansas	99904	0.7605	0.7307	−3.92
04410	Logan County, Arkansas	99904	0.7605	0.7307	−3.92
04420	Lonoke County, Arkansas	30780	0.8747	0.8890	1.63
04430	Madison County, Arkansas	22220	0.8203	0.8865	8.07
04440	Marion County, Arkansas	99904	0.7605	0.7307	−3.92
04450	Miller County, Arkansas	45500	0.8283	0.8104	−2.16
04460	Mississippi County, Arkansas	99904	0.7605	0.7307	−3.92
04470	Monroe County, Arkansas	99904	0.7605	0.7307	−3.92
04480	Montgomery County, Arkansas	99904	0.7605	0.7307	−3.92
04490	Nevada County, Arkansas	99904	0.7605	0.7307	−3.92
04500	Newton County, Arkansas	99904	0.7605	0.7307	−3.92
04510	Ouachita County, Arkansas	99904	0.7605	0.7307	−3.92
04520	Perry County, Arkansas	30780	0.8246	0.8890	7.81
04530	Phillips County, Arkansas	99904	0.7605	0.7307	−3.92
04540	Pike County, Arkansas	99904	0.7605	0.7307	−3.92
04550	Poinsett County, Arkansas	27860	0.7828	0.7662	−2.12
04560	Polk County, Arkansas	99904	0.7605	0.7307	−3.92
04570	Pope County, Arkansas	99904	0.7605	0.7307	−3.92
04580	Prairie County, Arkansas	99904	0.7605	0.7307	−3.92
04590	Pulaski County, Arkansas	30780	0.8747	0.8890	1.63
04600	Randolph County, Arkansas	99904	0.7605	0.7307	−3.92
04610	St Francis County, Arkansas	99904	0.7605	0.7307	−3.92
04620	Saline County, Arkansas	30780	0.8747	0.8890	1.63
04630	Scott County, Arkansas	99904	0.7605	0.7307	−3.92
04640	Searcy County, Arkansas	99904	0.7605	0.7307	−3.92
04650	Sebastian County, Arkansas	22900	0.8238	0.7731	−6.15
04660	Sevier County, Arkansas	99904	0.7605	0.7307	−3.92
04670	Sharp County, Arkansas	99904	0.7605	0.7307	−3.92
04680	Stone County, Arkansas	99904	0.7605	0.7307	−3.92
04690	Union County, Arkansas	99904	0.7605	0.7307	−3.92
04700	Van Buren County, Arkansas	99904	0.7605	0.7307	−3.92
04710	Washington County, Arkansas	22220	0.8661	0.8865	2.36
04720	White County, Arkansas	99904	0.7605	0.7307	−3.92
04730	Woodruff County, Arkansas	99904	0.7605	0.7307	−3.92
04740	Yell County, Arkansas	99904	0.7605	0.7307	−3.92
05000	Alameda County, California	36084	1.5346	1.5819	3.08
05010	Alpine County, California	99905	1.0915	1.1454	4.94
05020	Amador County, California	99905	1.0915	1.1454	4.94
05030	Butte County, California	17020	1.0511	1.1053	5.16
05040	Calaveras County, California	99905	1.0915	1.1454	4.94
05050	Colusa County, California	99905	1.0915	1.1454	4.94
05060	Contra Costa County, California	36084	1.5346	1.5819	3.08
05070	Del Norte County, California	99905	1.0915	1.1454	4.94
05080	Eldorado County, California	40900	1.3056	1.3372	2.42
05090	Fresno County, California	23420	1.0483	1.0943	4.39
05100	Glenn County, California	99905	1.0915	1.1454	4.94
05110	Humboldt County, California	99905	1.0915	1.1454	4.94
05120	Imperial County, California	20940	0.9841	0.9076	−7.77
05130	Inyo County, California	99905	1.0915	1.1454	4.94
05140	Kern County, California	12540	1.0470	1.0725	2.44
05150	Kings County, California	25260	1.0406	1.0282	−1.19
05160	Lake County, California	99905	1.0915	1.1454	4.94
05170	Lassen County, California	99905	1.0915	1.1454	4.94
05200	Los Angeles County, California	31084	1.1783	1.1760	−0.20
05210	Los Angeles County, California	31084	1.1783	1.1760	−0.20
05300	Madera County, California	31460	0.9571	0.8154	−14.81
05310	Marin County, California	41884	1.4994	1.5165	1.14
05320	Mariposa County, California	99905	1.0915	1.1454	4.94
05330	Mendocino County, California	99905	1.0915	1.1454	4.94
05340	Merced County, California	32900	1.1109	1.1471	3.26

ADDENDUM C.—COMPARISON OF HH PPS TRANSITION WAGE INDEX FOR CY 2006 AND PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX FOR CY 2007—Continued

SSA state/county code	County name	CBSA No.	CY 2006 HH PPS transition wage index	CY2007 CBSA-based wage index	Percent change CY2006–CY2007
05350	Modoc County, California	99905	1.0915	1.1454	4.94
05360	Mono County, California	99905	1.0915	1.1454	4.94
05370	Monterey County, California	41500	1.4128	1.4337	1.48
05380	Napa County, California	34900	1.3313	1.3374	0.46
05390	Nevada County, California	99905	1.0915	1.1454	4.94
05400	Orange County, California	42044	1.1559	1.1473	−0.74
05410	Placer County, California	40900	1.3056	1.3372	2.42
05420	Plumas County, California	99905	1.0915	1.1454	4.94
05430	Riverside County, California	40140	1.1027	1.0904	−1.12
05440	Sacramento County, California	40900	1.3056	1.3372	2.42
05450	San Benito County, California	41940	1.2937	1.5543	20.14
05460	San Bernardino County, California	40140	1.1027	1.0904	−1.12
05470	San Diego County, California	41740	1.1413	1.1354	−0.52
05480	San Francisco County, California	41884	1.4994	1.5165	1.14
05490	San Joaquin County, California	44700	1.1307	1.1442	1.19
05500	San Luis Obispo County, California	42020	1.1349	1.1598	2.19
05510	San Mateo County, California	41884	1.4994	1.5165	1.14
05520	Santa Barbara County, California	42060	1.1694	1.1091	−5.16
05530	Santa Clara County, California	41940	1.5109	1.5543	2.87
05540	Santa Cruz County, California	42100	1.5166	1.5457	1.92
05550	Shasta County, California	39820	1.2203	1.3198	8.15
05560	Sierra County, California	99905	1.0915	1.1454	4.94
05570	Siskiyou County, California	99905	1.0915	1.1454	4.94
05580	Solano County, California	46700	1.4460	1.5137	4.68
05590	Sonoma County, California	42220	1.3493	1.4464	7.20
05600	Stanislaus County, California	33700	1.1885	1.1729	−1.31
05610	Sutter County, California	49700	1.0921	1.0730	−1.75
05620	Tehama County, California	99905	1.0915	1.1454	4.94
05630	Trinity County, California	99905	1.0915	1.1454	4.94
05640	Tulare County, California	47300	1.0123	0.9968	−1.53
05650	Tuolumne County, California	99905	1.0915	1.1454	4.94
05660	Ventura County, California	37100	1.1622	1.1546	−0.65
05670	Yolo County, California	40900	1.1460	1.3372	16.68
05680	Yuba County, California	49700	1.0921	1.0730	−1.75
06000	Adams County, Colorado	19740	1.0723	1.0930	1.93
06010	Alamosa County, Colorado	99906	0.9380	0.9325	−0.59
06020	Arapahoe County, Colorado	19740	1.0723	1.0930	1.93
06030	Archuleta County, Colorado	99906	0.9380	0.9325	−0.59
06040	Baca County, Colorado	99906	0.9380	0.9325	−0.59
06050	Bent County, Colorado	99906	0.9380	0.9325	−0.59
06060	Boulder County, Colorado	14500	0.9734	1.0350	6.33
06070	Chaffee County, Colorado	99906	0.9380	0.9325	−0.59
06080	Cheyenne County, Colorado	99906	0.9380	0.9325	−0.59
06090	Clear Creek County, Colorado	19740	1.0052	1.0930	8.73
06100	Conejos County, Colorado	99906	0.9380	0.9325	−0.59
06110	Costilla County, Colorado	99906	0.9380	0.9325	−0.59
06120	Crowley County, Colorado	99906	0.9380	0.9325	−0.59
06130	Custer County, Colorado	99906	0.9380	0.9325	−0.59
06140	Delta County, Colorado	99906	0.9380	0.9325	−0.59
06150	Denver County, Colorado	19740	1.0723	1.0930	1.93
06160	Dolores County, Colorado	99906	0.9380	0.9325	−0.59
06170	Douglas County, Colorado	19740	1.0723	1.0930	1.93
06180	Eagle County, Colorado	99906	0.9380	0.9325	−0.59
06190	Elbert County, Colorado	19740	1.0052	1.0930	8.73
06200	El Paso County, Colorado	17820	0.9468	0.9701	2.46
06210	Fremont County, Colorado	99906	0.9380	0.9325	−0.59
06220	Garfield County, Colorado	99906	0.9380	0.9325	−0.59
06230	Gilpin County, Colorado	19740	1.0052	1.0930	8.73
06240	Grand County, Colorado	99906	0.9380	0.9325	−0.59
06250	Gunnison County, Colorado	99906	0.9380	0.9325	−0.59
06260	Hinsdale County, Colorado	99906	0.9380	0.9325	−0.59
06270	Huerfano County, Colorado	99906	0.9380	0.9325	−0.59
06280	Jackson County, Colorado	99906	0.9380	0.9325	−0.59
06290	Jefferson County, Colorado	19740	1.0723	1.0930	1.93
06300	Kiowa County, Colorado	99906	0.9380	0.9325	−0.59
06310	Kit Carson County, Colorado	99906	0.9380	0.9325	−0.59
06320	Lake County, Colorado	99906	0.9380	0.9325	−0.59
06330	La Plata County, Colorado	99906	0.9380	0.9325	−0.59

ADDENDUM C.—COMPARISON OF HH PPS TRANSITION WAGE INDEX FOR CY 2006 AND PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX FOR CY 2007—Continued

SSA state/county code	County name	CBSA No.	CY 2006 HH PPS transition wage index	CY2007 CBSA-based wage index	Percent change CY2006–CY2007
06340	Larimer County, Colorado	22660	1.0122	0.9544	−5.71
06350	Las Animas County, Colorado	99906	0.9380	0.9325	−0.59
06360	Lincoln County, Colorado	99906	0.9380	0.9325	−0.59
06370	Logan County, Colorado	99906	0.9380	0.9325	−0.59
06380	Mesa County, Colorado	24300	0.9550	0.9668	1.24
06390	Mineral County, Colorado	99906	0.9380	0.9325	−0.59
06400	Moffat County, Colorado	99906	0.9380	0.9325	−0.59
06410	Montezuma County, Colorado	99906	0.9380	0.9325	−0.59
06420	Montrose County, Colorado	99906	0.9380	0.9325	−0.59
06430	Morgan County, Colorado	99906	0.9380	0.9325	−0.59
06440	Otero County, Colorado	99906	0.9380	0.9325	−0.59
06450	Ouray County, Colorado	99906	0.9380	0.9325	−0.59
06460	Park County, Colorado	19740	1.0052	1.0930	8.73
06470	Phillips County, Colorado	99906	0.9380	0.9325	−0.59
06480	Pitkin County, Colorado	99906	0.9380	0.9325	−0.59
06490	Prowers County, Colorado	99906	0.9380	0.9325	−0.59
06500	Pueblo County, Colorado	39380	0.8623	0.8753	1.51
06510	Rio Blanco County, Colorado	99906	0.9380	0.9325	−0.59
06520	Rio Grande County, Colorado	99906	0.9380	0.9325	−0.59
06530	Routt County, Colorado	99906	0.9380	0.9325	−0.59
06540	Saguache County, Colorado	99906	0.9380	0.9325	−0.59
06550	San Juan County, Colorado	99906	0.9380	0.9325	−0.59
06560	San Miguel County, Colorado	99906	0.9380	0.9325	−0.59
06570	Sedgwick County, Colorado	99906	0.9380	0.9325	−0.59
06580	Summit County, Colorado	99906	0.9380	0.9325	−0.59
06590	Teller County, Colorado	17820	0.9424	0.9701	2.94
06600	Washington County, Colorado	99906	0.9380	0.9325	−0.59
06610	Weld County, Colorado	24540	0.9570	0.9602	0.33
06620	Yuma County, Colorado	99906	0.9380	0.9325	−0.59
06630	Broomfield County, Colorado	19740	1.0723	1.0930	1.93
07000	Fairfield County, Connecticut	14860	1.2394	1.2659	2.14
07010	Hartford County, Connecticut	25540	1.1073	1.0894	−1.62
07020	Litchfield County, Connecticut	25540	1.1073	1.0894	−1.62
07030	Middlesex County, Connecticut	25540	1.1073	1.0894	−1.62
07040	New Haven County, Connecticut	35300	1.2042	1.1953	−0.74
07050	New London County, Connecticut	35980	1.1345	1.1932	5.17
07060	Tolland County, Connecticut	25540	1.1073	1.0894	−1.62
07070	Windham County, Connecticut	99907	1.1730	1.1709	−0.18
08000	Kent County, Delaware	20100	0.9776	0.9847	0.73
08010	New Castle County, Delaware	48864	1.0499	1.0684	1.76
08020	Sussex County, Delaware	99908	0.9579	0.9705	1.32
09000	Washington DC County, Dist Of Col	47894	1.0951	1.1054	0.94
10000	Alachua County, Florida	23540	0.9388	0.9277	−1.18
10010	Baker County, Florida	27260	0.8984	0.9165	2.01
10020	Bay County, Florida	37460	0.8005	0.8027	0.27
10030	Bradford County, Florida	99910	0.8623	0.8594	−0.34
10040	Brevard County, Florida	37340	0.9839	0.9443	−4.02
10050	Broward County, Florida	22744	1.0432	1.0133	−2.87
10060	Calhoun County, Florida	99910	0.8623	0.8594	−0.34
10070	Charlotte County, Florida	39460	0.9255	0.9405	1.62
10080	Citrus County, Florida	99910	0.8623	0.8594	−0.34
10090	Clay County, Florida	27260	0.9295	0.9165	−1.40
10100	Collier County, Florida	34940	1.0139	0.9941	−1.95
10110	Columbia County, Florida	99910	0.8623	0.8594	−0.34
10120	Dade County, Florida	33124	0.9750	0.9812	0.64
10130	De Soto County, Florida	99910	0.8623	0.8594	−0.34
10140	Dixie County, Florida	99910	0.8623	0.8594	−0.34
10150	Duval County, Florida	27260	0.9295	0.9165	−1.40
10160	Escambia County, Florida	37860	0.8096	0.8000	−1.19
10170	Flagler County, Florida	99910	0.8947	0.8594	−3.95
10180	Franklin County, Florida	99910	0.8623	0.8594	−0.34
10190	Gadsden County, Florida	45220	0.8688	0.8942	2.92
10200	Gilchrist County, Florida	23540	0.9033	0.9277	2.70
10210	Glades County, Florida	99910	0.8623	0.8594	−0.34
10220	Gulf County, Florida	99910	0.8623	0.8594	−0.34
10230	Hamilton County, Florida	99910	0.8623	0.8594	−0.34
10240	Hardee County, Florida	99910	0.8623	0.8594	−0.34
10250	Hendry County, Florida	99910	0.8623	0.8594	−0.34

ADDENDUM C.—COMPARISON OF HH PPS TRANSITION WAGE INDEX FOR CY 2006 AND PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX FOR CY 2007—Continued

SSA state/county code	County name	CBSA No.	CY 2006 HH PPS transition wage index	CY2007 CBSA-based wage index	Percent change CY2006–CY2007
10260	Hernando County, Florida	45300	0.9233	0.9144	−0.96
10270	Highlands County, Florida	99910	0.8623	0.8594	−0.34
10280	Hillsborough County, Florida	45300	0.9233	0.9144	−0.96
10290	Holmes County, Florida	99910	0.8623	0.8594	−0.34
10300	Indian River County, Florida	42680	0.9056	0.9573	5.71
10310	Jackson County, Florida	99910	0.8623	0.8594	−0.34
10320	Jefferson County, Florida	45220	0.8683	0.8942	2.98
10330	Lafayette County, Florida	99910	0.8623	0.8594	−0.34
10340	Lake County, Florida	36740	0.9464	0.9452	−0.13
10350	Lee County, Florida	15980	0.9356	0.9342	−0.15
10360	Leon County, Florida	45220	0.8688	0.8942	2.92
10370	Levy County, Florida	99910	0.8623	0.8594	−0.34
10380	Liberty County, Florida	99910	0.8623	0.8594	−0.34
10390	Madison County, Florida	99910	0.8623	0.8594	−0.34
10400	Manatee County, Florida	42260	0.9639	0.9868	2.38
10410	Marion County, Florida	36100	0.8925	0.8867	−0.65
10420	Martin County, Florida	38940	1.0123	0.9833	−2.86
10430	Monroe County, Florida	99910	0.8623	0.8594	−0.34
10440	Nassau County, Florida	27260	0.9295	0.9165	−1.40
10450	Okaloosa County, Florida	23020	0.8872	0.8643	−2.58
10460	Okeechobee County, Florida	99910	0.8623	0.8594	−0.34
10470	Orange County, Florida	36740	0.9464	0.9452	−0.13
10480	Osceola County, Florida	36740	0.9464	0.9452	−0.13
10490	Palm Beach County, Florida	48424	1.0067	0.9649	−4.15
10500	Pasco County, Florida	45300	0.9233	0.9144	−0.96
10510	Pinellas County, Florida	45300	0.9233	0.9144	−0.96
10520	Polk County, Florida	29460	0.8912	0.8879	−0.37
10530	Putnam County, Florida	99910	0.8623	0.8594	−0.34
10540	Johns County, Florida	27260	0.9295	0.9165	−1.40
10550	St Lucie County, Florida	38940	1.0123	0.9833	−2.86
10560	Santa Rosa County, Florida	37860	0.8096	0.8000	−1.19
10570	Sarasota County, Florida	42260	0.9639	0.9868	2.38
10580	Seminole County, Florida	36740	0.9464	0.9452	−0.13
10590	Sumter County, Florida	99910	0.8623	0.8594	−0.34
10600	Suwannee County, Florida	99910	0.8623	0.8594	−0.34
10610	Taylor County, Florida	99910	0.8623	0.8594	−0.34
10620	Union County, Florida	99910	0.8623	0.8594	−0.34
10630	Volusia County, Florida	19660	0.9312	0.9263	−0.53
10640	Wakulla County, Florida	45220	0.8683	0.8942	2.98
10650	Walton County, Florida	99910	0.8623	0.8594	−0.34
10660	Washington County, Florida	99910	0.8623	0.8594	−0.34
11000	Appling County, Georgia	99911	0.7914	0.7593	−4.06
11010	Atkinson County, Georgia	99911	0.7914	0.7593	−4.06
11011	Bacon County, Georgia	99911	0.7914	0.7593	−4.06
11020	Baker County, Georgia	10500	0.8397	0.8991	7.07
11030	Baldwin County, Georgia	99911	0.7914	0.7593	−4.06
11040	Banks County, Georgia	99911	0.7914	0.7593	−4.06
11050	Barrow County, Georgia	12060	0.9793	0.9762	−0.32
11060	Bartow County, Georgia	12060	0.9793	0.9762	−0.32
11070	Ben Hill County, Georgia	99911	0.7914	0.7593	−4.06
11080	Berrien County, Georgia	99911	0.7914	0.7593	−4.06
11090	Bibb County, Georgia	31420	0.9360	0.9519	1.70
11100	Bleckley County, Georgia	99911	0.7914	0.7593	−4.06
11110	Brantley County, Georgia	15260	0.8739	1.0164	16.31
11120	Brooks County, Georgia	46660	0.8516	0.8369	−1.73
11130	Bryan County, Georgia	42340	0.9461	0.9351	−1.16
11140	Bulloch County, Georgia	99911	0.7914	0.7593	−4.06
11150	Burke County, Georgia	12260	0.8957	0.9667	7.93
11160	Butts County, Georgia	12060	0.8980	0.9762	8.71
11161	Calhoun County, Georgia	99911	0.7914	0.7593	−4.06
11170	Camden County, Georgia	99911	0.7914	0.7593	−4.06
11180	Candler County, Georgia	99911	0.7914	0.7593	−4.06
11190	Carroll County, Georgia	12060	0.9793	0.9762	−0.32
11200	Catoosa County, Georgia	16860	0.9088	0.8948	−1.54
11210	Charlton County, Georgia	99911	0.7914	0.7593	−4.06
11220	Chatham County, Georgia	42340	0.9461	0.9351	−1.16
11230	Chattahoochee County, Georgia	17980	0.8560	0.8239	−3.75
11240	Chattooga County, Georgia	99911	0.7914	0.7593	−4.06

ADDENDUM C.—COMPARISON OF HH PPS TRANSITION WAGE INDEX FOR CY 2006 AND PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX FOR CY 2007—Continued

SSA state/county code	County name	CBSA No.	CY 2006 HH PPS transition wage index	CY2007 CBSA-based wage index	Percent change CY2006–CY2007
11250	Cherokee County, Georgia	12060	0.9793	0.9762	−0.32
11260	Clarke County, Georgia	12020	0.9855	0.9856	0.01
11270	Clay County, Georgia	99911	0.7914	0.7593	−4.06
11280	Clayton County, Georgia	12060	0.9793	0.9762	−0.32
11281	Clinch County, Georgia	99911	0.7914	0.7593	−4.06
11290	Cobb County, Georgia	12060	0.9793	0.9762	−0.32
11291	Coffee County, Georgia	99911	0.7914	0.7593	−4.06
11300	Colquitt County, Georgia	99911	0.7914	0.7593	−4.06
11310	Columbia County, Georgia	12260	0.9778	0.9667	−1.14
11311	Cook County, Georgia	99911	0.7914	0.7593	−4.06
11320	Coweta County, Georgia	12060	0.9793	0.9762	−0.32
11330	Crawford County, Georgia	31420	0.8805	0.9519	8.11
11340	Crisp County, Georgia	99911	0.7914	0.7593	−4.06
11341	Dade County, Georgia	16860	0.9088	0.8948	−1.54
11350	Dawson County, Georgia	12060	0.8980	0.9762	8.71
11360	Decatur County, Georgia	99911	0.7914	0.7593	−4.06
11370	De Kalb County, Georgia	12060	0.9793	0.9762	−0.32
11380	Dodge County, Georgia	99911	0.7914	0.7593	−4.06
11381	Dooly County, Georgia	99911	0.7914	0.7593	−4.06
11390	Dougherty County, Georgia	10500	0.8628	0.8991	4.21
11400	Douglas County, Georgia	12060	0.9793	0.9762	−0.32
11410	Early County, Georgia	99911	0.7914	0.7593	−4.06
11420	Echols County, Georgia	46660	0.8516	0.8369	−1.73
11421	Effingham County, Georgia	42340	0.9461	0.9351	−1.16
11430	Elbert County, Georgia	99911	0.7914	0.7593	−4.06
11440	Emanuel County, Georgia	99911	0.7914	0.7593	−4.06
11441	Evans County, Georgia	99911	0.7914	0.7593	−4.06
11450	Fannin County, Georgia	99911	0.7914	0.7593	−4.06
11451	Fayette County, Georgia	12060	0.9793	0.9762	−0.32
11460	Floyd County, Georgia	40660	0.8790	0.9193	4.58
11461	Forsyth County, Georgia	12060	0.9793	0.9762	−0.32
11462	Franklin County, Georgia	99911	0.7914	0.7593	−4.06
11470	Fulton County, Georgia	12060	0.9793	0.9762	−0.32
11471	Gilmer County, Georgia	99911	0.7914	0.7593	−4.06
11480	Glascock County, Georgia	99911	0.7914	0.7593	−4.06
11490	Glynn County, Georgia	15260	0.8739	1.0164	16.31
11500	Gordon County, Georgia	99911	0.7914	0.7593	−4.06
11510	Grady County, Georgia	99911	0.7914	0.7593	−4.06
11520	Greene County, Georgia	99911	0.7914	0.7593	−4.06
11530	Gwinnett County, Georgia	12060	0.9793	0.9762	−0.32
11540	Habersham County, Georgia	99911	0.7914	0.7593	−4.06
11550	Hall County, Georgia	23580	0.8520	0.8958	5.14
11560	Hancock County, Georgia	99911	0.7914	0.7593	−4.06
11570	Haralson County, Georgia	12060	0.8980	0.9762	8.71
11580	Harris County, Georgia	17980	0.8560	0.8239	−3.75
11581	Hart County, Georgia	99911	0.7914	0.7593	−4.06
11590	Heard County, Georgia	12060	0.8980	0.9762	8.71
11591	Henry County, Georgia	12060	0.9793	0.9762	−0.32
11600	Houston County, Georgia	47580	0.8961	0.8380	−6.48
11601	Irwin County, Georgia	99911	0.7914	0.7593	−4.06
11610	Jackson County, Georgia	99911	0.7914	0.7593	−4.06
11611	Jasper County, Georgia	12060	0.8980	0.9762	8.71
11612	Jeff Davis County, Georgia	99911	0.7914	0.7593	−4.06
11620	Jefferson County, Georgia	99911	0.7914	0.7593	−4.06
11630	Jenkins County, Georgia	99911	0.7914	0.7593	−4.06
11640	Johnson County, Georgia	99911	0.7914	0.7593	−4.06
11650	Jones County, Georgia	31420	0.9360	0.9519	1.70
11651	Lamar County, Georgia	12060	0.8980	0.9762	8.71
11652	Lanier County, Georgia	46660	0.8516	0.8369	−1.73
11660	Laurens County, Georgia	99911	0.7914	0.7593	−4.06
11670	Lee County, Georgia	10500	0.8628	0.8991	4.21
11680	Liberty County, Georgia	25980	0.8973	0.9178	2.28
11690	Lincoln County, Georgia	99911	0.7914	0.7593	−4.06
11691	Long County, Georgia	25980	0.8973	0.9178	2.28
11700	Lowndes County, Georgia	46660	0.8516	0.8369	−1.73
11701	Lumpkin County, Georgia	99911	0.7914	0.7593	−4.06
11702	Mc Duffie County, Georgia	12260	0.9778	0.9667	−1.14
11703	Mc Intosh County, Georgia	15260	0.8739	1.0164	16.31

ADDENDUM C.—COMPARISON OF HH PPS TRANSITION WAGE INDEX FOR CY 2006 AND PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX FOR CY 2007—Continued

SSA state/county code	County name	CBSA No.	CY 2006 HH PPS transition wage index	CY2007 CBSA-based wage index	Percent change CY2006–CY2007
11710	Macon County, Georgia	99911	0.7914	0.7593	−4.06
11720	Madison County, Georgia	12020	0.9855	0.9856	0.01
11730	Marion County, Georgia	17980	0.8363	0.8239	−1.48
11740	Meriwether County, Georgia	12060	0.8980	0.9762	8.71
11741	Miller County, Georgia	99911	0.7914	0.7593	−4.06
11750	Mitchell County, Georgia	99911	0.7914	0.7593	−4.06
11760	Monroe County, Georgia	31420	0.8805	0.9519	8.11
11770	Montgomery County, Georgia	99911	0.7914	0.7593	−4.06
11771	Morgan County, Georgia	99911	0.7914	0.7593	−4.06
11772	Murray County, Georgia	19140	0.8623	0.9093	5.45
11780	Muscogee County, Georgia	17980	0.8560	0.8239	−3.75
11790	Newton County, Georgia	12060	0.9793	0.9762	−0.32
11800	Oconee County, Georgia	12020	0.9855	0.9856	0.01
11801	Oglethorpe County, Georgia	12020	0.9011	0.9856	9.38
11810	Paulding County, Georgia	12060	0.9793	0.9762	−0.32
11811	Peach County, Georgia	99911	0.8470	0.7593	−10.35
11812	Pickens County, Georgia	12060	0.9793	0.9762	−0.32
11820	Pierce County, Georgia	99911	0.7914	0.7593	−4.06
11821	Pike County, Georgia	12060	0.8980	0.9762	8.71
11830	Polk County, Georgia	99911	0.7914	0.7593	−4.06
11831	Pulaski County, Georgia	99911	0.7914	0.7593	−4.06
11832	Putnam County, Georgia	99911	0.7914	0.7593	−4.06
11833	Quitman County, Georgia	99911	0.7914	0.7593	−4.06
11834	Rabun County, Georgia	99911	0.7914	0.7593	−4.06
11835	Randolph County, Georgia	99911	0.7914	0.7593	−4.06
11840	Richmond County, Georgia	12260	0.9778	0.9667	−1.14
11841	Rockdale County, Georgia	12060	0.9793	0.9762	−0.32
11842	Schley County, Georgia	99911	0.7914	0.7593	−4.06
11850	Screven County, Georgia	99911	0.7914	0.7593	−4.06
11851	Seminole County, Georgia	99911	0.7914	0.7593	−4.06
11860	Spalding County, Georgia	12060	0.9793	0.9762	−0.32
11861	Stephens County, Georgia	99911	0.7914	0.7593	−4.06
11862	Stewart County, Georgia	99911	0.7914	0.7593	−4.06
11870	Sumter County, Georgia	99911	0.7914	0.7593	−4.06
11880	Talbot County, Georgia	99911	0.7914	0.7593	−4.06
11881	Taliaferro County, Georgia	99911	0.7914	0.7593	−4.06
11882	Tattnall County, Georgia	99911	0.7914	0.7593	−4.06
11883	Taylor County, Georgia	99911	0.7914	0.7593	−4.06
11884	Telfair County, Georgia	99911	0.7914	0.7593	−4.06
11885	Terrell County, Georgia	10500	0.8397	0.8991	7.07
11890	Thomas County, Georgia	99911	0.7914	0.7593	−4.06
11900	Tift County, Georgia	99911	0.7914	0.7593	−4.06
11901	Toombs County, Georgia	99911	0.7914	0.7593	−4.06
11902	Towns County, Georgia	99911	0.7914	0.7593	−4.06
11903	Treutlen County, Georgia	99911	0.7914	0.7593	−4.06
11910	Troup County, Georgia	99911	0.7914	0.7593	−4.06
11911	Turner County, Georgia	99911	0.7914	0.7593	−4.06
11912	Twiggs County, Georgia	31420	0.9360	0.9519	1.70
11913	Union County, Georgia	99911	0.7914	0.7593	−4.06
11920	Upson County, Georgia	99911	0.7914	0.7593	−4.06
11921	Walker County, Georgia	16860	0.9088	0.8948	−1.54
11930	Walton County, Georgia	12060	0.9793	0.9762	−0.32
11940	Ware County, Georgia	99911	0.7914	0.7593	−4.06
11941	Warren County, Georgia	99911	0.7914	0.7593	−4.06
11950	Washington County, Georgia	99911	0.7914	0.7593	−4.06
11960	Wayne County, Georgia	99911	0.7914	0.7593	−4.06
11961	Webster County, Georgia	99911	0.7914	0.7593	−4.06
11962	Wheeler County, Georgia	99911	0.7914	0.7593	−4.06
11963	White County, Georgia	99911	0.7914	0.7593	−4.06
11970	Whitfield County, Georgia	19140	0.8623	0.9093	5.45
11971	Wilcox County, Georgia	99911	0.7914	0.7593	−4.06
11972	Wilkes County, Georgia	99911	0.7914	0.7593	−4.06
11973	Wilkinson County, Georgia	99911	0.7914	0.7593	−4.06
11980	Worth County, Georgia	10500	0.8397	0.8991	7.07
12005	Kalawao County, Hawaii	99912	1.0551	1.0448	−0.98
12010	Hawaii County, Hawaii	99912	1.0551	1.0448	−0.98
12020	Honolulu County, Hawaii	26180	1.1214	1.1096	−1.05
12040	Kauai County, Hawaii	99912	1.0551	1.0448	−0.98

ADDENDUM C.—COMPARISON OF HH PPS TRANSITION WAGE INDEX FOR CY 2006 AND PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX FOR CY 2007—Continued

SSA state/county code	County name	CBSA No.	CY 2006 HH PPS transition wage index	CY2007 CBSA-based wage index	Percent change CY2006–CY2007
12050	Maui County, Hawaii	99912	1.0551	1.0448	−0.98
13000	Ada County, Idaho	14260	0.9052	0.9401	3.86
13010	Adams County, Idaho	99913	0.8567	0.8120	−5.22
13020	Bannock County, Idaho	38540	0.9351	0.9400	0.52
13030	Bear Lake County, Idaho	99913	0.8567	0.8120	−5.22
13040	Benewah County, Idaho	99913	0.8567	0.8120	−5.22
13050	Bingham County, Idaho	99913	0.8567	0.8120	−5.22
13060	Blaine County, Idaho	99913	0.8567	0.8120	−5.22
13070	Boise County, Idaho	14260	0.9075	0.9401	3.59
13080	Bonner County, Idaho	99913	0.8567	0.8120	−5.22
13090	Bonneville County, Idaho	26820	0.9259	0.9088	−1.85
13100	Boundary County, Idaho	99913	0.8567	0.8120	−5.22
13110	Butte County, Idaho	99913	0.8567	0.8120	−5.22
13120	Camas County, Idaho	99913	0.8567	0.8120	−5.22
13130	Canyon County, Idaho	14260	0.9052	0.9401	3.86
13140	Caribou County, Idaho	99913	0.8567	0.8120	−5.22
13150	Cassia County, Idaho	99913	0.8567	0.8120	−5.22
13160	Clark County, Idaho	99913	0.8567	0.8120	−5.22
13170	Clearwater County, Idaho	99913	0.8567	0.8120	−5.22
13180	Custer County, Idaho	99913	0.8567	0.8120	−5.22
13190	Elmore County, Idaho	99913	0.8567	0.8120	−5.22
13200	Franklin County, Idaho	30860	0.9131	0.9022	−1.19
13210	Fremont County, Idaho	99913	0.8567	0.8120	−5.22
13220	Gem County, Idaho	14260	0.9075	0.9401	3.59
13230	Gooding County, Idaho	99913	0.8567	0.8120	−5.22
13240	Idaho County, Idaho	99913	0.8567	0.8120	−5.22
13250	Jefferson County, Idaho	26820	0.9259	0.9088	−1.85
13260	Jerome County, Idaho	99913	0.8567	0.8120	−5.22
13270	Kootenai County, Idaho	17660	0.9372	0.9344	−0.30
13280	Latah County, Idaho	99913	0.8567	0.8120	−5.22
13290	Lemhi County, Idaho	99913	0.8567	0.8120	−5.22
13300	Lewis County, Idaho	99913	0.8567	0.8120	−5.22
13310	Lincoln County, Idaho	99913	0.8567	0.8120	−5.22
13320	Madison County, Idaho	99913	0.8567	0.8120	−5.22
13330	Minidoka County, Idaho	99913	0.8567	0.8120	−5.22
13340	Nez Perce County, Idaho	30300	0.9492	0.9853	3.80
13350	Oneida County, Idaho	99913	0.8567	0.8120	−5.22
13360	Owyhee County, Idaho	14260	0.9075	0.9401	3.59
13370	Payette County, Idaho	99913	0.8567	0.8120	−5.22
13380	Power County, Idaho	38540	0.9224	0.9400	1.91
13390	Shoshone County, Idaho	99913	0.8567	0.8120	−5.22
13400	Teton County, Idaho	99913	0.8567	0.8120	−5.22
13410	Twin Falls County, Idaho	99913	0.8567	0.8120	−5.22
13420	Valley County, Idaho	99913	0.8567	0.8120	−5.22
13430	Washington County, Idaho	99913	0.8567	0.8120	−5.22
14000	Adams County, Illinois	99914	0.8286	0.8320	0.41
14010	Alexander County, Illinois	99914	0.8286	0.8320	0.41
14020	Bond County, Illinois	41180	0.8628	0.9005	4.37
14030	Boone County, Illinois	40420	0.9984	0.9989	0.05
14040	Brown County, Illinois	99914	0.8286	0.8320	0.41
14050	Bureau County, Illinois	99914	0.8286	0.8320	0.41
14060	Calhoun County, Illinois	41180	0.8628	0.9005	4.37
14070	Carroll County, Illinois	99914	0.8286	0.8320	0.41
14080	Cass County, Illinois	99914	0.8286	0.8320	0.41
14090	Champaign County, Illinois	16580	0.9594	0.9644	0.52
14100	Christian County, Illinois	99914	0.8286	0.8320	0.41
14110	Clark County, Illinois	99914	0.8286	0.8320	0.41
14120	Clay County, Illinois	99914	0.8286	0.8320	0.41
14130	Clinton County, Illinois	41180	0.8958	0.9005	0.52
14140	Coles County, Illinois	99914	0.8286	0.8320	0.41
14141	Cook County, Illinois	16974	1.0787	1.0751	−0.33
14150	Crawford County, Illinois	99914	0.8286	0.8320	0.41
14160	Cumberland County, Illinois	99914	0.8286	0.8320	0.41
14170	De Kalb County, Illinois	16974	1.0787	1.0751	−0.33
14180	De Witt County, Illinois	99914	0.8286	0.8320	0.41
14190	Douglas County, Illinois	99914	0.8286	0.8320	0.41
14250	Du Page County, Illinois	16974	1.0787	1.0751	−0.33
14310	Edgar County, Illinois	99914	0.8286	0.8320	0.41

ADDENDUM C.—COMPARISON OF HH PPS TRANSITION WAGE INDEX FOR CY 2006 AND PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX FOR CY 2007—Continued

SSA state/county code	County name	CBSA No.	CY 2006 HH PPS transition wage index	CY2007 CBSA-based wage index	Percent change CY2006–CY2007
14320	Edwards County, Illinois	99914	0.8286	0.8320	0.41
14330	Effingham County, Illinois	99914	0.8286	0.8320	0.41
14340	Fayette County, Illinois	99914	0.8286	0.8320	0.41
14350	Ford County, Illinois	16580	0.8948	0.9644	7.78
14360	Franklin County, Illinois	99914	0.8286	0.8320	0.41
14370	Fulton County, Illinois	99914	0.8286	0.8320	0.41
14380	Gallatin County, Illinois	99914	0.8286	0.8320	0.41
14390	Greene County, Illinois	99914	0.8286	0.8320	0.41
14400	Grundy County, Illinois	16974	1.0787	1.0751	−0.33
14410	Hamilton County, Illinois	99914	0.8286	0.8320	0.41
14420	Hancock County, Illinois	99914	0.8286	0.8320	0.41
14421	Hardin County, Illinois	99914	0.8286	0.8320	0.41
14440	Henderson County, Illinois	99914	0.8286	0.8320	0.41
14450	Henry County, Illinois	19340	0.8724	0.8846	1.40
14460	Iroquois County, Illinois	99914	0.8286	0.8320	0.41
14470	Jackson County, Illinois	99914	0.8286	0.8320	0.41
14480	Jasper County, Illinois	99914	0.8286	0.8320	0.41
14490	Jefferson County, Illinois	99914	0.8286	0.8320	0.41
14500	Jersey County, Illinois	41180	0.8958	0.9005	0.52
14510	Jo Daviess County, Illinois	99914	0.8286	0.8320	0.41
14520	Johnson County, Illinois	99914	0.8286	0.8320	0.41
14530	Kane County, Illinois	16974	1.0787	1.0751	−0.33
14540	Kankakee County, Illinois	28100	1.0721	1.0083	−5.95
14550	Kendall County, Illinois	16974	1.0787	1.0751	−0.33
14560	Knox County, Illinois	99914	0.8286	0.8320	0.41
14570	Lake County, Illinois	29404	1.0606	1.0570	−0.34
14580	La Salle County, Illinois	99914	0.8286	0.8320	0.41
14590	Lawrence County, Illinois	99914	0.8286	0.8320	0.41
14600	Lee County, Illinois	99914	0.8286	0.8320	0.41
14610	Livingston County, Illinois	99914	0.8286	0.8320	0.41
14620	Logan County, Illinois	99914	0.8286	0.8320	0.41
14630	Mc Donough County, Illinois	99914	0.8286	0.8320	0.41
14640	Mc Henry County, Illinois	16974	1.0787	1.0751	−0.33
14650	Mclean County, Illinois	14060	0.9075	0.8944	−1.44
14660	Macon County, Illinois	19500	0.8067	0.8172	1.30
14670	Macoupin County, Illinois	41180	0.8628	0.9005	4.37
14680	Madison County, Illinois	41180	0.8958	0.9005	0.52
14690	Marion County, Illinois	99914	0.8286	0.8320	0.41
14700	Marshall County, Illinois	37900	0.8586	0.8982	4.61
14710	Mason County, Illinois	99914	0.8286	0.8320	0.41
14720	Massac County, Illinois	99914	0.8286	0.8320	0.41
14730	Menard County, Illinois	44100	0.8792	0.8890	1.11
14740	Mercer County, Illinois	19340	0.8513	0.8846	3.91
14750	Monroe County, Illinois	41180	0.8958	0.9005	0.52
14760	Montgomery County, Illinois	99914	0.8286	0.8320	0.41
14770	Morgan County, Illinois	99914	0.8286	0.8320	0.41
14780	Moultrie County, Illinois	99914	0.8286	0.8320	0.41
14790	Ogle County, Illinois	99914	0.9128	0.8320	−8.85
14800	Peoria County, Illinois	37900	0.8870	0.8982	1.26
14810	Perry County, Illinois	99914	0.8286	0.8320	0.41
14820	Piatt County, Illinois	16580	0.8948	0.9644	7.78
14830	Pike County, Illinois	99914	0.8286	0.8320	0.41
14831	Pope County, Illinois	99914	0.8286	0.8320	0.41
14850	Pulaski County, Illinois	99914	0.8286	0.8320	0.41
14860	Putnam County, Illinois	99914	0.8286	0.8320	0.41
14870	Randolph County, Illinois	99914	0.8286	0.8320	0.41
14880	Richland County, Illinois	99914	0.8286	0.8320	0.41
14890	Rock Island County, Illinois	19340	0.8724	0.8846	1.40
14900	St Clair County, Illinois	41180	0.8958	0.9005	0.52
14910	Saline County, Illinois	99914	0.8286	0.8320	0.41
14920	Sangamon County, Illinois	44100	0.8792	0.8890	1.11
14921	Schuyler County, Illinois	99914	0.8286	0.8320	0.41
14940	Scott County, Illinois	99914	0.8286	0.8320	0.41
14950	Shelby County, Illinois	99914	0.8286	0.8320	0.41
14960	Stark County, Illinois	37900	0.8586	0.8982	4.61
14970	Stephenson County, Illinois	99914	0.8286	0.8320	0.41
14980	Tazewell County, Illinois	37900	0.8870	0.8982	1.26
14981	Union County, Illinois	99914	0.8286	0.8320	0.41

ADDENDUM C.—COMPARISON OF HH PPS TRANSITION WAGE INDEX FOR CY 2006 AND PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX FOR CY 2007—Continued

SSA state/county code	County name	CBSA No.	CY 2006 HH PPS transition wage index	CY2007 CBSA-based wage index	Percent change CY2006–CY2007
14982	Vermilion County, Illinois	19180	0.8665	0.9266	6.94
14983	Wabash County, Illinois	99914	0.8286	0.8320	0.41
14984	Warren County, Illinois	99914	0.8286	0.8320	0.41
14985	Washington County, Illinois	99914	0.8286	0.8320	0.41
14986	Wayne County, Illinois	99914	0.8286	0.8320	0.41
14987	White County, Illinois	99914	0.8286	0.8320	0.41
14988	Whiteside County, Illinois	99914	0.8286	0.8320	0.41
14989	Will County, Illinois	16974	1.0787	1.0751	−0.33
14990	Williamson County, Illinois	99914	0.8286	0.8320	0.41
14991	Winnebago County, Illinois	40420	0.9984	0.9989	0.05
14992	Woodford County, Illinois	37900	0.8870	0.8982	1.26
15000	Adams County, Indiana	99915	0.9165	0.8538	−6.84
15010	Allen County, Indiana	23060	0.9750	0.9517	−2.39
15020	Bartholomew County, Indiana	18020	0.9164	0.9318	1.68
15030	Benton County, Indiana	29140	0.8738	0.8931	2.21
15040	Blackford County, Indiana	99915	0.8682	0.8538	−1.66
15050	Boone County, Indiana	26900	0.9893	0.9895	0.02
15060	Brown County, Indiana	26900	0.9330	0.9895	6.06
15070	Carroll County, Indiana	29140	0.8738	0.8931	2.21
15080	Cass County, Indiana	99915	0.8682	0.8538	−1.66
15090	Clark County, Indiana	31140	0.9272	0.9118	−1.66
15100	Clay County, Indiana	45460	0.8321	0.8765	5.34
15110	Clinton County, Indiana	99915	0.8680	0.8538	−1.64
15120	Crawford County, Indiana	99915	0.8682	0.8538	−1.66
15130	Daviess County, Indiana	99915	0.8682	0.8538	−1.66
15140	Dearborn County, Indiana	17140	0.9675	0.9601	−0.76
15150	Decatur County, Indiana	99915	0.8682	0.8538	−1.66
15160	De Kalb County, Indiana	99915	0.9165	0.8538	−6.84
15170	Delaware County, Indiana	34620	0.8930	0.8562	−4.12
15180	Dubois County, Indiana	99915	0.8682	0.8538	−1.66
15190	Elkhart County, Indiana	21140	0.9627	0.9426	−2.09
15200	Fayette County, Indiana	99915	0.8682	0.8538	−1.66
15210	Floyd County, Indiana	31140	0.9272	0.9118	−1.66
15220	Fountain County, Indiana	99915	0.8682	0.8538	−1.66
15230	Franklin County, Indiana	17140	0.9177	0.9601	4.62
15240	Fulton County, Indiana	99915	0.8682	0.8538	−1.66
15250	Gibson County, Indiana	21780	0.8726	0.9071	3.95
15260	Grant County, Indiana	99915	0.8682	0.8538	−1.66
15270	Greene County, Indiana	14020	0.8593	0.8533	−0.70
15280	Hamilton County, Indiana	26900	0.9893	0.9895	0.02
15290	Hancock County, Indiana	26900	0.9893	0.9895	0.02
15300	Harrison County, Indiana	31140	0.9272	0.9118	−1.66
15310	Hendricks County, Indiana	26900	0.9893	0.9895	0.02
15320	Henry County, Indiana	99915	0.8682	0.8538	−1.66
15330	Howard County, Indiana	29020	0.9508	0.9669	1.69
15340	Huntington County, Indiana	99915	0.9165	0.8538	−6.84
15350	Jackson County, Indiana	99915	0.8682	0.8538	−1.66
15360	Jasper County, Indiana	23844	0.9067	0.9334	2.94
15370	Jay County, Indiana	99915	0.8682	0.8538	−1.66
15380	Jefferson County, Indiana	99915	0.8682	0.8538	−1.66
15390	Jennings County, Indiana	99915	0.8682	0.8538	−1.66
15400	Johnson County, Indiana	26900	0.9893	0.9895	0.02
15410	Knox County, Indiana	99915	0.8682	0.8538	−1.66
15420	Kosciusko County, Indiana	99915	0.8682	0.8538	−1.66
15430	Lagrange County, Indiana	99915	0.8682	0.8538	−1.66
15440	Lake County, Indiana	23844	0.9395	0.9334	−0.65
15450	La Porte County, Indiana	33140	0.9069	0.9118	0.54
15460	Lawrence County, Indiana	99915	0.8682	0.8538	−1.66
15470	Madison County, Indiana	11300	0.9226	0.8681	−5.91
15480	Marion County, Indiana	26900	0.9893	0.9895	0.02
15490	Marshall County, Indiana	99915	0.8682	0.8538	−1.66
15500	Martin County, Indiana	99915	0.8682	0.8538	−1.66
15510	Miami County, Indiana	99915	0.8682	0.8538	−1.66
15520	Monroe County, Indiana	14020	0.8447	0.8533	1.02
15530	Montgomery County, Indiana	99915	0.8682	0.8538	−1.66
15540	Morgan County, Indiana	26900	0.9893	0.9895	0.02
15550	Newton County, Indiana	23844	0.9067	0.9334	2.94
15560	Noble County, Indiana	99915	0.8682	0.8538	−1.66

ADDENDUM C.—COMPARISON OF HH PPS TRANSITION WAGE INDEX FOR CY 2006 AND PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX FOR CY 2007—Continued

SSA state/county code	County name	CBSA No.	CY 2006 HH PPS transition wage index	CY2007 CBSA-based wage index	Percent change CY2006–CY2007
15570	Ohio County, Indiana	17140	0.9675	0.9601	−0.76
15580	Orange County, Indiana	99915	0.8682	0.8538	−1.66
15590	Owen County, Indiana	14020	0.8593	0.8533	−0.70
15600	Parke County, Indiana	99915	0.8682	0.8538	−1.66
15610	Perry County, Indiana	99915	0.8682	0.8538	−1.66
15620	Pike County, Indiana	99915	0.8682	0.8538	−1.66
15630	Porter County, Indiana	23844	0.9395	0.9334	−0.65
15640	Posey County, Indiana	21780	0.8713	0.9071	4.11
15650	Pulaski County, Indiana	99915	0.8682	0.8538	−1.66
15660	Putnam County, Indiana	26900	0.9330	0.9895	6.06
15670	Randolph County, Indiana	99915	0.8682	0.8538	−1.66
15680	Ripley County, Indiana	99915	0.8682	0.8538	−1.66
15690	Rush County, Indiana	99915	0.8682	0.8538	−1.66
15700	St Joseph County, Indiana	43780	0.9788	0.9842	0.55
15710	Scott County, Indiana	99915	0.8959	0.8538	−4.70
15720	Shelby County, Indiana	26900	0.9893	0.9895	0.02
15730	Spencer County, Indiana	99915	0.8682	0.8538	−1.66
15740	Starke County, Indiana	99915	0.8682	0.8538	−1.66
15750	Steuben County, Indiana	99915	0.8682	0.8538	−1.66
15760	Sullivan County, Indiana	45460	0.8522	0.8765	2.85
15770	Switzerland County, Indiana	99915	0.8682	0.8538	−1.66
15780	Tippecanoe County, Indiana	29140	0.8736	0.8931	2.23
15790	Tipton County, Indiana	29020	0.9508	0.9669	1.69
15800	Union County, Indiana	99915	0.8682	0.8538	−1.66
15810	Vanderburgh County, Indiana	21780	0.8713	0.9071	4.11
15820	Vermillion County, Indiana	45460	0.8321	0.8765	5.34
15830	Vigo County, Indiana	45460	0.8321	0.8765	5.34
15840	Wabash County, Indiana	99915	0.8682	0.8538	−1.66
15850	Warren County, Indiana	99915	0.8682	0.8538	−1.66
15860	Warrick County, Indiana	21780	0.8713	0.9071	4.11
15870	Washington County, Indiana	31140	0.8995	0.9118	1.37
15880	Wayne County, Indiana	99915	0.8682	0.8538	−1.66
15890	Wells County, Indiana	23060	0.9750	0.9517	−2.39
15900	White County, Indiana	99915	0.8682	0.8538	−1.66
15910	Whitley County, Indiana	23060	0.9750	0.9517	−2.39
16000	Adair County, Iowa	99916	0.8552	0.8681	1.51
16010	Adams County, Iowa	99916	0.8552	0.8681	1.51
16020	Allamakee County, Iowa	99916	0.8552	0.8681	1.51
16030	Appanoose County, Iowa	99916	0.8552	0.8681	1.51
16040	Audubon County, Iowa	99916	0.8552	0.8681	1.51
16050	Benton County, Iowa	16300	0.8710	0.8888	2.04
16060	Black Hawk County, Iowa	47940	0.8557	0.8408	−1.74
16070	Boone County, Iowa	99916	0.8552	0.8681	1.51
16080	Bremer County, Iowa	47940	0.8576	0.8408	−1.96
16090	Buchanan County, Iowa	99916	0.8552	0.8681	1.51
16100	Buena Vista County, Iowa	99916	0.8552	0.8681	1.51
16110	Butler County, Iowa	99916	0.8552	0.8681	1.51
16120	Calhoun County, Iowa	99916	0.8552	0.8681	1.51
16130	Carroll County, Iowa	99916	0.8552	0.8681	1.51
16140	Cass County, Iowa	99916	0.8552	0.8681	1.51
16150	Cedar County, Iowa	99916	0.8552	0.8681	1.51
16160	Cerro Gordo County, Iowa	99916	0.8552	0.8681	1.51
16170	Cherokee County, Iowa	99916	0.8552	0.8681	1.51
16180	Chickasaw County, Iowa	99916	0.8552	0.8681	1.51
16190	Clarke County, Iowa	99916	0.8552	0.8681	1.51
16200	Clay County, Iowa	99916	0.8552	0.8681	1.51
16210	Clayton County, Iowa	99916	0.8552	0.8681	1.51
16220	Clinton County, Iowa	99916	0.8552	0.8681	1.51
16230	Crawford County, Iowa	99916	0.8552	0.8681	1.51
16240	Dallas County, Iowa	19780	0.9669	0.9214	−4.71
16250	Davis County, Iowa	99916	0.8552	0.8681	1.51
16260	Decatur County, Iowa	99916	0.8552	0.8681	1.51
16270	Delaware County, Iowa	99916	0.8552	0.8681	1.51
16280	Des Moines County, Iowa	99916	0.8552	0.8681	1.51
16290	Dickinson County, Iowa	99916	0.8552	0.8681	1.51
16300	Dubuque County, Iowa	20220	0.9024	0.9133	1.21
16310	Emmet County, Iowa	99916	0.8552	0.8681	1.51
16320	Fayette County, Iowa	99916	0.8552	0.8681	1.51

ADDENDUM C.—COMPARISON OF HH PPS TRANSITION WAGE INDEX FOR CY 2006 AND PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX FOR CY 2007—Continued

SSA state/county code	County name	CBSA No.	CY 2006 HH PPS transition wage index	CY2007 CBSA-based wage index	Percent change CY2006–CY2007
16330	Floyd County, Iowa	99916	0.8552	0.8681	1.51
16340	Franklin County, Iowa	99916	0.8552	0.8681	1.51
16350	Fremont County, Iowa	99916	0.8552	0.8681	1.51
16360	Greene County, Iowa	99916	0.8552	0.8681	1.51
16370	Grundy County, Iowa	47940	0.8576	0.8408	−1.96
16380	Guthrie County, Iowa	19780	0.9132	0.9214	0.90
16390	Hamilton County, Iowa	99916	0.8552	0.8681	1.51
16400	Hancock County, Iowa	99916	0.8552	0.8681	1.51
16410	Hardin County, Iowa	99916	0.8552	0.8681	1.51
16420	Harrison County, Iowa	36540	0.9077	0.9450	4.11
16430	Henry County, Iowa	99916	0.8552	0.8681	1.51
16440	Howard County, Iowa	99916	0.8552	0.8681	1.51
16450	Humboldt County, Iowa	99916	0.8552	0.8681	1.51
16460	Ida County, Iowa	99916	0.8552	0.8681	1.51
16470	Iowa County, Iowa	99916	0.8552	0.8681	1.51
16480	Jackson County, Iowa	99916	0.8552	0.8681	1.51
16490	Jasper County, Iowa	99916	0.8552	0.8681	1.51
16500	Jefferson County, Iowa	99916	0.8552	0.8681	1.51
16510	Johnson County, Iowa	26980	0.9747	0.9714	−0.34
16520	Jones County, Iowa	16300	0.8710	0.8888	2.04
16530	Keokuk County, Iowa	99916	0.8552	0.8681	1.51
16540	Kossuth County, Iowa	99916	0.8552	0.8681	1.51
16550	Lee County, Iowa	99916	0.8552	0.8681	1.51
16560	Linn County, Iowa	16300	0.8825	0.8888	0.71
16570	Louisa County, Iowa	99916	0.8552	0.8681	1.51
16580	Lucas County, Iowa	99916	0.8552	0.8681	1.51
16590	Lyon County, Iowa	99916	0.8552	0.8681	1.51
16600	Madison County, Iowa	19780	0.9132	0.9214	0.90
16610	Mahaska County, Iowa	99916	0.8552	0.8681	1.51
16620	Marion County, Iowa	99916	0.8552	0.8681	1.51
16630	Marshall County, Iowa	99916	0.8552	0.8681	1.51
16640	Mills County, Iowa	36540	0.9077	0.9450	4.11
16650	Mitchell County, Iowa	99916	0.8552	0.8681	1.51
16660	Monona County, Iowa	99916	0.8552	0.8681	1.51
16670	Monroe County, Iowa	99916	0.8552	0.8681	1.51
16680	Montgomery County, Iowa	99916	0.8552	0.8681	1.51
16690	Muscatine County, Iowa	99916	0.8552	0.8681	1.51
16700	O Brien County, Iowa	99916	0.8552	0.8681	1.51
16710	Osceola County, Iowa	99916	0.8552	0.8681	1.51
16720	Page County, Iowa	99916	0.8552	0.8681	1.51
16730	Palo Alto County, Iowa	99916	0.8552	0.8681	1.51
16740	Plymouth County, Iowa	99916	0.8552	0.8681	1.51
16750	Pocahontas County, Iowa	99916	0.8552	0.8681	1.51
16760	Polk County, Iowa	19780	0.9669	0.9214	−4.71
16770	Pottawattamie County, Iowa	36540	0.9560	0.9450	−1.15
16780	Poweshiek County, Iowa	99916	0.8552	0.8681	1.51
16790	Ringgold County, Iowa	99916	0.8552	0.8681	1.51
16800	Sac County, Iowa	99916	0.8552	0.8681	1.51
16810	Scott County, Iowa	19340	0.8724	0.8846	1.40
16820	Shelby County, Iowa	99916	0.8552	0.8681	1.51
16830	Sioux County, Iowa	99916	0.8552	0.8681	1.51
16840	Story County, Iowa	11180	0.9065	0.9760	7.67
16850	Tama County, Iowa	99916	0.8552	0.8681	1.51
16860	Taylor County, Iowa	99916	0.8552	0.8681	1.51
16870	Union County, Iowa	99916	0.8552	0.8681	1.51
16880	Van Buren County, Iowa	99916	0.8552	0.8681	1.51
16890	Wapello County, Iowa	99916	0.8552	0.8681	1.51
16900	Warren County, Iowa	19780	0.9669	0.9214	−4.71
16910	Washington County, Iowa	26980	0.9171	0.9714	5.92
16920	Wayne County, Iowa	99916	0.8552	0.8681	1.51
16930	Webster County, Iowa	99916	0.8552	0.8681	1.51
16940	Winnebago County, Iowa	99916	0.8552	0.8681	1.51
16950	Winneshiek County, Iowa	99916	0.8552	0.8681	1.51
16960	Woodbury County, Iowa	43580	0.9399	0.9200	−2.12
16970	Worth County, Iowa	99916	0.8552	0.8681	1.51
16980	Wright County, Iowa	99916	0.8552	0.8681	1.51
17000	Allen County, Kansas	99917	0.8038	0.7998	−0.50
17010	Anderson County, Kansas	99917	0.8038	0.7998	−0.50

ADDENDUM C.—COMPARISON OF HH PPS TRANSITION WAGE INDEX FOR CY 2006 AND PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX FOR CY 2007—Continued

SSA state/county code	County name	CBSA No.	CY 2006 HH PPS transition wage index	CY2007 CBSA-based wage index	Percent change CY2006–CY2007
17020	Atchison County, Kansas	99917	0.8038	0.7998	−0.50
17030	Barber County, Kansas	99917	0.8038	0.7998	−0.50
17040	Barton County, Kansas	99917	0.8038	0.7998	−0.50
17050	Bourbon County, Kansas	99917	0.8038	0.7998	−0.50
17060	Brown County, Kansas	99917	0.8038	0.7998	−0.50
17070	Butler County, Kansas	48620	0.9164	0.9063	−1.10
17080	Chase County, Kansas	99917	0.8038	0.7998	−0.50
17090	Chautauqua County, Kansas	99917	0.8038	0.7998	−0.50
17100	Cherokee County, Kansas	99917	0.8038	0.7998	−0.50
17110	Cheyenne County, Kansas	99917	0.8038	0.7998	−0.50
17120	Clark County, Kansas	99917	0.8038	0.7998	−0.50
17130	Clay County, Kansas	99917	0.8038	0.7998	−0.50
17140	Cloud County, Kansas	99917	0.8038	0.7998	−0.50
17150	Coffey County, Kansas	99917	0.8038	0.7998	−0.50
17160	Comanche County, Kansas	99917	0.8038	0.7998	−0.50
17170	Cowley County, Kansas	99917	0.8038	0.7998	−0.50
17180	Crawford County, Kansas	99917	0.8038	0.7998	−0.50
17190	Decatur County, Kansas	99917	0.8038	0.7998	−0.50
17200	Dickinson County, Kansas	99917	0.8038	0.7998	−0.50
17210	Doniphan County, Kansas	41140	0.8780	1.0118	15.24
17220	Douglas County, Kansas	29940	0.8537	0.8365	−2.01
17230	Edwards County, Kansas	99917	0.8038	0.7998	−0.50
17240	Elk County, Kansas	99917	0.8038	0.7998	−0.50
17250	Ellis County, Kansas	99917	0.8038	0.7998	−0.50
17260	Ellsworth County, Kansas	99917	0.8038	0.7998	−0.50
17270	Finney County, Kansas	99917	0.8038	0.7998	−0.50
17280	Ford County, Kansas	99917	0.8038	0.7998	−0.50
17290	Franklin County, Kansas	28140	0.8758	0.9495	8.42
17300	Geary County, Kansas	99917	0.8038	0.7998	−0.50
17310	Gove County, Kansas	99917	0.8038	0.7998	−0.50
17320	Graham County, Kansas	99917	0.8038	0.7998	−0.50
17330	Grant County, Kansas	99917	0.8038	0.7998	−0.50
17340	Gray County, Kansas	99917	0.8038	0.7998	−0.50
17350	Greeley County, Kansas	99917	0.8038	0.7998	−0.50
17360	Greenwood County, Kansas	99917	0.8038	0.7998	−0.50
17370	Hamilton County, Kansas	99917	0.8038	0.7998	−0.50
17380	Harper County, Kansas	99917	0.8038	0.7998	−0.50
17390	Harvey County, Kansas	48620	0.9164	0.9063	−1.10
17391	Haskell County, Kansas	99917	0.8038	0.7998	−0.50
17410	Hodgeman County, Kansas	99917	0.8038	0.7998	−0.50
17420	Jackson County, Kansas	45820	0.8480	0.8730	2.95
17430	Jefferson County, Kansas	45820	0.8480	0.8730	2.95
17440	Jewell County, Kansas	99917	0.8038	0.7998	−0.50
17450	Johnson County, Kansas	28140	0.9483	0.9495	0.13
17451	Kearny County, Kansas	99917	0.8038	0.7998	−0.50
17470	Kingman County, Kansas	99917	0.8038	0.7998	−0.50
17480	Kiowa County, Kansas	99917	0.8038	0.7998	−0.50
17490	Labette County, Kansas	99917	0.8038	0.7998	−0.50
17500	Lane County, Kansas	99917	0.8038	0.7998	−0.50
17510	Leavenworth County, Kansas	28140	0.9483	0.9495	0.13
17520	Lincoln County, Kansas	99917	0.8038	0.7998	−0.50
17530	Linn County, Kansas	28140	0.8758	0.9495	8.42
17540	Logan County, Kansas	99917	0.8038	0.7998	−0.50
17550	Lyon County, Kansas	99917	0.8038	0.7998	−0.50
17560	Mc Pherson County, Kansas	99917	0.8038	0.7998	−0.50
17570	Marion County, Kansas	99917	0.8038	0.7998	−0.50
17580	Marshall County, Kansas	99917	0.8038	0.7998	−0.50
17590	Meade County, Kansas	99917	0.8038	0.7998	−0.50
17600	Miami County, Kansas	28140	0.9483	0.9495	0.13
17610	Mitchell County, Kansas	99917	0.8038	0.7998	−0.50
17620	Montgomery County, Kansas	99917	0.8038	0.7998	−0.50
17630	Morris County, Kansas	99917	0.8038	0.7998	−0.50
17640	Morton County, Kansas	99917	0.8038	0.7998	−0.50
17650	Nemaha County, Kansas	99917	0.8038	0.7998	−0.50
17660	Neosho County, Kansas	99917	0.8038	0.7998	−0.50
17670	Ness County, Kansas	99917	0.8038	0.7998	−0.50
17680	Norton County, Kansas	99917	0.8038	0.7998	−0.50
17690	Osage County, Kansas	45820	0.8480	0.8730	2.95

ADDENDUM C.—COMPARISON OF HH PPS TRANSITION WAGE INDEX FOR CY 2006 AND PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX FOR CY 2007—Continued

SSA state/county code	County name	CBSA No.	CY 2006 HH PPS transition wage index	CY2007 CBSA-based wage index	Percent change CY2006–CY2007
17700	Osborne County, Kansas	99917	0.8038	0.7998	−0.50
17710	Ottawa County, Kansas	99917	0.8038	0.7998	−0.50
17720	Pawnee County, Kansas	99917	0.8038	0.7998	−0.50
17730	Phillips County, Kansas	99917	0.8038	0.7998	−0.50
17740	Pottawatomie County, Kansas	99917	0.8038	0.7998	−0.50
17750	Pratt County, Kansas	99917	0.8038	0.7998	−0.50
17760	Rawlins County, Kansas	99917	0.8038	0.7998	−0.50
17770	Reno County, Kansas	99917	0.8038	0.7998	−0.50
17780	Republic County, Kansas	99917	0.8038	0.7998	−0.50
17790	Rice County, Kansas	99917	0.8038	0.7998	−0.50
17800	Riley County, Kansas	99917	0.8038	0.7998	−0.50
17810	Rooks County, Kansas	99917	0.8038	0.7998	−0.50
17820	Rush County, Kansas	99917	0.8038	0.7998	−0.50
17830	Russell County, Kansas	99917	0.8038	0.7998	−0.50
17840	Saline County, Kansas	99917	0.8038	0.7998	−0.50
17841	Scott County, Kansas	99917	0.8038	0.7998	−0.50
17860	Sedgwick County, Kansas	48620	0.9164	0.9063	−1.10
17870	Seward County, Kansas	99917	0.8038	0.7998	−0.50
17880	Shawnee County, Kansas	45820	0.8920	0.8730	−2.13
17890	Sheridan County, Kansas	99917	0.8038	0.7998	−0.50
17900	Sherman County, Kansas	99917	0.8038	0.7998	−0.50
17910	Smith County, Kansas	99917	0.8038	0.7998	−0.50
17920	Stafford County, Kansas	99917	0.8038	0.7998	−0.50
17921	Stanton County, Kansas	99917	0.8038	0.7998	−0.50
17940	Stevens County, Kansas	99917	0.8038	0.7998	−0.50
17950	Sumner County, Kansas	48620	0.8597	0.9063	5.42
17960	Thomas County, Kansas	99917	0.8038	0.7998	−0.50
17970	Trego County, Kansas	99917	0.8038	0.7998	−0.50
17980	Wabaunsee County, Kansas	45820	0.8480	0.8730	2.95
17981	Wallace County, Kansas	99917	0.8038	0.7998	−0.50
17982	Washington County, Kansas	99917	0.8038	0.7998	−0.50
17983	Wichita County, Kansas	99917	0.8038	0.7998	−0.50
17984	Wilson County, Kansas	99917	0.8038	0.7998	−0.50
17985	Woodson County, Kansas	99917	0.8038	0.7998	−0.50
17986	Wyandotte County, Kansas	28140	0.9483	0.9495	0.13
18000	Adair County, Kentucky	99918	0.7812	0.7768	−0.56
18010	Allen County, Kentucky	99918	0.7812	0.7768	−0.56
18020	Anderson County, Kentucky	99918	0.7812	0.7768	−0.56
18030	Ballard County, Kentucky	99918	0.7812	0.7768	−0.56
18040	Barren County, Kentucky	99918	0.7812	0.7768	−0.56
18050	Bath County, Kentucky	99918	0.7812	0.7768	−0.56
18060	Bell County, Kentucky	99918	0.7812	0.7768	−0.56
18070	Boone County, Kentucky	17140	0.9675	0.9601	−0.76
18080	Bourbon County, Kentucky	30460	0.9032	0.9181	1.65
18090	Boyd County, Kentucky	26580	0.9477	0.8997	−5.06
18100	Boyle County, Kentucky	99918	0.7812	0.7768	−0.56
18110	Bracken County, Kentucky	17140	0.8737	0.9601	9.89
18120	Breathitt County, Kentucky	99918	0.7812	0.7768	−0.56
18130	Breckinridge County, Kentucky	99918	0.7812	0.7768	−0.56
18140	Bullitt County, Kentucky	31140	0.9272	0.9118	−1.66
18150	Butler County, Kentucky	99918	0.7812	0.7768	−0.56
18160	Caldwell County, Kentucky	99918	0.7812	0.7768	−0.56
18170	Calloway County, Kentucky	99918	0.7812	0.7768	−0.56
18180	Campbell County, Kentucky	17140	0.9675	0.9601	−0.76
18190	Carlisle County, Kentucky	99918	0.7812	0.7768	−0.56
18191	Carroll County, Kentucky	99918	0.7812	0.7768	−0.56
18210	Carter County, Kentucky	99918	0.8622	0.7768	−9.90
18220	Casey County, Kentucky	99918	0.7812	0.7768	−0.56
18230	Christian County, Kentucky	17300	0.8284	0.8436	1.83
18240	Clark County, Kentucky	30460	0.9032	0.9181	1.65
18250	Clay County, Kentucky	99918	0.7812	0.7768	−0.56
18260	Clinton County, Kentucky	99918	0.7812	0.7768	−0.56
18270	Crittenden County, Kentucky	99918	0.7812	0.7768	−0.56
18271	Cumberland County, Kentucky	99918	0.7812	0.7768	−0.56
18290	Daviess County, Kentucky	36980	0.8780	0.8748	−0.36
18291	Edmonson County, Kentucky	14540	0.8035	0.8148	1.41
18310	Elliott County, Kentucky	99918	0.7812	0.7768	−0.56
18320	Estill County, Kentucky	99918	0.7812	0.7768	−0.56

ADDENDUM C.—COMPARISON OF HH PPS TRANSITION WAGE INDEX FOR CY 2006 AND PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX FOR CY 2007—Continued

SSA state/county code	County name	CBSA No.	CY 2006 HH PPS transition wage index	CY2007 CBSA-based wage index	Percent change CY2006–CY2007
18330	Fayette County, Kentucky	30460	0.9032	0.9181	1.65
18340	Fleming County, Kentucky	99918	0.7812	0.7768	−0.56
18350	Floyd County, Kentucky	99918	0.7812	0.7768	−0.56
18360	Franklin County, Kentucky	99918	0.7812	0.7768	−0.56
18361	Fulton County, Kentucky	99918	0.7812	0.7768	−0.56
18362	Gallatin County, Kentucky	17140	0.9675	0.9601	−0.76
18390	Garrard County, Kentucky	99918	0.7812	0.7768	−0.56
18400	Grant County, Kentucky	17140	0.9675	0.9601	−0.76
18410	Graves County, Kentucky	99918	0.7812	0.7768	−0.56
18420	Grayson County, Kentucky	99918	0.7812	0.7768	−0.56
18421	Green County, Kentucky	99918	0.7812	0.7768	−0.56
18440	Greenup County, Kentucky	26580	0.9477	0.8997	−5.06
18450	Hancock County, Kentucky	36980	0.8319	0.8748	5.16
18460	Hardin County, Kentucky	21060	0.8330	0.8697	4.41
18470	Harlan County, Kentucky	99918	0.7812	0.7768	−0.56
18480	Harrison County, Kentucky	99918	0.7812	0.7768	−0.56
18490	Hart County, Kentucky	99918	0.7812	0.7768	−0.56
18500	Henderson County, Kentucky	21780	0.8713	0.9071	4.11
18510	Henry County, Kentucky	31140	0.8555	0.9118	6.58
18511	Hickman County, Kentucky	99918	0.7812	0.7768	−0.56
18530	Hopkins County, Kentucky	99918	0.7812	0.7768	−0.56
18540	Jackson County, Kentucky	99918	0.7812	0.7768	−0.56
18550	Jefferson County, Kentucky	31140	0.9272	0.9118	−1.66
18560	Jessamine County, Kentucky	30460	0.9032	0.9181	1.65
18570	Johnson County, Kentucky	99918	0.7812	0.7768	−0.56
18580	Kenton County, Kentucky	17140	0.9675	0.9601	−0.76
18590	Knott County, Kentucky	99918	0.7812	0.7768	−0.56
18600	Knox County, Kentucky	99918	0.7812	0.7768	−0.56
18610	Larue County, Kentucky	21060	0.8330	0.8697	4.41
18620	Laurel County, Kentucky	99918	0.7812	0.7768	−0.56
18630	Lawrence County, Kentucky	99918	0.7812	0.7768	−0.56
18640	Lee County, Kentucky	99918	0.7812	0.7768	−0.56
18650	Leslie County, Kentucky	99918	0.7812	0.7768	−0.56
18660	Letcher County, Kentucky	99918	0.7812	0.7768	−0.56
18670	Lewis County, Kentucky	99918	0.7812	0.7768	−0.56
18680	Lincoln County, Kentucky	99918	0.7812	0.7768	−0.56
18690	Livingston County, Kentucky	99918	0.7812	0.7768	−0.56
18700	Logan County, Kentucky	99918	0.7812	0.7768	−0.56
18710	Lyon County, Kentucky	99918	0.7812	0.7768	−0.56
18720	Mc Cracken County, Kentucky	99918	0.7812	0.7768	−0.56
18730	Mc Creary County, Kentucky	99918	0.7812	0.7768	−0.56
18740	Mc Lean County, Kentucky	36980	0.8319	0.8748	5.16
18750	Madison County, Kentucky	99918	0.8377	0.7768	−7.27
18760	Magoffin County, Kentucky	99918	0.7812	0.7768	−0.56
18770	Marion County, Kentucky	99918	0.7812	0.7768	−0.56
18780	Marshall County, Kentucky	99918	0.7812	0.7768	−0.56
18790	Martin County, Kentucky	99918	0.7812	0.7768	−0.56
18800	Mason County, Kentucky	99918	0.7812	0.7768	−0.56
18801	Meade County, Kentucky	31140	0.8555	0.9118	6.58
18802	Menifee County, Kentucky	99918	0.7812	0.7768	−0.56
18830	Mercer County, Kentucky	99918	0.7812	0.7768	−0.56
18831	Metcalfe County, Kentucky	99918	0.7812	0.7768	−0.56
18850	Monroe County, Kentucky	99918	0.7812	0.7768	−0.56
18860	Montgomery County, Kentucky	99918	0.7812	0.7768	−0.56
18861	Morgan County, Kentucky	99918	0.7812	0.7768	−0.56
18880	Muhlenberg County, Kentucky	99918	0.7812	0.7768	−0.56
18890	Nelson County, Kentucky	31140	0.8555	0.9118	6.58
18900	Nicholas County, Kentucky	99918	0.7812	0.7768	−0.56
18910	Ohio County, Kentucky	99918	0.7812	0.7768	−0.56
18920	Oldham County, Kentucky	31140	0.9272	0.9118	−1.66
18930	Owen County, Kentucky	99918	0.7812	0.7768	−0.56
18931	Owsley County, Kentucky	99918	0.7812	0.7768	−0.56
18932	Pendleton County, Kentucky	17140	0.9675	0.9601	−0.76
18960	Perry County, Kentucky	99918	0.7812	0.7768	−0.56
18970	Pike County, Kentucky	99918	0.7812	0.7768	−0.56
18971	Powell County, Kentucky	99918	0.7812	0.7768	−0.56
18972	Pulaski County, Kentucky	99918	0.7812	0.7768	−0.56
18973	Robertson County, Kentucky	99918	0.7812	0.7768	−0.56

ADDENDUM C.—COMPARISON OF HH PPS TRANSITION WAGE INDEX FOR CY 2006 AND PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX FOR CY 2007—Continued

SSA state/county code	County name	CBSA No.	CY 2006 HH PPS transition wage index	CY2007 CBSA-based wage index	Percent change CY2006–CY2007
18974	Rockcastle County, Kentucky	99918	0.7812	0.7768	−0.56
18975	Rowan County, Kentucky	99918	0.7812	0.7768	−0.56
18976	Russell County, Kentucky	99918	0.7812	0.7768	−0.56
18977	Scott County, Kentucky	30460	0.9032	0.9181	1.65
18978	Shelby County, Kentucky	31140	0.8555	0.9118	6.58
18979	Simpson County, Kentucky	99918	0.7812	0.7768	−0.56
18980	Spencer County, Kentucky	31140	0.8555	0.9118	6.58
18981	Taylor County, Kentucky	99918	0.7812	0.7768	−0.56
18982	Todd County, Kentucky	99918	0.7812	0.7768	−0.56
18983	Trigg County, Kentucky	17300	0.8071	0.8436	4.52
18984	Trimble County, Kentucky	31140	0.8555	0.9118	6.58
18985	Union County, Kentucky	99918	0.7812	0.7768	−0.56
18986	Warren County, Kentucky	14540	0.8035	0.8148	1.41
18987	Washington County, Kentucky	99918	0.7812	0.7768	−0.56
18988	Wayne County, Kentucky	99918	0.7812	0.7768	−0.56
18989	Webster County, Kentucky	21780	0.8286	0.9071	9.47
18990	Whitley County, Kentucky	99918	0.7812	0.7768	−0.56
18991	Wolfe County, Kentucky	99918	0.7812	0.7768	−0.56
18992	Woodford County, Kentucky	30460	0.9032	0.9181	1.65
19000	Acadia County, Louisiana	99919	0.7831	0.7438	−5.02
19010	Allen County, Louisiana	99919	0.7376	0.7438	0.84
19020	Ascension County, Louisiana	12940	0.8618	0.8084	−6.20
19030	Assumption County, Louisiana	99919	0.7376	0.7438	0.84
19040	Avoyelles County, Louisiana	99919	0.7376	0.7438	0.84
19050	Beauregard County, Louisiana	99919	0.7376	0.7438	0.84
19060	Bienville County, Louisiana	99919	0.7376	0.7438	0.84
19070	Bossier County, Louisiana	43340	0.8749	0.8865	1.33
19080	Caddo County, Louisiana	43340	0.8749	0.8865	1.33
19090	Calcasieu County, Louisiana	29340	0.7846	0.7914	0.87
19100	Caldwell County, Louisiana	99919	0.7376	0.7438	0.84
19110	Cameron County, Louisiana	29340	0.7587	0.7914	4.31
19120	Catahoula County, Louisiana	99919	0.7376	0.7438	0.84
19130	Claiborne County, Louisiana	99919	0.7376	0.7438	0.84
19140	Concordia County, Louisiana	99919	0.7376	0.7438	0.84
19150	De Soto County, Louisiana	43340	0.8050	0.8865	10.12
19160	East Baton Rouge County, Louisiana	12940	0.8618	0.8084	−6.20
19170	East Carroll County, Louisiana	99919	0.7376	0.7438	0.84
19180	East Feliciana County, Louisiana	12940	0.7967	0.8084	1.47
19190	Evangeline County, Louisiana	99919	0.7376	0.7438	0.84
19200	Franklin County, Louisiana	99919	0.7376	0.7438	0.84
19210	Grant County, Louisiana	10780	0.7687	0.8006	4.15
19220	Iberia County, Louisiana	99919	0.7376	0.7438	0.84
19230	Iberville County, Louisiana	12940	0.7967	0.8084	1.47
19240	Jackson County, Louisiana	99919	0.7376	0.7438	0.84
19250	Jefferson County, Louisiana	35380	0.8995	0.8831	−1.82
19260	Jefferson Davis County, Louisiana	99919	0.7376	0.7438	0.84
19270	Lafayette County, Louisiana	29180	0.8340	0.8289	−0.61
19280	Lafourche County, Louisiana	26380	0.7894	0.8082	2.38
19290	La Salle County, Louisiana	99919	0.7376	0.7438	0.84
19300	Lincoln County, Louisiana	99919	0.7376	0.7438	0.84
19310	Livingston County, Louisiana	12940	0.8618	0.8084	−6.20
19320	Madison County, Louisiana	99919	0.7376	0.7438	0.84
19330	Morehouse County, Louisiana	99919	0.7376	0.7438	0.84
19340	Natchitoches County, Louisiana	99919	0.7376	0.7438	0.84
19350	Orleans County, Louisiana	35380	0.8995	0.8831	−1.82
19360	Ouachita County, Louisiana	33740	0.8038	0.7997	−0.51
19370	Plaquemines County, Louisiana	35380	0.8995	0.8831	−1.82
19380	Pointe Coupee County, Louisiana	12940	0.7967	0.8084	1.47
19390	Rapides County, Louisiana	10780	0.8033	0.8006	−0.34
19400	Red River County, Louisiana	99919	0.7376	0.7438	0.84
19410	Richland County, Louisiana	99919	0.7376	0.7438	0.84
19420	Sabine County, Louisiana	99919	0.7376	0.7438	0.84
19430	St Bernard County, Louisiana	35380	0.8995	0.8831	−1.82
19440	St Charles County, Louisiana	35380	0.8995	0.8831	−1.82
19450	St Helena County, Louisiana	12940	0.7967	0.8084	1.47
19460	St James County, Louisiana	99919	0.8203	0.7438	−9.33
19470	St John Baptist County, Louisiana	35380	0.8995	0.8831	−1.82
19480	St Landry County, Louisiana	99919	0.7831	0.7438	−5.02

ADDENDUM C.—COMPARISON OF HH PPS TRANSITION WAGE INDEX FOR CY 2006 AND PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX FOR CY 2007—Continued

SSA state/county code	County name	CBSA No.	CY 2006 HH PPS transition wage index	CY2007 CBSA-based wage index	Percent change CY2006–CY2007
19490	St Martin County, Louisiana	29180	0.8340	0.8289	−0.61
19500	St Mary County, Louisiana	99919	0.7376	0.7438	0.84
19510	St Tammany County, Louisiana	35380	0.8995	0.8831	−1.82
19520	Tangipahoa County, Louisiana	99919	0.7376	0.7438	0.84
19530	Tensas County, Louisiana	99919	0.7376	0.7438	0.84
19540	Terrebonne County, Louisiana	26380	0.7894	0.8082	2.38
19550	Union County, Louisiana	33740	0.7686	0.7997	4.05
19560	Vermilion County, Louisiana	99919	0.7376	0.7438	0.84
19570	Vernon County, Louisiana	99919	0.7376	0.7438	0.84
19580	Washington County, Louisiana	99919	0.7376	0.7438	0.84
19590	Webster County, Louisiana	99919	0.8074	0.7438	−7.88
19600	West Baton Rouge County, Louisiana	12940	0.8618	0.8084	−6.20
19610	West Carroll County, Louisiana	99919	0.7376	0.7438	0.84
19620	West Feliciana County, Louisiana	12940	0.7967	0.8084	1.47
19630	Winn County, Louisiana	99919	0.7376	0.7438	0.84
20000	Androscoggin County, Maine	30340	0.9331	0.9126	−2.20
20010	Aroostook County, Maine	99920	0.8843	0.8443	−4.52
20020	Cumberland County, Maine	38860	1.0382	0.9908	−4.57
20030	Franklin County, Maine	99920	0.8843	0.8443	−4.52
20040	Hancock County, Maine	99920	0.8843	0.8443	−4.52
20050	Kennebec County, Maine	99920	0.8843	0.8443	−4.52
20060	Knox County, Maine	99920	0.8843	0.8443	−4.52
20070	Lincoln County, Maine	99920	0.8843	0.8443	−4.52
20080	Oxford County, Maine	99920	0.8843	0.8443	−4.52
20090	Penobscot County, Maine	12620	0.9993	0.9711	−2.82
20100	Piscataquis County, Maine	99920	0.8843	0.8443	−4.52
20110	Sagadahoc County, Maine	38860	1.0382	0.9908	−4.57
20120	Somerset County, Maine	99920	0.8843	0.8443	−4.52
20130	Waldo County, Maine	99920	0.8843	0.8443	−4.52
20140	Washington County, Maine	99920	0.8843	0.8443	−4.52
20150	York County, Maine	38860	1.0382	0.9908	−4.57
21000	Allegany County, Maryland	19060	0.9317	0.8446	−9.35
21010	Anne Arundel County, Maryland	12580	0.9897	1.0088	1.93
21020	Baltimore County, Maryland	12580	0.9897	1.0088	1.93
21030	Baltimore City County, Maryland	12580	0.9897	1.0088	1.93
21040	Calvert County, Maryland	47894	1.0951	1.1054	0.94
21050	Caroline County, Maryland	99921	0.9292	0.8926	−3.94
21060	Carroll County, Maryland	12580	0.9897	1.0088	1.93
21070	Cecil County, Maryland	48864	1.0499	1.0684	1.76
21080	Charles County, Maryland	47894	1.0951	1.1054	0.94
21090	Dorchester County, Maryland	99921	0.9292	0.8926	−3.94
21100	Frederick County, Maryland	13644	1.1230	1.0903	−2.91
21110	Garrett County, Maryland	99921	0.9292	0.8926	−3.94
21120	Harford County, Maryland	12580	0.9897	1.0088	1.93
21130	Howard County, Maryland	12580	0.9897	1.0088	1.93
21140	Kent County, Maryland	99921	0.9292	0.8926	−3.94
21150	Montgomery County, Maryland	13644	1.1230	1.0903	−2.91
21160	Prince Georges County, Maryland	47894	1.0951	1.1054	0.94
21170	Queen Annes County, Maryland	12580	0.9897	1.0088	1.93
21180	St Marys County, Maryland	99921	0.9292	0.8926	−3.94
21190	Somerset County, Maryland	41540	0.9147	0.8953	−2.12
21200	Talbot County, Maryland	99921	0.9292	0.8926	−3.94
21210	Washington County, Maryland	25180	0.9679	0.9038	−6.62
21220	Wicomico County, Maryland	41540	0.9147	0.8953	−2.12
21230	Worcester County, Maryland	99921	0.9292	0.8926	−3.94
22000	Barnstable County, Massachusetts	12700	1.2600	1.2539	−0.48
22010	Berkshire County, Massachusetts	38340	1.0181	1.0266	0.83
22020	Bristol County, Massachusetts	39300	1.1072	1.0783	−2.61
22030	Dukes County, Massachusetts	99922	1.0216	1.1661	14.14
22040	Essex County, Massachusetts	21604	1.0858	1.0418	−4.05
22060	Franklin County, Massachusetts	44140	1.0232	1.0079	−0.64
22070	Hampden County, Massachusetts	44140	1.0256	1.0079	−1.73
22080	Hampshire County, Massachusetts	44140	1.0256	1.0079	−1.73
22090	Middlesex County, Massachusetts	15764	1.1175	1.0970	−1.83
22120	Nantucket County, Massachusetts	99922	1.0216	1.1661	14.14
22130	Norfolk County, Massachusetts	14484	1.1368	1.1679	2.74
22150	Plymouth County, Massachusetts	14484	1.1368	1.1679	2.74
22160	Suffolk County, Massachusetts	14484	1.1368	1.1679	2.74

ADDENDUM C.—COMPARISON OF HH PPS TRANSITION WAGE INDEX FOR CY 2006 AND PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX FOR CY 2007—Continued

SSA state/county code	County name	CBSA No.	CY 2006 HH PPS transition wage index	CY2007 CBSA-based wage index	Percent change CY2006–CY2007
22170	Worcester County, Massachusetts	49340	1.1103	1.0722	−3.43
23000	Alcona County, Michigan	99923	0.8860	0.9062	2.28
23010	Alger County, Michigan	99923	0.8860	0.9062	2.28
23020	Allegan County, Michigan	99923	0.9170	0.9062	−1.18
23030	Alpena County, Michigan	99923	0.8860	0.9062	2.28
23040	Antrim County, Michigan	99923	0.8860	0.9062	2.28
23050	Arenac County, Michigan	99923	0.8860	0.9062	2.28
23060	Baraga County, Michigan	99923	0.8860	0.9062	2.28
23070	Barry County, Michigan	24340	0.9107	0.9455	3.82
23080	Bay County, Michigan	13020	0.9292	0.9251	−0.44
23090	Benzie County, Michigan	99923	0.8860	0.9062	2.28
23100	Berrien County, Michigan	35660	0.8879	0.8915	0.41
23110	Branch County, Michigan	99923	0.8860	0.9062	2.28
23120	Calhoun County, Michigan	12980	0.9826	0.9762	−0.65
23130	Cass County, Michigan	43780	0.9306	0.9842	5.76
23140	Charlevoix County, Michigan	99923	0.8860	0.9062	2.28
23150	Cheboygan County, Michigan	99923	0.8860	0.9062	2.28
23160	Chippewa County, Michigan	99923	0.8860	0.9062	2.28
23170	Clare County, Michigan	99923	0.8860	0.9062	2.28
23180	Clinton County, Michigan	29620	0.9794	1.0088	3.00
23190	Crawford County, Michigan	99923	0.8860	0.9062	2.28
23200	Delta County, Michigan	99923	0.8860	0.9062	2.28
23210	Dickinson County, Michigan	99923	0.8860	0.9062	2.28
23220	Eaton County, Michigan	29620	0.9794	1.0088	3.00
23230	Emmet County, Michigan	99923	0.8860	0.9062	2.28
23240	Genesee County, Michigan	22420	1.0655	1.0969	2.95
23250	Gladwin County, Michigan	99923	0.8860	0.9062	2.28
23260	Gogebic County, Michigan	99923	0.8860	0.9062	2.28
23270	Grand Traverse County, Michigan	99923	0.8860	0.9062	2.28
23280	Gratiot County, Michigan	99923	0.8860	0.9062	2.28
23290	Hillsdale County, Michigan	99923	0.8860	0.9062	2.28
23300	Houghton County, Michigan	99923	0.8860	0.9062	2.28
23310	Huron County, Michigan	99923	0.8860	0.9062	2.28
23320	Ingham County, Michigan	29620	0.9794	1.0088	3.00
23330	Ionia County, Michigan	24340	0.9107	0.9455	3.82
23340	Iosco County, Michigan	99923	0.8860	0.9062	2.28
23350	Iron County, Michigan	99923	0.8860	0.9062	2.28
23360	Isabella County, Michigan	99923	0.8860	0.9062	2.28
23370	Jackson County, Michigan	27100	0.9304	0.9560	2.75
23380	Kalamazoo County, Michigan	28020	1.0262	1.0704	4.31
23390	Kalkaska County, Michigan	99923	0.8860	0.9062	2.28
23400	Kent County, Michigan	24340	0.9418	0.9455	0.39
23410	Keweenaw County, Michigan	99923	0.8860	0.9062	2.28
23420	Lake County, Michigan	99923	0.8860	0.9062	2.28
23430	Lapeer County, Michigan	47644	1.0009	1.0054	0.45
23440	Leelanau County, Michigan	99923	0.8860	0.9062	2.28
23450	Lenawee County, Michigan	99923	0.9801	0.9062	−7.54
23460	Livingston County, Michigan	47644	1.0289	1.0054	−2.28
23470	Luce County, Michigan	99923	0.8860	0.9062	2.28
23480	Mackinac County, Michigan	99923	0.8860	0.9062	2.28
23490	Macomb County, Michigan	47644	1.0009	1.0054	0.45
23500	Manistee County, Michigan	99923	0.8860	0.9062	2.28
23510	Marquette County, Michigan	99923	0.8860	0.9062	2.28
23520	Mason County, Michigan	99923	0.8860	0.9062	2.28
23530	Mecosta County, Michigan	99923	0.8860	0.9062	2.28
23540	Menominee County, Michigan	99923	0.8860	0.9062	2.28
23550	Midland County, Michigan	99923	0.9068	0.9062	−0.07
23560	Missaukee County, Michigan	99923	0.8860	0.9062	2.28
23570	Monroe County, Michigan	33780	0.9808	0.9707	−1.03
23580	Montcalm County, Michigan	99923	0.8860	0.9062	2.28
23590	Montmorency County, Michigan	99923	0.8860	0.9062	2.28
23600	Muskegon County, Michigan	34740	0.9555	0.9941	4.04
23610	Newaygo County, Michigan	24340	0.9107	0.9455	3.82
23620	Oakland County, Michigan	47644	1.0009	1.0054	0.45
23630	Oceana County, Michigan	99923	0.8860	0.9062	2.28
23640	Ogemaw County, Michigan	99923	0.8860	0.9062	2.28
23650	Ontonagon County, Michigan	99923	0.8860	0.9062	2.28
23660	Osceola County, Michigan	99923	0.8860	0.9062	2.28

ADDENDUM C.—COMPARISON OF HH PPS TRANSITION WAGE INDEX FOR CY 2006 AND PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX FOR CY 2007—Continued

SSA state/county code	County name	CBSA No.	CY 2006 HH PPS transition wage index	CY2007 CBSA-based wage index	Percent change CY2006–CY2007
23670	Oscoda County, Michigan	99923	0.8860	0.9062	2.28
23680	Otsego County, Michigan	99923	0.8860	0.9062	2.28
23690	Ottawa County, Michigan	26100	0.9250	0.9163	−0.94
23700	Presque Isle County, Michigan	99923	0.8860	0.9062	2.28
23710	Roscommon County, Michigan	99923	0.8860	0.9062	2.28
23720	Saginaw County, Michigan	40980	0.9165	0.8874	−3.18
23730	St Clair County, Michigan	47644	1.0009	1.0054	0.45
23740	St Joseph County, Michigan	99923	0.8860	0.9062	2.28
23750	Sanilac County, Michigan	99923	0.8860	0.9062	2.28
23760	Schoolcraft County, Michigan	99923	0.8860	0.9062	2.28
23770	Shiawassee County, Michigan	99923	0.8860	0.9062	2.28
23780	Tuscola County, Michigan	99923	0.8860	0.9062	2.28
23790	Van Buren County, Michigan	28020	1.0262	1.0704	4.31
23800	Washtenaw County, Michigan	11460	1.0783	1.0826	0.40
23810	Wayne County, Michigan	19804	1.0286	1.0281	−0.05
23830	Wexford County, Michigan	99923	0.8860	0.9062	2.28
24000	Aitkin County, Minnesota	99924	0.9132	0.9153	0.23
24010	Anoka County, Minnesota	33460	1.1075	1.0946	−1.16
24020	Becker County, Minnesota	99924	0.9132	0.9153	0.23
24030	Beltrami County, Minnesota	99924	0.9132	0.9153	0.23
24040	Benton County, Minnesota	41060	0.9965	1.0362	3.98
24050	Big Stone County, Minnesota	99924	0.9132	0.9153	0.23
24060	Blue Earth County, Minnesota	99924	0.9132	0.9153	0.23
24070	Brown County, Minnesota	99924	0.9132	0.9153	0.23
24080	Carlton County, Minnesota	20260	0.9673	1.0042	3.81
24090	Carver County, Minnesota	33460	1.1075	1.0946	−1.16
24100	Cass County, Minnesota	99924	0.9132	0.9153	0.23
24110	Chippewa County, Minnesota	99924	0.9132	0.9153	0.23
24120	Chisago County, Minnesota	33460	1.1075	1.0946	−1.16
24130	Clay County, Minnesota	22020	0.8486	0.8250	−2.78
24140	Clearwater County, Minnesota	99924	0.9132	0.9153	0.23
24150	Cook County, Minnesota	99924	0.9132	0.9153	0.23
24160	Cottonwood County, Minnesota	99924	0.9132	0.9153	0.23
24170	Crow Wing County, Minnesota	99924	0.9132	0.9153	0.23
24180	Dakota County, Minnesota	33460	1.1075	1.0946	−1.16
24190	Dodge County, Minnesota	40340	1.0132	1.1408	12.59
24200	Douglas County, Minnesota	99924	0.9132	0.9153	0.23
24210	Faribault County, Minnesota	99924	0.9132	0.9153	0.23
24220	Fillmore County, Minnesota	99924	0.9132	0.9153	0.23
24230	Freeborn County, Minnesota	99924	0.9132	0.9153	0.23
24240	Goodhue County, Minnesota	99924	0.9132	0.9153	0.23
24250	Grant County, Minnesota	99924	0.9132	0.9153	0.23
24260	Hennepin County, Minnesota	33460	1.1075	1.0946	−1.16
24270	Houston County, Minnesota	29100	0.9564	0.9426	−1.44
24280	Hubbard County, Minnesota	99924	0.9132	0.9153	0.23
24290	Isanti County, Minnesota	33460	1.1075	1.0946	−1.16
24300	Itasca County, Minnesota	99924	0.9132	0.9153	0.23
24310	Jackson County, Minnesota	99924	0.9132	0.9153	0.23
24320	Kanabec County, Minnesota	99924	0.9132	0.9153	0.23
24330	Kandiyohi County, Minnesota	99924	0.9132	0.9153	0.23
24340	Kittson County, Minnesota	99924	0.9132	0.9153	0.23
24350	Koochiching County, Minnesota	99924	0.9132	0.9153	0.23
24360	Lac Qui Parle County, Minnesota	99924	0.9132	0.9153	0.23
24370	Lake County, Minnesota	99924	0.9132	0.9153	0.23
24380	Lake Of Woods County, Minnesota	99924	0.9132	0.9153	0.23
24390	Le Sueur County, Minnesota	99924	0.9132	0.9153	0.23
24400	Lincoln County, Minnesota	99924	0.9132	0.9153	0.23
24410	Lyon County, Minnesota	99924	0.9132	0.9153	0.23
24420	Mc Leod County, Minnesota	99924	0.9132	0.9153	0.23
24430	Mahnomen County, Minnesota	99924	0.9132	0.9153	0.23
24440	Marshall County, Minnesota	99924	0.9132	0.9153	0.23
24450	Martin County, Minnesota	99924	0.9132	0.9153	0.23
24460	Meeker County, Minnesota	99924	0.9132	0.9153	0.23
24470	Mille Lacs County, Minnesota	99924	0.9132	0.9153	0.23
24480	Morrison County, Minnesota	99924	0.9132	0.9153	0.23
24490	Mower County, Minnesota	99924	0.9132	0.9153	0.23
24500	Murray County, Minnesota	99924	0.9132	0.9153	0.23
24510	Nicollet County, Minnesota	99924	0.9132	0.9153	0.23

ADDENDUM C.—COMPARISON OF HH PPS TRANSITION WAGE INDEX FOR CY 2006 AND PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX FOR CY 2007—Continued

SSA state/county code	County name	CBSA No.	CY 2006 HH PPS transition wage index	CY2007 CBSA-based wage index	Percent change CY2006–CY2007
24520	Nobles County, Minnesota	99924	0.9132	0.9153	0.23
24530	Norman County, Minnesota	99924	0.9132	0.9153	0.23
24540	Olmsted County, Minnesota	40340	1.1131	1.1408	2.49
24550	Otter Tail County, Minnesota	99924	0.9132	0.9153	0.23
24560	Pennington County, Minnesota	99924	0.9132	0.9153	0.23
24570	Pine County, Minnesota	99924	0.9132	0.9153	0.23
24580	Pipestone County, Minnesota	99924	0.9132	0.9153	0.23
24590	Polk County, Minnesota	24220	0.7901	0.7949	0.61
24600	Pope County, Minnesota	99924	0.9132	0.9153	0.23
24610	Ramsey County, Minnesota	33460	1.1075	1.0946	−1.16
24620	Red Lake County, Minnesota	99924	0.9132	0.9153	0.23
24630	Redwood County, Minnesota	99924	0.9132	0.9153	0.23
24640	Renville County, Minnesota	99924	0.9132	0.9153	0.23
24650	Rice County, Minnesota	99924	0.9132	0.9153	0.23
24660	Rock County, Minnesota	99924	0.9132	0.9153	0.23
24670	Roseau County, Minnesota	99924	0.9132	0.9153	0.23
24680	St Louis County, Minnesota	20260	1.0213	1.0042	−1.67
24690	Scott County, Minnesota	33460	1.1075	1.0946	−1.16
24700	Sherburne County, Minnesota	33460	1.1075	1.0946	−1.16
24710	Sibley County, Minnesota	99924	0.9132	0.9153	0.23
24720	Stearns County, Minnesota	41060	0.9965	1.0362	3.98
24730	Steele County, Minnesota	99924	0.9132	0.9153	0.23
24740	Stevens County, Minnesota	99924	0.9132	0.9153	0.23
24750	Swift County, Minnesota	99924	0.9132	0.9153	0.23
24760	Todd County, Minnesota	99924	0.9132	0.9153	0.23
24770	Traverse County, Minnesota	99924	0.9132	0.9153	0.23
24780	Wabasha County, Minnesota	40340	1.0132	1.1408	12.59
24790	Wadena County, Minnesota	99924	0.9132	0.9153	0.23
24800	Waseca County, Minnesota	99924	0.9132	0.9153	0.23
24810	Washington County, Minnesota	33460	1.1075	1.0946	−1.16
24820	Watonwan County, Minnesota	99924	0.9132	0.9153	0.23
24830	Wilkin County, Minnesota	99924	0.9132	0.9153	0.23
24840	Winona County, Minnesota	99924	0.9132	0.9153	0.23
24850	Wright County, Minnesota	33460	1.1075	1.0946	−1.16
24860	Yellow Medicine County, Minnesota	99924	0.9132	0.9153	0.23
25000	Adams County, Mississippi	99925	0.7654	0.7738	1.10
25010	Alcorn County, Mississippi	99925	0.7654	0.7738	1.10
25020	Amite County, Mississippi	99925	0.7654	0.7738	1.10
25030	Attala County, Mississippi	99925	0.7654	0.7738	1.10
25040	Benton County, Mississippi	99925	0.7654	0.7738	1.10
25050	Bolivar County, Mississippi	99925	0.7654	0.7738	1.10
25060	Calhoun County, Mississippi	99925	0.7654	0.7738	1.10
25070	Carroll County, Mississippi	99925	0.7654	0.7738	1.10
25080	Chickasaw County, Mississippi	99925	0.7654	0.7738	1.10
25090	Choctaw County, Mississippi	99925	0.7654	0.7738	1.10
25100	Claiborne County, Mississippi	99925	0.7654	0.7738	1.10
25110	Clarke County, Mississippi	99925	0.7654	0.7738	1.10
25120	Clay County, Mississippi	99925	0.7654	0.7738	1.10
25130	Coahoma County, Mississippi	99925	0.7654	0.7738	1.10
25140	Copiah County, Mississippi	27140	0.7973	0.8271	3.74
25150	Covington County, Mississippi	99925	0.7654	0.7738	1.10
25160	Desoto County, Mississippi	32820	0.9407	0.9373	−0.36
25170	Forrest County, Mississippi	25620	0.7601	0.7430	−2.25
25180	Franklin County, Mississippi	99925	0.7654	0.7738	1.10
25190	George County, Mississippi	37700	0.7895	0.8215	4.05
25200	Greene County, Mississippi	99925	0.7654	0.7738	1.10
25210	Grenada County, Mississippi	99925	0.7654	0.7738	1.10
25220	Hancock County, Mississippi	25060	0.8818	0.8915	1.10
25230	Harrison County, Mississippi	25060	0.8818	0.8915	1.10
25240	Hinds County, Mississippi	27140	0.8347	0.8271	−0.91
25250	Holmes County, Mississippi	99925	0.7654	0.7738	1.10
25260	Humphreys County, Mississippi	99925	0.7654	0.7738	1.10
25270	Issaquena County, Mississippi	99925	0.7654	0.7738	1.10
25280	Itawamba County, Mississippi	99925	0.7654	0.7738	1.10
25290	Jackson County, Mississippi	37700	0.8431	0.8215	−2.56
25300	Jasper County, Mississippi	99925	0.7654	0.7738	1.10
25310	Jefferson County, Mississippi	99925	0.7654	0.7738	1.10
25320	Jefferson Davis County, Mississippi	99925	0.7654	0.7738	1.10

ADDENDUM C.—COMPARISON OF HH PPS TRANSITION WAGE INDEX FOR CY 2006 AND PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX FOR CY 2007—Continued

SSA state/county code	County name	CBSA No.	CY 2006 HH PPS transition wage index	CY2007 CBSA-based wage index	Percent change CY2006–CY2007
25330	Jones County, Mississippi	99925	0.7654	0.7738	1.10
25340	Kemper County, Mississippi	99925	0.7654	0.7738	1.10
25350	Lafayette County, Mississippi	99925	0.7654	0.7738	1.10
25360	Lamar County, Mississippi	25620	0.7601	0.7430	−2.25
25370	Lauderdale County, Mississippi	99925	0.7654	0.7738	1.10
25380	Lawrence County, Mississippi	99925	0.7654	0.7738	1.10
25390	Leake County, Mississippi	99925	0.7654	0.7738	1.10
25400	Lee County, Mississippi	99925	0.7654	0.7738	1.10
25410	Leflore County, Mississippi	99925	0.7654	0.7738	1.10
25420	Lincoln County, Mississippi	99925	0.7654	0.7738	1.10
25430	Lowndes County, Mississippi	99925	0.7654	0.7738	1.10
25440	Madison County, Mississippi	27140	0.8347	0.8271	−0.91
25450	Marion County, Mississippi	99925	0.7654	0.7738	1.10
25460	Marshall County, Mississippi	32820	0.8516	0.9373	10.06
25470	Monroe County, Mississippi	99925	0.7654	0.7738	1.10
25480	Montgomery County, Mississippi	99925	0.7654	0.7738	1.10
25490	Neshoba County, Mississippi	99925	0.7654	0.7738	1.10
25500	Newton County, Mississippi	99925	0.7654	0.7738	1.10
25510	Noxubee County, Mississippi	99925	0.7654	0.7738	1.10
25520	Oktibbeha County, Mississippi	99925	0.7654	0.7738	1.10
25530	Panola County, Mississippi	99925	0.7654	0.7738	1.10
25540	Pearl River County, Mississippi	99925	0.7654	0.7738	1.10
25550	Perry County, Mississippi	25620	0.7618	0.7430	−2.47
25560	Pike County, Mississippi	99925	0.7654	0.7738	1.10
25570	Pontotoc County, Mississippi	99925	0.7654	0.7738	1.10
25580	Prentiss County, Mississippi	99925	0.7654	0.7738	1.10
25590	Quitman County, Mississippi	99925	0.7654	0.7738	1.10
25600	Rankin County, Mississippi	27140	0.8347	0.8271	−0.91
25610	Scott County, Mississippi	99925	0.7654	0.7738	1.10
25620	Sharkey County, Mississippi	99925	0.7654	0.7738	1.10
25630	Simpson County, Mississippi	27140	0.7973	0.8271	3.74
25640	Smith County, Mississippi	99925	0.7654	0.7738	1.10
25650	Stone County, Mississippi	25060	0.8282	0.8915	7.64
25660	Sunflower County, Mississippi	99925	0.7654	0.7738	1.10
25670	Tallahatchie County, Mississippi	99925	0.7654	0.7738	1.10
25680	Tate County, Mississippi	32820	0.8516	0.9373	10.06
25690	Tippah County, Mississippi	99925	0.7654	0.7738	1.10
25700	Tishomingo County, Mississippi	99925	0.7654	0.7738	1.10
25710	Tunica County, Mississippi	32820	0.8516	0.9373	10.06
25720	Union County, Mississippi	99925	0.7654	0.7738	1.10
25730	Walthall County, Mississippi	99925	0.7654	0.7738	1.10
25740	Warren County, Mississippi	99925	0.7654	0.7738	1.10
25750	Washington County, Mississippi	99925	0.7654	0.7738	1.10
25760	Wayne County, Mississippi	99925	0.7654	0.7738	1.10
25770	Webster County, Mississippi	99925	0.7654	0.7738	1.10
25780	Wilkinson County, Mississippi	99925	0.7654	0.7738	1.10
25790	Winston County, Mississippi	99925	0.7654	0.7738	1.10
25800	Yalobusha County, Mississippi	99925	0.7654	0.7738	1.10
25810	Yazoo County, Mississippi	99925	0.7654	0.7738	1.10
26000	Adair County, Missouri	99926	0.7930	0.7927	−0.04
26010	Andrew County, Missouri	41140	0.9519	1.0118	6.29
26020	Atchison County, Missouri	99926	0.7930	0.7927	−0.04
26030	Audrain County, Missouri	99926	0.7930	0.7927	−0.04
26040	Barry County, Missouri	99926	0.7930	0.7927	−0.04
26050	Barton County, Missouri	99926	0.7930	0.7927	−0.04
26060	Bates County, Missouri	28140	0.8718	0.9495	8.91
26070	Benton County, Missouri	99926	0.7930	0.7927	−0.04
26080	Bollinger County, Missouri	99926	0.7930	0.7927	−0.04
26090	Boone County, Missouri	17860	0.8345	0.8542	2.36
26100	Buchanan County, Missouri	41140	0.9519	1.0118	6.29
26110	Butler County, Missouri	99926	0.7930	0.7927	−0.04
26120	Caldwell County, Missouri	28140	0.8718	0.9495	8.91
26130	Callaway County, Missouri	27620	0.8173	0.8332	1.95
26140	Camden County, Missouri	99926	0.7930	0.7927	−0.04
26150	Cape Girardeau County, Missouri	99926	0.7930	0.7927	−0.04
26160	Carroll County, Missouri	99926	0.7930	0.7927	−0.04
26170	Carter County, Missouri	99926	0.7930	0.7927	−0.04
26180	Cass County, Missouri	28140	0.9483	0.9495	0.13

ADDENDUM C.—COMPARISON OF HH PPS TRANSITION WAGE INDEX FOR CY 2006 AND PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX FOR CY 2007—Continued

SSA state/county code	County name	CBSA No.	CY 2006 HH PPS transition wage index	CY2007 CBSA-based wage index	Percent change CY2006–CY2007
26190	Cedar County, Missouri	99926	0.7930	0.7927	−0.04
26200	Chariton County, Missouri	99926	0.7930	0.7927	−0.04
26210	Christian County, Missouri	44180	0.8244	0.8469	2.73
26220	Clark County, Missouri	99926	0.7930	0.7927	−0.04
26230	Clay County, Missouri	28140	0.9483	0.9495	0.13
26240	Clinton County, Missouri	28140	0.9483	0.9495	0.13
26250	Cole County, Missouri	27620	0.8173	0.8332	1.95
26260	Cooper County, Missouri	99926	0.7930	0.7927	−0.04
26270	Crawford County, Missouri	41180	0.8457	0.9005	6.48
26280	Dade County, Missouri	99926	0.7930	0.7927	−0.04
26290	Dallas County, Missouri	44180	0.8098	0.8469	4.58
26300	Daviess County, Missouri	99926	0.7930	0.7927	−0.04
26310	De Kalb County, Missouri	41140	0.8739	1.0118	15.78
26320	Dent County, Missouri	99926	0.7930	0.7927	−0.04
26330	Douglas County, Missouri	99926	0.7930	0.7927	−0.04
26340	Dunklin County, Missouri	99926	0.7930	0.7927	−0.04
26350	Franklin County, Missouri	41180	0.8958	0.9005	0.52
26360	Gasconade County, Missouri	99926	0.7930	0.7927	−0.04
26370	Gentry County, Missouri	99926	0.7930	0.7927	−0.04
26380	Greene County, Missouri	44180	0.8244	0.8469	2.73
26390	Grundy County, Missouri	99926	0.7930	0.7927	−0.04
26400	Harrison County, Missouri	99926	0.7930	0.7927	−0.04
26410	Henry County, Missouri	99926	0.7930	0.7927	−0.04
26411	Hickory County, Missouri	99926	0.7930	0.7927	−0.04
26412	Holt County, Missouri	99926	0.7930	0.7927	−0.04
26440	Howard County, Missouri	17860	0.8152	0.8542	4.78
26450	Howell County, Missouri	99926	0.7930	0.7927	−0.04
26460	Iron County, Missouri	99926	0.7930	0.7927	−0.04
26470	Jackson County, Missouri	28140	0.9483	0.9495	0.13
26480	Jasper County, Missouri	27900	0.8582	0.8605	0.27
26490	Jefferson County, Missouri	41180	0.8958	0.9005	0.52
26500	Johnson County, Missouri	99926	0.7930	0.7927	−0.04
26510	Knox County, Missouri	99926	0.7930	0.7927	−0.04
26520	Laclede County, Missouri	99926	0.7930	0.7927	−0.04
26530	Lafayette County, Missouri	28140	0.9483	0.9495	0.13
26540	Lawrence County, Missouri	99926	0.7930	0.7927	−0.04
26541	Lewis County, Missouri	99926	0.7930	0.7927	−0.04
26560	Lincoln County, Missouri	41180	0.8958	0.9005	0.52
26570	Linn County, Missouri	99926	0.7930	0.7927	−0.04
26580	Livingston County, Missouri	99926	0.7930	0.7927	−0.04
26590	Mc Donald County, Missouri	22220	0.8310	0.8865	6.68
26600	Macon County, Missouri	99926	0.7930	0.7927	−0.04
26601	Madison County, Missouri	99926	0.7930	0.7927	−0.04
26620	Maries County, Missouri	99926	0.7930	0.7927	−0.04
26630	Marion County, Missouri	99926	0.7930	0.7927	−0.04
26631	Mercer County, Missouri	99926	0.7930	0.7927	−0.04
26650	Miller County, Missouri	99926	0.7930	0.7927	−0.04
26660	Mississippi County, Missouri	99926	0.7930	0.7927	−0.04
26670	Moniteau County, Missouri	27620	0.8173	0.8332	1.95
26680	Monroe County, Missouri	99926	0.7930	0.7927	−0.04
26690	Montgomery County, Missouri	99926	0.7930	0.7927	−0.04
26700	Morgan County, Missouri	99926	0.7930	0.7927	−0.04
26710	New Madrid County, Missouri	99926	0.7930	0.7927	−0.04
26720	Newton County, Missouri	27900	0.8582	0.8605	0.27
26730	Nodaway County, Missouri	99926	0.7930	0.7927	−0.04
26740	Oregon County, Missouri	99926	0.7930	0.7927	−0.04
26750	Osage County, Missouri	27620	0.8173	0.8332	1.95
26751	Ozark County, Missouri	99926	0.7930	0.7927	−0.04
26770	Pemiscot County, Missouri	99926	0.7930	0.7927	−0.04
26780	Perry County, Missouri	99926	0.7930	0.7927	−0.04
26790	Pettis County, Missouri	99926	0.7930	0.7927	−0.04
26800	Phelps County, Missouri	99926	0.7930	0.7927	−0.04
26810	Pike County, Missouri	99926	0.7930	0.7927	−0.04
26820	Platte County, Missouri	28140	0.9483	0.9495	0.13
26821	Polk County, Missouri	44180	0.8098	0.8469	4.58
26840	Pulaski County, Missouri	99926	0.7930	0.7927	−0.04
26850	Putnam County, Missouri	99926	0.7930	0.7927	−0.04
26860	Ralls County, Missouri	99926	0.7930	0.7927	−0.04

ADDENDUM C.—COMPARISON OF HH PPS TRANSITION WAGE INDEX FOR CY 2006 AND PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX FOR CY 2007—Continued

SSA state/county code	County name	CBSA No.	CY 2006 HH PPS transition wage index	CY2007 CBSA-based wage index	Percent change CY2006–CY2007
26870	Randolph County, Missouri	99926	0.7930	0.7927	−0.04
26880	Ray County, Missouri	28140	0.9483	0.9495	0.13
26881	Reynolds County, Missouri	99926	0.7930	0.7927	−0.04
26900	Ripley County, Missouri	99926	0.7930	0.7927	−0.04
26910	St Charles County, Missouri	41180	0.8958	0.9005	0.52
26911	St Clair County, Missouri	99926	0.7930	0.7927	−0.04
26930	St Francois County, Missouri	99926	0.7930	0.7927	−0.04
26940	St Louis County, Missouri	41180	0.8958	0.9005	0.52
26950	St Louis City County, Missouri	41180	0.8958	0.9005	0.52
26960	Ste Genevieve County, Missouri	99926	0.7930	0.7927	−0.04
26970	Saline County, Missouri	99926	0.7930	0.7927	−0.04
26980	Schuyler County, Missouri	99926	0.7930	0.7927	−0.04
26981	Scotland County, Missouri	99926	0.7930	0.7927	−0.04
26982	Scott County, Missouri	99926	0.7930	0.7927	−0.04
26983	Shannon County, Missouri	99926	0.7930	0.7927	−0.04
26984	Shelby County, Missouri	99926	0.7930	0.7927	−0.04
26985	Stoddard County, Missouri	99926	0.7930	0.7927	−0.04
26986	Stone County, Missouri	99926	0.7930	0.7927	−0.04
26987	Sullivan County, Missouri	99926	0.7930	0.7927	−0.04
26988	Taney County, Missouri	99926	0.7930	0.7927	−0.04
26989	Texas County, Missouri	99926	0.7930	0.7927	−0.04
26990	Vernon County, Missouri	99926	0.7930	0.7927	−0.04
26991	Warren County, Missouri	41180	0.8958	0.9005	0.52
26992	Washington County, Missouri	41180	0.8457	0.9005	6.48
26993	Wayne County, Missouri	99926	0.7930	0.7927	−0.04
26994	Webster County, Missouri	44180	0.8244	0.8469	2.73
26995	Worth County, Missouri	99926	0.7930	0.7927	−0.04
26996	Wright County, Missouri	99926	0.7930	0.7927	−0.04
27000	Beaverhead County, Montana	99927	0.8762	0.8590	−1.96
27010	Big Horn County, Montana	99927	0.8762	0.8590	−1.96
27020	Blaine County, Montana	99927	0.8762	0.8590	−1.96
27030	Broadwater County, Montana	99927	0.8762	0.8590	−1.96
27040	Carbon County, Montana	13740	0.8798	0.8712	−0.98
27050	Carter County, Montana	99927	0.8762	0.8590	−1.96
27060	Cascade County, Montana	24500	0.9052	0.8598	−5.02
27070	Chouteau County, Montana	99927	0.8762	0.8590	−1.96
27080	Custer County, Montana	99927	0.8762	0.8590	−1.96
27090	Daniels County, Montana	99927	0.8762	0.8590	−1.96
27100	Dawson County, Montana	99927	0.8762	0.8590	−1.96
27110	Deer Lodge County, Montana	99927	0.8762	0.8590	−1.96
27113	Yellowstone National Park, Montana	99927	0.8762	0.8590	−1.96
27120	Fallon County, Montana	99927	0.8762	0.8590	−1.96
27130	Fergus County, Montana	99927	0.8762	0.8590	−1.96
27140	Flathead County, Montana	99927	0.8762	0.8590	−1.96
27150	Gallatin County, Montana	99927	0.8762	0.8590	−1.96
27160	Garfield County, Montana	99927	0.8762	0.8590	−1.96
27170	Glacier County, Montana	99927	0.8762	0.8590	−1.96
27180	Golden Valley County, Montana	99927	0.8762	0.8590	−1.96
27190	Granite County, Montana	99927	0.8762	0.8590	−1.96
27200	Hill County, Montana	99927	0.8762	0.8590	−1.96
27210	Jefferson County, Montana	99927	0.8762	0.8590	−1.96
27220	Judith Basin County, Montana	99927	0.8762	0.8590	−1.96
27230	Lake County, Montana	99927	0.8762	0.8590	−1.96
27240	Lewis And Clark County, Montana	99927	0.8762	0.8590	−1.96
27250	Liberty County, Montana	99927	0.8762	0.8590	−1.96
27260	Lincoln County, Montana	99927	0.8762	0.8590	−1.96
27270	Mc Cone County, Montana	99927	0.8762	0.8590	−1.96
27280	Madison County, Montana	99927	0.8762	0.8590	−1.96
27290	Meagher County, Montana	99927	0.8762	0.8590	−1.96
27300	Mineral County, Montana	99927	0.8762	0.8590	−1.96
27310	Missoula County, Montana	33540	0.9473	0.8928	−5.75
27320	Musselshell County, Montana	99927	0.8762	0.8590	−1.96
27330	Park County, Montana	99927	0.8762	0.8590	−1.96
27340	Petroleum County, Montana	99927	0.8762	0.8590	−1.96
27350	Phillips County, Montana	99927	0.8762	0.8590	−1.96
27360	Pondera County, Montana	99927	0.8762	0.8590	−1.96
27370	Powder River County, Montana	99927	0.8762	0.8590	−1.96
27380	Powell County, Montana	99927	0.8762	0.8590	−1.96

ADDENDUM C.—COMPARISON OF HH PPS TRANSITION WAGE INDEX FOR CY 2006 AND PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX FOR CY 2007—Continued

SSA state/county code	County name	CBSA No.	CY 2006 HH PPS transition wage index	CY2007 CBSA-based wage index	Percent change CY2006–CY2007
27390	Prairie County, Montana	99927	0.8762	0.8590	−1.96
27400	Ravalli County, Montana	99927	0.8762	0.8590	−1.96
27410	Richland County, Montana	99927	0.8762	0.8590	−1.96
27420	Roosevelt County, Montana	99927	0.8762	0.8590	−1.96
27430	Rosebud County, Montana	99927	0.8762	0.8590	−1.96
27440	Sanders County, Montana	99927	0.8762	0.8590	−1.96
27450	Sheridan County, Montana	99927	0.8762	0.8590	−1.96
27460	Silver Bow County, Montana	99927	0.8762	0.8590	−1.96
27470	Stillwater County, Montana	99927	0.8762	0.8590	−1.96
27480	Sweet Grass County, Montana	99927	0.8762	0.8590	−1.96
27490	Teton County, Montana	99927	0.8762	0.8590	−1.96
27500	Toole County, Montana	99927	0.8762	0.8590	−1.96
27510	Treasure County, Montana	99927	0.8762	0.8590	−1.96
27520	Valley County, Montana	99927	0.8762	0.8590	−1.96
27530	Wheatland County, Montana	99927	0.8762	0.8590	−1.96
27540	Wibaux County, Montana	99927	0.8762	0.8590	−1.96
27550	Yellowstone County, Montana	13740	0.8834	0.8712	−1.38
28000	Adams County, Nebraska	99928	0.8657	0.8677	0.23
28010	Antelope County, Nebraska	99928	0.8657	0.8677	0.23
28020	Arthur County, Nebraska	99928	0.8657	0.8677	0.23
28030	Banner County, Nebraska	99928	0.8657	0.8677	0.23
28040	Blaine County, Nebraska	99928	0.8657	0.8677	0.23
28050	Boone County, Nebraska	99928	0.8657	0.8677	0.23
28060	Box Butte County, Nebraska	99928	0.8657	0.8677	0.23
28070	Boyd County, Nebraska	99928	0.8657	0.8677	0.23
28080	Brown County, Nebraska	99928	0.8657	0.8677	0.23
28090	Buffalo County, Nebraska	99928	0.8657	0.8677	0.23
28100	Burt County, Nebraska	99928	0.8657	0.8677	0.23
28110	Butler County, Nebraska	99928	0.8657	0.8677	0.23
28120	Cass County, Nebraska	36540	0.9560	0.9450	−1.15
28130	Cedar County, Nebraska	99928	0.8657	0.8677	0.23
28140	Chase County, Nebraska	99928	0.8657	0.8677	0.23
28150	Cherry County, Nebraska	99928	0.8657	0.8677	0.23
28160	Cheyenne County, Nebraska	99928	0.8657	0.8677	0.23
28170	Clay County, Nebraska	99928	0.8657	0.8677	0.23
28180	Colfax County, Nebraska	99928	0.8657	0.8677	0.23
28190	Cuming County, Nebraska	99928	0.8657	0.8677	0.23
28200	Custer County, Nebraska	99928	0.8657	0.8677	0.23
28210	Dakota County, Nebraska	43580	0.9399	0.9200	−2.12
28220	Dawes County, Nebraska	99928	0.8657	0.8677	0.23
28230	Dawson County, Nebraska	99928	0.8657	0.8677	0.23
28240	Deuel County, Nebraska	99928	0.8657	0.8677	0.23
28250	Dixon County, Nebraska	43580	0.9019	0.9200	2.01
28260	Dodge County, Nebraska	99928	0.8657	0.8677	0.23
28270	Douglas County, Nebraska	36540	0.9560	0.9450	−1.15
28280	Dundy County, Nebraska	99928	0.8657	0.8677	0.23
28290	Fillmore County, Nebraska	99928	0.8657	0.8677	0.23
28300	Franklin County, Nebraska	99928	0.8657	0.8677	0.23
28310	Frontier County, Nebraska	99928	0.8657	0.8677	0.23
28320	Furnas County, Nebraska	99928	0.8657	0.8677	0.23
28330	Gage County, Nebraska	99928	0.8657	0.8677	0.23
28340	Garden County, Nebraska	99928	0.8657	0.8677	0.23
28350	Garfield County, Nebraska	99928	0.8657	0.8677	0.23
28360	Gosper County, Nebraska	99928	0.8657	0.8677	0.23
28370	Grant County, Nebraska	99928	0.8657	0.8677	0.23
28380	Greeley County, Nebraska	99928	0.8657	0.8677	0.23
28390	Hall County, Nebraska	99928	0.8657	0.8677	0.23
28400	Hamilton County, Nebraska	99928	0.8657	0.8677	0.23
28410	Harlan County, Nebraska	99928	0.8657	0.8677	0.23
28420	Hayes County, Nebraska	99928	0.8657	0.8677	0.23
28430	Hitchcock County, Nebraska	99928	0.8657	0.8677	0.23
28440	Holt County, Nebraska	99928	0.8657	0.8677	0.23
28450	Hooker County, Nebraska	99928	0.8657	0.8677	0.23
28460	Howard County, Nebraska	99928	0.8657	0.8677	0.23
28470	Jefferson County, Nebraska	99928	0.8657	0.8677	0.23
28480	Johnson County, Nebraska	99928	0.8657	0.8677	0.23
28490	Kearney County, Nebraska	99928	0.8657	0.8677	0.23
28500	Keith County, Nebraska	99928	0.8657	0.8677	0.23

ADDENDUM C.—COMPARISON OF HH PPS TRANSITION WAGE INDEX FOR CY 2006 AND PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX FOR CY 2007—Continued

SSA state/county code	County name	CBSA No.	CY 2006 HH PPS transition wage index	CY2007 CBSA-based wage index	Percent change CY2006–CY2007
28510	Keya Paha County, Nebraska	99928	0.8657	0.8677	0.23
28520	Kimball County, Nebraska	99928	0.8657	0.8677	0.23
28530	Knox County, Nebraska	99928	0.8657	0.8677	0.23
28540	Lancaster County, Nebraska	30700	1.0214	1.0092	−1.19
28550	Lincoln County, Nebraska	99928	0.8657	0.8677	0.23
28560	Logan County, Nebraska	99928	0.8657	0.8677	0.23
28570	Loup County, Nebraska	99928	0.8657	0.8677	0.23
28580	Mc Pherson County, Nebraska	99928	0.8657	0.8677	0.23
28590	Madison County, Nebraska	99928	0.8657	0.8677	0.23
28600	Merrick County, Nebraska	99928	0.8657	0.8677	0.23
28610	Morrill County, Nebraska	99928	0.8657	0.8677	0.23
28620	Nance County, Nebraska	99928	0.8657	0.8677	0.23
28630	Nemaha County, Nebraska	99928	0.8657	0.8677	0.23
28640	Nuckolls County, Nebraska	99928	0.8657	0.8677	0.23
28650	Otoe County, Nebraska	99928	0.8657	0.8677	0.23
28660	Pawnee County, Nebraska	99928	0.8657	0.8677	0.23
28670	Perkins County, Nebraska	99928	0.8657	0.8677	0.23
28680	Phelps County, Nebraska	99928	0.8657	0.8677	0.23
28690	Pierce County, Nebraska	99928	0.8657	0.8677	0.23
28700	Platte County, Nebraska	99928	0.8657	0.8677	0.23
28710	Polk County, Nebraska	99928	0.8657	0.8677	0.23
28720	Redwillow County, Nebraska	99928	0.8657	0.8677	0.23
28730	Richardson County, Nebraska	99928	0.8657	0.8677	0.23
28740	Rock County, Nebraska	99928	0.8657	0.8677	0.23
28750	Saline County, Nebraska	99928	0.8657	0.8677	0.23
28760	Sarpy County, Nebraska	36540	0.9560	0.9450	−1.15
28770	Saunders County, Nebraska	36540	0.9109	0.9450	3.74
28780	Scotts Bluff County, Nebraska	99928	0.8657	0.8677	0.23
28790	Seward County, Nebraska	30700	0.9436	1.0092	6.95
28800	Sheridan County, Nebraska	99928	0.8657	0.8677	0.23
28810	Sherman County, Nebraska	99928	0.8657	0.8677	0.23
28820	Sioux County, Nebraska	99928	0.8657	0.8677	0.23
28830	Stanton County, Nebraska	99928	0.8657	0.8677	0.23
28840	Thayer County, Nebraska	99928	0.8657	0.8677	0.23
28850	Thomas County, Nebraska	99928	0.8657	0.8677	0.23
28860	Thurston County, Nebraska	99928	0.8657	0.8677	0.23
28870	Valley County, Nebraska	99928	0.8657	0.8677	0.23
28880	Washington County, Nebraska	36540	0.9560	0.9450	−1.15
28890	Wayne County, Nebraska	99928	0.8657	0.8677	0.23
28900	Webster County, Nebraska	99928	0.8657	0.8677	0.23
28910	Wheeler County, Nebraska	99928	0.8657	0.8677	0.23
28920	York County, Nebraska	99928	0.8657	0.8677	0.23
29000	Churchill County, Nevada	99929	0.9376	0.8944	−4.61
29010	Clark County, Nevada	29820	1.1296	1.1430	1.19
29020	Douglas County, Nevada	99929	0.9376	0.8944	−4.61
29030	Elko County, Nevada	99929	0.9376	0.8944	−4.61
29040	Esmeralda County, Nevada	99929	0.9376	0.8944	−4.61
29050	Eureka County, Nevada	99929	0.9376	0.8944	−4.61
29060	Humboldt County, Nevada	99929	0.9376	0.8944	−4.61
29070	Lander County, Nevada	99929	0.9376	0.8944	−4.61
29080	Lincoln County, Nevada	99929	0.9376	0.8944	−4.61
29090	Lyon County, Nevada	99929	0.9376	0.8944	−4.61
29100	Mineral County, Nevada	99929	0.9376	0.8944	−4.61
29110	Nye County, Nevada	99929	1.0110	0.8944	−11.53
29120	Carson City County, Nevada	16180	0.9961	1.0025	0.64
29130	Pershing County, Nevada	99929	0.9376	0.8944	−4.61
29140	Storey County, Nevada	39900	1.0335	1.1963	15.75
29150	Washoe County, Nevada	39900	1.0982	1.1963	8.93
29160	White Pine County, Nevada	99929	0.9376	0.8944	−4.61
30000	Belknap County, New Hampshire	99930	1.0817	1.0853	0.33
30010	Carroll County, New Hampshire	99930	1.0817	1.0853	0.33
30020	Cheshire County, New Hampshire	99930	1.0817	1.0853	0.33
30030	Coos County, New Hampshire	99930	1.0817	1.0853	0.33
30040	Grafton County, New Hampshire	99930	1.0817	1.0853	0.33
30050	Hillsboro County, New Hampshire	31700	1.0766	1.0243	−4.86
30060	Merrimack County, New Hampshire	31700	1.0766	1.0243	−4.86
30070	Rockingham County, New Hampshire	40484	1.0776	1.0159	−5.73
30080	Strafford County, New Hampshire	40484	1.0776	1.0159	−5.73

ADDENDUM C.—COMPARISON OF HH PPS TRANSITION WAGE INDEX FOR CY 2006 AND PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX FOR CY 2007—Continued

SSA state/county code	County name	CBSA No.	CY 2006 HH PPS transition wage index	CY2007 CBSA-based wage index	Percent change CY2006–CY2007
30090	Sullivan County, New Hampshire	99930	1.0817	1.0853	0.33
31000	Atlantic County, New Jersey	12100	1.1556	1.1831	2.38
31100	Bergen County, New Jersey	35644	1.2420	1.3177	6.10
31150	Burlington County, New Jersey	15804	1.0720	1.0392	−3.06
31160	Camden County, New Jersey	15804	1.0720	1.0392	−3.06
31180	Cape May County, New Jersey	36140	1.1254	1.0472	−6.95
31190	Cumberland County, New Jersey	47220	0.9827	0.9832	0.05
31200	Essex County, New Jersey	35084	1.1859	1.1892	0.28
31220	Gloucester County, New Jersey	15804	1.0720	1.0392	−3.06
31230	Hudson County, New Jersey	35644	1.2263	1.3177	7.45
31250	Hunterdon County, New Jersey	35084	1.1525	1.1892	3.18
31260	Mercer County, New Jersey	45940	1.0834	1.0835	0.01
31270	Middlesex County, New Jersey	20764	1.1208	1.1190	−0.16
31290	Monmouth County, New Jersey	20764	1.1255	1.1190	−0.58
31300	Morris County, New Jersey	35084	1.1859	1.1892	0.28
31310	Ocean County, New Jersey	20764	1.1255	1.1190	−0.58
31320	Passaic County, New Jersey	35644	1.2420	1.3177	6.10
31340	Salem County, New Jersey	48864	1.0697	1.0684	−0.12
31350	Somerset County, New Jersey	20764	1.1208	1.1190	−0.16
31360	Sussex County, New Jersey	35084	1.1859	1.1892	0.28
31370	Union County, New Jersey	35084	1.1859	1.1892	0.28
31390	Warren County, New Jersey	10900	1.0826	0.9947	−8.12
32000	Bernalillo County, New Mexico	10740	0.9684	0.9458	−2.33
32010	Catron County, New Mexico	99932	0.8599	0.8332	−3.11
32020	Chaves County, New Mexico	99932	0.8599	0.8332	−3.11
32025	Cibola County, New Mexico	99932	0.8599	0.8332	−3.11
32030	Colfax County, New Mexico	99932	0.8599	0.8332	−3.11
32040	Curry County, New Mexico	99932	0.8599	0.8332	−3.11
32050	De Baca County, New Mexico	99932	0.8599	0.8332	−3.11
32060	Dona Ana County, New Mexico	29740	0.8467	0.9273	9.52
32070	Eddy County, New Mexico	99932	0.8599	0.8332	−3.11
32080	Grant County, New Mexico	99932	0.8599	0.8332	−3.11
32090	Guadalupe County, New Mexico	99932	0.8599	0.8332	−3.11
32100	Harding County, New Mexico	99932	0.8599	0.8332	−3.11
32110	Hidalgo County, New Mexico	99932	0.8599	0.8332	−3.11
32120	Lea County, New Mexico	99932	0.8599	0.8332	−3.11
32130	Lincoln County, New Mexico	99932	0.8599	0.8332	−3.11
32131	Los Alamos County, New Mexico	99932	0.9692	0.8332	−14.03
32140	Luna County, New Mexico	99932	0.8599	0.8332	−3.11
32150	Mc Kinley County, New Mexico	99932	0.8599	0.8332	−3.11
32160	Mora County, New Mexico	99932	0.8599	0.8332	−3.11
32170	Otero County, New Mexico	99932	0.8599	0.8332	−3.11
32180	Quay County, New Mexico	99932	0.8599	0.8332	−3.11
32190	Rio Arriba County, New Mexico	99932	0.8599	0.8332	−3.11
32200	Roosevelt County, New Mexico	99932	0.8599	0.8332	−3.11
32210	Sandoval County, New Mexico	10740	0.9684	0.9458	−2.33
32220	San Juan County, New Mexico	22140	0.8536	0.8589	0.62
32230	San Miguel County, New Mexico	99932	0.8599	0.8332	−3.11
32240	Santa Fe County, New Mexico	42140	1.0834	1.0824	−0.09
32250	Sierra County, New Mexico	99932	0.8599	0.8332	−3.11
32260	Socorro County, New Mexico	99932	0.8599	0.8332	−3.11
32270	Taos County, New Mexico	99932	0.8599	0.8332	−3.11
32280	Torrance County, New Mexico	10740	0.9124	0.9458	3.66
32290	Union County, New Mexico	99932	0.8599	0.8332	−3.11
32300	Valencia County, New Mexico	10740	0.9684	0.9458	−2.33
33000	Albany County, New York	10580	0.8574	0.8720	1.70
33010	Allegany County, New York	99933	0.8275	0.8232	−0.52
33020	Bronx County, New York	35644	1.3326	1.3177	−1.12
33030	Broome County, New York	13780	0.8562	0.8786	2.62
33040	Cattaraugus County, New York	99933	0.8275	0.8232	−0.52
33050	Cayuga County, New York	99933	0.8823	0.8232	−6.70
33060	Chautauqua County, New York	99933	0.7849	0.8232	4.88
33070	Chemung County, New York	21300	0.8250	0.8240	−0.12
33080	Chenango County, New York	99933	0.8275	0.8232	−0.52
33090	Clinton County, New York	99933	0.8275	0.8232	−0.52
33200	Columbia County, New York	99933	0.8275	0.8232	−0.52
33210	Cortland County, New York	99933	0.8275	0.8232	−0.52
33220	Delaware County, New York	99933	0.8275	0.8232	−0.52

ADDENDUM C.—COMPARISON OF HH PPS TRANSITION WAGE INDEX FOR CY 2006 AND PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX FOR CY 2007—Continued

SSA state/county code	County name	CBSA No.	CY 2006 HH PPS transition wage index	CY2007 CBSA-based wage index	Percent change CY2006–CY2007
33230	Dutchess County, New York	39100	1.0683	1.0911	2.13
33240	Erie County, New York	15380	0.9511	0.9424	−0.91
33260	Essex County, New York	99933	0.8275	0.8232	−0.52
33270	Franklin County, New York	99933	0.8275	0.8232	−0.52
33280	Fulton County, New York	99933	0.8275	0.8232	−0.52
33290	Genesee County, New York	99933	0.8602	0.8232	−4.30
33300	Greene County, New York	99933	0.8275	0.8232	−0.52
33310	Hamilton County, New York	99933	0.8275	0.8232	−0.52
33320	Herkimer County, New York	46540	0.8358	0.8396	0.45
33330	Jefferson County, New York	99933	0.8275	0.8232	−0.52
33331	Kings County, New York	35644	1.3326	1.3177	−1.12
33340	Lewis County, New York	99933	0.8275	0.8232	−0.52
33350	Livingston County, New York	40380	0.9085	0.8994	−1.00
33360	Madison County, New York	45060	0.9533	0.9691	1.66
33370	Monroe County, New York	40380	0.9085	0.8994	−1.00
33380	Montgomery County, New York	99933	0.8357	0.8232	−1.50
33400	Nassau County, New York	35004	1.2719	1.2662	−0.45
33420	New York County, New York	35644	1.3326	1.3177	−1.12
33500	Niagara County, New York	15380	0.9511	0.9424	−0.91
33510	Oneida County, New York	46540	0.8358	0.8396	0.45
33520	Onondaga County, New York	45060	0.9533	0.9691	1.66
33530	Ontario County, New York	40380	0.9085	0.8994	−1.00
33540	Orange County, New York	39100	1.1049	1.0911	−1.25
33550	Orleans County, New York	40380	0.9085	0.8994	−1.00
33560	Oswego County, New York	45060	0.9533	0.9691	1.66
33570	Otsego County, New York	99933	0.8275	0.8232	−0.52
33580	Putnam County, New York	35644	1.3326	1.3177	−1.12
33590	Queens County, New York	35644	1.3326	1.3177	−1.12
33600	Rensselaer County, New York	10580	0.8574	0.8720	1.70
33610	Richmond County, New York	35644	1.3326	1.3177	−1.12
33620	Rockland County, New York	35644	1.3326	1.3177	−1.12
33630	St Lawrence County, New York	99933	0.8275	0.8232	−0.52
33640	Saratoga County, New York	10580	0.8574	0.8720	1.70
33650	Schenectady County, New York	10580	0.8574	0.8720	1.70
33660	Schoharie County, New York	10580	0.8574	0.8720	1.70
33670	Schuyler County, New York	99933	0.8275	0.8232	−0.52
33680	Seneca County, New York	99933	0.8275	0.8232	−0.52
33690	Steuben County, New York	99933	0.8275	0.8232	−0.52
33700	Suffolk County, New York	35004	1.2719	1.2662	−0.45
33710	Sullivan County, New York	99933	0.8275	0.8232	−0.52
33720	Tioga County, New York	13780	0.8562	0.8786	2.62
33730	Tompkins County, New York	27060	0.9094	0.9928	9.17
33740	Ulster County, New York	28740	0.8825	0.9367	6.14
33750	Warren County, New York	24020	0.8559	0.8324	−2.75
33760	Washington County, New York	24020	0.8559	0.8324	−2.75
33770	Wayne County, New York	40380	0.9085	0.8994	−1.00
33800	Westchester County, New York	35644	1.3326	1.3177	−1.12
33900	Wyoming County, New York	99933	0.8275	0.8232	−0.52
33910	Yates County, New York	99933	0.8275	0.8232	−0.52
34000	Alamance County, N Carolina	15500	0.8962	0.8674	−3.21
34010	Alexander County, N Carolina	25860	0.8921	0.9010	1.00
34020	Alleghany County, N Carolina	99934	0.8501	0.8588	1.02
34030	Anson County, N Carolina	16740	0.9106	0.9554	4.92
34040	Ashe County, N Carolina	99934	0.8501	0.8588	1.02
34050	Avery County, N Carolina	99934	0.8501	0.8588	1.02
34060	Beaufort County, N Carolina	99934	0.8501	0.8588	1.02
34070	Bertie County, N Carolina	99934	0.8501	0.8588	1.02
34080	Bladen County, N Carolina	99934	0.8501	0.8588	1.02
34090	Brunswick County, N Carolina	48900	0.9582	0.9835	2.64
34100	Buncombe County, N Carolina	11700	0.9511	0.9216	−3.10
34110	Burke County, N Carolina	25860	0.8921	0.9010	1.00
34120	Cabarrus County, N Carolina	16740	0.9733	0.9554	−1.84
34130	Caldwell County, N Carolina	25860	0.8921	0.9010	1.00
34140	Camden County, N Carolina	99934	0.8501	0.8588	1.02
34150	Carteret County, N Carolina	99934	0.8501	0.8588	1.02
34160	Caswell County, N Carolina	99934	0.8501	0.8588	1.02
34170	Catawba County, N Carolina	25860	0.8921	0.9010	1.00
34180	Chatham County, N Carolina	20500	1.0139	0.9826	−3.09

ADDENDUM C.—COMPARISON OF HH PPS TRANSITION WAGE INDEX FOR CY 2006 AND PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX FOR CY 2007—Continued

SSA state/county code	County name	CBSA No.	CY 2006 HH PPS transition wage index	CY2007 CBSA-based wage index	Percent change CY2006–CY2007
34190	Cherokee County, N Carolina	99934	0.8501	0.8588	1.02
34200	Chowan County, N Carolina	99934	0.8501	0.8588	1.02
34210	Clay County, N Carolina	99934	0.8501	0.8588	1.02
34220	Cleveland County, N Carolina	99934	0.8501	0.8588	1.02
34230	Columbus County, N Carolina	99934	0.8501	0.8588	1.02
34240	Craven County, N Carolina	99934	0.8501	0.8588	1.02
34250	Cumberland County, N Carolina	22180	0.9416	0.8945	−5.00
34251	Currituck County, N Carolina	47260	0.8799	0.8790	−0.10
34270	Dare County, N Carolina	99934	0.8501	0.8588	1.02
34280	Davidson County, N Carolina	99934	0.8779	0.8588	−2.18
34290	Davie County, N Carolina	49180	0.8981	0.9276	3.28
34300	Duplin County, N Carolina	99934	0.8501	0.8588	1.02
34310	Durham County, N Carolina	20500	1.0139	0.9826	−3.09
34320	Edgecombe County, N Carolina	40580	0.8915	0.8854	−0.68
34330	Forsyth County, N Carolina	49180	0.8981	0.9276	3.28
34340	Franklin County, N Carolina	39580	0.9863	0.9864	0.01
34350	Gaston County, N Carolina	16740	0.9733	0.9554	−1.84
34360	Gates County, N Carolina	99934	0.8501	0.8588	1.02
34370	Graham County, N Carolina	99934	0.8501	0.8588	1.02
34380	Granville County, N Carolina	99934	0.8501	0.8588	1.02
34390	Greene County, N Carolina	24780	0.8944	0.9432	5.46
34400	Guilford County, N Carolina	24660	0.9061	0.8866	−2.15
34410	Halifax County, N Carolina	99934	0.8501	0.8588	1.02
34420	Harnett County, N Carolina	99934	0.8501	0.8588	1.02
34430	Haywood County, N Carolina	11700	0.8874	0.9216	3.85
34440	Henderson County, N Carolina	11700	0.8874	0.9216	3.85
34450	Hertford County, N Carolina	99934	0.8501	0.8588	1.02
34460	Hoke County, N Carolina	22180	0.8939	0.8945	0.07
34470	Hyde County, N Carolina	99934	0.8501	0.8588	1.02
34480	Iredell County, N Carolina	99934	0.8501	0.8588	1.02
34490	Jackson County, N Carolina	99934	0.8501	0.8588	1.02
34500	Johnston County, N Carolina	39580	0.9863	0.9864	0.01
34510	Jones County, N Carolina	99934	0.8501	0.8588	1.02
34520	Lee County, N Carolina	99934	0.8501	0.8588	1.02
34530	Lenoir County, N Carolina	99934	0.8501	0.8588	1.02
34540	Lincoln County, N Carolina	99934	0.9128	0.8588	−5.92
34550	Mc Dowell County, N Carolina	99934	0.8501	0.8588	1.02
34560	Macon County, N Carolina	99934	0.8501	0.8588	1.02
34570	Madison County, N Carolina	11700	0.9511	0.9216	−3.10
34580	Martin County, N Carolina	99934	0.8501	0.8588	1.02
34590	Mecklenburg County, N Carolina	16740	0.9733	0.9554	−1.84
34600	Mitchell County, N Carolina	99934	0.8501	0.8588	1.02
34610	Montgomery County, N Carolina	99934	0.8501	0.8588	1.02
34620	Moore County, N Carolina	99934	0.8501	0.8588	1.02
34630	Nash County, N Carolina	40580	0.8915	0.8854	−0.68
34640	New Hanover County, N Carolina	48900	0.9582	0.9835	2.64
34650	Northampton County, N Carolina	99934	0.8501	0.8588	1.02
34660	Onslow County, N Carolina	27340	0.8236	0.8231	−0.06
34670	Orange County, N Carolina	20500	1.0139	0.9826	−3.09
34680	Pamlico County, N Carolina	99934	0.8501	0.8588	1.02
34690	Pasquotank County, N Carolina	99934	0.8501	0.8588	1.02
34700	Pender County, N Carolina	48900	0.9022	0.9835	9.01
34710	Perquimans County, N Carolina	99934	0.8501	0.8588	1.02
34720	Person County, N Carolina	20500	0.9353	0.9826	5.06
34730	Pitt County, N Carolina	24780	0.9425	0.9432	0.07
34740	Polk County, N Carolina	99934	0.8501	0.8588	1.02
34750	Randolph County, N Carolina	24660	0.9061	0.8866	−2.15
34760	Richmond County, N Carolina	99934	0.8501	0.8588	1.02
34770	Robeson County, N Carolina	99934	0.8501	0.8588	1.02
34780	Rockingham County, N Carolina	24660	0.8783	0.8866	0.95
34790	Rowan County, N Carolina	99934	0.9128	0.8588	−5.92
34800	Rutherford County, N Carolina	99934	0.8501	0.8588	1.02
34810	Sampson County, N Carolina	99934	0.8501	0.8588	1.02
34820	Scotland County, N Carolina	99934	0.8501	0.8588	1.02
34830	Stanly County, N Carolina	99934	0.8501	0.8588	1.02
34840	Stokes County, N Carolina	49180	0.8981	0.9276	3.28
34850	Surry County, N Carolina	99934	0.8501	0.8588	1.02
34860	Swain County, N Carolina	99934	0.8501	0.8588	1.02

ADDENDUM C.—COMPARISON OF HH PPS TRANSITION WAGE INDEX FOR CY 2006 AND PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX FOR CY 2007—Continued

SSA state/county code	County name	CBSA No.	CY 2006 HH PPS transition wage index	CY2007 CBSA-based wage index	Percent change CY2006–CY2007
34870	Transylvania County, N Carolina	99934	0.8501	0.8588	1.02
34880	Tyrrell County, N Carolina	99934	0.8501	0.8588	1.02
34890	Union County, N Carolina	16740	0.9733	0.9554	−1.84
34900	Vance County, N Carolina	99934	0.8501	0.8588	1.02
34910	Wake County, N Carolina	39580	0.9863	0.9864	0.01
34920	Warren County, N Carolina	99934	0.8501	0.8588	1.02
34930	Washington County, N Carolina	99934	0.8501	0.8588	1.02
34940	Watauga County, N Carolina	99934	0.8501	0.8588	1.02
34950	Wayne County, N Carolina	24140	0.8775	0.9171	4.51
34960	Wilkes County, N Carolina	99934	0.8501	0.8588	1.02
34970	Wilson County, N Carolina	99934	0.8501	0.8588	1.02
34980	Yadkin County, N Carolina	49180	0.8981	0.9276	3.28
34981	Yancey County, N Carolina	99934	0.8501	0.8588	1.02
35000	Adams County, N Dakota	99935	0.7261	0.7215	−0.63
35010	Barnes County, N Dakota	99935	0.7261	0.7215	−0.63
35020	Benson County, N Dakota	99935	0.7261	0.7215	−0.63
35030	Billings County, N Dakota	99935	0.7261	0.7215	−0.63
35040	Bottineau County, N Dakota	99935	0.7261	0.7215	−0.63
35050	Bowman County, N Dakota	99935	0.7261	0.7215	−0.63
35060	Burke County, N Dakota	99935	0.7261	0.7215	−0.63
35070	Burleigh County, N Dakota	13900	0.7574	0.7240	−4.41
35080	Cass County, N Dakota	22020	0.8486	0.8250	−2.78
35090	Cavalier County, N Dakota	99935	0.7261	0.7215	−0.63
35100	Dickey County, N Dakota	99935	0.7261	0.7215	−0.63
35110	Divide County, N Dakota	99935	0.7261	0.7215	−0.63
35120	Dunn County, N Dakota	99935	0.7261	0.7215	−0.63
35130	Eddy County, N Dakota	99935	0.7261	0.7215	−0.63
35140	Emmons County, N Dakota	99935	0.7261	0.7215	−0.63
35150	Foster County, N Dakota	99935	0.7261	0.7215	−0.63
35160	Golden Valley County, N Dakota	99935	0.7261	0.7215	−0.63
35170	Grand Forks County, N Dakota	24220	0.7901	0.7949	0.61
35180	Grant County, N Dakota	99935	0.7261	0.7215	−0.63
35190	Griggs County, N Dakota	99935	0.7261	0.7215	−0.63
35200	Hettinger County, N Dakota	99935	0.7261	0.7215	−0.63
35210	Kidder County, N Dakota	99935	0.7261	0.7215	−0.63
35220	La Moure County, N Dakota	99935	0.7261	0.7215	−0.63
35230	Logan County, N Dakota	99935	0.7261	0.7215	−0.63
35240	Mc Henry County, N Dakota	99935	0.7261	0.7215	−0.63
35250	Mc Intosh County, N Dakota	99935	0.7261	0.7215	−0.63
35260	Mc Kenzie County, N Dakota	99935	0.7261	0.7215	−0.63
35270	Mc Lean County, N Dakota	99935	0.7261	0.7215	−0.63
35280	Mercer County, N Dakota	99935	0.7261	0.7215	−0.63
35290	Morton County, N Dakota	13900	0.7574	0.7240	−4.41
35300	Mountrail County, N Dakota	99935	0.7261	0.7215	−0.63
35310	Nelson County, N Dakota	99935	0.7261	0.7215	−0.63
35320	Oliver County, N Dakota	99935	0.7261	0.7215	−0.63
35330	Pembina County, N Dakota	99935	0.7261	0.7215	−0.63
35340	Pierce County, N Dakota	99935	0.7261	0.7215	−0.63
35350	Ramsey County, N Dakota	99935	0.7261	0.7215	−0.63
35360	Ransom County, N Dakota	99935	0.7261	0.7215	−0.63
35370	Renville County, N Dakota	99935	0.7261	0.7215	−0.63
35380	Richland County, N Dakota	99935	0.7261	0.7215	−0.63
35390	Rolette County, N Dakota	99935	0.7261	0.7215	−0.63
35400	Sargent County, N Dakota	99935	0.7261	0.7215	−0.63
35410	Sheridan County, N Dakota	99935	0.7261	0.7215	−0.63
35420	Sioux County, N Dakota	99935	0.7261	0.7215	−0.63
35430	Slope County, N Dakota	99935	0.7261	0.7215	−0.63
35440	Stark County, N Dakota	99935	0.7261	0.7215	−0.63
35450	Steele County, N Dakota	99935	0.7261	0.7215	−0.63
35460	Stutsman County, N Dakota	99935	0.7261	0.7215	−0.63
35470	Towner County, N Dakota	99935	0.7261	0.7215	−0.63
35480	Traill County, N Dakota	99935	0.7261	0.7215	−0.63
35490	Walsh County, N Dakota	99935	0.7261	0.7215	−0.63
35500	Ward County, N Dakota	99935	0.7261	0.7215	−0.63
35510	Wells County, N Dakota	99935	0.7261	0.7215	−0.63
35520	Williams County, N Dakota	99935	0.7261	0.7215	−0.63
36000	Adams County, Ohio	99936	0.8874	0.8658	−2.43
36010	Allen County, Ohio	30620	0.9172	0.9042	−1.42

ADDENDUM C.—COMPARISON OF HH PPS TRANSITION WAGE INDEX FOR CY 2006 AND PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX FOR CY 2007—Continued

SSA state/county code	County name	CBSA No.	CY 2006 HH PPS transition wage index	CY2007 CBSA-based wage index	Percent change CY2006–CY2007
36020	Ashland County, Ohio	99936	0.8874	0.8658	−2.43
36030	Ashtabula County, Ohio	99936	0.9005	0.8658	−3.85
36040	Athens County, Ohio	99936	0.8874	0.8658	−2.43
36050	Auglaize County, Ohio	99936	0.8973	0.8658	−3.51
36060	Belmont County, Ohio	48540	0.7161	0.7010	−2.11
36070	Brown County, Ohio	17140	0.9675	0.9601	−0.76
36080	Butler County, Ohio	17140	0.9283	0.9601	3.43
36090	Carroll County, Ohio	15940	0.8935	0.9031	1.07
36100	Champaign County, Ohio	99936	0.8874	0.8658	−2.43
36110	Clark County, Ohio	44220	0.8688	0.8593	−1.09
36120	Clermont County, Ohio	17140	0.9675	0.9601	−0.76
36130	Clinton County, Ohio	99936	0.8874	0.8658	−2.43
36140	Columbiana County, Ohio	99936	0.8837	0.8658	−2.03
36150	Coshocton County, Ohio	99936	0.8874	0.8658	−2.43
36160	Crawford County, Ohio	99936	0.9359	0.8658	−7.49
36170	Cuyahoga County, Ohio	17460	0.9198	0.9400	2.20
36190	Darke County, Ohio	99936	0.8874	0.8658	−2.43
36200	Defiance County, Ohio	99936	0.8874	0.8658	−2.43
36210	Delaware County, Ohio	18140	0.9867	1.0107	2.43
36220	Erie County, Ohio	41780	0.8970	0.9302	3.70
36230	Fairfield County, Ohio	18140	0.9867	1.0107	2.43
36240	Fayette County, Ohio	99936	0.8874	0.8658	−2.43
36250	Franklin County, Ohio	18140	0.9867	1.0107	2.43
36260	Fulton County, Ohio	45780	0.9574	0.9586	0.13
36270	Gallia County, Ohio	99936	0.8874	0.8658	−2.43
36280	Geauga County, Ohio	17460	0.9198	0.9400	2.20
36290	Greene County, Ohio	19380	0.9022	0.9037	0.17
36300	Guernsey County, Ohio	99936	0.8874	0.8658	−2.43
36310	Hamilton County, Ohio	17140	0.9675	0.9601	−0.76
36330	Hancock County, Ohio	99936	0.8874	0.8658	−2.43
36340	Hardin County, Ohio	99936	0.8874	0.8658	−2.43
36350	Harrison County, Ohio	99936	0.8874	0.8658	−2.43
36360	Henry County, Ohio	99936	0.8874	0.8658	−2.43
36370	Highland County, Ohio	99936	0.8874	0.8658	−2.43
36380	Hocking County, Ohio	99936	0.8874	0.8658	−2.43
36390	Holmes County, Ohio	99936	0.8874	0.8658	−2.43
36400	Huron County, Ohio	99936	0.8874	0.8658	−2.43
36410	Jackson County, Ohio	99936	0.8874	0.8658	−2.43
36420	Jefferson County, Ohio	48260	0.7819	0.8063	3.12
36430	Knox County, Ohio	99936	0.8874	0.8658	−2.43
36440	Lake County, Ohio	17460	0.9198	0.9400	2.20
36450	Lawrence County, Ohio	26580	0.9477	0.8997	−5.06
36460	Licking County, Ohio	18140	0.9867	1.0107	2.43
36470	Logan County, Ohio	99936	0.8874	0.8658	−2.43
36480	Lorain County, Ohio	17460	0.9198	0.9400	2.20
36490	Lucas County, Ohio	45780	0.9574	0.9586	0.13
36500	Madison County, Ohio	18140	0.9867	1.0107	2.43
36510	Mahoning County, Ohio	49660	0.8726	0.8802	0.87
36520	Marion County, Ohio	99936	0.8874	0.8658	−2.43
36530	Medina County, Ohio	17460	0.9198	0.9400	2.20
36540	Meigs County, Ohio	99936	0.8874	0.8658	−2.43
36550	Mercer County, Ohio	99936	0.8874	0.8658	−2.43
36560	Miami County, Ohio	19380	0.9022	0.9037	0.17
36570	Monroe County, Ohio	99936	0.8874	0.8658	−2.43
36580	Montgomery County, Ohio	19380	0.9022	0.9037	0.17
36590	Morgan County, Ohio	99936	0.8874	0.8658	−2.43
36600	Morrow County, Ohio	18140	0.9391	1.0107	7.62
36610	Muskingum County, Ohio	99936	0.8874	0.8658	−2.43
36620	Noble County, Ohio	99936	0.8874	0.8658	−2.43
36630	Ottawa County, Ohio	45780	0.9248	0.9586	3.65
36640	Paulding County, Ohio	99936	0.8874	0.8658	−2.43
36650	Perry County, Ohio	99936	0.8874	0.8658	−2.43
36660	Pickaway County, Ohio	18140	0.9867	1.0107	2.43
36670	Pike County, Ohio	99936	0.8874	0.8658	−2.43
36680	Portage County, Ohio	10420	0.8982	0.8654	−3.65
36690	Preble County, Ohio	19380	0.8993	0.9037	0.49
36700	Putnam County, Ohio	99936	0.8874	0.8658	−2.43
36710	Richland County, Ohio	31900	0.9891	0.9271	−6.27

ADDENDUM C.—COMPARISON OF HH PPS TRANSITION WAGE INDEX FOR CY 2006 AND PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX FOR CY 2007—Continued

SSA state/county code	County name	CBSA No.	CY 2006 HH PPS transition wage index	CY2007 CBSA-based wage index	Percent change CY2006–CY2007
36720	Ross County, Ohio	99936	0.8874	0.8658	−2.43
36730	Sandusky County, Ohio	99936	0.8874	0.8658	−2.43
36740	Scioto County, Ohio	99936	0.8874	0.8658	−2.43
36750	Seneca County, Ohio	99936	0.8874	0.8658	−2.43
36760	Shelby County, Ohio	99936	0.8874	0.8658	−2.43
36770	Stark County, Ohio	15940	0.8935	0.9031	1.07
36780	Summit County, Ohio	10420	0.8982	0.8654	−3.65
36790	Trumbull County, Ohio	49660	0.8726	0.8802	0.87
36800	Tuscarawas County, Ohio	99936	0.8874	0.8658	−2.43
36810	Union County, Ohio	18140	0.9391	1.0107	7.62
36820	Van Wert County, Ohio	99936	0.8874	0.8658	−2.43
36830	Vinton County, Ohio	99936	0.8874	0.8658	−2.43
36840	Warren County, Ohio	17140	0.9675	0.9601	−0.76
36850	Washington County, Ohio	37620	0.8270	0.7977	−3.54
36860	Wayne County, Ohio	99936	0.8874	0.8658	−2.43
36870	Williams County, Ohio	99936	0.8874	0.8658	−2.43
36880	Wood County, Ohio	45780	0.9574	0.9586	0.13
36890	Wyandot County, Ohio	99936	0.8874	0.8658	−2.43
37000	Adair County, Oklahoma	99937	0.7512	0.7629	1.56
37010	Alfalfa County, Oklahoma	99937	0.7512	0.7629	1.56
37020	Atoka County, Oklahoma	99937	0.7512	0.7629	1.56
37030	Beaver County, Oklahoma	99937	0.7512	0.7629	1.56
37040	Beckham County, Oklahoma	99937	0.7512	0.7629	1.56
37050	Blaine County, Oklahoma	99937	0.7512	0.7629	1.56
37060	Bryan County, Oklahoma	99937	0.7512	0.7629	1.56
37070	Caddo County, Oklahoma	99937	0.7512	0.7629	1.56
37080	Canadian County, Oklahoma	36420	0.9028	0.8843	−2.05
37090	Carter County, Oklahoma	99937	0.7512	0.7629	1.56
37100	Cherokee County, Oklahoma	99937	0.7512	0.7629	1.56
37110	Choctaw County, Oklahoma	99937	0.7512	0.7629	1.56
37120	Cimarron County, Oklahoma	99937	0.7512	0.7629	1.56
37130	Cleveland County, Oklahoma	36420	0.9028	0.8843	−2.05
37140	Coal County, Oklahoma	99937	0.7512	0.7629	1.56
37150	Comanche County, Oklahoma	30020	0.7872	0.8065	2.45
37160	Cotton County, Oklahoma	99937	0.7512	0.7629	1.56
37170	Craig County, Oklahoma	99937	0.7512	0.7629	1.56
37180	Creek County, Oklahoma	46140	0.8565	0.8103	−5.39
37190	Custer County, Oklahoma	99937	0.7512	0.7629	1.56
37200	Delaware County, Oklahoma	99937	0.7512	0.7629	1.56
37210	Dewey County, Oklahoma	99937	0.7512	0.7629	1.56
37220	Ellis County, Oklahoma	99937	0.7512	0.7629	1.56
37230	Garfield County, Oklahoma	99937	0.8124	0.7629	−6.09
37240	Garvin County, Oklahoma	99937	0.7512	0.7629	1.56
37250	Grady County, Oklahoma	36420	0.8237	0.8843	7.36
37260	Grant County, Oklahoma	99937	0.7512	0.7629	1.56
37270	Greer County, Oklahoma	99937	0.7512	0.7629	1.56
37280	Harmon County, Oklahoma	99937	0.7512	0.7629	1.56
37290	Harper County, Oklahoma	99937	0.7512	0.7629	1.56
37300	Haskell County, Oklahoma	99937	0.7512	0.7629	1.56
37310	Hughes County, Oklahoma	99937	0.7512	0.7629	1.56
37320	Jackson County, Oklahoma	99937	0.7512	0.7629	1.56
37330	Jefferson County, Oklahoma	99937	0.7512	0.7629	1.56
37340	Johnston County, Oklahoma	99937	0.7512	0.7629	1.56
37350	Kay County, Oklahoma	99937	0.7512	0.7629	1.56
37360	Kingfisher County, Oklahoma	99937	0.7512	0.7629	1.56
37370	Kiowa County, Oklahoma	99937	0.7512	0.7629	1.56
37380	Latimer County, Oklahoma	99937	0.7512	0.7629	1.56
37390	Le Flore County, Oklahoma	22900	0.7836	0.7731	−1.34
37400	Lincoln County, Oklahoma	36420	0.8237	0.8843	7.36
37410	Logan County, Oklahoma	36420	0.9028	0.8843	−2.05
37420	Love County, Oklahoma	99937	0.7512	0.7629	1.56
37430	Mc Clain County, Oklahoma	36420	0.9028	0.8843	−2.05
37440	Mc Curtain County, Oklahoma	99937	0.7512	0.7629	1.56
37450	Mc Intosh County, Oklahoma	99937	0.7512	0.7629	1.56
37460	Major County, Oklahoma	99937	0.7512	0.7629	1.56
37470	Marshall County, Oklahoma	99937	0.7512	0.7629	1.56
37480	Mayes County, Oklahoma	99937	0.7512	0.7629	1.56
37490	Murray County, Oklahoma	99937	0.7512	0.7629	1.56

ADDENDUM C.—COMPARISON OF HH PPS TRANSITION WAGE INDEX FOR CY 2006 AND PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX FOR CY 2007—Continued

SSA state/county code	County name	CBSA No.	CY 2006 HH PPS transition wage index	CY2007 CBSA-based wage index	Percent change CY2006–CY2007
37500	Muskogee County, Oklahoma	99937	0.7512	0.7629	1.56
37510	Noble County, Oklahoma	99937	0.7512	0.7629	1.56
37520	Nowata County, Oklahoma	99937	0.7512	0.7629	1.56
37530	Okfuskee County, Oklahoma	99937	0.7512	0.7629	1.56
37540	Oklahoma County, Oklahoma	36420	0.9028	0.8843	−2.05
37550	Okmulgee County, Oklahoma	46140	0.7993	0.8103	1.38
37560	Osage County, Oklahoma	46140	0.8565	0.8103	−5.39
37570	Ottawa County, Oklahoma	99937	0.7512	0.7629	1.56
37580	Pawnee County, Oklahoma	46140	0.7993	0.8103	1.38
37590	Payne County, Oklahoma	99937	0.7512	0.7629	1.56
37600	Pittsburg County, Oklahoma	99937	0.7512	0.7629	1.56
37610	Pontotoc County, Oklahoma	99937	0.7512	0.7629	1.56
37620	Pottawatomie County, Oklahoma	99937	0.8303	0.7629	−8.12
37630	Pushmataha County, Oklahoma	99937	0.7512	0.7629	1.56
37640	Roger Mills County, Oklahoma	99937	0.7512	0.7629	1.56
37650	Rogers County, Oklahoma	46140	0.8565	0.8103	−5.39
37660	Seminole County, Oklahoma	99937	0.7512	0.7629	1.56
37670	Sequoyah County, Oklahoma	22900	0.8238	0.7731	−6.15
37680	Stephens County, Oklahoma	99937	0.7512	0.7629	1.56
37690	Texas County, Oklahoma	99937	0.7512	0.7629	1.56
37700	Tillman County, Oklahoma	99937	0.7512	0.7629	1.56
37710	Tulsa County, Oklahoma	46140	0.8565	0.8103	−5.39
37720	Wagoner County, Oklahoma	46140	0.8565	0.8103	−5.39
37730	Washington County, Oklahoma	99937	0.7512	0.7629	1.56
37740	Washita County, Oklahoma	99937	0.7512	0.7629	1.56
37750	Woods County, Oklahoma	99937	0.7512	0.7629	1.56
37760	Woodward County, Oklahoma	99937	0.7512	0.7629	1.56
38000	Baker County, Oregon	99938	0.9939	0.9753	−1.87
38010	Benton County, Oregon	18700	1.0729	1.1546	7.61
38020	Clackamas County, Oregon	38900	1.1266	1.1416	1.33
38030	Clatsop County, Oregon	99938	0.9939	0.9753	−1.87
38040	Columbia County, Oregon	38900	1.1266	1.1416	1.33
38050	Coos County, Oregon	99938	0.9939	0.9753	−1.87
38060	Crook County, Oregon	99938	0.9939	0.9753	−1.87
38070	Curry County, Oregon	99938	0.9939	0.9753	−1.87
38080	Deschutes County, Oregon	13460	1.0419	1.0743	3.11
38090	Douglas County, Oregon	99938	0.9939	0.9753	−1.87
38100	Gilliam County, Oregon	99938	0.9939	0.9753	−1.87
38110	Grant County, Oregon	99938	0.9939	0.9753	−1.87
38120	Harney County, Oregon	99938	0.9939	0.9753	−1.87
38130	Hood River County, Oregon	99938	0.9939	0.9753	−1.87
38140	Jackson County, Oregon	32780	1.0225	1.0818	5.80
38150	Jefferson County, Oregon	99938	0.9939	0.9753	−1.87
38160	Josephine County, Oregon	99938	0.9939	0.9753	−1.87
38170	Klamath County, Oregon	99938	0.9939	0.9753	−1.87
38180	Lake County, Oregon	99938	0.9939	0.9753	−1.87
38190	Lane County, Oregon	21660	1.0818	1.0876	0.54
38200	Lincoln County, Oregon	99938	0.9939	0.9753	−1.87
38210	Linn County, Oregon	99938	0.9939	0.9753	−1.87
38220	Malheur County, Oregon	99938	0.9939	0.9753	−1.87
38230	Marion County, Oregon	41420	1.0442	1.0438	−0.04
38240	Morrow County, Oregon	99938	0.9939	0.9753	−1.87
38250	Multnomah County, Oregon	38900	1.1266	1.1416	1.33
38260	Polk County, Oregon	41420	1.0442	1.0438	−0.04
38270	Sherman County, Oregon	99938	0.9939	0.9753	−1.87
38280	Tillamook County, Oregon	99938	0.9939	0.9753	−1.87
38290	Umatilla County, Oregon	99938	0.9939	0.9753	−1.87
38300	Union County, Oregon	99938	0.9939	0.9753	−1.87
38310	Wallowa County, Oregon	99938	0.9939	0.9753	−1.87
38320	Wasco County, Oregon	99938	0.9939	0.9753	−1.87
38330	Washington County, Oregon	38900	1.1266	1.1416	1.33
38340	Wheeler County, Oregon	99938	0.9939	0.9753	−1.87
38350	Yamhill County, Oregon	38900	1.1266	1.1416	1.33
39000	Adams County, Pennsylvania	99939	0.8305	0.8320	0.18
39010	Allegheny County, Pennsylvania	38300	0.8853	0.8674	−2.02
39070	Armstrong County, Pennsylvania	38300	0.8582	0.8674	1.07
39080	Beaver County, Pennsylvania	38300	0.8853	0.8674	−2.02
39100	Bedford County, Pennsylvania	99939	0.8305	0.8320	0.18

ADDENDUM C.—COMPARISON OF HH PPS TRANSITION WAGE INDEX FOR CY 2006 AND PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX FOR CY 2007—Continued

SSA state/county code	County name	CBSA No.	CY 2006 HH PPS transition wage index	CY2007 CBSA-based wage index	Percent change CY2006–CY2007
39110	Berks County, Pennsylvania	39740	0.9686	0.9622	−0.66
39120	Blair County, Pennsylvania	11020	0.8944	0.8812	−1.48
39130	Bradford County, Pennsylvania	99939	0.8305	0.8320	0.18
39140	Bucks County, Pennsylvania	37964	1.0980	1.0996	0.15
39150	Butler County, Pennsylvania	38300	0.8853	0.8674	−2.02
39160	Cambria County, Pennsylvania	27780	0.8220	0.8620	4.87
39180	Cameron County, Pennsylvania	99939	0.8305	0.8320	0.18
39190	Carbon County, Pennsylvania	10900	0.9832	0.9947	1.17
39200	Centre County, Pennsylvania	44300	0.8356	0.8784	5.12
39210	Chester County, Pennsylvania	37964	1.0980	1.0996	0.15
39220	Clarion County, Pennsylvania	99939	0.8305	0.8320	0.18
39230	Clearfield County, Pennsylvania	99939	0.8305	0.8320	0.18
39240	Clinton County, Pennsylvania	99939	0.8305	0.8320	0.18
39250	Columbia County, Pennsylvania	99939	0.8408	0.8320	−1.05
39260	Crawford County, Pennsylvania	99939	0.8305	0.8320	0.18
39270	Cumberland County, Pennsylvania	25420	0.9273	0.9402	1.39
39280	Dauphin County, Pennsylvania	25420	0.9273	0.9402	1.39
39290	Delaware County, Pennsylvania	37964	1.0980	1.0996	0.15
39310	Elk County, Pennsylvania	99939	0.8305	0.8320	0.18
39320	Erie County, Pennsylvania	21500	0.8737	0.8827	1.03
39330	Fayette County, Pennsylvania	38300	0.8853	0.8674	−2.02
39340	Forest County, Pennsylvania	99939	0.8305	0.8320	0.18
39350	Franklin County, Pennsylvania	99939	0.8305	0.8320	0.18
39360	Fulton County, Pennsylvania	99939	0.8305	0.8320	0.18
39370	Greene County, Pennsylvania	99939	0.8305	0.8320	0.18
39380	Huntingdon County, Pennsylvania	99939	0.8305	0.8320	0.18
39390	Indiana County, Pennsylvania	99939	0.8305	0.8320	0.18
39400	Jefferson County, Pennsylvania	99939	0.8305	0.8320	0.18
39410	Juniata County, Pennsylvania	99939	0.8305	0.8320	0.18
39420	Lackawanna County, Pennsylvania	42540	0.8532	0.8347	−2.17
39440	Lancaster County, Pennsylvania	29540	0.9694	0.9589	−1.08
39450	Lawrence County, Pennsylvania	99939	0.8305	0.8320	0.18
39460	Lebanon County, Pennsylvania	30140	0.8846	0.8679	−1.89
39470	Lehigh County, Pennsylvania	10900	0.9832	0.9947	1.17
39480	Luzerne County, Pennsylvania	42540	0.8532	0.8347	−2.17
39510	Lycoming County, Pennsylvania	48700	0.8364	0.8139	−2.69
39520	Mc Kean County, Pennsylvania	99939	0.8305	0.8320	0.18
39530	Mercer County, Pennsylvania	49660	0.8198	0.8802	7.37
39540	Mifflin County, Pennsylvania	99939	0.8305	0.8320	0.18
39550	Monroe County, Pennsylvania	99939	0.8305	0.8320	0.18
39560	Montgomery County, Pennsylvania	37964	1.0980	1.0996	0.15
39580	Montour County, Pennsylvania	99939	0.8305	0.8320	0.18
90 Nor	thampton County, Pennsylvania	10900	0.9832	0.9947	1.17
39600	Northumberland County, Pennsylvania	99939	0.8305	0.8320	0.18
39610	Perry County, Pennsylvania	25420	0.9273	0.9402	1.39
39620	Philadelphia County, Pennsylvania	37964	1.0980	1.0996	0.15
39630	Pike County, Pennsylvania	35084	1.1545	1.1892	3.01
39640	Potter County, Pennsylvania	99939	0.8305	0.8320	0.18
39650	Schuylkill County, Pennsylvania	99939	0.8305	0.8320	0.18
39670	Snyder County, Pennsylvania	99939	0.8305	0.8320	0.18
39680	Somerset County, Pennsylvania	99939	0.8189	0.8320	1.60
39690	Sullivan County, Pennsylvania	99939	0.8305	0.8320	0.18
39700	Susquehanna County, Pennsylvania	99939	0.8305	0.8320	0.18
39710	Tioga County, Pennsylvania	99939	0.8305	0.8320	0.18
39720	Union County, Pennsylvania	99939	0.8305	0.8320	0.18
39730	Venango County, Pennsylvania	99939	0.8305	0.8320	0.18
39740	Warren County, Pennsylvania	99939	0.8305	0.8320	0.18
39750	Washington County, Pennsylvania	38300	0.8853	0.8674	−2.02
39760	Wayne County, Pennsylvania	99939	0.8305	0.8320	0.18
39770	Westmoreland County, Pennsylvania	38300	0.8853	0.8674	−2.02
39790	Wyoming County, Pennsylvania	42540	0.8532	0.8347	−2.17
39800	York County, Pennsylvania	49620	0.9347	0.9397	0.53
40010	Adjuntas County, Puerto Rico	99940	0.3826	0.4047	5.78
40020	Aguada County, Puerto Rico	10380	0.4807	0.3915	−18.56
40030	Aguadilla County, Puerto Rico	10380	0.4807	0.3915	−18.56
40040	Aguas Buenas County, Puerto Rico	41980	0.4687	0.4452	−5.01
40050	Aibonito County, Puerto Rico	41980	0.4113	0.4452	8.24
40060	Anasco County, Puerto Rico	10380	0.4491	0.3915	−12.83

ADDENDUM C.—COMPARISON OF HH PPS TRANSITION WAGE INDEX FOR CY 2006 AND PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX FOR CY 2007—Continued

SSA state/county code	County name	CBSA No.	CY 2006 HH PPS transition wage index	CY2007 CBSA-based wage index	Percent change CY2006–CY2007
40070	Arecibo County, Puerto Rico	41980	0.4367	0.4452	1.95
40080	Arroyo County, Puerto Rico	25020	0.3393	0.3235	−4.66
40090	Barceloneta County, Puerto Rico	41980	0.4687	0.4452	−5.01
40100	Barranquitas County, Puerto Rico	41980	0.4113	0.4452	8.24
40110	Bayamon County, Puerto Rico	41980	0.4687	0.4452	−5.01
40120	Cabo Rojo County, Puerto Rico	41900	0.4447	0.4885	9.85
40130	Caguas County, Puerto Rico	41980	0.4371	0.4452	1.85
40140	Camuy County, Puerto Rico	41980	0.4367	0.4452	1.95
40145	Canovanas County, Puerto Rico	41980	0.4687	0.4452	−5.01
40150	Carolina County, Puerto Rico	41980	0.4687	0.4452	−5.01
40160	Catano County, Puerto Rico	41980	0.4687	0.4452	−5.01
40170	Cayey County, Puerto Rico	41980	0.4371	0.4452	1.85
40180	Ceiba County, Puerto Rico	21940	0.4453	0.4036	−9.36
40190	Ciales County, Puerto Rico	41980	0.4113	0.4452	8.24
40200	Cidra County, Puerto Rico	41980	0.4371	0.4452	1.85
40210	Coamo County, Puerto Rico	99940	0.3826	0.4047	5.78
40220	Comerio County, Puerto Rico	41980	0.4687	0.4452	−5.01
40230	Corozal County, Puerto Rico	41980	0.4687	0.4452	−5.01
40240	Culebra County, Puerto Rico	99940	0.3826	0.4047	5.78
40250	Dorado County, Puerto Rico	41980	0.4687	0.4452	−5.01
40260	Fajardo County, Puerto Rico	21940	0.4453	0.4036	−9.36
40265	Florida County, Puerto Rico	41980	0.4687	0.4452	−5.01
40270	Guanica County, Puerto Rico	49500	0.4006	0.3854	−3.79
40280	Guayama County, Puerto Rico	25020	0.3393	0.3235	−4.66
40290	Guayanilla County, Puerto Rico	49500	0.4645	0.3854	−17.03
40300	Guaynabo County, Puerto Rico	41980	0.4687	0.4452	−5.01
40310	Gurabo County, Puerto Rico	41980	0.4371	0.4452	1.85
40320	Hatillo County, Puerto Rico	41980	0.4367	0.4452	1.95
40330	Hormigueros County, Puerto Rico	32420	0.4132	0.3848	−6.87
40340	Humacao County, Puerto Rico	41980	0.4687	0.4452	−5.01
40350	Isabela County, Puerto Rico	10380	0.4171	0.3915	−6.14
40360	Jayuya County, Puerto Rico	99940	0.3826	0.4047	5.78
40370	Juana Diaz County, Puerto Rico	38660	0.4910	0.4842	−1.38
40380	Juncos County, Puerto Rico	41980	0.4687	0.4452	−5.01
40390	Lajas County, Puerto Rico	41900	0.4127	0.4885	18.37
40400	Lares County, Puerto Rico	10380	0.4171	0.3915	−6.14
40410	Las Marias County, Puerto Rico	99940	0.3826	0.4047	5.78
40420	Las Piedras County, Puerto Rico	41980	0.4687	0.4452	−5.01
40430	Loiza County, Puerto Rico	41980	0.4687	0.4452	−5.01
40440	Luquillo County, Puerto Rico	21940	0.4453	0.4036	−9.36
40450	Manati County, Puerto Rico	41980	0.4687	0.4452	−5.01
40460	Maricao County, Puerto Rico	99940	0.3826	0.4047	5.78
40470	Maunabo County, Puerto Rico	41980	0.4113	0.4452	8.24
40480	Mayaguez County, Puerto Rico	32420	0.4132	0.3848	−6.87
40490	Moca County, Puerto Rico	10380	0.4807	0.3915	−18.56
40500	Morovis County, Puerto Rico	41980	0.4687	0.4452	−5.01
40510	Naguabo County, Puerto Rico	41980	0.4687	0.4452	−5.01
40520	Naranjito County, Puerto Rico	41980	0.4687	0.4452	−5.01
40530	Orocovis County, Puerto Rico	41980	0.4113	0.4452	8.24
40540	Patillas County, Puerto Rico	25020	0.3393	0.3235	−4.66
40550	Penuelas County, Puerto Rico	49500	0.4645	0.3854	−17.03
40560	Ponce County, Puerto Rico	38660	0.4910	0.4842	−1.38
40570	Quebradillas County, Puerto Rico	41980	0.4113	0.4452	8.24
40580	Rincon County, Puerto Rico	10380	0.4171	0.3915	−6.14
40590	Rio Grande County, Puerto Rico	41980	0.4687	0.4452	−5.01
40610	Sabana Grande County, Puerto Rico	41900	0.4447	0.4885	9.85
40620	Salinas County, Puerto Rico	99940	0.3826	0.4047	5.78
40630	San German County, Puerto Rico	41900	0.4447	0.4885	9.85
40640	San Juan County, Puerto Rico	41980	0.4687	0.4452	−5.01
40650	San Lorenzo County, Puerto Rico	41980	0.4371	0.4452	1.85
40660	San Sebastian County, Puerto Rico	10380	0.4171	0.3915	−6.14
40670	Santa Isabel County, Puerto Rico	99940	0.3826	0.4047	5.78
40680	Toa Alta County, Puerto Rico	41980	0.4687	0.4452	−5.01
40690	Toa Baja County, Puerto Rico	41980	0.4687	0.4452	−5.01
40700	Trujillo Alto County, Puerto Rico	41980	0.4687	0.4452	−5.01
40710	Utuado County, Puerto Rico	99940	0.3826	0.4047	5.78
40720	Vega Alta County, Puerto Rico	41980	0.4687	0.4452	−5.01
40730	Vega Baja County, Puerto Rico	41980	0.4687	0.4452	−5.01

ADDENDUM C.—COMPARISON OF HH PPS TRANSITION WAGE INDEX FOR CY 2006 AND PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX FOR CY 2007—Continued

SSA state/county code	County name	CBSA No.	CY 2006 HH PPS transition wage index	CY2007 CBSA-based wage index	Percent change CY2006–CY2007
40740	Vieques County, Puerto Rico	99940	0.3826	0.4047	5.78
40750	Villalba County, Puerto Rico	38660	0.4910	0.4842	−1.38
40760	Yabucoa County, Puerto Rico	41980	0.4687	0.4452	−5.01
40770	Yauco County, Puerto Rico	49500	0.4645	0.3854	−17.03
41000	Bristol County, Rhode Island	39300	1.1012	1.0783	−2.08
41010	Kent County, Rhode Island	39300	1.1012	1.0783	−2.08
41020	Newport County, Rhode Island	39300	1.1012	1.0783	−2.08
41030	Providence County, Rhode Island	39300	1.1012	1.0783	−2.08
41050	Washington County, Rhode Island	39300	1.1012	1.0783	−2.08
42000	Abbeville County, S Carolina	99942	0.8635	0.8566	−0.80
42010	Aiken County, S Carolina	12260	0.9778	0.9667	−1.14
42020	Allendale County, S Carolina	99942	0.8635	0.8566	−0.80
42030	Anderson County, S Carolina	11340	0.9306	0.9017	−3.11
42040	Bamberg County, S Carolina	99942	0.8635	0.8566	−0.80
42050	Barnwell County, S Carolina	99942	0.8635	0.8566	−0.80
42060	Beaufort County, S Carolina	99942	0.8635	0.8566	−0.80
42070	Berkeley County, S Carolina	16700	0.9245	0.9145	−1.08
42080	Calhoun County, S Carolina	17900	0.8844	0.8933	1.01
42090	Charleston County, S Carolina	16700	0.9245	0.9145	−1.08
42100	Cherokee County, S Carolina	99942	0.9127	0.8566	−6.15
42110	Chester County, S Carolina	99942	0.8635	0.8566	−0.80
42120	Chesterfield County, S Carolina	99942	0.8635	0.8566	−0.80
42130	Clarendon County, S Carolina	99942	0.8635	0.8566	−0.80
42140	Colleton County, S Carolina	99942	0.8635	0.8566	−0.80
42150	Darlington County, S Carolina	22500	0.8789	0.8388	−4.56
42160	Dillon County, S Carolina	99942	0.8635	0.8566	−0.80
42170	Dorchester County, S Carolina	16700	0.9245	0.9145	−1.08
42180	Edgefield County, S Carolina	12260	0.9778	0.9667	−1.14
42190	Fairfield County, S Carolina	17900	0.8844	0.8933	1.01
42200	Florence County, S Carolina	22500	0.8995	0.8388	−6.75
42210	Georgetown County, S Carolina	99942	0.8635	0.8566	−0.80
42220	Greenville County, S Carolina	24860	0.9821	0.9804	−0.17
42230	Greenwood County, S Carolina	99942	0.8635	0.8566	−0.80
42240	Hampton County, S Carolina	99942	0.8635	0.8566	−0.80
42250	Horry County, S Carolina	34820	0.8934	0.8810	−1.39
42260	Jasper County, S Carolina	99942	0.8635	0.8566	−0.80
42270	Kershaw County, S Carolina	17900	0.8844	0.8933	1.01
42280	Lancaster County, S Carolina	99942	0.8635	0.8566	−0.80
42290	Laurens County, S Carolina	24860	0.9329	0.9804	5.09
42300	Lee County, S Carolina	99942	0.8635	0.8566	−0.80
42310	Lexington County, S Carolina	17900	0.9070	0.8933	−1.51
42320	Mc Cormick County, S Carolina	99942	0.8635	0.8566	−0.80
42330	Marion County, S Carolina	99942	0.8635	0.8566	−0.80
42340	Marlboro County, S Carolina	99942	0.8635	0.8566	−0.80
42350	Newberry County, S Carolina	99942	0.8635	0.8566	−0.80
42360	Oconee County, S Carolina	99942	0.8635	0.8566	−0.80
42370	Orangeburg County, S Carolina	99942	0.8635	0.8566	−0.80
42380	Pickens County, S Carolina	24860	0.9821	0.9804	−0.17
42390	Richland County, S Carolina	17900	0.9070	0.8933	−1.51
42400	Saluda County, S Carolina	17900	0.8844	0.8933	1.01
42410	Spartanburg County, S Carolina	43900	0.9394	0.9174	−2.34
42420	Sumter County, S Carolina	44940	0.8377	0.8083	−3.51
42430	Union County, S Carolina	99942	0.8635	0.8566	−0.80
42440	Williamsburg County, S Carolina	99942	0.8635	0.8566	−0.80
42450	York County, S Carolina	16740	0.9733	0.9554	−1.84
43010	Aurora County, S Dakota	99943	0.8556	0.8480	−0.89
43020	Beadle County, S Dakota	99943	0.8556	0.8480	−0.89
43030	Bennett County, S Dakota	99943	0.8556	0.8480	−0.89
43040	Bon Homme County, S Dakota	99943	0.8556	0.8480	−0.89
43050	Brookings County, S Dakota	99943	0.8556	0.8480	−0.89
43060	Brown County, S Dakota	99943	0.8556	0.8480	−0.89
43070	Brule County, S Dakota	99943	0.8556	0.8480	−0.89
43080	Buffalo County, S Dakota	99943	0.8556	0.8480	−0.89
43090	Butte County, S Dakota	99943	0.8556	0.8480	−0.89
43100	Campbell County, S Dakota	99943	0.8556	0.8480	−0.89
43110	Charles Mix County, S Dakota	99943	0.8556	0.8480	−0.89
43120	Clark County, S Dakota	99943	0.8556	0.8480	−0.89
43130	Clay County, S Dakota	99943	0.8556	0.8480	−0.89

ADDENDUM C.—COMPARISON OF HH PPS TRANSITION WAGE INDEX FOR CY 2006 AND PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX FOR CY 2007—Continued

SSA state/county code	County name	CBSA No.	CY 2006 HH PPS transition wage index	CY2007 CBSA-based wage index	Percent change CY2006–CY2007
43140	Codington County, S Dakota	99943	0.8556	0.8480	−0.89
43150	Corson County, S Dakota	99943	0.8556	0.8480	−0.89
43160	Custer County, S Dakota	99943	0.8556	0.8480	−0.89
43170	Davison County, S Dakota	99943	0.8556	0.8480	−0.89
43180	Day County, S Dakota	99943	0.8556	0.8480	−0.89
43190	Deuel County, S Dakota	99943	0.8556	0.8480	−0.89
43200	Dewey County, S Dakota	99943	0.8556	0.8480	−0.89
43210	Douglas County, S Dakota	99943	0.8556	0.8480	−0.89
43220	Edmunds County, S Dakota	99943	0.8556	0.8480	−0.89
43230	Fall River County, S Dakota	99943	0.8556	0.8480	−0.89
43240	Faulk County, S Dakota	99943	0.8556	0.8480	−0.89
43250	Grant County, S Dakota	99943	0.8556	0.8480	−0.89
43260	Gregory County, S Dakota	99943	0.8556	0.8480	−0.89
43270	Haakon County, S Dakota	99943	0.8556	0.8480	−0.89
43280	Hamlin County, S Dakota	99943	0.8556	0.8480	−0.89
43290	Hand County, S Dakota	99943	0.8556	0.8480	−0.89
43300	Hanson County, S Dakota	99943	0.8556	0.8480	−0.89
43310	Harding County, S Dakota	99943	0.8556	0.8480	−0.89
43320	Hughes County, S Dakota	99943	0.8556	0.8480	−0.89
43330	Hutchinson County, S Dakota	99943	0.8556	0.8480	−0.89
43340	Hyde County, S Dakota	99943	0.8556	0.8480	−0.89
43350	Jackson County, S Dakota	99943	0.8556	0.8480	−0.89
43360	Jerauld County, S Dakota	99943	0.8556	0.8480	−0.89
43370	Jones County, S Dakota	99943	0.8556	0.8480	−0.89
43380	Kingsbury County, S Dakota	99943	0.8556	0.8480	−0.89
43390	Lake County, S Dakota	99943	0.8556	0.8480	−0.89
43400	Lawrence County, S Dakota	99943	0.8556	0.8480	−0.89
43410	Lincoln County, S Dakota	43620	0.9635	0.9559	−0.79
43420	Lyman County, S Dakota	99943	0.8556	0.8480	−0.89
43430	Mc Cook County, S Dakota	43620	0.9093	0.9559	5.12
43440	Mc Pherson County, S Dakota	99943	0.8556	0.8480	−0.89
43450	Marshall County, S Dakota	99943	0.8556	0.8480	−0.89
43460	Meade County, S Dakota	39660	0.8769	0.8833	0.73
43470	Mellette County, S Dakota	99943	0.8556	0.8480	−0.89
43480	Miner County, S Dakota	99943	0.8556	0.8480	−0.89
43490	Minnehaha County, S Dakota	43620	0.9635	0.9559	−0.79
43500	Moody County, S Dakota	99943	0.8556	0.8480	−0.89
43510	Pennington County, S Dakota	39660	0.8987	0.8833	−1.71
43520	Perkins County, S Dakota	99943	0.8556	0.8480	−0.89
43530	Potter County, S Dakota	99943	0.8556	0.8480	−0.89
43540	Roberts County, S Dakota	99943	0.8556	0.8480	−0.89
43550	Sanborn County, S Dakota	99943	0.8556	0.8480	−0.89
43560	Shannon County, S Dakota	99943	0.8556	0.8480	−0.89
43570	Spink County, S Dakota	99943	0.8556	0.8480	−0.89
43580	Stanley County, S Dakota	99943	0.8556	0.8480	−0.89
43590	Sully County, S Dakota	99943	0.8556	0.8480	−0.89
43600	Todd County, S Dakota	99943	0.8556	0.8480	−0.89
43610	Tripp County, S Dakota	99943	0.8556	0.8480	−0.89
43620	Turner County, S Dakota	43620	0.9093	0.9559	5.12
43630	Union County, S Dakota	43580	0.8966	0.9200	2.61
43640	Walworth County, S Dakota	99943	0.8556	0.8480	−0.89
43650	Washabaugh County, S Dakota	99943	0.8556	0.8480	−0.89
43670	Yankton County, S Dakota	99943	0.8556	0.8480	−0.89
43680	Ziebach County, S Dakota	99943	0.8556	0.8480	−0.89
44000	Anderson County, Tennessee	28940	0.8419	0.8249	−2.02
44010	Bedford County, Tennessee	99944	0.7915	0.7827	−1.11
44020	Benton County, Tennessee	99944	0.7915	0.7827	−1.11
44030	Bledsoe County, Tennessee	99944	0.7915	0.7827	−1.11
44040	Blount County, Tennessee	28940	0.8419	0.8249	−2.02
44050	Bradley County, Tennessee	17420	0.8037	0.8109	0.90
44060	Campbell County, Tennessee	99944	0.7915	0.7827	−1.11
44070	Cannon County, Tennessee	34980	0.8838	0.9847	11.42
44080	Carroll County, Tennessee	99944	0.7915	0.7827	−1.11
44090	Carter County, Tennessee	27740	0.7972	0.8043	0.89
44100	Cheatham County, Tennessee	34980	0.9751	0.9847	0.98
44110	Chester County, Tennessee	27180	0.8964	0.8853	−1.24
44120	Claiborne County, Tennessee	99944	0.7915	0.7827	−1.11
44130	Clay County, Tennessee	99944	0.7915	0.7827	−1.11

ADDENDUM C.—COMPARISON OF HH PPS TRANSITION WAGE INDEX FOR CY 2006 AND PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX FOR CY 2007—Continued

SSA state/county code	County name	CBSA No.	CY 2006 HH PPS transition wage index	CY2007 CBSA-based wage index	Percent change CY2006–CY2007
44140	Cocke County, Tennessee	99944	0.7915	0.7827	−1.11
44150	Coffee County, Tennessee	99944	0.7915	0.7827	−1.11
44160	Crockett County, Tennessee	99944	0.7915	0.7827	−1.11
44170	Cumberland County, Tennessee	99944	0.7915	0.7827	−1.11
44180	Davidson County, Tennessee	34980	0.9751	0.9847	0.98
44190	Decatur County, Tennessee	99944	0.7915	0.7827	−1.11
44200	De Kalb County, Tennessee	99944	0.7915	0.7827	−1.11
44210	Dickson County, Tennessee	34980	0.9751	0.9847	0.98
44220	Dyer County, Tennessee	99944	0.7915	0.7827	−1.11
44230	Fayette County, Tennessee	32820	0.9407	0.9373	−0.36
44240	Fentress County, Tennessee	99944	0.7915	0.7827	−1.11
44250	Franklin County, Tennessee	99944	0.7915	0.7827	−1.11
44260	Gibson County, Tennessee	99944	0.7915	0.7827	−1.11
44270	Giles County, Tennessee	99944	0.7915	0.7827	−1.11
44280	Grainger County, Tennessee	34100	0.7948	0.7933	−0.19
44290	Greene County, Tennessee	99944	0.7915	0.7827	−1.11
44300	Grundy County, Tennessee	99944	0.7915	0.7827	−1.11
44310	Hamblen County, Tennessee	34100	0.7948	0.7933	−0.19
44320	Hamilton County, Tennessee	16860	0.9088	0.8948	−1.54
44330	Hancock County, Tennessee	99944	0.7915	0.7827	−1.11
44340	Hardeman County, Tennessee	99944	0.7915	0.7827	−1.11
44350	Hardin County, Tennessee	99944	0.7915	0.7827	−1.11
44360	Hawkins County, Tennessee	28700	0.8031	0.7985	−0.57
44370	Haywood County, Tennessee	99944	0.7915	0.7827	−1.11
44380	Henderson County, Tennessee	99944	0.7915	0.7827	−1.11
44390	Henry County, Tennessee	99944	0.7915	0.7827	−1.11
44400	Hickman County, Tennessee	34980	0.8838	0.9847	11.42
44410	Houston County, Tennessee	99944	0.7915	0.7827	−1.11
44420	Humphreys County, Tennessee	99944	0.7915	0.7827	−1.11
44430	Jackson County, Tennessee	99944	0.7915	0.7827	−1.11
44440	Jefferson County, Tennessee	34100	0.7948	0.7933	−0.19
44450	Johnson County, Tennessee	99944	0.7915	0.7827	−1.11
44460	Knox County, Tennessee	28940	0.8419	0.8249	−2.02
44470	Lake County, Tennessee	99944	0.7915	0.7827	−1.11
44480	Lauderdale County, Tennessee	99944	0.7915	0.7827	−1.11
44490	Lawrence County, Tennessee	99944	0.7915	0.7827	−1.11
44500	Lewis County, Tennessee	99944	0.7915	0.7827	−1.11
44510	Lincoln County, Tennessee	99944	0.7915	0.7827	−1.11
44520	Loudon County, Tennessee	28940	0.8419	0.8249	−2.02
44530	Mc Minn County, Tennessee	99944	0.7915	0.7827	−1.11
44540	Mc Nairy County, Tennessee	99944	0.7915	0.7827	−1.11
44550	Macon County, Tennessee	34980	0.8838	0.9847	11.42
44560	Madison County, Tennessee	27180	0.8964	0.8853	−1.24
44570	Marion County, Tennessee	16860	0.9088	0.8948	−1.54
44580	Marshall County, Tennessee	99944	0.7915	0.7827	−1.11
44590	Maury County, Tennessee	99944	0.7915	0.7827	−1.11
44600	Meigs County, Tennessee	99944	0.7915	0.7827	−1.11
44610	Monroe County, Tennessee	99944	0.7915	0.7827	−1.11
44620	Montgomery County, Tennessee	17300	0.8284	0.8436	1.83
44630	Moore County, Tennessee	99944	0.7915	0.7827	−1.11
44640	Morgan County, Tennessee	99944	0.7915	0.7827	−1.11
44650	Obion County, Tennessee	99944	0.7915	0.7827	−1.11
44660	Overton County, Tennessee	99944	0.7915	0.7827	−1.11
44670	Perry County, Tennessee	99944	0.7915	0.7827	−1.11
44680	Pickett County, Tennessee	99944	0.7915	0.7827	−1.11
44690	Polk County, Tennessee	17420	0.8037	0.8109	0.90
44700	Putnam County, Tennessee	99944	0.7915	0.7827	−1.11
44710	Rhea County, Tennessee	99944	0.7915	0.7827	−1.11
44720	Roane County, Tennessee	99944	0.7915	0.7827	−1.11
44730	Robertson County, Tennessee	34980	0.9751	0.9847	0.98
44740	Rutherford County, Tennessee	34980	0.9751	0.9847	0.98
44750	Scott County, Tennessee	99944	0.7915	0.7827	−1.11
44760	Sequatchie County, Tennessee	16860	0.8512	0.8948	5.12
44770	Sevier County, Tennessee	99944	0.8146	0.7827	−3.92
44780	Shelby County, Tennessee	32820	0.9407	0.9373	−0.36
44790	Smith County, Tennessee	34980	0.8838	0.9847	11.42
44800	Stewart County, Tennessee	17300	0.8110	0.8436	4.02
44810	Sullivan County, Tennessee	28700	0.8031	0.7985	−0.57

ADDENDUM C.—COMPARISON OF HH PPS TRANSITION WAGE INDEX FOR CY 2006 AND PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX FOR CY 2007—Continued

SSA state/county code	County name	CBSA No.	CY 2006 HH PPS transition wage index	CY2007 CBSA-based wage index	Percent change CY2006–CY2007
44820	Sumner County, Tennessee	34980	0.9751	0.9847	0.98
44830	Tipton County, Tennessee	32820	0.9407	0.9373	−0.36
44840	Trousdale County, Tennessee	34980	0.8838	0.9847	11.42
44850	Unicoi County, Tennessee	27740	0.7972	0.8043	0.89
44860	Union County, Tennessee	28940	0.8419	0.8249	−2.02
44870	Van Buren County, Tennessee	99944	0.7915	0.7827	−1.11
44880	Warren County, Tennessee	99944	0.7915	0.7827	−1.11
44890	Washington County, Tennessee	27740	0.7972	0.8043	0.89
44900	Wayne County, Tennessee	99944	0.7915	0.7827	−1.11
44910	Weakley County, Tennessee	99944	0.7915	0.7827	−1.11
44920	White County, Tennessee	99944	0.7915	0.7827	−1.11
44930	Williamson County, Tennessee	34980	0.9751	0.9847	0.98
44940	Wilson County, Tennessee	34980	0.9751	0.9847	0.98
45000	Anderson County, Texas	99945	0.7967	0.7965	−0.03
45010	Andrews County, Texas	99945	0.7967	0.7965	−0.03
45020	Angelina County, Texas	99945	0.7967	0.7965	−0.03
45030	Aransas County, Texas	18580	0.8241	0.8564	3.92
45040	Archer County, Texas	48660	0.8325	0.8311	−0.17
45050	Armstrong County, Texas	11100	0.8544	0.9169	7.32
45060	Atascosa County, Texas	41700	0.8456	0.8844	4.59
45070	Austin County, Texas	26420	0.8962	1.0008	11.67
45080	Bailey County, Texas	99945	0.7967	0.7965	−0.03
45090	Bandera County, Texas	41700	0.8456	0.8844	4.59
45100	Bastrop County, Texas	12420	0.9437	0.9344	−0.99
45110	Baylor County, Texas	99945	0.7967	0.7965	−0.03
45113	Bee County, Texas	99945	0.7967	0.7965	−0.03
45120	Bell County, Texas	28660	0.8526	0.8901	4.40
45130	Bexar County, Texas	41700	0.8982	0.8844	−1.54
45140	Blanco County, Texas	99945	0.7967	0.7965	−0.03
45150	Borden County, Texas	99945	0.7967	0.7965	−0.03
45160	Bosque County, Texas	99945	0.7967	0.7965	−0.03
45170	Bowie County, Texas	45500	0.8283	0.8104	−2.16
45180	Brazoria County, Texas	26420	0.9278	1.0008	7.87
45190	Brazos County, Texas	17780	0.8900	0.9045	1.63
45200	Brewster County, Texas	99945	0.7967	0.7965	−0.03
45201	Briscoe County, Texas	99945	0.7967	0.7965	−0.03
45210	Brooks County, Texas	99945	0.7967	0.7965	−0.03
45220	Brown County, Texas	99945	0.7967	0.7965	−0.03
45221	Burleson County, Texas	17780	0.8416	0.9045	7.47
45222	Burnet County, Texas	99945	0.7967	0.7965	−0.03
45223	Caldwell County, Texas	12420	0.9437	0.9344	−0.99
45224	Calhoun County, Texas	47020	0.8046	0.8560	6.39
45230	Callahan County, Texas	10180	0.7914	0.8000	1.09
45240	Cameron County, Texas	15180	0.9804	0.9430	−3.81
45250	Camp County, Texas	99945	0.7967	0.7965	−0.03
45251	Carson County, Texas	11100	0.8544	0.9169	7.32
45260	Cass County, Texas	99945	0.7967	0.7965	−0.03
45270	Castro County, Texas	99945	0.7967	0.7965	−0.03
45280	Chambers County, Texas	26420	1.0040	1.0008	−0.32
45281	Cherokee County, Texas	99945	0.7967	0.7965	−0.03
45290	Childress County, Texas	99945	0.7967	0.7965	−0.03
45291	Clay County, Texas	48660	0.8108	0.8311	2.50
45292	Cochran County, Texas	99945	0.7967	0.7965	−0.03
45300	Coke County, Texas	99945	0.7967	0.7965	−0.03
45301	Coleman County, Texas	99945	0.7967	0.7965	−0.03
45310	Collin County, Texas	19124	1.0217	1.0075	−1.39
45311	Collingsworth County, Texas	99945	0.7967	0.7965	−0.03
45312	Colorado County, Texas	99945	0.7967	0.7965	−0.03
45320	Comal County, Texas	41700	0.8982	0.8844	−1.54
45321	Comanche County, Texas	99945	0.7967	0.7965	−0.03
45330	Concho County, Texas	99945	0.7967	0.7965	−0.03
45340	Cooke County, Texas	99945	0.7967	0.7965	−0.03
45341	Coryell County, Texas	28660	0.8526	0.8901	4.40
45350	Cottle County, Texas	99945	0.7967	0.7965	−0.03
45360	Crane County, Texas	99945	0.7967	0.7965	−0.03
45361	Crockett County, Texas	99945	0.7967	0.7965	−0.03
45362	Crosby County, Texas	31180	0.8357	0.8613	3.06
45370	Culberson County, Texas	99945	0.7967	0.7965	−0.03

ADDENDUM C.—COMPARISON OF HH PPS TRANSITION WAGE INDEX FOR CY 2006 AND PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX FOR CY 2007—Continued

SSA state/county code	County name	CBSA No.	CY 2006 HH PPS transition wage index	CY2007 CBSA-based wage index	Percent change CY2006–CY2007
45380	Dallam County, Texas	99945	0.7967	0.7965	−0.03
45390	Dallas County, Texas	19124	1.0217	1.0075	−1.39
45391	Dawson County, Texas	99945	0.7967	0.7965	−0.03
45392	Deaf Smith County, Texas	99945	0.7967	0.7965	−0.03
45400	Delta County, Texas	19124	0.9080	1.0075	10.96
45410	Denton County, Texas	19124	1.0217	1.0075	−1.39
45420	De Witt County, Texas	99945	0.7967	0.7965	−0.03
45421	Dickens County, Texas	99945	0.7967	0.7965	−0.03
45430	Dimmit County, Texas	99945	0.7967	0.7965	−0.03
45431	Donley County, Texas	99945	0.7967	0.7965	−0.03
45440	Duval County, Texas	99945	0.7967	0.7965	−0.03
45450	Eastland County, Texas	99945	0.7967	0.7965	−0.03
45451	Ector County, Texas	36220	0.9813	1.0073	2.65
45460	Edwards County, Texas	99945	0.7967	0.7965	−0.03
45470	Ellis County, Texas	19124	1.0217	1.0075	−1.39
45480	El Paso County, Texas	21340	0.8977	0.9053	0.85
45490	Erath County, Texas	99945	0.7967	0.7965	−0.03
45500	Falls County, Texas	99945	0.7967	0.7965	−0.03
45510	Fannin County, Texas	99945	0.7967	0.7965	−0.03
45511	Fayette County, Texas	99945	0.7967	0.7965	−0.03
45520	Fisher County, Texas	99945	0.7967	0.7965	−0.03
45521	Floyd County, Texas	99945	0.7967	0.7965	−0.03
45522	Foard County, Texas	99945	0.7967	0.7965	−0.03
45530	Fort Bend County, Texas	26420	1.0040	1.0008	−0.32
45531	Franklin County, Texas	99945	0.7967	0.7965	−0.03
45540	Freestone County, Texas	99945	0.7967	0.7965	−0.03
45541	Frio County, Texas	99945	0.7967	0.7965	−0.03
45542	Gaines County, Texas	99945	0.7967	0.7965	−0.03
45550	Galveston County, Texas	26420	0.9814	1.0008	1.98
45551	Garza County, Texas	99945	0.7967	0.7965	−0.03
45552	Gillespie County, Texas	99945	0.7967	0.7965	−0.03
45560	Glasscock County, Texas	99945	0.7967	0.7965	−0.03
45561	Goliad County, Texas	47020	0.8046	0.8560	6.39
45562	Gonzales County, Texas	99945	0.7967	0.7965	−0.03
45563	Gray County, Texas	99945	0.7967	0.7965	−0.03
45564	Grayson County, Texas	43300	0.9507	0.8502	−10.57
45570	Gregg County, Texas	30980	0.8809	0.8788	−0.24
45580	Grimes County, Texas	99945	0.7967	0.7965	−0.03
45581	Guadaloupe County, Texas	41700	0.8982	0.8844	−1.54
45582	Hale County, Texas	99945	0.7967	0.7965	−0.03
45583	Hall County, Texas	99945	0.7967	0.7965	−0.03
45590	Hamilton County, Texas	99945	0.7967	0.7965	−0.03
45591	Hansford County, Texas	99945	0.7967	0.7965	−0.03
45592	Hardeman County, Texas	99945	0.7967	0.7965	−0.03
45600	Hardin County, Texas	13140	0.8412	0.8595	2.18
45610	Harris County, Texas	26420	1.0040	1.0008	−0.32
45620	Harrison County, Texas	99945	0.8446	0.7965	−5.70
45621	Hartley County, Texas	99945	0.7967	0.7965	−0.03
45630	Haskell County, Texas	99945	0.7967	0.7965	−0.03
45631	Hays County, Texas	12420	0.9437	0.9344	−0.99
45632	Hemphill County, Texas	99945	0.7967	0.7965	−0.03
45640	Henderson County, Texas	99945	0.9104	0.7965	−12.51
45650	Hidalgo County, Texas	32580	0.8934	0.8773	−1.80
45651	Hill County, Texas	99945	0.7967	0.7965	−0.03
45652	Hockley County, Texas	99945	0.7967	0.7965	−0.03
45653	Hood County, Texas	99945	0.8763	0.7965	−9.11
45654	Hopkins County, Texas	99945	0.7967	0.7965	−0.03
45660	Houston County, Texas	99945	0.7967	0.7965	−0.03
45661	Howard County, Texas	99945	0.7967	0.7965	−0.03
45662	Hudspeth County, Texas	99945	0.7967	0.7965	−0.03
45670	Hunt County, Texas	19124	1.0217	1.0075	−1.39
45671	Hutchinson County, Texas	99945	0.7967	0.7965	−0.03
45672	Irion County, Texas	41660	0.8101	0.8362	3.22
45680	Jack County, Texas	99945	0.7967	0.7965	−0.03
45681	Jackson County, Texas	99945	0.7967	0.7965	−0.03
45690	Jasper County, Texas	99945	0.7967	0.7965	−0.03
45691	Jeff Davis County, Texas	99945	0.7967	0.7965	−0.03
45700	Jefferson County, Texas	13140	0.8412	0.8595	2.18

ADDENDUM C.—COMPARISON OF HH PPS TRANSITION WAGE INDEX FOR CY 2006 AND PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX FOR CY 2007—Continued

SSA state/county code	County name	CBSA No.	CY 2006 HH PPS transition wage index	CY2007 CBSA-based wage index	Percent change CY2006–CY2007
45710	Jim Hogg County, Texas	99945	0.7967	0.7965	−0.03
45711	Jim Wells County, Texas	99945	0.7967	0.7965	−0.03
45720	Johnson County, Texas	23104	0.9504	0.9569	0.68
45721	Jones County, Texas	10180	0.7914	0.8000	1.09
45722	Karnes County, Texas	99945	0.7967	0.7965	−0.03
45730	Kaufman County, Texas	19124	1.0217	1.0075	−1.39
45731	Kendall County, Texas	41700	0.8456	0.8844	4.59
45732	Kenedy County, Texas	99945	0.7967	0.7965	−0.03
45733	Kent County, Texas	99945	0.7967	0.7965	−0.03
45734	Kerr County, Texas	99945	0.7967	0.7965	−0.03
45740	Kimble County, Texas	99945	0.7967	0.7965	−0.03
45741	King County, Texas	99945	0.7967	0.7965	−0.03
45742	Kinney County, Texas	99945	0.7967	0.7965	−0.03
45743	Kleberg County, Texas	99945	0.7967	0.7965	−0.03
45744	Knox County, Texas	99945	0.7967	0.7965	−0.03
45750	Lamar County, Texas	99945	0.7967	0.7965	−0.03
45751	Lamb County, Texas	99945	0.7967	0.7965	−0.03
45752	Lampasas County, Texas	28660	0.8229	0.8901	8.17
45753	La Salle County, Texas	99945	0.7967	0.7965	−0.03
45754	Lavaca County, Texas	99945	0.7967	0.7965	−0.03
45755	Lee County, Texas	99945	0.7967	0.7965	−0.03
45756	Leon County, Texas	99945	0.7967	0.7965	−0.03
45757	Liberty County, Texas	26420	1.0040	1.0008	−0.32
45758	Limestone County, Texas	99945	0.7967	0.7965	−0.03
45759	Lipscomb County, Texas	99945	0.7967	0.7965	−0.03
45760	Live Oak County, Texas	99945	0.7967	0.7965	−0.03
45761	Llano County, Texas	99945	0.7967	0.7965	−0.03
45762	Loving County, Texas	99945	0.7967	0.7965	−0.03
45770	Lubbock County, Texas	31180	0.8783	0.8613	−1.94
45771	Lynn County, Texas	99945	0.7967	0.7965	−0.03
45772	Mc Culloch County, Texas	99945	0.7967	0.7965	−0.03
45780	Mc Lennan County, Texas	47380	0.8518	0.8633	1.35
45781	Mc Mullen County, Texas	99945	0.7967	0.7965	−0.03
45782	Madison County, Texas	99945	0.7967	0.7965	−0.03
45783	Marion County, Texas	99945	0.7967	0.7965	−0.03
45784	Martin County, Texas	99945	0.7967	0.7965	−0.03
45785	Mason County, Texas	99945	0.7967	0.7965	−0.03
45790	Matagorda County, Texas	99945	0.7967	0.7965	−0.03
45791	Maverick County, Texas	99945	0.7967	0.7965	−0.03
45792	Medina County, Texas	41700	0.8456	0.8844	4.59
45793	Menard County, Texas	99945	0.7967	0.7965	−0.03
45794	Midland County, Texas	33260	0.9628	0.9786	1.64
45795	Milam County, Texas	99945	0.7967	0.7965	−0.03
45796	Mills County, Texas	99945	0.7967	0.7965	−0.03
45797	Mitchell County, Texas	99945	0.7967	0.7965	−0.03
45800	Montague County, Texas	99945	0.7967	0.7965	−0.03
45801	Montgomery County, Texas	26420	1.0040	1.0008	−0.32
45802	Moore County, Texas	99945	0.7967	0.7965	−0.03
45803	Morris County, Texas	99945	0.7967	0.7965	−0.03
45804	Motley County, Texas	99945	0.7967	0.7965	−0.03
45810	Nacogdoches County, Texas	99945	0.7967	0.7965	−0.03
45820	Navarro County, Texas	99945	0.7967	0.7965	−0.03
45821	Newton County, Texas	99945	0.7967	0.7965	−0.03
45822	Nolan County, Texas	99945	0.7967	0.7965	−0.03
45830	Nueces County, Texas	18580	0.8550	0.8564	0.16
45831	Ochiltree County, Texas	99945	0.7967	0.7965	−0.03
45832	Oldham County, Texas	99945	0.7967	0.7965	−0.03
45840	Orange County, Texas	13140	0.8412	0.8595	2.18
45841	Palo Pinto County, Texas	99945	0.7967	0.7965	−0.03
45842	Panola County, Texas	99945	0.7967	0.7965	−0.03
45843	Parker County, Texas	23104	0.9504	0.9569	0.68
45844	Parmer County, Texas	99945	0.7967	0.7965	−0.03
45845	Pecos County, Texas	99945	0.7967	0.7965	−0.03
45850	Polk County, Texas	99945	0.7967	0.7965	−0.03
45860	Potter County, Texas	11100	0.9156	0.9169	0.14
45861	Presidio County, Texas	99945	0.7967	0.7965	−0.03
45870	Rains County, Texas	99945	0.7967	0.7965	−0.03
45871	Randall County, Texas	11100	0.9156	0.9169	0.14

ADDENDUM C.—COMPARISON OF HH PPS TRANSITION WAGE INDEX FOR CY 2006 AND PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX FOR CY 2007—Continued

SSA state/county code	County name	CBSA No.	CY 2006 HH PPS transition wage index	CY2007 CBSA-based wage index	Percent change CY2006–CY2007
45872	Reagan County, Texas	99945	0.7967	0.7965	−0.03
45873	Real County, Texas	99945	0.7967	0.7965	−0.03
45874	Red River County, Texas	99945	0.7967	0.7965	−0.03
45875	Reeves County, Texas	99945	0.7967	0.7965	−0.03
45876	Refugio County, Texas	99945	0.7967	0.7965	−0.03
45877	Roberts County, Texas	99945	0.7967	0.7965	−0.03
45878	Robertson County, Texas	17780	0.8416	0.9045	7.47
45879	Rockwall County, Texas	19124	1.0217	1.0075	−1.39
45880	Runnels County, Texas	99945	0.7967	0.7965	−0.03
45881	Rusk County, Texas	30980	0.8331	0.8788	5.49
45882	Sabine County, Texas	99945	0.7967	0.7965	−0.03
45883	San Augustine County, Texas	99945	0.7967	0.7965	−0.03
45884	San Jacinto County, Texas	26420	0.8962	1.0008	11.67
45885	San Patricio County, Texas	18580	0.8550	0.8564	0.16
45886	San Saba County, Texas	99945	0.7967	0.7965	−0.03
45887	Schleicher County, Texas	99945	0.7967	0.7965	−0.03
45888	Scurry County, Texas	99945	0.7967	0.7965	−0.03
45889	Shackelford County, Texas	99945	0.7967	0.7965	−0.03
45890	Shelby County, Texas	99945	0.7967	0.7965	−0.03
45891	Sherman County, Texas	99945	0.7967	0.7965	−0.03
45892	Smith County, Texas	46340	0.9168	0.8811	−3.89
45893	Somervell County, Texas	99945	0.7967	0.7965	−0.03
45900	Starr County, Texas	99945	0.7967	0.7965	−0.03
45901	Stephens County, Texas	99945	0.7967	0.7965	−0.03
45902	Sterling County, Texas	99945	0.7967	0.7965	−0.03
45903	Stonewall County, Texas	99945	0.7967	0.7965	−0.03
45904	Sutton County, Texas	99945	0.7967	0.7965	−0.03
45905	Swisher County, Texas	99945	0.7967	0.7965	−0.03
45910	Tarrant County, Texas	23104	0.9504	0.9569	0.68
45911	Taylor County, Texas	10180	0.7975	0.8000	0.31
45912	Terrell County, Texas	99945	0.7967	0.7965	−0.03
45913	Terry County, Texas	99945	0.7967	0.7965	−0.03
45920	Throckmorton County, Texas	99945	0.7967	0.7965	−0.03
45921	Titus County, Texas	99945	0.7967	0.7965	−0.03
45930	Tom Green County, Texas	41660	0.8271	0.8362	1.10
45940	Travis County, Texas	12420	0.9437	0.9344	−0.99
45941	Trinity County, Texas	99945	0.7967	0.7965	−0.03
45942	Tyler County, Texas	99945	0.7967	0.7965	−0.03
45943	Upshur County, Texas	30980	0.8809	0.8788	−0.24
45944	Upton County, Texas	99945	0.7967	0.7965	−0.03
45945	Uvalde County, Texas	99945	0.7967	0.7965	−0.03
45946	Val Verde County, Texas	99945	0.7967	0.7965	−0.03
45947	Van Zandt County, Texas	99945	0.7967	0.7965	−0.03
45948	Victoria County, Texas	47020	0.8160	0.8560	4.90
45949	Walker County, Texas	99945	0.7967	0.7965	−0.03
45950	Waller County, Texas	26420	1.0040	1.0008	−0.32
45951	Ward County, Texas	99945	0.7967	0.7965	−0.03
45952	Washington County, Texas	99945	0.7967	0.7965	−0.03
45953	Webb County, Texas	29700	0.8068	0.7811	−3.19
45954	Wharton County, Texas	99945	0.7967	0.7965	−0.03
45955	Wheeler County, Texas	99945	0.7967	0.7965	−0.03
45960	Wichita County, Texas	48660	0.8325	0.8311	−0.17
45961	Wilbarger County, Texas	99945	0.7967	0.7965	−0.03
45962	Willacy County, Texas	99945	0.7967	0.7965	−0.03
45970	Williamson County, Texas	12420	0.9437	0.9344	−0.99
45971	Wilson County, Texas	41700	0.8982	0.8844	−1.54
45972	Winkler County, Texas	99945	0.7967	0.7965	−0.03
45973	Wise County, Texas	23104	0.8709	0.9569	9.87
45974	Wood County, Texas	99945	0.7967	0.7965	−0.03
45980	Yoakum County, Texas	99945	0.7967	0.7965	−0.03
45981	Young County, Texas	99945	0.7967	0.7965	−0.03
45982	Zapata County, Texas	99945	0.7967	0.7965	−0.03
45983	Zavala County, Texas	99945	0.7967	0.7965	−0.03
46000	Beaver County, Utah	99946	0.8440	0.8140	−3.55
46010	Box Elder County, Utah	99946	0.8440	0.8140	−3.55
46020	Cache County, Utah	30860	0.8963	0.9022	0.66
46030	Carbon County, Utah	99946	0.8440	0.8140	−3.55
46040	Daggett County, Utah	99946	0.8440	0.8140	−3.55

ADDENDUM C.—COMPARISON OF HH PPS TRANSITION WAGE INDEX FOR CY 2006 AND PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX FOR CY 2007—Continued

SSA state/county code	County name	CBSA No.	CY 2006 HH PPS transition wage index	CY2007 CBSA-based wage index	Percent change CY2006–CY2007
46050	Davis County, Utah	36260	0.9185	0.8995	−2.07
46060	Duchesne County, Utah	99946	0.8440	0.8140	−3.55
46070	Emery County, Utah	99946	0.8440	0.8140	−3.55
46080	Garfield County, Utah	99946	0.8440	0.8140	−3.55
46090	Grand County, Utah	99946	0.8440	0.8140	−3.55
46100	Iron County, Utah	99946	0.8440	0.8140	−3.55
46110	Juab County, Utah	39340	0.9131	0.9537	4.45
46120	Kane County, Utah	99946	0.9982	0.8140	−18.45
46130	Millard County, Utah	99946	0.8440	0.8140	−3.55
46140	Morgan County, Utah	36260	0.8896	0.8995	1.11
46150	Piute County, Utah	99946	0.8440	0.8140	−3.55
46160	Rich County, Utah	99946	0.8440	0.8140	−3.55
46170	Salt Lake County, Utah	41620	0.9381	0.9402	0.22
46180	San Juan County, Utah	99946	0.8440	0.8140	−3.55
46190	Sanpete County, Utah	99946	0.8440	0.8140	−3.55
46200	Sevier County, Utah	99946	0.8440	0.8140	−3.55
46210	Summit County, Utah	41620	0.9092	0.9402	3.41
46220	Tooele County, Utah	41620	0.9092	0.9402	3.41
46230	Uintah County, Utah	99946	0.8440	0.8140	−3.55
46240	Utah County, Utah	39340	0.9500	0.9537	0.39
46250	Wasatch County, Utah	99946	0.8440	0.8140	−3.55
46260	Washington County, Utah	41100	0.9077	0.9265	2.07
46270	Wayne County, Utah	99946	0.8440	0.8140	−3.55
46280	Weber County, Utah	36260	0.9185	0.8995	−2.07
47000	Addison County, Vermont	99947	0.9830	0.9744	−0.87
47010	Bennington County, Vermont	99947	0.9830	0.9744	−0.87
47020	Caledonia County, Vermont	99947	0.9830	0.9744	−0.87
47030	Chittenden County, Vermont	15540	0.9410	0.9474	0.68
47040	Essex County, Vermont	99947	0.9830	0.9744	−0.87
47050	Franklin County, Vermont	15540	0.9410	0.9474	0.68
47060	Grand Isle County, Vermont	15540	0.9410	0.9474	0.68
47070	Lamoille County, Vermont	99947	0.9830	0.9744	−0.87
47080	Orange County, Vermont	99947	0.9830	0.9744	−0.87
47090	Orleans County, Vermont	99947	0.9830	0.9744	−0.87
47100	Rutland County, Vermont	99947	0.9830	0.9744	−0.87
47110	Washington County, Vermont	99947	0.9830	0.9744	−0.87
47120	Windham County, Vermont	99947	0.9830	0.9744	−0.87
47130	Windsor County, Vermont	99947	0.9830	0.9744	−0.87
48010	St Croix County, Virgin Islands	99948	0.7615	0.8467	11.19
48020	St Thomas-John County, Virgin Islands	99948	0.7615	0.8467	11.19
49000	Accomack County, Virginia	99949	0.8215	0.7940	−3.35
49010	Albemarle County, Virginia	16820	1.0187	1.0125	−0.61
49011	Alexandria City County, Virginia	47894	1.0951	1.1054	0.94
49020	Alleghany County, Virginia	99949	0.8215	0.7940	−3.35
49030	Amelia County, Virginia	40060	0.8873	0.9177	3.43
49040	Amherst County, Virginia	31340	0.8691	0.8694	0.03
49050	Appomattox County, Virginia	31340	0.8554	0.8694	1.64
49060	Arlington County, Virginia	47894	1.0951	1.1054	0.94
49070	Augusta County, Virginia	99949	0.8215	0.7940	−3.35
49080	Bath County, Virginia	99949	0.8215	0.7940	−3.35
49088	Bedford City County, Virginia	31340	0.8691	0.8694	0.03
49090	Bedford County, Virginia	31340	0.8691	0.8694	0.03
49100	Bland County, Virginia	99949	0.8215	0.7940	−3.35
49110	Botetourt County, Virginia	40220	0.8381	0.8647	3.17
49111	Bristol City County, Virginia	28700	0.8031	0.7985	−0.57
49120	Brunswick County, Virginia	99949	0.8215	0.7940	−3.35
49130	Buchanan County, Virginia	99949	0.8215	0.7940	−3.35
49140	Buckingham County, Virginia	99949	0.8215	0.7940	−3.35
49141	Buena Vista City County, Virginia	99949	0.8215	0.7940	−3.35
49150	Campbell County, Virginia	31340	0.8691	0.8694	0.03
49160	Caroline County, Virginia	40060	0.8873	0.9177	3.43
49170	Carroll County, Virginia	99949	0.8215	0.7940	−3.35
49180	Charles City County, Virginia	40060	0.9328	0.9177	−1.62
49190	Charlotte County, Virginia	99949	0.8215	0.7940	−3.35
49191	Charlottesville City County, Virginia	16820	1.0187	1.0125	−0.61
49194	Chesapeake County, Virginia	47260	0.8799	0.8790	−0.10
49200	Chesterfield County, Virginia	40060	0.9328	0.9177	−1.62
49210	Clarke County, Virginia	47894	1.0951	1.1054	0.94

ADDENDUM C.—COMPARISON OF HH PPS TRANSITION WAGE INDEX FOR CY 2006 AND PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX FOR CY 2007—Continued

SSA state/county code	County name	CBSA No.	CY 2006 HH PPS transition wage index	CY2007 CBSA-based wage index	Percent change CY2006–CY2007
49211	Clifton Forge City County, Virginia	99949	0.8215	0.7940	−3.35
49212	Colonial Heights County, Virginia	40060	0.9328	0.9177	−1.62
49213	Covington City County, Virginia	99949	0.8215	0.7940	−3.35
49220	Craig County, Virginia	40220	0.8396	0.8647	2.99
49230	Culpeper County, Virginia	99949	0.9495	0.7940	−16.38
49240	Cumberland County, Virginia	40060	0.8873	0.9177	3.43
49241	Danville City County, Virginia	19260	0.8489	0.8451	−0.45
49250	Dickenson County, Virginia	99949	0.8215	0.7940	−3.35
49260	Dinniddie County, Virginia	40060	0.9328	0.9177	−1.62
49270	Emporia County, Virginia	99949	0.8215	0.7940	−3.35
49280	Essex County, Virginia	99949	0.8215	0.7940	−3.35
49288	Fairfax City County, Virginia	47894	1.0951	1.1054	0.94
49290	Fairfax County, Virginia	47894	1.0951	1.1054	0.94
49291	Falls Church City County, Virginia	47894	1.0951	1.1054	0.94
49300	Fauquier County, Virginia	47894	1.0951	1.1054	0.94
49310	Floyd County, Virginia	99949	0.8215	0.7940	−3.35
49320	Fluvanna County, Virginia	16820	1.0187	1.0125	−0.61
49328	Franklin City County, Virginia	99949	0.8215	0.7940	−3.35
49330	Franklin County, Virginia	40220	0.8396	0.8647	2.99
49340	Frederick County, Virginia	49020	0.9316	1.0091	8.32
49342	Fredericksburg City County, Virginia	47894	1.0951	1.1054	0.94
49343	Galax City County, Virginia	99949	0.8215	0.7940	−3.35
49350	Giles County, Virginia	13980	0.8186	0.8213	0.33
49360	Gloucester County, Virginia	47260	0.8799	0.8790	−0.10
49370	Goochland County, Virginia	40060	0.9328	0.9177	−1.62
49380	Grayson County, Virginia	99949	0.8215	0.7940	−3.35
49390	Greene County, Virginia	16820	1.0187	1.0125	−0.61
49400	Greensville County, Virginia	99949	0.8215	0.7940	−3.35
49410	Halifax County, Virginia	99949	0.8215	0.7940	−3.35
49411	Hampton City County, Virginia	47260	0.8799	0.8790	−0.10
49420	Hanover County, Virginia	40060	0.9328	0.9177	−1.62
49421	Harrisonburg City County, Virginia	25500	0.8753	0.9073	3.66
49430	Henrico County, Virginia	40060	0.9328	0.9177	−1.62
49440	Henry County, Virginia	99949	0.8215	0.7940	−3.35
49450	Highland County, Virginia	99949	0.8215	0.7940	−3.35
49451	Hopewell City County, Virginia	40060	0.9328	0.9177	−1.62
49460	Isle Of Wight County, Virginia	47260	0.8799	0.8790	−0.10
49470	James City Co County, Virginia	47260	0.8799	0.8790	−0.10
49480	King And Queen County, Virginia	40060	0.8873	0.9177	3.43
49490	King George County, Virginia	99949	0.9495	0.7940	−16.38
49500	King William County, Virginia	40060	0.8873	0.9177	3.43
49510	Lancaster County, Virginia	99949	0.8215	0.7940	−3.35
49520	Lee County, Virginia	99949	0.8215	0.7940	−3.35
49522	Lexington County, Virginia	99949	0.8215	0.7940	−3.35
49530	Loudoun County, Virginia	47894	1.0951	1.1054	0.94
49540	Louisa County, Virginia	40060	0.8873	0.9177	3.43
49550	Lunenburg County, Virginia	99949	0.8215	0.7940	−3.35
49551	Lynchburg City County, Virginia	31340	0.8691	0.8694	0.03
49560	Madison County, Virginia	99949	0.8215	0.7940	−3.35
49561	Martinsville City County, Virginia	99949	0.8215	0.7940	−3.35
49563	Manassas City County, Virginia	47894	1.0951	1.1054	0.94
49565	Manassas Park City County, Virginia	47894	1.0951	1.1054	0.94
49570	Mathews County, Virginia	47260	0.8799	0.8790	−0.10
49580	Mecklenburg County, Virginia	99949	0.8215	0.7940	−3.35
49590	Middlesex County, Virginia	99949	0.8215	0.7940	−3.35
49600	Montgomery County, Virginia	13980	0.8186	0.8213	0.33
49610	Nansemond, Virginia	99949	0.8215	0.7940	−3.35
49620	Nelson County, Virginia	16820	0.9302	1.0125	8.85
49621	New Kent County, Virginia	40060	0.9328	0.9177	−1.62
49622	Newport News City County, Virginia	47260	0.8799	0.8790	−0.10
49641	Norfolk City County, Virginia	47260	0.8799	0.8790	−0.10
49650	Northampton County, Virginia	99949	0.8215	0.7940	−3.35
49660	Northumberland County, Virginia	99949	0.8215	0.7940	−3.35
49661	Norton City County, Virginia	99949	0.8215	0.7940	−3.35
49670	Nottoway County, Virginia	99949	0.8215	0.7940	−3.35
49680	Orange County, Virginia	99949	0.8215	0.7940	−3.35
49690	Page County, Virginia	99949	0.8215	0.7940	−3.35
49700	Patrick County, Virginia	99949	0.8215	0.7940	−3.35

ADDENDUM C.—COMPARISON OF HH PPS TRANSITION WAGE INDEX FOR CY 2006 AND PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX FOR CY 2007—Continued

SSA state/county code	County name	CBSA No.	CY 2006 HH PPS transition wage index	CY2007 CBSA-based wage index	Percent change CY2006–CY2007
49701	Petersburg City County, Virginia	40060	0.9328	0.9177	−1.62
49710	Pittsylvania County, Virginia	19260	0.8489	0.8451	−0.45
49711	Portsmouth City County, Virginia	47260	0.8799	0.8790	−0.10
49712	Poquoson City County, Virginia	47260	0.8799	0.8790	−0.10
49720	Powhatan County, Virginia	40060	0.9328	0.9177	−1.62
49730	Prince Edward County, Virginia	99949	0.8215	0.7940	−3.35
49740	Prince George County, Virginia	40060	0.9328	0.9177	−1.62
49750	Prince William County, Virginia	47894	1.0951	1.1054	0.94
49770	Pulaski County, Virginia	13980	0.8186	0.8213	0.33
49771	Radford City County, Virginia	13980	0.8186	0.8213	0.33
49780	Rappahannock County, Virginia	99949	0.8215	0.7940	−3.35
49790	Richmond County, Virginia	99949	0.8215	0.7940	−3.35
49791	Richmond City County, Virginia	40060	0.9328	0.9177	−1.62
49800	Roanoke County, Virginia	40220	0.8381	0.8647	3.17
49801	Roanoke City County, Virginia	40220	0.8381	0.8647	3.17
49810	Rockbridge County, Virginia	99949	0.8215	0.7940	−3.35
49820	Rockingham County, Virginia	25500	0.8753	0.9073	3.66
49830	Russell County, Virginia	99949	0.8215	0.7940	−3.35
49838	Salem County, Virginia	40220	0.8381	0.8647	3.17
49840	Scott County, Virginia	28700	0.8031	0.7985	−0.57
49850	Shenandoah County, Virginia	99949	0.8215	0.7940	−3.35
49860	Smyth County, Virginia	99949	0.8215	0.7940	−3.35
49867	South Boston City County, Virginia	99949	0.8215	0.7940	−3.35
49870	Southampton County, Virginia	99949	0.8215	0.7940	−3.35
49880	Spotsylvania County, Virginia	47894	1.0951	1.1054	0.94
49890	Stafford County, Virginia	47894	1.0951	1.1054	0.94
49891	Staunton City County, Virginia	99949	0.8215	0.7940	−3.35
49892	Suffolk City County, Virginia	47260	0.8799	0.8790	−0.10
49900	Surry County, Virginia	47260	0.8608	0.8790	2.11
49910	Sussex County, Virginia	40060	0.8873	0.9177	3.43
49920	Tazewell County, Virginia	99949	0.8215	0.7940	−3.35
49921	Virginia Beach City County, Virginia	47260	0.8799	0.8790	−0.10
49930	Warren County, Virginia	47894	1.0951	1.1054	0.94
49950	Washington County, Virginia	28700	0.8031	0.7985	−0.57
49951	Waynesboro City County, Virginia	99949	0.8215	0.7940	−3.35
49960	Westmoreland County, Virginia	99949	0.8215	0.7940	−3.35
49961	Williamsburg City County, Virginia	47260	0.8799	0.8790	−0.10
49962	Winchester City County, Virginia	49020	0.9316	1.0091	8.32
49970	Wise County, Virginia	99949	0.8215	0.7940	−3.35
49980	Wythe County, Virginia	99949	0.8215	0.7940	−3.35
49981	York County, Virginia	47260	0.8799	0.8790	−0.10
50000	Adams County, Washington	99950	1.0364	1.0263	−0.97
50010	Asotin County, Washington	30300	1.0052	0.9853	−1.98
50020	Benton County, Washington	28420	1.0619	1.0343	−2.60
50030	Chelan County, Washington	48300	1.0144	1.0346	1.99
50040	Clallam County, Washington	99950	1.0364	1.0263	−0.97
50050	Clark County, Washington	38900	1.1266	1.1416	1.33
50060	Columbia County, Washington	99950	1.0364	1.0263	−0.97
50070	Cowlitz County, Washington	31020	0.9898	1.0011	1.14
50080	Douglas County, Washington	48300	1.0144	1.0346	1.99
50090	Ferry County, Washington	99950	1.0364	1.0263	−0.97
50100	Franklin County, Washington	28420	1.0619	1.0343	−2.60
50110	Garfield County, Washington	99950	1.0364	1.0263	−0.97
50120	Grant County, Washington	99950	1.0364	1.0263	−0.97
50130	Grays Harbor County, Washington	99950	1.0364	1.0263	−0.97
50140	Island County, Washington	99950	1.1039	1.0263	−7.03
50150	Jefferson County, Washington	99950	1.0364	1.0263	−0.97
50160	King County, Washington	42644	1.1572	1.1434	−1.19
50170	Kitsap County, Washington	14740	1.0675	1.0913	2.23
50180	Kittitas County, Washington	99950	1.0364	1.0263	−0.97
50190	Klickitat County, Washington	99950	1.0364	1.0263	−0.97
50200	Lewis County, Washington	99950	1.0364	1.0263	−0.97
50210	Lincoln County, Washington	99950	1.0364	1.0263	−0.97
50220	Mason County, Washington	99950	1.0364	1.0263	−0.97
50230	Okanogan County, Washington	99950	1.0364	1.0263	−0.97
50240	Pacific County, Washington	99950	1.0364	1.0263	−0.97
50250	Pend Oreille County, Washington	99950	1.0364	1.0263	−0.97
50260	Pierce County, Washington	45104	1.0742	1.0789	0.44

ADDENDUM C.—COMPARISON OF HH PPS TRANSITION WAGE INDEX FOR CY 2006 AND PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX FOR CY 2007—Continued

SSA state/county code	County name	CBSA No.	CY 2006 HH PPS transition wage index	CY2007 CBSA-based wage index	Percent change CY2006–CY2007
50270	San Juan County, Washington	99950	1.0364	1.0263	−0.97
50280	Skagit County, Washington	34580	1.0336	1.0517	1.75
50290	Skamania County, Washington	38900	1.0742	1.1416	6.27
50300	Snohomish County, Washington	42644	1.1572	1.1434	−1.19
50310	Spokane County, Washington	44060	1.0905	1.0447	−4.20
50320	Stevens County, Washington	99950	1.0364	1.0263	−0.97
50330	Thurston County, Washington	36500	1.0927	1.1081	1.41
50340	Wahkiakum County, Washington	99950	1.0364	1.0263	−0.97
50350	Walla Walla County, Washington	99950	1.0364	1.0263	−0.97
50360	Whatcom County, Washington	13380	1.1731	1.1104	−5.34
50370	Whitman County, Washington	99950	1.0364	1.0263	−0.97
50380	Yakima County, Washington	49420	1.0155	0.9847	−3.03
51000	Barbour County, W Virginia	99951	0.7809	0.7607	−2.59
51010	Berkeley County, W Virginia	25180	1.0233	0.9038	−11.68
51020	Boone County, W Virginia	16620	0.8173	0.8542	4.51
51030	Braxton County, W Virginia	99951	0.7809	0.7607	−2.59
51040	Brooke County, W Virginia	48260	0.7819	0.8063	3.12
51050	Cabell County, W Virginia	26580	0.9477	0.8997	−5.06
51060	Calhoun County, W Virginia	99951	0.7809	0.7607	−2.59
51070	Clay County, W Virginia	16620	0.8173	0.8542	4.51
51080	Doddridge County, W Virginia	99951	0.7809	0.7607	−2.59
51090	Fayette County, W Virginia	99951	0.7809	0.7607	−2.59
51100	Gilmer County, W Virginia	99951	0.7809	0.7607	−2.59
51110	Grant County, W Virginia	99951	0.7809	0.7607	−2.59
51120	Greenbrier County, W Virginia	99951	0.7809	0.7607	−2.59
51130	Hampshire County, W Virginia	49020	0.9057	1.0091	11.42
51140	Hancock County, W Virginia	48260	0.7819	0.8063	3.12
51150	Hardy County, W Virginia	99951	0.7809	0.7607	−2.59
51160	Harrison County, W Virginia	99951	0.7809	0.7607	−2.59
51170	Jackson County, W Virginia	99951	0.7809	0.7607	−2.59
51180	Jefferson County, W Virginia	47894	1.0951	1.1054	0.94
51190	Kanawha County, W Virginia	16620	0.8445	0.8542	1.15
51200	Lewis County, W Virginia	99951	0.7809	0.7607	−2.59
51210	Lincoln County, W Virginia	16620	0.8173	0.8542	4.51
51220	Logan County, W Virginia	99951	0.7809	0.7607	−2.59
51230	Mc Dowell County, W Virginia	99951	0.7809	0.7607	−2.59
51240	Marion County, W Virginia	99951	0.7809	0.7607	−2.59
51250	Marshall County, W Virginia	48540	0.7161	0.7010	−2.11
51260	Mason County, W Virginia	99951	0.7809	0.7607	−2.59
51270	Mercer County, W Virginia	99951	0.7809	0.7607	−2.59
51280	Mineral County, W Virginia	19060	0.9317	0.8446	−9.35
51290	Mingo County, W Virginia	99951	0.7809	0.7607	−2.59
51300	Monongalia County, W Virginia	34060	0.8160	0.8423	3.22
51310	Monroe County, W Virginia	99951	0.7809	0.7607	−2.59
51320	Morgan County, W Virginia	25180	0.8695	0.9038	3.94
51330	Nicholas County, W Virginia	99951	0.7809	0.7607	−2.59
51340	Ohio County, W Virginia	48540	0.7161	0.7010	−2.11
51350	Pendleton County, W Virginia	99951	0.7809	0.7607	−2.59
51360	Pleasants County, W Virginia	37620	0.8085	0.7977	−1.34
51370	Pocahontas County, W Virginia	99951	0.7809	0.7607	−2.59
51380	Preston County, W Virginia	34060	0.8160	0.8423	3.22
51390	Putnam County, W Virginia	16620	0.8445	0.8542	1.15
51400	Raleigh County, W Virginia	99951	0.7809	0.7607	−2.59
51410	Randolph County, W Virginia	99951	0.7809	0.7607	−2.59
51420	Ritchie County, W Virginia	99951	0.7809	0.7607	−2.59
51430	Roane County, W Virginia	99951	0.7809	0.7607	−2.59
51440	Summers County, W Virginia	99951	0.7809	0.7607	−2.59
51450	Taylor County, W Virginia	99951	0.7809	0.7607	−2.59
51460	Tucker County, W Virginia	99951	0.7809	0.7607	−2.59
51470	Tyler County, W Virginia	99951	0.7809	0.7607	−2.59
51480	Upshur County, W Virginia	99951	0.7809	0.7607	−2.59
51490	Wayne County, W Virginia	26580	0.9477	0.8997	−5.06
51500	Webster County, W Virginia	99951	0.7809	0.7607	−2.59
51510	Wetzel County, W Virginia	99951	0.7809	0.7607	−2.59
51520	Wirt County, W Virginia	37620	0.8085	0.7977	−1.34
51530	Wood County, W Virginia	37620	0.8270	0.7977	−3.54
51540	Wyoming County, W Virginia	99951	0.7809	0.7607	−2.59
52000	Adams County, Wisconsin	99952	0.9494	0.9553	0.62

ADDENDUM C.—COMPARISON OF HH PPS TRANSITION WAGE INDEX FOR CY 2006 AND PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX FOR CY 2007—Continued

SSA state/county code	County name	CBSA No.	CY 2006 HH PPS transition wage index	CY2007 CBSA-based wage index	Percent change CY2006–CY2007
52010	Ashland County, Wisconsin	99952	0.9494	0.9553	0.62
52020	Barron County, Wisconsin	99952	0.9494	0.9553	0.62
52030	Bayfield County, Wisconsin	99952	0.9494	0.9553	0.62
52040	Brown County, Wisconsin	24580	0.9483	0.9787	3.21
52050	Buffalo County, Wisconsin	99952	0.9494	0.9553	0.62
52060	Burnett County, Wisconsin	99952	0.9494	0.9553	0.62
52070	Calumet County, Wisconsin	11540	0.9264	0.9455	2.06
52080	Chippewa County, Wisconsin	20740	0.9201	0.9630	4.66
52090	Clark County, Wisconsin	99952	0.9494	0.9553	0.62
52100	Columbia County, Wisconsin	31540	1.0069	1.0840	7.66
52110	Crawford County, Wisconsin	99952	0.9494	0.9553	0.62
52120	Dane County, Wisconsin	31540	1.0707	1.0840	1.24
52130	Dodge County, Wisconsin	99952	0.9494	0.9553	0.62
52140	Door County, Wisconsin	99952	0.9494	0.9553	0.62
52150	Douglas County, Wisconsin	20260	1.0213	1.0042	−1.67
52160	Dunn County, Wisconsin	99952	0.9494	0.9553	0.62
52170	Eau Claire County, Wisconsin	20740	0.9201	0.9630	4.66
52180	Florence County, Wisconsin	99952	0.9494	0.9553	0.62
52190	Fond Du Lac County, Wisconsin	22540	0.9559	1.0063	5.27
52200	Forest County, Wisconsin	99952	0.9494	0.9553	0.62
52210	Grant County, Wisconsin	99952	0.9494	0.9553	0.62
52220	Green County, Wisconsin	99952	0.9494	0.9553	0.62
52230	Green Lake County, Wisconsin	99952	0.9494	0.9553	0.62
52240	Iowa County, Wisconsin	31540	1.0069	1.0840	7.66
52250	Iron County, Wisconsin	99952	0.9494	0.9553	0.62
52260	Jackson County, Wisconsin	99952	0.9494	0.9553	0.62
52270	Jefferson County, Wisconsin	99952	0.9494	0.9553	0.62
52280	Juneau County, Wisconsin	99952	0.9494	0.9553	0.62
52290	Kenosha County, Wisconsin	29404	1.0095	1.0570	4.71
52300	Kewaunee County, Wisconsin	24580	0.9481	0.9787	3.23
52310	La Crosse County, Wisconsin	29100	0.9564	0.9426	−1.44
52320	Lafayette County, Wisconsin	99952	0.9494	0.9553	0.62
52330	Langlade County, Wisconsin	99952	0.9494	0.9553	0.62
52340	Lincoln County, Wisconsin	99952	0.9494	0.9553	0.62
52350	Manitowoc County, Wisconsin	99952	0.9494	0.9553	0.62
52360	Marathon County, Wisconsin	48140	0.9590	0.9722	1.38
52370	Marinette County, Wisconsin	99952	0.9494	0.9553	0.62
52380	Marquette County, Wisconsin	99952	0.9494	0.9553	0.62
52381	Menominee County, Wisconsin	99952	0.9494	0.9553	0.62
52390	Milwaukee County, Wisconsin	33340	1.0146	1.0218	0.71
52400	Monroe County, Wisconsin	99952	0.9494	0.9553	0.62
52410	Oconto County, Wisconsin	24580	0.9481	0.9787	3.23
52420	Oneida County, Wisconsin	99952	0.9494	0.9553	0.62
52430	Outagamie County, Wisconsin	11540	0.9264	0.9455	2.06
52440	Ozaukee County, Wisconsin	33340	1.0146	1.0218	0.71
52450	Pepin County, Wisconsin	99952	0.9494	0.9553	0.62
52460	Pierce County, Wisconsin	33460	1.1075	1.0946	−1.16
52470	Polk County, Wisconsin	99952	0.9494	0.9553	0.62
52480	Portage County, Wisconsin	99952	0.9494	0.9553	0.62
52490	Price County, Wisconsin	99952	0.9494	0.9553	0.62
52500	Racine County, Wisconsin	39540	0.8997	0.9356	3.99
52510	Richland County, Wisconsin	99952	0.9494	0.9553	0.62
52520	Rock County, Wisconsin	27500	0.9538	0.9655	1.23
52530	Rusk County, Wisconsin	99952	0.9494	0.9553	0.62
52540	St Croix County, Wisconsin	33460	1.1075	1.0946	−1.16
52550	Sauk County, Wisconsin	99952	0.9494	0.9553	0.62
52560	Sawyer County, Wisconsin	99952	0.9494	0.9553	0.62
52570	Shawano County, Wisconsin	99952	0.9494	0.9553	0.62
52580	Sheboygan County, Wisconsin	43100	0.8911	0.9026	1.29
52590	Taylor County, Wisconsin	99952	0.9494	0.9553	0.62
52600	Trempealeau County, Wisconsin	99952	0.9494	0.9553	0.62
52610	Vernon County, Wisconsin	99952	0.9494	0.9553	0.62
52620	Vilas County, Wisconsin	99952	0.9494	0.9553	0.62
52630	Walworth County, Wisconsin	99952	0.9494	0.9553	0.62
52640	Washburn County, Wisconsin	99952	0.9494	0.9553	0.62
52650	Washington County, Wisconsin	33340	1.0146	1.0218	0.71
52660	Waukesha County, Wisconsin	33340	1.0146	1.0218	0.71
52670	Waupaca County, Wisconsin	99952	0.9494	0.9553	0.62

ADDENDUM C.—COMPARISON OF HH PPS TRANSITION WAGE INDEX FOR CY 2006 AND PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX FOR CY 2007—Continued

SSA state/county code	County name	CBSA No.	CY 2006 HH PPS transition wage index	CY2007 CBSA-based wage index	Percent change CY2006–CY2007
52680	Waushara County, Wisconsin	99952	0.9494	0.9553	0.62
52690	Winnebago County, Wisconsin	36780	0.9211	0.9315	1.13
52700	Wood County, Wisconsin	99952	0.9494	0.9553	0.62
53000	Albany County, Wyoming	99953	0.9257	0.9295	0.41
53010	Big Horn County, Wyoming	99953	0.9257	0.9295	0.41
53020	Campbell County, Wyoming	99953	0.9257	0.9295	0.41
53030	Carbon County, Wyoming	99953	0.9257	0.9295	0.41
53040	Converse County, Wyoming	99953	0.9257	0.9295	0.41
53050	Crook County, Wyoming	99953	0.9257	0.9295	0.41
53060	Fremont County, Wyoming	99953	0.9257	0.9295	0.41
53070	Goshen County, Wyoming	99953	0.9257	0.9295	0.41
53080	Hot Springs County, Wyoming	99953	0.9257	0.9295	0.41
53090	Johnson County, Wyoming	99953	0.9257	0.9295	0.41
53100	Laramie County, Wyoming	16940	0.8775	0.9060	3.25
53110	Lincoln County, Wyoming	99953	0.9257	0.9295	0.41
53120	Natrona County, Wyoming	16220	0.9026	0.9145	1.32
53130	Niobrara County, Wyoming	99953	0.9257	0.9295	0.41
53140	Park County, Wyoming	99953	0.9257	0.9295	0.41
53150	Platte County, Wyoming	99953	0.9257	0.9295	0.41
53160	Sheridan County, Wyoming	99953	0.9257	0.9295	0.41
53170	Sublette County, Wyoming	99953	0.9257	0.9295	0.41
53180	Sweetwater County, Wyoming	99953	0.9257	0.9295	0.41
53190	Teton County, Wyoming	99953	0.9257	0.9295	0.41
53200	Uinta County, Wyoming	99953	0.9257	0.9295	0.41
53210	Washakie County, Wyoming	99953	0.9257	0.9295	0.41
53220	Weston County, Wyoming	99953	0.9257	0.9295	0.41
65010	Agana County, Guam	99965	0.9611	0.9611	0.00
65020	Agana Heights County, Guam	99965	0.9611	0.9611	0.00
65030	Agat County, Guam	99965	0.9611	0.9611	0.00
65040	Asan County, Guam	99965	0.9611	0.9611	0.00
65050	Barrigada County, Guam	99965	0.9611	0.9611	0.00
65060	Chalan Pago County, Guam	99965	0.9611	0.9611	0.00
65070	Dededo County, Guam	99965	0.9611	0.9611	0.00
65080	Inarajan County, Guam	99965	0.9611	0.9611	0.00
65090	Maite County, Guam	99965	0.9611	0.9611	0.00
65100	Mangilao County, Guam	99965	0.9611	0.9611	0.00
65110	Merizo County, Guam	99965	0.9611	0.9611	0.00
65120	Mongmong County, Guam	99965	0.9611	0.9611	0.00
65130	Ordot County, Guam	99965	0.9611	0.9611	0.00
65140	Piti County, Guam	99965	0.9611	0.9611	0.00
65150	Santa Rita County, Guam	99965	0.9611	0.9611	0.00
65160	Sinajana County, Guam	99965	0.9611	0.9611	0.00
65170	Talofofo County, Guam	99965	0.9611	0.9611	0.00
65180	Tamuning County, Guam	99965	0.9611	0.9611	0.00
65190	Toto County, Guam	99965	0.9611	0.9611	0.00
65200	Umatac County, Guam	99965	0.9611	0.9611	0.00
65210	Yigo County, Guam	99965	0.9611	0.9611	0.00
65220	Yona County, Guam	99965	0.9611	0.9611	0.00

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Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Contiguous United States Distinct Population Segment of the Canada Lynx; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AU52

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Contiguous United States Distinct Population Segment of the Canada Lynx

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are designating critical habitat for the contiguous United States distinct population segment of the Canada lynx (*Lynx canadensis*) (lynx) pursuant to the Endangered Species Act of 1973, as amended (Act). In total, approximately 1,841 square miles (mi^2) (4,768 square kilometers (km^2)) fall within the boundaries of the critical habitat designation, in three units in the States of Minnesota, Montana, and Washington.

DATES: This rule becomes effective on December 11, 2006.

ADDRESSES: Comments and materials received, as well as supporting documentation used in the preparation of this final rule, are available for public inspection, by appointment, during normal business hours, at the Montana Ecological Services Office, 585 Shepard Way, Helena, Montana 59601 (telephone 406/449–5225). The final rule, environmental assessment, and economic analysis are available via the Internet at *http://mountain-prairie.fws.gov/species/mammals/lynx/criticalhabitat.htm.*

FOR FURTHER INFORMATION CONTACT: Mark Wilson, Field Supervisor, Montana Fish and Wildlife Office, at the above address, (telephone 406/449–5225); Gordon Russell, Field Supervisor, Maine Field Office (207/827–5938); Tony Sullins, Field Supervisor, Twin Cities Field Office (Minnesota) (612/725–3548); or Susan Martin, Field Supervisor, Upper Columbia Fish and Wildlife Office (Washington) (509/891–6839).

SUPPLEMENTARY INFORMATION:

Role of Critical Habitat in Actual Practice of Administering and Implementing the Act

Attention to and protection of habitat is paramount to successful conservation actions. The role that designation of critical habitat plays in protecting habitat of listed species, however, is often misunderstood. As discussed in more detail below in the discussion of exclusions under section 4(b)(2) of the Act, there are significant limitations on the regulatory effect of designation under section 7(a)(2) of the Act. In brief, (1) designation provides additional protection to habitat only where there is a Federal action, known as a ''nexus'', that triggers consultation under section 7 of the Act; (2) the protection is relevant only when, in the absence of designation, destruction or adverse modification of the critical habitat would in fact take place (in other words, other statutory or regulatory protections, policies, or other factors relevant to agency decision-making would not prevent the destruction or adverse modification); and (3) designation of critical habitat triggers the prohibition of destruction or adverse modification of that habitat. However, designation of critical habitat does not require specific actions to restore or improve habitat.

Currently, only 475 species, or 36 percent of the 1,310 listed species in the U.S. under the jurisdiction of the Service, have designated critical habitat. We address the habitat needs of all 1,310 listed species through conservation mechanisms such as listing, section 7 consultations, the section 4 recovery planning process, the section 9 protective prohibitions of unauthorized take, section 6 funding to the States, the section 10 incidental take permit process, and cooperative, nonregulatory efforts with private landowners. The Service believes that it is these measures that may make the difference between extinction and survival for many species.

In considering exclusions of areas originally proposed for designation, we evaluated the benefits of designation in light of *Gifford Pinchot Task Force* v. *United States Fish and Wildlife Service*. In that case, the Ninth Circuit invalidated the Service's regulation defining ''destruction or adverse modification of critical habitat.'' In response, on December 9, 2004, the Director issued guidance to be considered in making section 7 adverse modification determinations. This critical habitat designation does not use the invalidated regulation in our consideration of the benefits of including areas in this final designation. The Service will carefully manage future consultations that analyze impacts to designated critical habitat, particularly those that appear to be resulting in an adverse modification determination. Such consultations will be reviewed by the Regional Office prior to completion to ensure that an adequate analysis has been conducted that is informed by the Director's guidance.

On the other hand, to the extent that designation of critical habitat provides protection, that protection can come at significant social and economic cost. In addition, the mere administrative process of designation of critical habitat is expensive, time-consuming, and controversial. The current statutory framework of critical habitat, combined with past judicial interpretations of the statute, make critical habitat the subject of excessive litigation. As a result, critical habitat designations are driven by litigation and courts rather than biology, and made at a time and under a time frame that limits our ability to obtain and evaluate the scientific and other information required to make the designation most meaningful.

In light of these circumstances, the Service believes that additional agency discretion would allow our focus to return to those actions that provide the greatest benefit to the species most in need of protection.

Procedural and Resource Difficulties in Designating Critical Habitat

We have been inundated with lawsuits for our failure to designate critical habitat, and we face a growing number of lawsuits challenging critical habitat determinations once they are made. These lawsuits have subjected the Service to an ever-increasing series of court orders and court-approved settlement agreements, compliance with which now consumes nearly the entire listing program budget. This leaves the Service with little ability to prioritize its activities to direct scarce listing resources to the listing program actions with the most biologically urgent species conservation needs.

The consequence of the critical habitat litigation activity is that limited listing funds are used to defend active lawsuits, to respond to Notices of Intent (NOIs) to sue relative to critical habitat, and to comply with the growing number of adverse court orders. As a result, listing petition responses, the Service's own proposals to list critically imperiled species, and final listing determinations on existing proposals are all significantly delayed.

The accelerated schedules of court-ordered designations have left the Service with limited ability to provide for public participation or to ensure a defect-free rulemaking process before making decisions on listing and critical habitat proposals, due to the risks associated with noncompliance with judicially imposed deadlines. This in turn fosters a second round of litigation

in which those who fear adverse impacts from critical habitat designations challenge those designations. The cycle of litigation appears endless, and is very expensive, thus diverting resources from conservation actions that may provide relatively more benefit to imperiled species.

The costs resulting from the designation include legal costs, the cost of preparation and publication of the designation, the analysis of the economic effects and the cost of requesting and responding to public comment, and in some cases the costs of compliance with the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*)). These costs directly reduce the funds available for direct and tangible conservation actions.

Background

It is our intent to discuss only those topics directly relevant to the designation of critical habitat in this rule. For more information, refer to the proposed critical habitat rule published in the **Federal Register** on November 9, 2005 (70 FR 68294); the notice reopening the public comment period and clarifying the proposed critical habitat designation, published on February 16, 2006 (71 FR 8258); the notice reopening the comment period that published on September 11, 2006 (71 FR 53,355); the final listing rule published on March 24, 2000 (65 FR 16052); and the clarification of findings published on July 3, 2003 (68 FR 40076).

Previous Federal Actions

For more information on previous Federal actions concerning the lynx, refer to the final listing rule published in the **Federal Register** on March 24, 2000 (65 FR 16052), and the clarification of findings published in the **Federal Register** on July 3, 2003 (68 FR 40076). As a result of litigation from Defenders of Wildlife, *et al.*, the U.S. District Court for the District of Columbia instructed us to propose critical habitat by November 1, 2005, and to issue a final rule for critical habitat by November 1, 2006. The proposed rule to designate critical habitat for the lynx was published in the **Federal Register** on November 9, 2005 (70 FR 68294). A notice reopening the public comment period and clarifying the proposed critical habitat designation was published on February 16, 2006 (71 FR 8258). A Notice of Availability of the draft economic analysis and draft environmental assessment was published on September 11, 2006 (71 FR 53355). This final rule has been completed in compliance with the Court order.

On September 29, 2006, U.S. District Court for the District of Columbia remanded one element of the 2000 listing decision for lynx. The Court requires the Service to explain how ''[c]ollectively the Northeast, Great Lakes, and Southern Rockies do not constitute a significant portion of the [Lynx] DPS.'' The Court reasoned that ''an explanation of an important finding in that prior decision, especially when the explanation (or even the modification or rejection of that explanation) may be relevant to the new rationale it is offering for that decision.'' The Court hoped that the Service can accomplish its task within 90 days, but did not identify a deadline for the remanded decision in its Order. The Service anticipates it will address this issue before the end of this year or early next year, and will make its explanation available in the **Federal Register**.

Summary of Comments and Recommendations

We requested written comments from the public on the proposed designation of critical habitat for the lynx published on November 9, 2005 (70 FR 68294). A notice reopening the public comment period and clarifying the proposed critical habitat designation was published on February 16, 2006 (71 FR 8258). We also contacted appropriate Federal, State, and local agencies; tribes; scientific organizations; and other interested parties and invited them to comment on the proposed rule. The comment period was open from November 9, 2005, to February 7, 2006. It was reopened on February 16 for an additional 74 days until April 30, 2006. On September 11, 2006 (71 FR 53355), the comment period was reopened to receive comment on the draft economic analysis and draft environmental assessment. Comments and new information received that were relevant to the final designation are addressed in the following summary and incorporated into the final rule as appropriate.

During the comment period for the proposed rule that was open between November 9, 2005, and April 30, 2006, we received a total of 8,028 comment letters. For the comment period open from September 11, 2006 to October 11, 2006 we received 1,118 comments. A majority of the comments received were form letters. Comments were received from Federal, State, tribal and local governments, non-government organizations, private businesses, and individuals.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we solicited expert opinions from eleven knowledgeable individuals with scientific expertise that included familiarity with the species, the geographic region in which the species occurs, and conservation biology principles. We received responses from seven of the peer reviewers. The peer reviewers had differing assessments of our methods and conclusions and provided additional information, clarifications, and suggestions to improve the final critical habitat rule. Peer reviewer comments are addressed in the following summary and incorporated into the final rule as appropriate.

We reviewed all comments received from the peer reviewers and the public for substantive issues and new information regarding critical habitat for the lynx and addressed them in the following summary.

Peer Reviewer Comments

1. *Comment:* Some peer reviewers believed that our criteria (especially regarding evidence of occupancy and reproduction) for defining lynx critical habitat were too narrow and/or arbitrary, and resulted in us not including areas they consider important to lynx conservation, particularly the Kettle Range, the Greater Yellowstone Area, the Southern Rockies/Colorado, and a slightly more extensive area in Minnesota. Additionally, we received general comments recommending we designate critical habitat according to the lynx recovery outline, which included the areas of concern noted above by peer reviewers in addition to areas considered secondary or peripheral to recovery. General comments also were concerned with our criteria, asserting we should not restrict our designation solely to areas with confirmed evidence of the presence of reproducing lynx populations because lynx surveys have not been adequate to detect all reproducing lynx populations.

Our response: Critical habitat contributes to the overall conservation of listed species, but does not by itself achieve conservation. It is not the intent of the Act to designate critical habitat for every population or occurrence of lynx. In the ''Criteria Used To Identify Critical Habitat'' section of the proposed and final critical habitat rules, we describe the parameters used for delineating areas that contain the physical and biological features essential to the conservation of lynx, as required by the definition of critical

habitat when considering occupied areas. We determined that occupied areas containing the features essential to the conservation of lynx support the majority of recent lynx records and evidence of breeding lynx populations since 1995, and have direct connectivity with lynx populations in Canada. We relied on records since 1995 to ensure that the proposed critical habitat designation was based on the data that most closely represented the current status of lynx in the contiguous United States and the geographic area occupied by the species. Although the average life span of a wild lynx is not known, we assumed that a lynx born in 1995 could have been alive in 2000 or 2003, the dates of publication of the final listing rule and the clarification of findings. Furthermore, lynx-related research in the contiguous United States substantially increased after the 1998 proposal to list, providing additional information on which to base this proposed critical habitat designation. We recognize that adequate surveys to confirm the presence of breeding lynx populations have not occurred everywhere throughout the species' range; however, no information was provided to us to suggest where there might be undetected breeding populations that we should more closely evaluate for designation as critical habitat other than the areas we already considered. We found the additional areas suggested by commenters were not essential to the conservation of the lynx.

The areas we considered in our methodology for defining critical habitat for the lynx did not mirror the exact areas identified in the recovery outline, but it did reflect the biological concepts considered important in the recovery plan. We used the best science available in determining those areas that contained the features essential for the conservation of lynx. As explained on pages 68302 to 68303 of the critical habitat proposal (November 9, 2005; 70 FR 68294), the areas we determined to be essential for the conservation of lynx do not include all the areas identified in the recovery outline. This is because the criteria we used for determining areas essential to the conservation of lynx for the critical habitat designation based on the critical habitat requirements of the Act which are were more selective than those used for delineating the recovery areas in the lynx recovery outline.

The recovery outline more broadly encompassed older records of lynx and did not focus solely on areas directly connected with populations in Canada, although in the recovery outline it was recognized that maintaining connectivity with Canadian lynx populations was important. Furthermore, the areas in the recovery outline were mapped conceptually and, therefore, include substantial areas which do not contain PCEs for Lynx, which are unoccupied, and therefore not essential to the conservation of Lynx. We refined our mapping for the purposes of designating critical habitat in order to meet the statutory requirements associated with a rulemaking designating critical habitat. As a result, areas determined to be essential to the conservation of lynx for the purposes of critical habitat did not include the entire areas delineated in the recovery outline.

Specifically, following our methodology, the Kettle Range (WA) and Greater Yellowstone core areas and the Southern Rockies provisional core area were determined not to be essential to the conservation of lynx for the purposes of critical habitat as described in detail in the Criteria Used To Identify Critical Habitat section of the proposed rule (November 9, 2005; 70 FR 68294). To summarize: There is no evidence that a lynx population has occupied the Kettle Range since 1995. In the Greater Yellowstone Ecosystem, lynx habitat appears to be of lower quality as indicated by the low numbers of lynx records, and it is not directly connected to lynx populations in Canada. In the Southern Rockies it is still uncertain whether a self-sustaining lynx population will become established as a result of Colorado's reintroduction effort, but we recognize this reintroduction has been an important step, although not essential, toward the recovery of lynx, and thus it is included in the recovery plan, but not the critical habitat designation. Finally, the Southern Rockies are not directly connected to lynx populations in Canada.

A substantial portion of the lynx habitat in the Kettle range, the Greater Yellowstone Area, and the Southern Rockies areas is on Federal lands, particularly U.S. Forest Service (USFS) lands, which conveys considerable management attention for lynx; as a result, these areas do not meet the critical habitat definition. Under a formal conservation agreement with the Service, the USFS committed to largely avoiding adverse effects to lynx and using the Lynx Conservation Assessment and Strategy (LCAS) to guide section 7 effects determinations for lynx pending amendments to Land and Resource Management Plans (LRMPs) that provide guidance for the conservation of lynx (USFS and Service 2006, entire). The LCAS is based on the best available science for lynx (see section 3(5)(A) discussion below). As a result, lynx habitat in these three areas is not in need of special management or protection.

2. *Comment:* Some peer reviewers disagreed with or didn't understand our rationale for removing USFS and Bureau of Land Management (BLM) lands from the designation because these lands support a majority of lynx habitat or lynx occurrence records in their respective geographic regions. One peer reviewer supported removing such lands. Additionally, we received numerous general comments either opposing or supporting the removal of USFS and BLM lands, concerned that not all the LRMPs are complete or will change over time. Others are concerned that recent changes to the 2005 National Forest System Land and Resource Management Planning rules weaken the protective measures in LRMPs.

Our response: U.S. Forest Service lands have been removed from the designation because either their LRMP has already been revised to incorporate lynx conservation measures, as is the situation with the Superior National Forest (NF), or the other National Forests that are operating under a Conservation Agreement with the Service in which the USFS agreed to use the LCAS to guide section 7 effects determinations for lynx (see Application of Section 3(5)(A) discussion, below). The LCAS is the basis for implementing this Conservation Agreement and the Superior NF plan revision. As explained starting on page 68307 of the proposed rule, the LCAS is based on the best available science for lynx. Bureau of Land Management lands, including the Garnet Resource Area and the Spokane District, were removed from the proposed designation because they had already incorporated the provisions of the LCAS into their Resource Management Plans (see Application of Section 3(5)(A) of the Endangered Species Act discussion, below).

Regarding concerns that the 2005 National Forest System Land and Resource Management Planning rules weaken protective measures in the LRMPs, to date, none of the plan amendments for lynx have been completed under the USFS 2005 Planning Rules, and so any conclusions regarding the effect of the rules is speculative. However, we note that future revisions to Forest Service Management Plans will consider the LCAs and include plan direction to provide for the needs of the lynx, pursuant to the MOU between the FWS and USFS.

3. *Comment:* Some peer reviewers were concerned about using the LCAS as a basis for removing lands, such as USFS, from the designation because it is not yet known from a scientific standpoint if the measures in the LCAS will be adequate to conserve lynx. Another peer reviewer agreed that the LCAS was based on the best available science, but was concerned whether it would be kept up-to-date as new information becomes available. Some peer reviewers believed the management scope of the LCAS is limited and, therefore, is unlikely to provide the level of conservation that would be achieved under a critical habitat designation. Additionally, we received general comments with similar concerns about the LCAS or suggesting the LCAS isn't being implemented appropriately.

Our response: As explained starting on page 68307 of the proposed rule, the LCAS is based on the best available science for lynx. The LCAS describes how and when updates will occur and that such updates will be based on the best current lynx science. In fact, revision of the LCAS is currently underway. Commenters did not provide specific examples of how the LCAS has not been properly implemented, and we have no information indicating this is the case. As described in the Application of Section 3(5)(A) of the Endangered Species Act discussion, below, USFS and Service are parties to a conservation agreement that requires the FS to use the LCAS to guide section 7 effects determinations for lynx; all projects in lynx habitat on USFS lands undergo section 7 review and we have no indication the USFS is not adhering to the guidance in the LCAs.

4. *Comment:* One peer reviewer questioned our determination that non-Federal lands require special management because lynx currently use a variety of non-Federal lands that support good lynx habitat as a result of past forest management practices. Prey densities in 15 to 20 years will be determined by current forest management.

Our response: We agree and for this reason, in addition to other reasons, we have excluded all non-Federal lands from the designation (see Exclusions Under Section 4(b)(2) of the Act discussion, below).

General Comments

1. *Comment:* Many commented that our discussion of the value of designating critical habitat, and the procedural and resource difficulties involved, was inappropriate and should be addressed in a different forum, not in a critical habitat rule.

Our response: As discussed in the sections ''Designation of Critical Habitat Provides Little Additional Protection to Species,'' ''Role of Critical Habitat in Actual Practice of Administering and Implementing the Act,'' and ''Procedural and Resource Difficulties in Designating Critical Habitat'' and other sections of this and other critical habitat designations, we believe that, in most cases, other conservation mechanisms provide greater incentives and conservation benefits than does the designation of critical habitat. These other mechanisms include the section 4 recovery planning process, section 6 funding to the States, section 7 consultations, the section 9 protective prohibitions of unauthorized take, the section 10 incidental take permit process, and cooperative programs with private and public landholders and Tribal nations.

2. *Comment:* Many commenters agreed with our discussions in ''Designation of Critical Habitat Provides Little Additional Protection to Species,'' ''Role of Critical Habitat in Actual Practice of Administering and Implementing the Act,'' and ''Procedural and Resource Difficulties in Designating Critical Habitat'' and, as a result, questioned why we would designate critical habitat for the lynx. Additional comments suggested that critical habitat should not be designated because lynx are doing fine without it.

Our response: Section 4(a)(3) of the Act requires that critical habitat be designated for listed species. The lynx was listed as a threatened species under the Act on March 24, 2000 (65 FR 16052). Under section 4(b)(2), the Act requires that a critical habitat designation be made on the basis of the best scientific data available and after taking into consideration the economic impact and any other relevant impact of specifying any particular area as critical habitat. Furthermore, the Service is under an order from the U.S. District Court for the District of Columbia to issue a final rule for critical habitat by November 1, 2006.

In developing this final rule, we considered whether some areas should be designated as critical habitat given the issue the commenters identified about the status of lynx without critical habitat. We took a closer look at the necessity of designating critical habitat on lands managed by non-Federal landowners to determine whether current management was sufficient to conserve lynx. As a result of our additional analysis, we have excluded additional lands from this final rule based on the sufficiency of current management and other reasons (see Exclusions Under Section 4(b)(2) of the Act discussion, below).

3. *Comment:* Numerous commenters asserted that the designation of critical habitat results in an increased regulatory burden, increased landowner costs, and restricted land uses and property rights. Specifically, many private landowners, particularly private timber companies, State, and county entities, commented that this designation would cause them harm economically and delay projects through the regulatory process.

Our response: We have excluded all non-Federal lands from the final designation for the reasons described below in the ''Exclusions Under Section 4(b)(2) of the Act'' discussion, which resolves these concerns. The designation of critical habitat does not itself result in the regulation of non-Federal actions on private lands. However, as discussed in the sections ''Designation of Critical Habitat Provides Little Additional Protection to Species,'' ''Role of Critical Habitat in Actual Practice of Administering and Implementing the Act,'' and ''Procedural and Resource Difficulties in Designating Critical Habitat,'' and other sections of this and other critical habitat designations, we believe that, in most cases, other conservation mechanisms provide greater incentives and conservation benefits than does the designation of critical habitat. These other mechanisms include the section 4 recovery planning process, section 6 funding to the States, the section 9 protective prohibitions of unauthorized take, the section 10 incidental take permit process, and cooperative programs with private and public landholders and Tribal nations. We note that on non-Federal lands there often are no Federal actions necessitating evaluation under section 7 of the Act. The economic issues raised have been addressed in the economic analysis and have been considered during the designation process.

4. *Comment:* Some commenters suggested that the designation will result in an increased regulatory burden because State or local governments (such as county land use planning boards) could promulgate local rules to conserve designated lynx critical habitat.

Our response: We recognize that State and local governments can promulgate regulations or local rules that may be linked to a critical habitat designation. This issue will not be a concern because we have excluded all lands from the final designation except National Parks

(see ''Exclusions Under Section 4(b)(2) of the Act'' discussion below).

5. *Comment:* Some commenters stated that our comment periods for the proposed rule, NEPA document, and economic analysis were inadequate to allow the public to understand and comment meaningfully on the proposed rule.

Our response: The proposed critical habitat rule for the lynx was available to the public for review and comment for 90 days (November 9, 2005, to February 7, 2006.) It was reopened on February 16 for an additional 74 days until April 30, 2006. The amount of time available for the public to comment on the proposed rule was substantially more than for most critical habitat proposals, and was the maximum time practical given the one-year period we had to finalize the rule. The comment period for the economic analysis and NEPA document was open for 30 days, from September 11 to October 11, 2006. We believe the length of the comment period was adequate.

6. *Comment:* Some commenters stated that the Service did not adequately notify landowners about the proposal or where proposed critical habitat was located.

Our response: Because of the large scope of the proposed designation it was not possible to contact each landowner. However, we issued a widely-disseminated news release regarding our proposal, and published legal notices in major newspapers in areas involved in the proposal. We published **Federal Register** notices, including the critical habitat proposal, reopening of the comment period, and the notice of availability of draft documents. We sent hundreds of letters, cards, and e-mails to State and Federal agencies, tribal governments, local governments, private individuals, private companies, non-government organizations, and elected officials announcing the proposal, document availability, and public meetings and hearings. We also issued press releases concurrent with **Federal Register** notice announcements. A Web page of lynx critical habitat materials and information has been maintained at *http://mountain-prairie.fws.gov/species/mammals/lynx/criticalhabitat.htm.* Public hearings, open houses, and meetings on the published proposal were held on the following dates and locations: December 7, 2005, Duluth, MN; December 14, 2005, Orono, ME; January 4, 2006, Helena, MT; January 5, 2006, Great Falls, MT; January 10, 2006, Kalispell, MT; January 18, 2006, Twisp, WA. In the proposed rule we provided contact information for four Service Field Offices for anyone seeking assistance with the proposed critical habitat. Therefore, we believe that we made a conscientious effort to reach all interested parties and provide avenues for them to obtain information concerning our proposal and supporting documents.

We recognize the scale of the maps published in the **Federal Register** made it difficult to accurately identify whether particular parcels of land were included within the proposed designation. However, the descriptions that begin on page 68313 of the proposed rule (November 9, 2005; 70 FR 68294) were provided to assist the public in understanding exactly which lands were proposed as critical habitat.

7. *Comment:* Many commenters expressed concern that commercial and recreational activities such as logging, mining, snowmobiling, off-road vehicles, and downhill skiing, would be prohibited or severely restricted by a designation of critical habitat.

Our response: This issue is no longer a concern because we have excluded all lands from the final designation except National Parks (see ''Exclusions Under Section 4(b)(2) of the Act'' discussion below). All other lands were removed or excluded from the final designation because of existing conservation commitments or because the benefits of excluding these areas exceeded the benefits of including the areas (see Application of Section 3(5)(A) of the Endangered Species Act and Exclusions Under Section 4(b)(2) of the Act discussions, below).

Section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or result in the destruction or adverse modification of critical habitat. If a Federal agency action, such as an action by the National Park Service (NPS), may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Through this consultation, the action agency ensures that their actions do not destroy or adversely modify critical habitat. Section 7 of the Act does not apply to activities on private or other non-Federal lands where there is not a Federal action that triggers consultation, and critical habitat designation would not provide any additional protections under the Act for private or non-Federal activities. Critical habitat would not prohibit private or commercial activities from occurring unless they were occurring on the designated National Park System lands and we determined through a consultation that they would destroy or adversely modify critical habitat. We think this outcome would be highly unlikely given that the mission of the NPS largely prevents private or commercial activities that would result in major impacts to habitat. All parties—Federal, State, private, and tribal—are unable to take (e.g., harm, harass, pursue) listed species under section 9 without the appropriate permit.

8. *Comment:* Some comments recommended excluding areas where landowners participate in the Sustainable Forestry Initiative (SFI) program.

Our response: The SFI program is a condition for membership in the American Forest and Paper Association. The SFI program is a comprehensive system of principles, objectives and performance measures developed by foresters, conservationists and scientists, that combines the perpetual growing and harvesting of trees with the protection of wildlife, plants, soil and water quality (American Forest and Paper Association 2006). The SFI program appears well-intentioned, and can provide benefits to wildlife, and promotes wildlife conservation. The SFI program contains a number of principles and objectives that generally pertain to overall forest health. The objective that is most pertinent to lynx conservation is ''[t]o manage the quality and distribution of wildlife habitats and contribute to the conservation of biological diversity by developing and implementing stand- and landscape-level measures that promote habitat diversity and the conservation of forest plants and animals, including aquatic fauna.'' Therefore, participation in the SFI program is partially a basis for our decision to exclude non-Federal lands managed for commercial forestry from the designation (see Exclusions Under Section 4(b)(2) of the Act discussions, below).

9. *Comment:* Some commenters asserted the designation of critical habitat constitutes an uncompensated taking of private property and is therefore illegal.

Our response: This issue is no longer a concern because we have excluded all lands from the final designation except National Parks (see Exclusions Under Section 4(b)(2) of the Act discussion below). Additionally, the mere promulgation of a regulation, like the enactment of a statute, does not take private property unless the regulation on its face denies the property owners all economically beneficial or productive use of their land. Further, in accordance with Executive Order 12630 (''Government Actions and Interference

with Constitutionally Protected Private Property Rights''), we have analyzed the potential takings implications of designating critical habitat for the lynx in a takings implications assessment. The takings implications assessment concludes that this designation of critical habitat for the lynx does not pose significant takings implications

10. *Comment:* Some commenters asserted that the proposed rule failed to adequately identify the physical or biological features (primary constituent element or PCE) essential to the conservation of the lynx. Some commenters stated the PCE needs to be more narrowly defined. Some commenters suggested that lynx use a wider variety of forest types than those described in the PCE or that lynx subsist on prey other than snowshoe hares. A few commenters claimed that snow is not essential to the lynx because there is no snow in summer.

Our response: The features essential for the conservation of the species were determined based on the best scientific data available on lynx and snowshoe hare ecology. As more thoroughly described in the ''Primary Constituent Element'' section of the proposed rule, starting on page 68299, we determined the PCE to be (1) Boreal forest landscapes supporting a mosaic of differing successional forest stages and containing: (a) presence of snowshoe hares and their preferred habitat conditions, which include dense understories of young trees or shrubs tall enough to protrude above the snow; (b) winter snow conditions that are generally deep and fluffy for extended periods of time; and (c) sites for denning that have abundant, coarse woody debris, such as downed trees and root wads. We recognize the value of observable or measurable standards. Unfortunately, current science is not sufficient to tell us, for example, the minimum density of snowshoe hares necessary to support a reproducing lynx population, nor is there reliable scientific information regarding a specific density or size of coarse woody debris such that a lynx would select for a den site, nor the precise snow conditions (such as depth or other properties) that provide a lynx an advantage over other potential competitors such as coyote or bobcat. As a result, our description of the PCE is as specific as the current science will allow.

The best scientific information has demonstrated that lynx are highly adapted to preying on snowshoe hares and that snowshoe hare density is the most important factor explaining the persistence of lynx populations (see 65 FR 16052, March 24, 2000; 68 FR 40076, July 3, 2003; background section of 70 FR 68294, November 9, 2005; Steury and Murray 2004, p.136). As a result, we determined that habitats containing the features essential to the conservation of lynx are those that support snowshoe hares, despite the fact that lynx are known to prey opportunistically on other small mammals and birds. Lynx populations are found in habitats that support abundant snowshoe hares. Such habitats are generally described as boreal forest or cold temperate forests (Frelich and Reich 1995, p, 325; Agee 2000 pp. 43–46). Because lynx are capable of traveling long distances, they have been documented in a variety of habitat types, but habitat types that are incapable of supporting abundant snowshoe hares are not considered essential to the conservation of lynx. The commenters are correct that most of the areas included in the lynx critical habitat designation do not have snow in summer. Lynx and snowshoe hares are highly evolved to survive deep and/or fluffy snow, which is why we specified winter snow conditions as a component of the PCE. The presence of deep, fluffy snow in the winter gives lynx the competitive advantage over similar-sized carnivores and is a reliable indicator of the most important habitat for lynx persistence in the contiguous United States. All of the areas we are designating as critical habitat have deep, fluffy snow in winter, and this feature is essential to lynx conservation.

11. *Comment:* Some commenters stated that many of the lands included in the proposed designation do not contain the physical and biological features (PCE) identified as being essential to the conservation of the lynx. Additional comments asserted the boundaries we used (such as the 4,000-foot (ft) (1,219-meter (m)) elevation contour or highways) were arbitrary or overly broad.

Our response: The 4,000-ft (1,219–m) elevation contour is used to delineate the boundary within Glacier National Park west of the Continental Divide and the boundary within North Cascades National Park east of the Crest of the Cascade Mountains. As described on page 68299 of the Methods section of the proposed rule (November 9, 2005; 70 FR 68294), the features essential to the conservation of lynx, the majority of lynx records, the evidence of reproduction, and the boreal forest types are found above 4,000 ft in these areas.

Based on recently received landscape-scale vegetation maps for the Northern Rockies and Cascades proposed critical habitat units, we removed public land survey sections that were primarily unforested from the designation. We reviewed aerial photos for particular parcels identified by commenters as not supporting the PCE (such as Minnesota Power and Cleveland Cliffs in Unit 2), and determined that these parcels do not support the PCE. On that basis we removed them from the designation. A 1-mi (1.6-km) buffer along the Lake Superior shoreline and a 10-mi (16-km) circular buffer around Duluth, MN, were removed based on aerial photography showing that existing development in Unit 2 is concentrated in these areas (Industrial Economics, Incorporated 2006, p. 4–12)., limiting the potential of any lynx habitat intermingling in these areas

12. *Comment:* Some commenters recommended that we designate critical habitat in unoccupied habitat. Others suggested that critical habitat units should encompass all lynx occurrence records.

Our response: As explained on page 68298 of the proposed rule (November 9, 2005; 70 FR 68294), the data that define the current and historical range of the lynx at the time of listing constitute the geographic area occupied by the species. At the time of listing, we did not consider any areas within the current or historical range to be unoccupied because the lynx is highly mobile and survey information was spotty and incomplete. We considered critical habitat in areas that have the highest likelihood of supporting reproducing populations of lynx based on: (1) The presence of the PCE; (2) the majority of recent lynx records; (3) recent evidence of breeding lynx populations; and (4) direct connectivity with lynx populations in Canada. Many historic records of lynx occur in areas that do not support extensive boreal forest and abundant snowshoe hares. No evidence suggests that these areas ever supported self-sustaining populations of lynx in the past 100 years (e.g., Oregon) (Aubry 2006, p.2). Pursuant to section 3(5)(A) of the Act, critical habitat shall not include the entire geographical area that can be occupied by the species unless otherwise determined by the Secretary. We have concluded that not all occupied habitat is essential to the conservation of the lynx.

13. *Comment:* Some commenters stated that private lands have few to no Federal actions requiring consultation under section 7 of the Act, suggesting little need or benefit of designating critical habitat on private lands.

Our response: We agree. The fact that Federal actions requiring consultation under section 7 of the Act occur infrequently on private lands weighed into our decision to exclude all private

lands from the designation, including lands managed for commercial forestry, small landowners, and lands not managed for commercial forestry because the benefit of excluding these areas exceeded the benefit of including them (see ''Exclusions Under Section 4(b)(2) of the Act'' discussion, below). Small land parcels and lands not managed for commercial forestry have a minor influence on the features essential to the conservation of lynx because they are small in size relative to the large landscape required to support lynx, particularly compared to the important role and large scale of National Forest lands and lands managed for commercial forestry.

14. *Comment:* Some commenters were concerned that critical habitat designation will create a disincentive for lynx conservation on private lands because consultation under the Act is triggered when landowners participate in Federal programs such as conservation easements or receive Federal funding. Owners of private timber lands said they would be reluctant to accept Federal funding intended to encourage the conservation of private forest lands, such as the USFS Forest Legacy Program, because of the consultation requirement.

Our response: We considered this factor in weighing whether the benefit of exclusion of lands from critical habitat designation exceeded the benefit of their inclusion in critical habitat (see ''Exclusions Under Section 4(b)(2) of the Act'' discussion of section 4(b)(2) exclusions below). As a result, we have excluded non-Federal lands from the final designation. We are obligated to note that Federal funding for conservation on private lands would still be subject to section 7 consultation in areas that are occupied by lynx. However, this requirement has existed since the lynx was listed and is unchanged by our designation of critical habitat.

15. *Comment:* Some commenters believe that designation of critical habitat prior to completion of a lynx recovery plan or other lynx conservation guidance is premature.

Our response: Section 4(a)(3) of the Act requires that critical habitat be designated for listed species within a year of listing. The lynx was listed as a threatened species under the Act in 2000 (March 24, 2000; 65 FR 16052). The designation is made on the basis of the best scientific data available and after taking into consideration the economic impact and any other relevant impact of specifying any particular area as critical habitat. Furthermore, the Service is under an order from the U.S. District Court for the District of Columbia to issue a final rule for critical habitat by November 1, 2006. Therefore, we must proceed with the designation although a recovery plan has not yet been drafted for the lynx.

16. *Comment:* Some commenters pointed out that some of the occurrence data we used to support the proposed critical habitat designation were based on winter track surveys, particularly from Maine, although in the proposed rule we said we only used winter track survey data when confirmed by genetic (DNA) testing.

Our response: We did not include any lands in Maine in the final designation; therefore, this issue is moot. The pooling of snow track survey results with other verified evidence of lynx occurrence was an oversight. However, because of the stringent protocols used in confirming tracks as lynx and the minimal number of species in the area with which lynx tracks could be misidentified in Maine (McCollough 2006), we have high confidence in the accuracy of the Maine snow track data that was incorporated into the data used for the proposed designation.

17. *Comment:* Some commenters suggested that better snow information should have been used to delineate critical habitat boundaries.

Our response: As explained on page 68301 of the proposed rule (November 9, 2005; 70 FR 68294), snow conditions also determine the distribution of lynx. However, available scientific information does not allow us to identify whether a precise snow depth and/or other quality, such as surface hardness or sinking depth, defines lynx use or preference. Information on average snow depth is limited to areas with good coverage by weather stations that record snow depth data. We were able to use average snow depth maps based on weather station data to inform our consideration of lands in Maine and Minnesota. However, in mountainous areas such as the Northern Rockies and Cascades, few weather stations exist, and local topography strongly influences snow conditions. Therefore, snow depth maps were not used for the Northern Rockies or Cascades units, where we relied on lynx occurrence records, vegetation data, and elevation.

18. *Comment:* Some commenters suggested the critical habitat units or the PCEs do not encompass all the areas or features essential to the conservation of lynx. Specifically mentioned were areas that would mitigate the effect of climate change on lynx habitat, provide habitat for dispersing lynx to colonize (such as portions of New Hampshire, New York, North Dakota, Wyoming, Utah, Washington, and Oregon), or lynx travel corridors both within the United States and between the United States and Canada.

Our response: The PCE and the areas proposed as critical habitat represent the features essential to the conservation of lynx. The Act states at section 3(5)(A), that except in particular circumstances determined by the Secretary, critical habitat shall not include the entire geographical area which can be occupied by the threatened or endangered species. It is not the intent of the Act to designate critical habitat for every population and every documented historical location of a species. As described on page 68299 of the proposed rule (November 9, 2005; 70 FR 68294), the areas proposed as critical habitat serve a variety of functions, including providing habitat that may serve as travel corridors to facilitate dispersal and exploratory movements. At this time the biological or physical features of habitats lynx choose for travel or colonization is not well-understood. The extent that climate change might affect lynx habitat is not known, nor do we know if any areas within the contiguous United States would mitigate for habitat changes due to climate change. Therefore, we did not have sufficient data to accurately delineate areas in the contiguous United States that might provide travel, serve as sites for colonization or corridors, or mitigate for climate change.

19. *Comment:* Many commenters assert that the presence of lynx demonstrates that present and past timber management practices (i.e., those that started around 20 years ago and continue today) have created the current habitat conditions that are good for lynx; therefore, critical habitat should not be designated on such lands.

Our response: We agree and for this reason, in addition to others, we have excluded all non-federal lands managed for commercial forestry from the designation (see Exclusions Under Section 4(b)(2) of the Act discussion, below).

20. *Comment:* Washington State Department of Natural Resources requested that their lands be removed from the designation because the agency has implemented a Lynx Habitat Management Plan since 1996 that has been effective in the conservation of lynx habitat and updated the Habitat Management Plan in 2006 to include modifications to avoid the incidental take of lynx.

Our response: We determined that Washington State Department of Natural Resources lands should be removed

from the critical habitat because Washington DNR's plan provides sufficient management so that special management or protection is not required and thus the identified lands do not meet the definition of critical habitat. First, the plan is complete: The original plan was completed in 1996, updates and modifications to the plan were completed in 2006. Second, the plan provides specific provisions for lynx foraging (snowshoe hare) habitat and denning habitat on a landscape scale based on the best available science on lynx and snowshoe hare ecology. Third, the plan has been implemented since 1996. The Service found that implementation of the 1996 plan will maintain the function of the landscape and its capability to support lynx reproduction and was not likely to result in mortality or injury to lynx through significant impairment of breeding, feeding or sheltering or other essential behaviors (Martin 2002). Finally, implementation and effectiveness monitoring reports are provided and are incorporated into the 2006 plan. This issue is discussed in more detail in Exclusions Under Section 4(b)(2) of the Act, below.

21. *Comment:* Montana Department of Natural Resources and Conservation requested that Montana State Trust Lands be excluded from designation because of Montana Department of Natural Resources and Conservation's pending Habitat Conservation Plan that will specifically address lynx conservation.

Our response: We determined that Montana State Trust Lands should be excluded from the designation of critical habitat because the benefits of excluding these lands covered by the pending HCP outweigh the benefits of including them in the designation (see Exclusions Under Section 4(b)(2) of the Act, below). The Lynx Conservation Strategy portion of the pending HCP has undergone public review pursuant to State law and provides for the PCE in that it will provide multistoried boreal forest stands, foraging habitat (i.e., snowshoe hare habitat), lynx denning habitat, and protection for known den sites.

22. *Comment:* Tribes submitted comments requesting their lands be excluded from the designation. We received other comments opposing the exclusion of tribal lands from the designation.

Our response: In accordance with Secretarial Order 3206, ''American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act'' (June 5, 1997); the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951); Executive Order 13175 ''Consultation and Coordination with Indian Tribal Governments;'' and the relevant provision of the Departmental Manual of the Department of the Interior (512 DM 2), we believe that fish, wildlife, and other natural resources on tribal lands are better managed under tribal authorities, policies, and programs than through Federal regulation wherever possible and practicable. Such designation is often viewed by tribes as an unwanted intrusion into tribal self governance, thus compromising the government-to-government relationship essential to achieving our mutual goals of managing for healthy ecosystems upon which the viability of threatened and endangered species populations depend.

We contacted all tribes potentially affected by the proposed designation and met with some of them to discuss their ongoing or future management strategies for lynx. Several tribes subsequently submitted letters requesting exclusion based on their sovereign rights and concerns about the economic impact and affects on their ability to manage natural resources. As described on page 68310 of the proposed rule, we have determined that conservation of lynx can be achieved off tribal lands within the critical habitat units and/or with the cooperation of tribes. The tribal lands included in the proposed designation are found only in the Maine and Minnesota units and the size of the areas are relatively small (approximately 223 and 192 km^2, respectively [86 and 74 mi^2]). Therefore, these tribal lands are excluded from final designation as critical habitat pursuant to section 4(b)(2) of the Act (see Exclusions Under Section 4(b)(2) of the Act discussion, below).

23. *Comment:* Some commenters are concerned the designation provides a mechanism for increased third party litigation.

Our response: We have designated critical habitat for the lynx based upon the statutory obligations and definitions pursuant to sections 3 and 4 of the Act after taking into consideration the best available scientific and commercial information. Further, we have finalized our designation for lynx critical habitat following an evaluation of all conservation measures and partnerships, economics, and other relevant factors and subsequently weighing the benefits of inclusion against the benefits of exclusion pursuant to section 4(b)(2) of the Act. Thus, we believe that we have proposed and designated critical habitat according to the provisions of the Act and our implementing regulations. However, the final designation can be subject to litigation and those affected by the designation may also be vulnerable to third-party litigation if determined not to be in compliance with the provisions and protection of the regulation.

24. *Comment:* Some commenters believe that the analysis for justifying removing USFS lands from the designation was inadequate.

Our response: We have noted the comment and provide an expanded discussion in Application of Section 3(5)(A) of the Act, below. We have concluded that the conservation agreement, proposed plan amendments, and existing LRMPs that include lynx conservation provide sufficient special management for lynx.

25. *Comment:* Some commenters believe that because USFS lands are being managed for lynx under the Conservation Agreement, the lands require special management and, therefore, should not be removed from the designation under section 3(5)(A). Additionally, commenters suggest that removal of USFS lands from the designation violates *Center for Biological Diversity* v. *Norton* (2003).

Our response: Under the definition of critical habitat, an area must be both essential to a species' conservation and require ''special management considerations or protections.'' Our interpretation is that special management or protections are not required if adequate management or protections are already in place. Adequate special management or protection is provided by a plan or agreement that addresses the maintenance and improvement of the primary constituent element for the species and manages for the long-term conservation of the species (see Application of Section 3(5)(A) of the Act, below). In our final designation, we analyzed whether the lands containing the features essential to the conservation of lynx required special management above and beyond what was currently being implemented. Because the USFS's current lynx management conserves lynx, we did not include any USFS lands in the final designation.

26. *Comment:* Removing Federal lands from the designation unfairly and disproportionately places the burden of lynx conservation on non-federal landowners.

Our response: We have excluded all non-federal lands from the final designation for the reasons described below in the Exclusions Under Section 4(b)(2) of the Act discussion, which resolves these concerns.

27. *Comment:* Voluntary, non-regulatory, cooperative conservation strategies would provide more effective lynx conservation than the critical habitat designation.

Our response: In general, we agree with this comment. We responded to this comment by weighing the benefits of exclusion against the benefit of inclusion pursuant to 4(b)(2) of the Act. The benefits of non-regulatory conservation on private, state, and county lands were factored into our decision not to include such lands in the final designation. See Exclusions Under Section 4(b)(2) of the Act discussion below for a complete discussion.

28. *Comment:* Designation of critical habitat would be harmful to lynx conservation because the regulation will make current land use (e.g., logging) unprofitable, causing landowners to sell to developers and resulting in a loss of lynx habitat.

Our response: Our decision to include only National Park Service lands in the final designation resolves these concerns. No logging occurs within NPS lands. It is relevant to note, however, that our economic analysis did not indicate logging would be made unprofitable by the designation of lynx critical habitat. The cost of the designation on timber lands was relatively small on a per-acre basis. Thus, the exclusion of these areas in the final designation was not due to economic impacts. Please refer to our draft and final economic analyses for further detail concerning our estimate of potential economic impacts resulting from the proposed and this final designation.

29. *Comment:* Lands covered by Plum Creek Timber Company's Native Fish Habitat Conservation Plan should be excluded from the designation because the plan conserves riparian zones that function as snowshoe hare habitat, lynx denning habitat, and lynx travel corridors.

Our response: Plum Creek lands are not included in the final designation in part because the company has demonstrated it is a willing partner in fish and wildlife conservation efforts, such as the Native Fish Habitat Conservation Plan, which provides some ancillary benefits to lynx, as described below in the Exclusions Under Section 4(b)(2) of the Act discussion, which resolves this concern. We believe partnerships are essential for the conservation and recovery of lynx.

30. *Comment:* Private lands in Montana covered by the Swan Valley Grizzly Bear Conservation Agreement should be excluded from the designation.

Our response: Private lands in Montana are not included in the final designation for the reasons described below in the Exclusions Under Section 4(b)(2) of the Act discussion, which resolves this concern. We believe that preserving cooperative partnerships such as demonstrated with the Swan Valley Grizzly Bear Agreement, which provides some ancillary benefits to lynx, is essential for the conservation and recovery of lynx.

31. *Comment:* Dense forests required by lynx and snowshoe hares increases the risk of wildfires.

Our response: Wildfire is not thought to be a threat to lynx, and often results in beneficial effects when burned areas regenerate into good lynx foraging habitat. The designation of critical habitat will not prohibit protection of defensible space around homes or the wildland-urban interface. As described in the final rule listing the lynx, natural fire plays an important role in creating the mosaic of vegetation patterns, forest stand ages, and structure that provide good lynx and snowshoe hare habitat, particularly in the western Great Lakes region and in the western mountain ranges of the United States (Agee 2000, pp. 47–56). The final designation includes only National Parks. The National Park Service manages wildfire risk in accordance with the National Fire Plan. We routinely coordinate with NPS on fire projects that may affect listed species pursuant to section 7 of the Act. Typically, NPS fire management projects do not result in adverse effects to lynx. We anticipate that future projects are unlikely to adversely modify its critical habitat.

32. *Comment:* Some commenters questioned the adequacy of the Environmental Assessment (EA) and other aspects of our compliance with NEPA. They believe the Service should prepare an Environmental Impact Statement (EIS) on this action.

Our Response: An EIS is required only in instances where a proposed Federal action is expected to have a significant impact on the human environment. In order to determine whether designation of critical habitat would have such an effect, we prepared an EA of the effects of the proposed designation. We published a Notice of the Availability of the draft EA for public comment on September 11, 2006 (71 FR 53355). Following consideration of public comments, we prepared a final EA and determined that critical habitat designation does not constitute a major Federal action having a significant impact on the human environment. That determination is documented in our Finding of No Significant Impact (FONSI). Both the final EA and FONSI are available on our Web site (see **ADDRESSES** section).

33. *Comment:* Commenters believe that designating State School Trust lands as critical habitat will harm schools and school children because the lands will not be able to be used to fund the School Trust.

Our response: We have excluded all State lands from the final critical habitat designation for the reasons described below in the Exclusions Under Section 4(b)(2) of the Act discussion, which resolves this concern.

34. *Comment:* Some commenters were concerned that the Maine Forest Practices Act (MFPA), which regulates forestry in Maine, is not adequate to provide for the habitat requirements of lynx and, therefore, compliance with the Act should not be a basis for excluding lands from the critical habitat designation.

Our response: We have previously recognized that the shift away from clear-cutting towards partial cutting in Maine creates uncertainty as to the long-range suitability of habitat for lynx. This shift is in large part a result of implementation of the Maine Forest Practices Act (MFPA) starting in 1989 when it was enacted. In our 2003 Remanded Determination regarding the listing of the lynx as a threatened species, we noted that ''*if* harvest practices cease to provide early successional forest with dense understories or stand-replacing disturbances (such as provided by a large clear-cut) in proportions similar to historic conditions, habitat conditions for snow shoe hares and lynx will be diminished.'' 68 FR 40076, 40094 (July 3, 2003) (emphasis added). In that notice, we also stated that ''at this time, we do not know if future timber harvest practices will continue to provide forest conditions that are capable of supporting snowshoe hare densities that can, in turn, support a resident lynx population.'' Id. Our 2005 Lynx Recovery Outline also acknowledges this uncertainty: ''harvest management in Maine has shifted away from clear-cutting and now favors partial cutting, *which in some situations, may* result in less favorable conditions for snowshoe hare and lynx.'' Recovery Outline, p.9 (emphasis added).

We agree that this uncertainty remains. As we have previously noted, lynx preference for regenerating clear-cuts has been well-documented by analyses at landscape- and stand-level scales (Hoving et al. 2004, pp. 291–292; Fuller 2006, p. 31; Robinson 2006, pp.

119–129). Maine lynx habitat models document that lynx avoid partial harvest stands (Hoving et al. 2004, p. 292) or that partial harvested areas are not statistically associated with lynx occurrence at home range and landscape scales (Robinson 2006, pp.122–123). Furthermore, partial harvest stands support substantially lower snowshoe hare densities than regenerating clearcuts (Robinson 2006, p. 9), with many stands below a threshold of 1.1 hares/ha believed necessary to support a lynx population (Steury and Murray 2004, p. 137). But, at least one Maine study suggests that, under certain circumstances, lynx may prefer partially-harvested stands (Fuller 2006, p. 31). We recognize that this study, as with most, has certain limitations, but it does represent a somewhat different conclusion than previous studies about the suitability for lynx of various habitats created through forest management in Maine.

But, long-range habitat suitability in Maine also depends on the distribution, amount, and longevity of habitats created through forest management. Thus another critical question is whether the mosaic created by clear-cutting, which is anticipated to last another 10–15 years, may be replaced over time by across the landscape by other practices.

Neither the MFPA nor its regulations provide prescriptions for age class, distribution of forest, or coarse woody debris. It is important to note that although the MFPA regulates clear-cutting it does not eliminate this practice altogether as some have suggested in their comments. The MFPA allows for the possibility of large clear-cuts (up to 400 acres) so long as such harvesting is accompanied by proper documentation and permits. In 1989, clear-cuts accounted for 45% of the land area harvested and partial harvests 55% (Maine Forest Service 1995, summary statistics). In 1999, clear-cuts accounted for only 3%, whereas partial harvests accounted for 96% (Maine Forest Service 2000, summary statistics). This new silvicultural paradigm has landscape level implications for lynx because larger areas must be logged to supply mills with an equivalent volume of wood. The annual number of acres that is partially harvested has increased 21% from 398,743 acres in 1993 to 481,153 acres in 2004 (Maine Forest Service 2005, summary statistics). As currently implemented, MFPA is adequately providing for the habitat requirements of lynx.

Partnerships will be essential in resolving both these scientific as well as management uncertainties, especially given that the majority of lynx habitat and occurrences occur on private lands managed for commercial forestry in Maine. Agreements and commitments with private landowners to allow access to lands, provide research capabilities and funding, map habitat and correlate it to past and existing forest management practices is necessary to address and reconcile uncertainties about which type and distribution of habitats lynx prefer. Because the amount and quality lynx habitat may ultimately depend on the types and locations of harvesting that are pursued under the MFPA, maintaining working relationships with the commercial timber industry is important, this is especially so because commercial timber operations in Maine typically do not involve Federal actions that would trigger consultation under Section 7 of the Act.

35. *Comment:* Some commenters are concerned that certification programs and voluntary agreements were not working well on corporate forestlands in Maine and Montana and, therefore, should not be a basis for excluding such lands from the final critical habitat designation. Specific information was provided about Maine Department of Inland Fisheries and Wildlife's (MDIFW) concern about Plum Creek's reluctance to abide by voluntary, cooperative deer wintering area agreements that were negotiated with the previous owner. Commenters asserted that Plum Creek's land management in Montana includes activities that may threaten lynx, such as precommercial thinning that decreases the quality of snowshoe hare habitat; and divesting of its land holdings, which may then be developed.

Our response: Several corporate forest landowners in Maine, including Plum Creek, have voluntary agreements with MDIFW to manage deer wintering habitat. These agreements enable the state to work in partnership with forest industry to manage for deer wintering habitat. Given the significant turnover in corporate forest land ownership in Maine in the last 15 years, agreements with previous companies need to be renegotiated with the new owners. New landowners sometimes do not honor the agreements made by previous landowners and cut in deer wintering areas. Deer wintering areas are large areas of mature softwood, usually in riparian areas. Although these are boreal habitats, they generally do not provide quality habitat for snowshoe hares or lynx. Lynx in Maine prefer young, regenerating softwood stands. Cutting deer wintering habitat may have created lynx habitat.

The lynx forest management strategy offered by the Maine Forest Products Council applies to about 400 member landowners that comprise about 84% of the proposed Maine Unit of the critical habitat. The lynx management specified in the strategy applies to current and future landowners. Thus, as landowners change, there is a good probability that the lynx strategy will apply to future corporate forestry landowners.

Section 7 of the Act only applies to activities on private lands where there is a Federal action that triggers consultation; critical habitat designation would not provide any additional protections under the Act to address activities on private lands that do not involve a Federal action. We weighed the benefits of exclusion against the benefit of inclusion pursuant to section 4(b)(2) of the Act. The benefits of preserving effective partnerships with private landowners and encouraging non-regulatory conservation on private lands managed for commercial forestry factored into our decision to exclude such lands. Specifically, Plum Creek has demonstrated it is a willing and effective partner in various fish and wildlife conservation efforts; it contributes funding for lynx research and allows research to occur on its properties, as well as managing habitat that supports lynx and other species, both protected and unprotected. See Exclusions Under Section 4(b)(2) of the Act discussion below for a complete discussion of specific exclusions.

Comments on Economic Issues

General Comments on Methodology and Scope

1. *Comment:* Cook County commented that the draft economic analysis (DEA) does not include a breakdown of economic impacts by county. Similarly, Lutsen-Tolfte Tourism Association and Lutsen Mountains Ski resort suggested that the Service should separately analyze the developed portion of Cook County in Northeastern Minnesota, as it comprises the majority of the existing development and industry in the County.

Our response: As described in Section 2.1, an economic analysis of this type must make a determination of the geographic level at which to present results. In this case, the DEA provides economic impacts at the subunit level, which is defined by landowner type (e.g., private timberlands, State lands, etc.). Landowner type was selected as the geographic scale of the analysis, as impacts across land use types were expected to be more homogenous than across political boundaries, such as

cities or counties. Impacts of lynx conservation on Cook County lands are, therefore, summarized according to the subunits that intersect Cook County in Unit 2. These are the Superior National Forest, Unknown Private Landowner, MN Department of Natural Resources, Private Mining Company Lands, and Tribal Lands subunits.

2. *Comment:* One comment stated that the DEA refers to a ''one mile buffer along the coast of Lake Superior'' as being excluded from the economic analysis. The commenter requests clarification regarding the actual delineation of critical habitat as Section 4(b)(2) of the Act requires economic analysis of areas proposed to be included in the designation, and thus including the 1-mile buffer as critical habitat without analyzing the economic data would be a violation of the Act.

Our response: The DEA does not refer to the 1-mile buffer surrounding Lake Superior as being excluded from the economic analysis. These areas were explicitly considered in the DEA as described in Section 4.3.2.

3. *Comment:* One commenter stated that the DEA should include the direct cost to the private sector and Federal agencies of dealing with critical habitat through interactions with Federal agencies regarding permits or sales. This commenter also stated that the DEA should consider the indirect costs of dealing with project delays and the legal costs associated with critical habitat designation that accrue to both the public and private sector.

Our response: Appendix A of the DEA quantifies the administrative costs to public and private entities of section 7 consultations, a direct impact of critical habitat designation. These impacts of complying with section 7 of the Act are included in the total economic impact estimates provided in the DEA. The DEA also considers the impact of project delays. For example, the analysis quantifies construction of new roads to access timber or mining projects to avoid delays associated with lynx conservation concerns.

4. *Comment:* One comment highlighted that the DEA does not quantify impacts to mines, development, and grazing in the area. Another comment questioned why the DEA presents the full value estimates for development and mining.

Our response: Since the publication of the DEA, a supplemental analysis of impacts to development was undertaken and will be incorporated in the Final Economic Analysis (Final EA). As described in Section 6.5 of the DEA, absent information regarding how or whether grazing activities may be impacted by lynx conservation, the DEA provides information on the geographic areas grazed and the full value of the grazing within the study area. While not an impact estimate, this information is useful for decision making by identifying the distribution of grazing activity across the study area. Section 8 of the economic analysis does quantify impacts to mining activities.

5. *Comment:* Plum Creek Timber Company, Inc. commented that the DEA does not consider that an acre of land may have both timber and potentially substantial future additional value, and thus the DEA underestimates the potential value at risk associated with critical habitat designation. The comment further stated that all of Plum Creek's lands have some future value (including recreation, conservation, and higher and better uses) in addition to current use values, regardless of Plum Creek's ultimate use of the land. The assumption that an acre of land is primarily used for one use (rendering the value of secondary uses negligible), therefore, underestimates the total acreage at risk of losing value.

Our response: The DEA does not assume that the primary land use of an acre is its only value, or that other components of the total value are negligible. Rather, the DEA recognizes that the value of an acre encompasses the value of all of its foreseeable future uses. The DEA uses existing zoning and land use information to identify acres that are expected to have a value associated with the option for future development. For land parcels for which the only foreseeable future use is timber (based on available data), however, the potential of that parcel to be developed is unknown within the timeframe of the analysis, and, therefore, the parcel does not have an estimated development option value in the DEA. This characterizes the majority of the Plum Creek lands in both Maine and Montana. Communication with land value appraisers in Montana confirmed that the appraised value of parcels for which timber management is the only current and known future use do not include a measurable value associated with the option for future development. To the extent that these lands may be developed in the future absent lynx conservation, the DEA underestimates impacts related to development on these parcels.

6. *Comment:* Defenders of Wildlife commented that the DEA omits assessment of benefits from increased direct uses including welfare gains for participants in non-motorized recreation activities that benefit from restrictions on snowmobiling, or avoided loss of scenic beauty for recreationists due to prevented destruction of habitat for development.

Our response: As discussed in Section 1.2.4 of the DEA, these types of benefits are considered in the analysis. However, similar to the calculation of benefits related to viewing lynx, information regarding the number of non-snowmobilers recreating in the area is not readily available, and the extent to which lynx-related restrictions increases enjoyment of non-motorized recreation due to reduced noise pollution, or increases the scenic beauty of the study area, is unknown.

7. *Comment:* Defenders of Wildlife stated that the DEA violates its own study parameters in order to incorporate project costs that occur beyond the 20-year timeframe of the analysis. In particular, the commenter notes that pre-commercial thinning impacts would change from a net cost to a net benefit if the DEA respected its own temporal boundaries of analysis.

Our response: As stated in Section 1.3, the DEA forecasts impacts to activities that are considered ''reasonably foreseeable.'' Where information is available to reliably forecast economic activity beyond the 20-year timeframe, this analysis incorporates that information. For timber management, silvicultural planning typically occurs over a long time horizon (e.g., 100 years). The DEA, therefore, forecasts impacts to activities in the timber industry accordingly. Reporting only the first 20 years of impacts of restrictions on precommercial thinning would result in the reporting of a net benefit of these restrictions, as the costs of these restrictions are experienced at the time of harvest (e.g., reduced yield). Reporting a net benefit or precluding precommercial thinning from the analysis would be misleading, however, as precommercial thinning would not likely be undertaken if it did not offer a long-term benefit to landowners.

8. *Comment:* Pingree Associates, Inc., commented that the DEA was prepared based on substandard information with no peer review and that there was no adherence to any appraisal standards in determining values of forestlands.

Our response: The DEA applies the best available information, and was peer-reviewed by forest economists from both Maine and Montana. As described in Section 4 and Appendix D, the land appraisal information applied in the DEA is from recent appraisals by the Maine Revenue Service. This information is used by the Land Use Regulatory Commission in Maine, and was cross-checked with a number of

stakeholders, including the University of Maine and the Maine Department of Inland Fisheries and Wildlife.

Comments on Timber Analysis

9. *Comment:* A comment provided by Maine Audubon asserted that the DEA overestimates the number of acres likely to be precommercially thinned. The DEA estimates that over a 100-year period, 6.1 million acres will be precommercially thinned; Maine Audubon estimates that this should be closer to 2.1 million acres. The comment further states that timber impacts in Maine should be estimated over a 30-year projection, rather than 100 years due to the short tenure of most timberland ownerships.

Our response: The DEA applied the best available information regarding the potential impact of precluding precommercial thinning in Maine. The estimates are based on previously conducted modeling by the University of Maine Cooperative Forestry Research Unit as described in Section 3 and Appendix D. Results applied in the DEA from the existing model are estimated benefits of precommercial thinning on a per-acre basis for the entire State of Maine over a 100-year timeframe, based on the recent, observed level of precommercial thinning. The application of this model to the DEA was reviewed and considered reasonable by multiple stakeholders and peer reviewers. Further, the tenure of a landowner is not relevant to the timeframe of the analysis, as the impacts estimated are not specific to current landowners, but to land parcels.

10. *Comment:* The Montana Wood Products Association commented that the assumption in the DEA that there is no market for precommercially thinned material is incorrect. In Montana existing facilities that function on residuals from timber harvesting would be impacted by restrictions on precommercial thinning. This comment further stated that the assumption that future stumpage prices will be comparable to past prices is unfounded.

Our response: As described in Section 3.2 of the DEA, Scenario 2 of timber analysis assumes that no ready market exists for slash from precommercial thinning. To the extent that a market for this residual does exist within the study area, the DEA acknowledges in Exhibit 3–7 and on page 3–9 that timber impacts could be underestimated. An increase in biomass energy production would create demand and provide a market for residuals from precommercial thinning. This comment suggests that the market for residuals from precommercial thinning exists in certain areas of the proposed critical habitat. As timber harvests would not be precluded under any of the scenarios considered in the DEA, it is unlikely that this market would be completely eliminated, however, as there would still be residual material from harvests available for these facilities.

11. *Comment:* One comment highlighted that Exhibit 3–7 of the DEA states that differences in quality between thinned and unthinned stands are not taken into consideration, and noted that precommercial thinning would not be undertaken if it had no purpose.

Our response: Following discussions with a variety of timberland stakeholders, the DEA timber analysis focused on the benefits in quantity and timing of the harvest resulting from precommercial thinning rather than the potential increases in quality of the wood harvested. Benefits related to an increased quality are highly dependent on the initial quality of the stand, which was unknown across the study area. To the extent that restricting precommercial thinning leads to decreased quality of wood harvested from a stand, the analysis may underestimate impacts, as noted in Exhibit 3–7.

12. *Comment:* One commenter noted that the impacts cited in the Section 3 did not match those in the Executive Summary, and were significantly higher.

Our response: The figure of $808 million referred to in the Key Findings for the Timber analysis in page ES–3 of the DEA was a rounding error and has been corrected to show $809 million. Other timber analysis results cited in the Executive Summary are correct and match those in Section 3.

13. *Comment:* Maine Forest Products Council asserted that the full value of timberland estimated for Maine was understated because the $300/per acre value applied did not account for the entire ''timber capital value.'' The commenter stated that many timberland transactions have occurred that have exceeded those values.

Our response: As described in Appendix D of the DEA, the average per-acre timber value of $300 applied in the DEA for Maine represents the value of land as a silvicultural input, which generally reflects the present value of the standing timber. This estimate is based on information regarding appraised value of lands where timber is the only use. This value represented an average value, thus, it is likely that there have been transactions exceeding this value. The $300-per-acre average value was confirmed with a number of stakeholders and peer reviewers.

14. *Comment:* One commenter expressed concern that the DEA does not consider the broader economic impacts that stem from the effect critical habitat designation could have on the overall strength of the forest products industry in Maine and its global competitiveness.

Our response: The DEA provides information on the full value of the timberland within the study area, as well as information regarding the potential impacts to the timber industry under two scenarios, one with restrictions on precommercial thinning, and one without. As described in Section 3.2 of the DEA, under Scenario 1, no impacts to the quantity of timber harvested on private lands is forecast, while under Scenario 2, impacts to timber harvest quantity are forecast in the future as a result of restrictions on precommercial thinning practices. The full value of the timberland in Maine is presented along with the impact of lynx conservation on the timber resource to provide context to the impact estimate, and its relative effect on the regional timber industry.

15. *Comment:* The Maine Forest Products Council commented that the DEA does not address the impact of the designation on spruce plantations. Additionally, the commenter is concerned that the report does not address the potential for a future spruce budworm outbreak and the impact the designation could have on the ability of the State and its timberland owners to deal with the next outbreak.

Our response: The analysis of impacts to the timber industry did not focus on impacts to plantations as this was not the focus of the timber-related conservation guidelines described in the LCAS. As discussed in Section 1.4 of the DEA, the LCAS is considered by the Service to be the best information available regarding conservation measures for the lynx. The DEA assumes that, absent more specific information, public and private landowners across the proposed critical habitat will use the LCAS as a model for lynx conservation needs. To the extent that limiting precommercial thinning can multiply the impact of an upcoming spruce-budworm epidemic, the analysis may have underestimated impacts to the timber industry. No models are available, however, to link restrictions on precommercial thinning with increased probability or severity of spruce budworm outbreaks.

16. *Comment:* One comment stated that the DEA does not address the impact of changes in wood supply

within the study area on industry located outside the study area.

Our response: Scenario 2 of the timber analysis in the DEA quantifies impacts to future timber harvest resulting from a restriction on precommercial thinning practices. The DEA does not make any assumptions about where the harvested timber is delivered, within or outside of the proposed critical habitat, but instead focuses on the estimated decreased value of a timber stand to the landowner as a result of restrictions on precommercial thinning. Any impacts to mills associated with a decreased supply of timber as a result of precommercial thinning restrictions would occur at the time of harvest, which may be 60 to 100 years (depending on harvest rotation schedules) from the time the restrictions on thinning are implemented. Further, while Section D.1.2 of the DEA states that the best available information indicates that approximately 1 percent of the timber lands are precommercially thinned per year, information is not readily available describing which particular parcels would be thinned in a given year, or which specific mills (within or outside of the study area) rely on those particular stands.

17. *Comment:* Comments from Pingree Associates, Inc., and the American Forest and Paper Association (AFPA) stated that limiting the discussion on forest management impacts to precommercial thinning restrictions is inadequate and misleading. Pingree Associates asserted that, from past experience with critical habitats for other species, a high probability exists that designation of critical habitat will require additional set-asides and lead to restrictions on commercial thinning and harvesting. AFPA cited the Washington State Department of Natural Resources standards, which they believe, if applied across the critical habitat, would result in a greatly increased calculation of economic impact.

Our response: The DEA applies information from the LCAS regarding the types of habitat-related conservation measures that may be requested to benefit the lynx. Information in the LCAS and from review of past consultations does not indicate that additional set-asides or restrictions on commercial thinning will be recommended for the benefit of the lynx. While the WADNR standards are similar to the LCAS, the LCAS has been applied to a broader geographic area.

18. *Comment:* The American Forest and Paper Association (AFPA) argues that using full value of timberlands shown in Exhibit 3–2 in the DEA would provide a more appropriate 'high impact' benchmark for measuring and weighing the benefits and economic impacts of the critical habitat designation.

Our response: The DEA does not consider the full values of designated timberland to be a valid estimate of impacts of lynx habitat-related conservation, as there is no basis to assume this full value could be lost due to the proposed critical habitat. Rather, the DEA is based on information contained in the LCAS about how timber activities would be expected to change under the proposed critical habitat designation as described in Section 3.2.

19. *Comment:* The Montana Wood Products Association stated the assumption that future stumpage prices will be comparable to past prices is unfounded. Similarly, the American Forest and Paper Association stated that rising stumpage prices resulting from restrictions in timber management may also place in jeopardy portions of the pulp and paper industry or solid wood products industry in the affected States.

Our response: As stated in Exhibit 3–7, the DEA made the simplifying assumption that future stumpage prices would be similar to past stumpage prices. Specifically, the analysis utilized the most recent information available (from 2005) for stumpage prices for Minnesota and Montana, and relied on analyses provided by the University of Maine, Idaho Department of Lands, and Washington State Department of Natural Resources for impacts in those areas. This assumption and impact analysis method was peer reviewed by forest economists in both Maine and Montana.

20. *Comment:* F.H. Stoltze Land and Lumber Company commented that it is a small family-owned business that is directly affected by the critical habitat through purchase of USFS sales, Special Use Permits for access and radio towers, contract road maintenance, and participation in stewardship contracts, and that none of these issues are considered in the DEA. The commenter further stated that the estimated $652 per acre of timberland in Western Montana is not the appropriate market value and that the DEA underestimates that value of thinning and returns to forest landowners. F.H. Stoltze Land and Lumber Company also commented that the DEA does not reflect the use of fertilization, which is also used on Stoltze lands. The commenter further states that studies have shown they can achieve a 50 to 60 percent increase in growth rates by using the 20-foot spacing and fertilization and that these lost revenues and costs should be considered in the economic analysis.

Our response: Impacts related to special use permits and road maintenance on Federal lands were considered in Section 3 of the DEA. The estimated per-acre value is an average; thus, it is not surprising that some sales of specific lands will be well above this average due to factors such as location, access and quality. Also, as discussed in Section 1.4 of the DEA, the DEA assumes that the LCAS is the best information available regarding conservation measures for the lynx and the LCAS does not suggest any habitat-related conservation measures related to the use of fertilizers; thus no impacts to fertilization activities are expected. Stoltze lands are excluded from critical habitat in the final designation for biological reasons.

Comments on Development Analysis

21. *Comment:* One commenter stated that because the DEA relies on existing zoning status, it underestimates the amount of land in Maine that may be subject to development as future changes in zoning may occur.

Our response: Section 4.2 of the DEA highlights that, while the analysis does not account for potential changes in future zoning across the study area, the relatively rural character of the area does not suggest that significant levels of re-zoning will be necessary to accommodate the existing development pressure. To the extent that development pressure increases in this region and rezoning occurs, however, the DEA will underestimate the number of developable acres in the study area in Maine.

22. *Comment:* Maine Audubon commented that the DEA calculates revenues likely to be lost if no development is allowed on lands currently zoned for development in Maine. The comment argued that this assumes that there is no silvicultural value of those lands, and that no development will be allowed under the designation, and these are unlikely assumptions.

Our response: The DEA does not calculate lost revenues as a result of restrictions on development, but rather reduced value of land as a result of precluding the option to develop. Further, the DEA does assume that silviculture is a potential use of these lands and, therefore, if development is precluded, the land retains its silvicultural value. While the DEA provides information on the full value of the option to develop the study area, it does so due to lack of information regarding how development projects

may be modified for the benefit of the lynx as described in Section 4.2 and does not assume that all development within the study area will be precluded as a result of lynx conservation.

23. *Comment:* A comment from Cook County, Minnesota, noted that, although the DEA provides information on the full value of developable land in Unit 2 ($1.56 billion), the total economic impacts of lynx conservation provided is an underestimate of costs because impacts to the developable lands are not assessed and added.

Our response: The comment correctly highlights that the DEA did not quantify impacts to potential development activities, but rather provides the full option value of future development within the study area. Since the publication of the DEA, a supplemental analysis of impacts to development was completed by the economists, and will be incorporated in the Final Economic Analysis (Final EA). The supplemental development analysis estimated impacts to development in Unit 2 to be $658 million to $709 million.

24. *Comment:* Plum Creek Timber Company, Inc., commented that the DEA should consider conservation easement values as a proxy for future development value, as development value of timber acres is overlooked in the DEA. Maine Forest Products Council commented that the analysis of development in Maine does not look at any development proposals, empirical market information, analysis of comparable market sales, or appraisal information, and it posits no build-out scenarios. This commenter also expressed concern that there is no consideration of development value on backland, which they suggest could be based on available information from the sale of conservation easements. The commenter provides information on two conservation easement sales and applies these per-acre values to estimate potential development value of some lands in the study area in Maine.

Our response: The values of conservation easements can serve as a proxy for the value of a parcel for development. Research was undertaken in the development of the DEA on per-acre values of conservation easements in the study area. In order to transfer the value of development from a conservation easement to other parcels, however, information is needed on the relationship between land attributes, such as distance from existing development and roads, proximity to water bodies, etc., and the easement values. Without information on the attributes of specific parcels that may be developed, values of conservation easements could not be transferred from easement lands to the specific parcels as a proxy of their development value.

25. *Comment:* A comment provided by Cook County, Minnesota, states that the DEA underestimates the amount of developable land in Cook County.

Our response: As highlighted in this comment, approximately 91 percent of the lands in Cook County are public forest lands; the private lands in the County are primarily inholdings within these public forests. Where information was available to identify the private inholdings among the public lands, those private lands were considered developable. For example, 291 acres in the southwestern corner of Cook County were identified as privately owned, and considered developable in the DEA. Best available data regarding landownership within Unit 2, however, is imperfect and may not identify all of the private inholdings within the forests, in which case impacts may be underestimated.

26. *Comment:* A comment provided by Lutsen Mountains Ski Area asserted that the DEA should consider ''other relevant impacts'' of the designation, including any resulting increased local standards on land use decisions, such as zoning and issuance of building permits. This may require hiring of experts, analysis, and public hearings before the planning commission and county board.

Our response: The area of Cook County, Minnesota, to which this comment refers is a developed area, containing recreational, commercial, and residential infrastructure. Existing development and infrastructure is excluded from critical habitat in the proposed rule. The analysis, therefore, does not quantify impacts associated with increased standards on local land use regulation associated with lynx conservation.

27. *Comment:* A comment from F.H. Stoltze Land and Lumber Company asserted that the use of $932 per acre as the value for development in Montana is too low.

Our response: As described in Section 4.3.3, the DEA did not apply an average per-acre value for developable lands in Montana but instead applied parcel-specific appraisal data from the Montana Department of Administration, Information Technology Services. The average per-acre value is presented for context, although the specific values of parcels ranged across the region.

Comments on the Recreation Analysis

28. *Comment:* Two comments asserted that the DEA should consider the benefit to the economy of wildlife watching, including having lynx available to watch. One commenter highlights the National Survey of Fishing, Hunting, and Wildlife-Associated Recreation estimates that 778,000 people participated in wildlife-watching in Maine in 2001, spending an average of $445 per participant.

Our response: Section 1.2.4 of the DEA acknowledges the potential for benefits to the wildlife-viewing community of lynx conservation efforts. Three pieces of information would be required to estimate economic benefits derived from lynx-viewing: (1) The number of visitors that may engage in lynx-viewing (the National Survey evidences the importance of wildlife-viewing for all species in the entire State, not that specifically related to lynx or within the lynx habitat area); (2) the extent to which the likelihood of viewing lynx may be increased due to the lynx conservation efforts described in this analysis; and (3) the incremental value of a wildlife-viewing trip associated with lynx sightings. These data are not available. To the extent that the conservation efforts quantified in the DEA increase the likelihood of a lynx sighting, and wildlife-viewing participants positively value that opportunity, impacts in the DEA may be overestimated.

29. *Comment:* A comment from Lutsen Mountains Ski Area stated that, while the DEA considers impacts associated with increased congestion on snowmobiling trails and costs of hunter and trapper education, it does not consider recreation activities occurring in Cook County, including alpine skiing, golfing, hiking, cross country skiing, and mountain biking.

Our response: The DEA considers activities that represent a conservation threat to the lynx, and how they may be affected by lynx conservation. As described in Section 4.2 of the DEA, existing infrastructure related to recreation, such as ski resorts or golf courses, are not considered critical habitat as described in the proposed rule and, therefore, are not expected to be impacted by lynx conservation as they do not support the lynx (70 FR 68304–5). The DEA looks at expansions of existing recreation areas and developments of new trails that may impact the proposed critical habitat for the lynx. Accordingly, the DEA quantifies impacts in Cook County associated with precluding the development of new trails, which may be used, for example, for snowmobiling.

30. *Comment:* Maine Audubon and Defenders of Wildlife commented that the recreation analysis in the DEA should not include the costs of hunter

and trapper education programs as these programs are required regardless of critical habitat designation because the lynx is a threatened species.

Our response: As described in Section 1.2 of the DEA, due to the difficulty in making a credible distinction between listing and critical habitat effects within critical habitat boundaries, this analysis considers all future conservation-related impacts to be co-extensive with the designation.

31. *Comment:* One comment provided on the DEA states that roadless areas of the National Forest System are the best hunting areas, and the DEA should therefore consider that the enhancement and maintenance of fish and wildlife species as a result of designating critical habitat will also enhance hunting and tourism sectors of local economies.

Our response: While maintenance and enhancement of hunting areas provides a benefit to hunters, and potentially tourism, within the region, the extent to which the conservation efforts quantified in the DEA contribute to the improved quantity (area) and/or quality (*e.g.*, game density) of the forests for hunting is unknown. In the case that restrictions on development within the habitat area increase the total amount of land available for hunting in the future, information is required regarding whether additional hunters would use the region, or whether density of hunters across the region would decrease, to provide an associated welfare benefit.

32. *Comment:* The Maine Forest Products Council asserted that the analysis should weigh the impact of fewer snowmobilers recreating in Maine with the demand for purchasing lands in the study area, including impacts on forestland value, lease-lot values, conservation easement values, and backland camplot values.

Our response: This comment asserts that demand for purchasing lands in the study area will decrease as a result of decreases in the number of snowmobilers recreating in the region. As described in Section 5.2, the DEA assumes there will be no decrease in the number of snowmobilers recreating in the study area in Maine. Rather, the DEA assumes that the same number of snowmobilers will be recreating on fewer trails in the future, as it assumes snowmobilers will not be deterred by the increased densities projected. Therefore, the DEA does not estimate a decreased demand on land purchases.

33. *Comment:* The Northwest Environmental Defense Center commented that the analysis of impacts to the snowmobiling industry is flawed. The DEA uses the results of a study of the impacts of increased crowding of snowmobilers at Yellowstone National Park. The Northwest Environmental Defense Center asserts that Yellowstone National Park is significantly more crowded than the areas in question in the DEA.

Our response: Appendix E of the DEA discusses the limitations associated with applying the results of the Yellowstone study to the impacts to snowmobilers in the DEA, and acknowledges the comment raised above. However, this study represents the best available information regarding the impacts of increased crowding of snowmobilers. The commenter states that the baseline density of snowmobilers in Yellowstone is higher than that in the study area. For this reason, Scenario 1 of the recreation impact analysis assumes that snowmobilers do not experience a reduced value for snowmobiling trips as described in Section 5.2 of the DEA.

34. *Comment:* A comment provided by the Washington State Snowmobile Association asserted that the DEA failed to consider impacts to the regional economy in Washington of curtailing snowmobiling. It further states that, although there are only 29 miles of affected snowmobile trails in Washington, those trails provide access to over 429 miles of trails outside of the proposed habitat area. Similarly, F.H. Stoltze Land and Lumber Company commented that the DEA fails to consider impacts to local guides that charge for OHV use.

Our response: As described in Section 5 of the DEA, Scenario 2 of the recreation analysis quantifies the impacts of increased congestion on snowmobile trails as a result of restrictions on creating new trails. Because the analysis quantifies impacts of increased congestion as opposed to reduced participation, no impacts to regional businesses benefiting from participation in snowmobiling are expected. Regarding the access issue, the DEA does not assume that existing trails will be decommissioned, as this is not described in the LCAS or in the past consultation history as a habitat-related conservation measure for the lynx. Accordingly, there is no economic impact forecast associated with accessing trails outside of the study area from existing trails within the study area.

35. *Comment:* The Cook County ATV Club commented that the DEA should have considered impacts to ATV use in addition to other types of recreation, such as snowmobiling.

Our response: The DEA applies habitat-related conservation measures from the LCAS and consultation history to determine how land use activities may be impacted by lynx conservation. Neither the LCAS nor the consultation history cite ATV use specifically as a conservation threat to the lynx or suggest that this activity may be impacted by lynx conservation.

Comments on the Public Lands and Conservation Lands Management Analysis

36. *Comment:* Maine Audubon commented that the DEA estimate to prepare a habitat management plan of $5.73 per acre overestimates the true costs. The comment argued that the costs would be closer to a range of $1 to $3 per acre.

Our response: The average per-acre cost estimate to prepare a lynx habitat management plan is a weighted average of all known lynx management plans in the region. Some of these plans cost on the order of $1 to $3 per acre, and others were significantly greater, as described in Exhibit 6–4.

37. *Comment:* The Washington Cattlemen's Association commented that the DEA downplays the impact of lynx conservation on grazing in Washington by comparing the impacts to the grazing activities in Okanogan County to the entire Washington State livestock industry.

Our response: Section 6.5 of the DEA quantifies the value of grazing in the study area. The DEA recognizes that impacts to rural communities may be significant even when small compared to the statewide industry. The value of the grazing resource in Washington State was presented alongside the value of grazing in the critical habitat area in order to provide additional information on the impacts of critical habitat to the statewide economy. The final rule has excluded areas that are currently grazed, and, therefore, there will be no grazing impact as a result of this rule.

38. *Comment:* F.H. Stoltze Land and Lumber, Co. commented that page 6–18 of the DEA highlights that fencing to limit livestock grazing is a conservation measure related to the lynx, but does not quantify impacts of this effort.

Our response: As noted in Section 6.5 of the DEA, fencing of foraging areas specifically for lynx and snowshoe hare is a habitat-related conservation effort for the lynx. The DEA further states, however, that while information is available regarding the level of grazing activity in the habitat area overall, the extent to which grazing occurs specifically within foraging habitat is unknown. The amount and location of fencing that may be requested for the benefit of the lynx is, therefore,

uncertain. The DEA thus presents the full value of the grazing resource within the potential critical habitat area as a resource at risk of being impacted by lynx conservation within the study area.

39. *Comment:* The Okanogan County Farm Bureau commented that fires burn thousands of acres of lynx habitat in the North Cascades, and broad designation of critical habitat will severely restrict the thinning necessary to prevent fire losses that threaten homes and lives. F.H. Stoltze Land and Lumber Company also commented that management of fires has been important in Western Montana.

Our response: The DEA relies on the conservation measures outlined in the LCAS to determine how land use activities may be affected by lynx conservation. As described in Section 6.6. of the DEA, the LCAS does not recommend precluding burn management as a lynx conservation measure, but suggests that lynx conservation be taken into consideration in planning burn management, for example, by promoting response by shrub and tree species favored by the snowshoe hare or other prey species, avoiding construction of permanent firebreaks, and minimizing temporary construction of roads.

Comments on the Transportation Analysis

40. *Comment:* One commenter was concerned about the impact the designation could have on the ability to maintain and improve Route 11 in Maine; in particular, the commenter was concerned about impacts on the ability of the sawmills in Portage and Ashland to get wood.

Our response: We have excluded all lands in Maine from this final designation of critical habitat for the lynx pursuant to section 4(b)(2) of the Act; thus, this concern about impacting Route 11 maintenance is no longer an issue.

Comments on the Mining Analysis

41. *Comment:* The Northwest Mining Association commented that the DEA did not consider impacts to three mines in Western Montana (Troy, Rock Creek, and Montanore), Formation Capital's cobalt project near Salmon, ID, or Kinross Gold's Buckhorn project in Okanagan County, WA.

Our response: As described in Section 2.1, the geographic scope of the DEA is limited to those areas proposed for designation and those areas considered for exclusion from critical habitat in the proposed rule; these lands are referred to as the ''study area'' of the DEA. None of the mines referenced in this comment are within the study area.

42. *Comment:* The Northwest Mining Association stated that the economic analysis should have analyzed the impact of the loss of mining activity on Federal lands due to the LCAS.

Our response: Mining expansions or expected new mining projects were considered in the analysis of mining activity in Section 8 regardless of whether they were expected to occur on Federal lands or otherwise.

Comments on the Initial Regulatory Flexibility Analysis (IRFA)

43. *Comment:* The Small Business Administration (SBA), Office of Advocacy commented that the development analysis in the DEA should include more information on the number of small entities to which the proposed rule will apply, similar to how impacts to small timber-related businesses are considered in the DEA.

Our response: Because the DEA did not provide estimates of impact to development activities, entities related to development were not considered in the draft IRFA. A supplemental analysis estimating impacts to development activities conducted during the public comment period provided more information on how landowners may be affected by the proposed rule. The IRFA in the Final EA is, therefore, updated to include numbers of development-related small entities. Further, this updated information was taken into consideration in the development of this final rule.

44. *Comment:* The SBA commented that the DEA does not include data on the economic impacts of the proposed rule on small entities in the development industry, which include developers, builders, and other types of small entities in addition to landowners.

Our response: The supplemental development analysis incorporated in the Final EA quantifies impacts to land values associated with restrictions on development for the purposes of lynx conservation. The IRFA assumes that the primary impact of decreased development is to the landowner in the form of decreased land value. The analysis further assumes that, to the extent that decreased development leads to impacts on related businesses, these businesses are small. This is because the majority (90 to 100 percent depending on the sector) of the businesses in related industries (e.g., construction, planning, and landscaping) are small in the counties containing proposed critical habitat. While more detailed information became available to us for consideration of potential economic impacts on small business entities through the supplemental analysis, because only National Park Service lands remain in the final designation, we do not anticipate significant impacts to a substantial number of small business entities. Please refer to our discussion concerning compliance with the Regulatory Flexibility Analysis later in the rule.

45. *Comment:* The SBA expressed concern that the IRFA does not include impacts to the timber industry such as decreased employment, decreased number of businesses or foregone revenue, or profit per business. The comment further stated that small entities are worried that further regulatory restrictions from the State and local government will further burden the timber industry. Another comment on the DEA stated that the IRFA is inadequate and requested that the IRFA be revised to consider the impacts to small businesses that rely on the resources on public lands. The comment further asserted that the IRFA should look at small business impacts in individual communities as opposed to the habitat as a whole.

Our response: The draft IRFA contained within the DEA represents an initial examination of potential impacts to small businesses to provide information regarding whether the rule may result in a significant impact on a substantial number of small businesses, and, therefore, whether a full Regulatory Flexibility Analysis should be completed, which would require additional research, outreach, and analysis. However, because only National Park Service lands remain in the final designation, we do not anticipate significant impacts to a substantial number of small business entities. Please refer to our discussion concerning compliance with the Regulatory Flexibility Analysis later in the rule.

46. *Comment:* One commenter expressed concern about the reliability of data sources used to estimate the number of small businesses in the study area.

Our response: As stated in the notes to Exhibit C–3, the number of small timber-related businesses in the study area is from the Dun & Bradstreet database, a frequently cited source of business information, and was acquired in February 2006. The numbers of small businesses estimated are for all counties containing critical habitat, and not just for the study area within the county as this information is not readily available at a more refined geographic scale than county.

Summary of Changes From Proposed Rule

In preparing the final critical habitat designation for the lynx, we reviewed and considered comments from the public on the proposed designation of critical habitat published on November 9, 2005 (70 FR 68294). We published a Notice of Availability of the DEA and draft environmental assessment on September 11, 2006 (71 FR 53355). As a result of comments received on the proposal, the DEA, draft environmental assessment and a reevaluation of the proposed critical habitat boundaries we made changes to our proposed designation as follows:

(1) We reevaluated the proposed critical habitat units based on peer review, public comments, and biological information received during the public comment period. We excluded areas based on Tribal ownership, lands with existing lynx management plans or pending HCPs for lynx, lands managed for commercial forestry because of existing management practices and partnerships, and small landowners and lands not managed for commercial forestry because of their minor role in the conservation of lynx compared to efforts taken by larger landowners on adjacent and nearby lands who have an important role in the conservation of lynx habitat.

(2) Portions of units that did not contain PCEs or where development was concentrated were removed from the final designation based on available maps.

(3) Collectively, we excluded or removed a total of approximately 41,922 km^2 (16,190 mi^2) of land from this final critical habitat designation. Please refer to Table 1 for the differences in the amount of area proposed for designation and the areas designated in this final rule. For a detailed discussion of all exclusions and exemptions, please refer to Exclusions Under Section 4(b)(2) of the Act section below.

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. Conservation, as defined under section 3 of the Act means to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking. Conservation is a process which contributes to improving the status of the species. Individual actions may still be considered conservation even though in and of themselves they do not remove the species' need for protection under the Act.

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 requires consultation on Federal actions that are likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow government or public access to private lands. Section 7 is a purely protective measure and does not require implementation of restoration, recovery, or enhancement measures.

To be included in a critical habitat designation, the habitat within the geographical area occupied by the subspecies must first have features that are essential to the conservation of the subspecies. Critical habitat designations identify, to the extent known using the best scientific data available, habitat areas that provide essential life cycle needs of the subspecies (i.e., areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)).

Habitat occupied at the time of listing may be included in critical habitat only if the essential features thereon may require special management considerations or protection. Thus, we do not include areas where existing management is sufficient to conserve the subspecies. (As discussed below, such areas may also be excluded from critical habitat pursuant to section 4(b)(2).) Accordingly, when the best available scientific data do not demonstrate that the conservation needs of the subspecies require additional areas, we will not designate critical habitat in areas outside the geographical area occupied by the subspecies at the time of listing. An area currently occupied by the subspecies but was not known to be occupied at the time of listing will likely, but not always, be essential to the conservation of the subspecies and, therefore, typically included in the critical habitat designation.

The Service's Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), and section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658) and the associated Information Quality Guidelines issued by the Service, provide criteria, establish procedures, and provide guidance to ensure that decisions made by the Service represent the best scientific data available. They require Service biologists to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information is generally the listing package for the species. Additional information sources include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, or other unpublished materials and expert opinion or personal knowledge. All information is used in accordance with the provisions of section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658) and the associated Information Quality Guidelines issued by the Service.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the subspecies. For these reasons, critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery.

Areas that support populations, but are outside the critical habitat designation, will continue to be subject to conservation actions implemented under section 7(a)(1) of the Act and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard, as determined on the basis of the best available information at the time of the action. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to designate as critical habitat, we consider those physical and biological features (PCEs) that are essential to the conservation of the subspecies, and within areas occupied by the subspecies at the time of listing, that may require special management considerations and protection. These include, but are not limited to: Space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, and rearing (or development) of offspring; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

The area designated as critical habitat provides boreal forest habitat for breeding, non-breeding, and dispersing lynx in metapopulations across the species' range in the contiguous United States. No areas are being designated solely because they provide habitat for dispersing animals. At this time, the biological or physical features of habitats lynx choose for dispersal are not well-understood; while it is assumed lynx would prefer to travel where there is forested cover, the literature contains many examples of lynx crossing large, unforested openings (e.g., Roe *et al.* 2000, p. 30–33). The areas being designated as critical habitat serve a variety of functions that include acting as a source of dispersing animals and providing habitat that may serve as travel corridors to facilitate dispersal and exploratory movements. The features or habitat components essential for the conservation of the species were determined from studies of lynx and snowshoe hare ecology.

The specific biological and physical features, otherwise known as the primary constituent elements, essential to the conservation of the lynx are:

(1) Boreal forest landscapes supporting a mosaic of differing successional forest stages and containing:

(a) Presence of snowshoe hares and their preferred habitat conditions, which include dense understories of young trees, shrubs or overhanging boughs that protrude above the snow; and

(b) Winter snow conditions that are generally deep and fluffy for extended periods of time; and

(c) Sites for denning that have abundant coarse woody debris, such as downed trees and root wads.

A description of the primary constituent elements is provided below.

Boreal Forest Landscapes (Space for Individual and Population Growth and Normal Behavior)

Lynx populations respond to biotic and abiotic factors at different scales. At the regional scale, snow conditions, boreal forest and competitors (especially bobcat) influence the species' range (Aubry *et al.* 2000, p. 378–380; McKelvey *et al.*, 2000b p. 242–253; Hoving *et al.*, 2005 p. 749). At the landscape scale within each region, natural and human-caused disturbance processes (e.g., fire, wind, insect infestations and forest management) influence the spatial and temporal distribution of lynx populations by affecting the distribution of good habitat for snowshoe hares (Agee 2000, pp. 47–73; Ruediger *et al.* 2000, pp. 1–3, 2–2—2–6, 7–3). At the stand-level scale, quality, quantity, and juxtaposition of habitats influence home range size, productivity, and survival (Aubry et al 2000, pp. 380–390; Vashon *et al.* 2005a, pp. 9–11). At the substand scale, spatial distribution and abundance of prey and microclimate influence movements, hunting behavior, den, and resting site locations.

All of the constituent elements of critical habitat for lynx are found within large landscapes in what is broadly described as the boreal forest or cold temperate forest (Frelich and Reich 1995, p. 325, Agee 2000, pp. 43–46). In the contiguous United States, the boreal forest is more transitional rather than true boreal forest of northern Canada and Alaska (Agee 2000, pp. 43–46). This difference is because the boreal forest is at its southern limits in the contiguous United States, where it transitions to deciduous temperate forest in the Northeast and Great Lakes and subalpine forest in the west (Agee 2000, pp. 43–46). We use the term ''boreal forest'' because it generally encompasses most of the vegetative descriptions of the transitional forest types that comprise lynx habitat in the contiguous United States (Agee 2000, pp. 40–41).

At a regional scale, lynx habitat is within the areas that support deep snow for extended periods and that support boreal forest vegetation types (see below for more detail). In eastern North America, lynx distribution was strongly associated with areas of deep snowfall and 100 km^2 (40 mi^2)) landscapes with a high proportion of regenerating forest (Hoving 2001, pp. 75,143). Hoving *et al.* (2004, p. 291) concluded that the broad geographic distribution of lynx in eastern North America is most influenced by snowfall, but within areas of similarly deep snowfall, measures of forest succession become more important factors in determining lynx distribution.

Boreal forests used by lynx are generally cool, moist and dominated by conifer tree species, primarily spruce and fir (Agee 2000, pp. 40–46; Aubry *et al.* 2000, pp. 378–382; Ruediger *et al.* 2000, pp. 4–3, 4–8—4–11, 4–25—4–26, 4–29—4–30). Boreal forest landscapes used by lynx are a heterogeneous mosaic of vegetative cover types and successional forest stages created by natural and human-caused disturbances (McKelvey *et al.* 2000a, pp. 426–434). Periodic vegetation disturbances stimulate development of dense understory or early successional habitat for snowshoe hares (Ruediger *et al.* 2000, pp. 1–3—1–4, 7–4—7–5). In Maine, lynx were positively associated with landscapes altered by clearcutting 15 to 25 years previously (Hoving *et al.* 2004, p. 291).

The overall quality of the boreal forest landscape matrix and juxtaposition of stands in suitable condition within the landscape is important for both lynx and snowshoe hares in that it can influence connectivity or movements between suitable stands, availability of food and cover and spatial structuring of populations or subpopulations (Hodges 2000b, pp. 184–195; McKelvey *et al.* 2000a, pp. 431–432; Walker 2005, pp. 79). For example, lynx foraging habitat must be near denning habitat to allow females to adequately provision dependent kittens, especially when the kittens are relatively immobile. In north-central Washington, hare densities were higher in landscapes with an abundance of dense boreal forest interspersed with

small patches of open habitat, in contrast to landscapes composed primarily of open forest interspersed with few dense vegetation patches (Walker 2005, p. 79). Similarly, in northwest Montana, connectivity of dense patches within the forest matrix benefited snowshoe hares (Ausband and Baty 2005, p. 209). In mountainous areas, lynx appear to prefer flatter slopes (Apps 2000, p. 361; McKelvey *et al.* 2000d, p. 333; von Kienast 2003, p. 21, Table 2; Maletzke 2004, pp. 17–18).

Individual lynx require large portions of boreal forest landscapes to support their home ranges and to facilitate dispersal and exploratory travel. The size of lynx home ranges is believed to be strongly influenced by the quality of the habitat, particularly the abundance of snowshoe hares, in addition to other factors such as gender, age, season, and density of the lynx population (Aubry *et al.* 2000, pp. 382–385; Mowat *et al.* 2000, pp. 276–280). Generally, females with kittens have the smallest home ranges while males have the largest home ranges (Moen *et al.* 2005, p. 11). Reported home range sizes vary greatly from 31 km^2 (12 mi^2) for females and 68 km^2 (26 mi^2) for males in Maine (Vashon *et al.* 2005a, p. 7), 21 km^2 (8 mi^2) for females to 307 km^2 (119 mi^2) for males in Minnesota (Moen *et al.* 2005, p. 12), and 88 km^2 (34 mi^2) for females and 216 km^2 (83 mi^2) for males in northwest Montana (Squires *et al.* 2004b, pp. 15–16).

Forest Type Associations

Maine

Lynx were more likely to occur in 100 km^2 (40 mi^2) landscapes with regenerating forest, and less likely to occur in landscapes with recent clearcut or partial harvest, (Hoving *et al.* 2004, pp. 291–292). Lynx in Maine select softwood-dominated (spruce and fir) regenerating stands (Vashon *et al.* 2005a, p. 8). Regenerating stands used by lynx generally develop 15–30 years after forest disturbance and are characterized by dense horizontal structure and high stem density within a meter of the ground. These habitats support high snowshoe hare densities (Homyack 2003, p. 63; Fuller and Harrison 2005, pp. 716,719; Vashon *et al.* 2005a, pp. 10–11). At the stand scale, lynx in northwestern Maine selected older (11 to 26 year-old), tall (4.6 to 7.3 m (15 to 24 ft)) regenerating clearcut stands and older (11 to 21 year-old) partially harvested stands (A. Fuller, University of Maine, unpubl. data).

Minnesota

In Minnesota, lynx primarily occur in the Northern Superior Uplands Ecological Section of the Laurentian Mixed Forest Province. Historically, this area was dominated by red pine (*Pinus resinosa*) and white pine (*P. strobus*) mixed with aspen (*Populus* spp.), paper birch (*Betula papyrifera*), spruce, balsam fir (*A. balsamifera*) and jack pine (*P. banksiana*) (Minnesota Department of Natural Resources [Minnesota DNR] 2003, p. 2).

Preliminary research suggests lynx in Minnesota generally use younger stands (less than 50 years) with a conifer component in greater proportion than their availability (R. Moen, University of Minnesota, unpubl. data). Lynx prefer predominantly upland forests dominated by red pine, white pine, jack pine, black spruce (*P. mariana*), paper birch, quaking aspen (*P. tremuloides*), or balsam fir (R. Moen, unpubl. data).

Washington

In the North Cascades in Washington, the majority of lynx occurrences were found above 1,250 m (4,101 ft) (McKelvey *et al.* 2000b, p. 243, 2000d, p. 321; von Kienast 2003, p. 28, Table 2; Maletzke 2004, p. 17). In this area, lynx selected Engelman spruce (*P. engelmanii*)-subalpine fir (*A. lasiocarpa*) forest cover types in winter (von Kienast 2003, p. 28, Maletzke 2004, pp. 16–17). Lodgepole pine (*P. contorta*) is a dominant tree species in the earlier successional stages of these climax cover types. Seral lodgepole stands contained dense understories and therefore received high use by snowshoe hares and lynx (Koehler 1990, pp. 847–848; McKelvey *et al.* 2000d, pp. 332–335).

Northern Rockies

In the Northern Rocky Mountains, the majority of lynx occurrences are associated with the Rocky Mountain Conifer Forest or Western Spruce-Fir Forest vegetative class (Kuchler 1964, p. 4; McKelvey *et al.* 2000b, p. 246) and occur above 1,250 m (4,101 ft) elevation (Aubry *et al.* 2000, pp. 378–380; McKelvey *et al.* 2000b, pp. 243–245). The dominant vegetation that constitutes lynx habitat in these areas is subalpine fir, Engelman spruce and lodgepole pine (Aubry *et al.* 2000, p. 379; Ruediger *et al.* 2000, pp. 4–8—4–10). As in the Cascades, lodgepole pine is an earlier successional stage of subalpine fir and Engelman spruce climax forest cover types.

a. Snowshoe Hares (Food)

Snowshoe hare density is the most important factor explaining the persistence of lynx populations (Steury and Murray 2004, p. 136). A minimum snowshoe hare density necessary to maintain a persistent, reproducing lynx population within the contiguous United States has not been determined, although Ruggiero *et al.* (2000, pp. 446–447) suggested that at least 0.5 hares per hectare (ha) (0.2 hares per acre (ac)) may be necessary. Steury and Murray (2004, p. 137)) modeled lynx and snowshoe hare populations and predicted that a minimum of 1.1 to 1.8 hares per ha (0.4 to 0.7 hares per ac) was required for persistence of a reintroduced lynx population in the southern portion of the lynx range.

The boreal forest landscape must contain a mosaic of forest stand successional stages to sustain lynx populations over the long term as the condition of individual stands changes over time. If the vegetation potential (or climax forest type) of a particular forest stand is conducive to supporting abundant snowshoe hares, it likely will also go through successional phases that are unsuitable as lynx foraging (snowshoe hare habitat) or lynx denning habitat (Agee 2000, p. 62–72; Buskirk *et al.* 2000b, pp. 403–408). For example, a boreal forest stand where there has been recent disturbance, such as fire or timber harvest, resulting in little or no understory structure is unsuitable as snowhoe hare habitat for lynx foraging. That temporarily unsuitable stand may regenerate into suitable snowshoe hare (lynx foraging) habitat within 10 to 25 years, depending on local conditions (Ruediger *et al.* 2000, pp. 1–3—1–4, 2–2—2–5). Forest management techniques that thin the understory, however, may render the habitat unsuitable for hares and, thus, for lynx (Ruediger *et al.* 2000, pp. 2–4—3–2; Hoving *et al.* 2004, pp. 291–292). Stands may continue to provide suitable snowshoe hare habitat for many years until woody stems in the understory become too sparse, as a result of undisturbed forest succession or management (*e.g.*, clearcutting or thinning). Thus, if the vegetation potential of the stand is appropriate, a stand that is not currently in a condition that is suitable to support abundant snowshoe hares for lynx foraging or coarse woody debris for den sites has the capability to develop into suitable habitat for lynx and snowshoe hares with time.

As described previously, snowshoe hares prefer boreal forest stands that have a dense horizontal understory to provide food, cover and security from predators. Snowshoe hares feed on conifers, deciduous trees and shrubs (Hodges 2000b, pp. 181–183). Snowshoe hare density is correlated to understory

cover between approximately 1 to 3 m (3 to 10 ft) above the ground or snow level (Hodges 2000b, p. 184). Habitats most heavily used by snowshoe hares are stands with shrubs, stands that are densely stocked, and stands at ages where branches have more lateral cover (Hodges 2000b, p. 184). In Maine, the snowshoe hare densities were highest in stands supporting high conifer stem densities (Homyack 2003, p. 195, Robinson 2006, p. 69). In northcentral Washington, snowshoe hare density was highest in 20-year-old lodgepole pine stands where the average density of trees and shrubs was 15,840 stems per ha (6,415 stems per ac) (Koehler 1990, p. 848). Generally, earlier successional forest stages support a greater density of horizontal understory and more abundant snowshoe hares (Buehler and Keith 1982, p. 24; Wolfe *et al.* 1982, p. 668–669; Koehler 1990, pp. 847–848; Hodges 2000b, pp. 184–191; Griffin 2004, pp. 84–88); however, sometimes mature stands also can have adequate dense understory to support abundant snowshoe hares (Griffin 2004, p. 88). In Montana, lynx favor multistory stands, often in older-age classes, where the tree boughs touch the snow surface but where the stem density is low (Squires 2006, p. 4).

In Maine, the highest snowshoe hare densities were found in regenerating softwood (spruce and fir) and mixedwood stands with high conifer stem densities (Fuller and Harrison 2005, pp. 716,719, Robinson 2006, p. 69). In the north Cascades, the highest snowshoe hare densities were found in 20-year-old seral lodgepole pine stands with a dense understory (Koehler 1990, p. 847–848). In montane and subalpine forests in northwest Montana, the highest snowshoe hare densities in summer were generally in younger stands with dense forest structure, whereas in winter, snowshoe hare densities were as high or higher in mature stands with dense understory forest structure (Griffin 2004, p. 53). Snowshoe hare studies are just underway in Minnesota (Moen *et al.* 2005, p. 18); therefore, results on habitat relationships are still preliminary.

Habitats supporting abundant snowshoe hares must be present in a large proportion of the landscape to support a viable lynx population. Broad-scale snowshoe hare density estimates are not available for the areas being designated as lynx critical habitat; available snowshoe hare density estimates are only applicable for the immediate area and time frame for which the study was conducted and cannot be extrapolated further.

b. Snow Conditions (Other Physiological Requirements)

Snow conditions also determine the distribution of lynx and snowshoe hares. Deep, fluffy snow conditions likely restrict potential competitors such as bobcat or coyote from effectively encroaching on or hunting in winter lynx habitat. Snowfall was the strongest predictor of lynx occurrence at a regional scale (Hoving *et al.* 2005, p. 746, Table 5). In addition to snow depth, other snow properties, including surface hardness or sinking depth, are important factors in the spatial, ecological, and genetic structuring of the species (Stenseth *et al.* 2004, p. 75).

In the northeastern United States, lynx are most likely to occur in areas with a 10-year mean annual snowfall greater than 268 cm (105 in) (Hoving 2001, p. 75). The Northern Superior Uplands section of Minnesota receives more of its precipitation as snow than any section in the State, has the longest period of snow cover, and the shortest growing season (Minnesota DNR 2003, p. 2). Mean annual snowfall from 1971 to 2000 in this area was generally greater than 149 cm (55 in) (University of Minnesota 2005 Web page).

Information on average snowfall or snow depths in mountainous areas such as the Cascades or northwest Montana is limited because there are few weather stations in these regions that have measured snow fall or snow depth over time. An important consideration is that the topography strongly influences local snow conditions. In the Cascades, at the Mazama station, average annual snowfall from 1948 to 1976 was 292 cm (115 in) (Western Regional Climate Center 2005 Web page). In Montana, at the Seeley Lake Ranger Station, average annual snowfall from 1948 to 2005 was 315 cm (124 in), while at the Troy station the average total snowfall from 1961 to 1994 was 229 cm (90 in) (Western Regional Climate Center 2005 Web page).

c. Denning Habitat (Sites for Reproduction and Rearing of Offspring)

Lynx den sites are found in mature and younger boreal forest stands that have a large amount of cover and downed, large woody debris. The structural components of lynx den sites are common features in managed (logged) and unmanaged (e.g., insect damaged, wind-throw) stands. Downed trees provide excellent cover for den sites and kittens and often are associated with dense woody stem growth.

Sub-stand characteristics were evaluated for 26 lynx dens from 1999 to 2004 in northwest Maine. Dens were found in several stand types. Modeling of den site variables determined that tip-up mounds (exposed roots from fallen trees) alone best explained den site selection (J. Organ, Service, unpubl. data). Tip-up mounds may purely be an index of downed trees, which were abundant on the landscape. Horizontal cover at 5 m (16 ft) alone was the next best performing model (J. Organ, unpubl. data). Dead downed trees were sampled, but did not explain den site selection as well as tip-up mounds and cover at 5 m (16 ft). Lynx essentially select dense cover in a cover-rich area for denning.

In the North Cascades, Washington, lynx denned in mature (older than 250 years) stands with an overstory of Engelman spruce, subalpine fir and lodgepole pine with an abundance of downed woody debris (Koehler 1990, p. 847). In this study, all den sites were located on north-northeast aspects (Koehler 1990, p. 847). In northwest Montana, the immediate areas around dens were in a variety of stand ages but all contained abundant woody debris including downed logs, blowdowns, and rootwads, and dense understory cover (Squires *et al.* 2004b, Table 3). Information on den site characteristics in Minnesota has not yet been reported (Moen *et al.* 2005, p. 8).

This critical habitat designation is designed for the conservation of the PCE essential to the conservation of the lynx and necessary to support lynx life history functions. The PCE comprises the essential features of boreal forest that (1) provide adequate prey resources necessary for the persistence of local populations and metapopulations of lynx through reproduction; (2) act as a possible source of lynx for more peripheral boreal forested areas; (3) enable the maintenance of home ranges; (4) incorporate snow conditions for which lynx are highly specialized that give lynx a competitive advantage over potential competitors; (5) provide denning habitat; and (6) provide habitat connectivity for travel within home ranges, exploratory movements, and dispersal.

Criteria Used To Identify Critical Habitat

As required by section 4(b)(2) of the Act, we use the best scientific data available in determining critical habitat. We have reviewed the approach to the conservation of the lynx provided in a recovery outline (Service 2005, entire); information from State, Federal and tribal agencies; and information from academia and private organizations that have collected scientific data on lynx.

The focus of our strategy in considering lands for designation as critical habitat was on boreal forest landscapes of sufficient size to encompass the temporal and spatial changes in habitat and snowshoe hare populations to support interbreeding lynx populations or metapopulations over time. Individual lynx maintain large home ranges; the areas identified to have features essential to the conservation of the lynx are large enough to encompass multiple home ranges. A secondary consideration is that, in addition to supporting breeding populations, these areas provide connectivity among patches of suitable habitat (e.g., patches containing abundant snowshoe hares), whose locations in the landscape shift through time.

We reviewed available information that pertains to the habitat requirements of this species and its principal prey, the snowshoe hare. This information included data in reports submitted by researchers holding recovery permits under section 10(a)(1)(A) of the Act; research published in peer-reviewed articles, presented in academic theses, agency reports and unpublished data; and various Geographic Information System (GIS) coverages (e.g., land cover type information, land ownership information, snow depth information, topographic information, locations of lynx obtained from radio- or GPS-collars and locations of lynx confirmed via DNA analysis or other verified records).

In designating critical habitat for the lynx we used the best scientific data available to evaluate areas that possess those physical and biological features essential to the conservation of the species and that may require special management considerations or protection. In evaluating areas as critical habitat, we first determined the geographic area occupied by the species. We utilized data providing verified evidence of the occurrence of lynx and evidence of the presence of breeding lynx populations as represented by records of lynx reproduction. We focused on records since 1995 to ensure that this critical habitat designation is based on the data that most closely represents the current status of lynx in the contiguous United States and the geographic area occupied by the species. Data that define the historic and current range of the lynx (e.g., McKelvey *et al.* 2000b, pp. 207–232; Hoving *et al.* 2003, entire) constitute the geographic area that may be occupied by the species; therefore, we determined that areas outside the historic distribution are not essential to the conservation of the species. Although the average life span of a wild lynx is not known, we have assumed that a lynx born in 1995 could have been alive in 2000 or 2003, the dates of publication of the final listing rule and the clarification of findings. Recent verified lynx occurrence records were provided by Federal research entities, state wildlife agencies, academic researchers, and private individuals or organizations working on lynx (K. Aubry, Pacific Northwest Research Station, unpubl. data; S. Gehman, Wildthings Unlimited, unpubl. data; S. Gniadek, Glacier National Park, unpubl. data; S. Loch, Independent Scientist, and E. Lindquist, Superior National Forest, unpubl. data; K. McKelvey, Rocky Mountain Research Station; unpubl. data; Minnesota DNR 2005 Web site; R. Moen, University of Minnesota, Natural Resources Research Institute, unpubl. data.; J. Squires, Rocky Mountain Research Station, unpubl. data; J. Vashon, Maine Department of Inland Fisheries and Wildlife, unpubl. data).

By accepting only verified recent lynx records, we restricted the available lynx occurrence dataset because we wanted reliable data for the purposes of evaluating areas and features for critical habitat designation. The reliability of lynx occurrence reports can be questionable because the bobcat, a common species, can be confused with the lynx, which is similar in appearance. Additionally, many surveys are conducted by snow tracking in which correct identification of tracks can be difficult because of variable conditions affecting the quality of the track and variable expertise of the tracker. Our definition of a verified lynx record is modified from McKelvey *et al.* (2000b, p. 209)—(1) an animal (live or dead) in hand or observed closely by a person knowledgeable in lynx identification, (2) genetic (DNA) confirmation, (3) snow tracks only when confirmed by genetic analysis (e.g., McKelvey *et al.* 2006, entire) or (4) location data from radio- or GPS-collared lynx. Documentation of lynx reproduction consists of lynx kittens in hand, or observed with the mother by someone knowledgeable in lynx identification, or snow tracks demonstrating family groups traveling together, as identified by a person highly knowledgeable in identification of carnivore tracks. However, we made an exception and accepted snow track data from Maine because of the stringent protocols used in confirming tracks as lynx and the minimal number of species in the area with which lynx tracks could be misidentified (McCollough 2006, entire).

The geographical area occupied by the species was then delineated to encompass areas containing features essential to the conservation of the lynx, the majority of recent lynx records, evidence of breeding lynx populations, the boreal forest type that is currently occupied by lynx in that particular region and direct connectivity with lynx populations in Canada. Lynx populations in the contiguous United States seem to be influenced by lynx population dynamics in Canada (Thiel 1987; McKelvey *et al.* 2000a, p. 427, 2000c, p. 33). Many of these populations in Canada are directly interconnected with United States' populations, and are likely a source of emigration into the contiguous United States, lynx from the contiguous United States are known to move into Canada. Therefore, we assume that retaining connectivity with larger lynx populations in Canada is important to ensuring long-term persistence of lynx populations in the United States. We assume that, regionally, lynx within the contiguous United States and adjacent Canadian provinces interact as metapopulations. Where available, data on historic average snow depths and bobcat harvest provided additional insight for refining and delineating appropriate boundaries for consideration as critical habitat.

In the North Cascades and Northern Rockies, the features essential to the conservation of lynx, the majority of lynx records, evidence of reproduction, and the boreal forest types are found above 4,000 feet (ft) (1,219 meters [m]) in elevation (McKelvey *et al.* 2000b, pp. 243–245; McAllister *et al.* 2000, entire). Thus, we limited the delineation of critical habitat to lands above this elevation. Additionally, in the North Cascades, features essential to the conservation of the lynx and the majority of the lynx records and evidence of reproduction occur east of the crest of the Cascade Mountains.

Once we determined which lands contained the physical and biological features essential to the conservation of lynx, we did not include lands that did not require additional special management according for the definition of critical habitat, and lands where the benefits of exclusion outweighed the benefits of inclusion. Finally, we excluded Tribal lands in accordance with Secretarial Order 3206, *et al.*

Lands that we did not include because they did not require special management included lands with management plans to conserve lynx, such as the Superior National Forest; Garnet Resource Area, Bureau of Land Management; Flathead Indian

Reservation, and the Spokane District, Bureau of Land Management. We also did not include USFS Lands Covered by a Conservation Agreement for Lynx, which includes portions of the Flathead National Forest, Helena National Forest, Idaho Panhandle National Forests, Kootenai National Forest, Lewis and Clark National Forest, Lolo National Forest and the Okanogan-Wenatchee National Forest. Please refer to Application of Section 3(5)(A) of the Endangered Species Act discussion below.

We determined that the benefits of exclusion outweighed the benefits of inclusion for the Montana Department of Natural Resources and Conservation Forested State Trust lands that are covered by a pending Habitat Conservation Plan for lynx and other species, Washington Department of Natural Resource (WDNR) lands managed under Lynx Habitat Management Plan, lands managed for commercial forestry, small landowners, and other lands not managed for commercial forestry but that benefit from conservation measures taken by adjacent or nearby landowners (which includes inholdings within National Parks and National Forests). These exclusions are described in more detail in section 4(b)(2) below.

We excluded Tribal lands in accordance with Secretarial Order 3206, ''American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act'' and other orders and directives. These include Houlton Band of Maliseet Indians, Aroostook Band of Micmac Indians, Passamaquoddy Tribe, Penobscot Indian Nation, Grand Portage Indian Reservation, Vermillion Lake Indian Reservation.

Based on comments received, the availability of better maps and inspection of aerial photos, we removed sections of lands that were not forested. We then removed a 1 mile strip along the entire Lake Superior shoreline in Minnesota and the area within a 10-mile radius of Duluth, MN, because this is where existing development is concentrated (Industrial Economics, Incorporated 2006, pp. 4–12), limiting the potential of any lynx habitat intermingling in these areas.

As a result of stepping through this process, we are not designating any critical habitat in Maine, and only National Park Service lands in Minnesota (Voyageurs National Park), Montana (Glacier National Park), and Washington (North Cascades National Park including Lake Chelan National Recreation Area).

Given the scale of the critical habitat units, it was not feasible to completely avoid encompassing waterbodies, including lakes, reservoirs and rivers, grasslands, or human-made structures such as buildings, paved and gravel roadbeds, parking lots, and other structures that lack the PCEs for the lynx. Any such developed areas and the land on which such structures are located inside critical habitat boundaries, are excluded by text and are not designated critical habitat. Therefore, Federal actions limited to these areas would not trigger section 7 consultation, unless they affect the species and/or primary constituent element in adjacent critical habitat.

When considering what areas to include as critical habitat, we focused closely on areas with reliable evidence of lynx occurrence and reproduction since 1995. For example, because there is no verified evidence of lynx occupation or reproduction in New Hampshire or western Maine since 1995, we did not consider these areas to be essential to the conservation of the lynx. In addition, while evaluating information for the critical habitat proposal, we received bobcat harvest data for Minnesota showing abundant bobcat harvest and reduced lynx presence in the area west of the critical habitat unit in Minnesota, which suggests the western portion of the area preliminarily delineated as core in Minnesota may not be of high quality for lynx.

We determined that the Kettle Range in northcentral Washington and the Greater Yellowstone Ecosystem did not contain the features essential to the conservation of the listed entity and thus did not include them in either our proposed or final critical habitat rules. The Kettle Range historically supported lynx populations (Stinson 2001, pp.13–14). However, although boreal forest habitat within the Kettle Range appears of high quality for lynx, there is no evidence that the Kettle Range is currently occupied by a lynx population (Koehler 2005 entire). In particular, we have no information to suggest a lynx population has occupied the Kettle area since 1995 so it did not meet our criteria for consideration as critical habitat. Therefore, we did not propose the Kettle Range as critical habitat.

Although lynx currently occupy the Greater Yellowstone Ecosystem (Murphy *et al.* 2004, entire; J. Squires, Rocky Mountain Research Station, unpubl. data; S. Gehman, Wildthings Unlimited, unpubl. data), their presence has been at a lower level compared to areas we considered as critical habitat. In the clarification of findings published in the **Federal Register** on July 3, 2003 (68 FR 40076), we concluded this was because habitat in this area is less capable of supporting snowshoe hares because it is naturally marginal (more patchy and drier forest types) and because the Greater Yellowstone Ecosystem is disjunct from likely source populations. Within Yellowstone National Park, few lynx were detected during recent surveys (Murphy *et al.* 2004, pp.8–9) and snowshoe hare densities were very low (Hodges and Mills 2005, pp. 5–6). Murphy *et al.* (2004, pp. 9–10) concluded that elevations and slope aspects cause lynx habitat in this area to be naturally highly fragmented, resulting in low lynx densities. Few lynx were documented in the Wyoming Mountain Range in the southern portion of the ecosystem (Squires and Laurion 2000, pp. 343–345; Squires *et al.* 2001, pp. 9–10). On study sites on the western edge of the Greater Yellowstone Ecosystem in Idaho, the subalpine fir vegetation series that comprises lynx and snowshoe hare habitat was found only in small, discontinuous patches (McDaniel and McKelvey 2004, pp. 15–18). In this study area, few stands supported snowshoe hare densities similar to areas known to support lynx (McKelvey and McDaniel 2001, pp. 11–18). Therefore, because the habitat is of lower quality as indicated by the low numbers of lynx and snowshoe hares, we did not consider the habitat within the Greater Yellowstone Ecosystem to have the features that are essential for the conservation of lynx.

Native lynx were functionally extirpated from their historic range in Colorado and southern Wyoming in the Southern Rocky Mountains by the time the lynx was listed in 2000. In 1999, the State of Colorado began an intensive effort to reintroduce lynx. Although it is too early to determine whether the introduction will result in a self-sustaining population, the reintroduced lynx have produced kittens and now are distributed throughout the lynx habitat in Colorado and southern Wyoming. These animals are not designated as experimental under section 10(j) of the Act. Although Colorado's reintroduction effort is an important step toward the recovery of lynx, we determined that the Southern Rockies does not have features that are essential to the conservation of lynx and require special management.

Many areas within the contiguous United States have one or more individual lynx records with no evidence of persistent, reproducing lynx populations. It is possible some of these areas may support undocumented persistent populations of lynx.

However, most of these records are likely a result of wide-ranging dispersal events, occur in habitat that is less suitable for lynx than in the core areas, and are mostly disjunct from areas that contain persistent lynx populations. We consider these areas as secondary or peripheral and their role in sustaining persistent lynx populations is unclear; such areas may provide habitat to dispersing lynx, especially when populations are extremely high and some of these animals may eventually settle in areas capable of supporting lynx populations. We do not believe these areas require special management for lynx.

Secondary and peripheral areas contain only periodic records of lynx over time, and they lack evidence of reproducing lynx populations. Habitat suitability for lynx has not been assessed throughout the secondary and peripheral areas, so we are not certain whether the PCEs are present. However, the relative lack of lynx records over time, and, in particular the lack of evidence of reproducing populations, may suggest that habitat (snowshoe hare densities, in particular) has not been adequate historically, nor is it currently adequate, to support reproducing lynx populations. Additionally, some of the peripheral areas are naturally disjunct and support few historical records of lynx.

Special Management Considerations or Protections

We believe the areas designated as critical habitat in this final rule will require some level of management and/or protection to ensure the conservation of the lynx; the General Management Plans for the National Parks designated lack direction specific to conserve lynx. The areas we designated are components of the areas containing the features essential to the conservation of lynx, which provide connectivity to the larger lynx populations in Canada. This connectivity is important to maintain, as the conservation of lynx in the United States may not be possible without it. The designation of critical habitat does not imply that lands outside of critical habitat do not play an important role in the conservation of the lynx. Federal activities outside of critical habitat are still subject to review under section 7 of the Act if they may affect the lynx or its critical habitat (such as activities on Federal lands, Clean Water Act permits, etc.). Prohibitions of section 9 of the Act also continue to apply both inside and outside of designated critical habitat. A detailed discussion of threats to the lynx and its habitat can be found in the final listing rule (65 FR 16052, March 24, 2000) and the clarification of findings (68 FR 40076, July 3, 2003).

Critical Habitat Designation

We are designating three units as critical habitat for the lynx (Table 1). The critical habitat areas described below constitute our best assessment at this time of areas: (1) Determined to be occupied at the time of listing, (2) contain the primary constituent elements essential for the conservation of the species, and (3) possibly requiring special management. The three areas designated as critical habitat are Voyageurs National Park in Minnesota, portions of Glacier National Park in Montana, and portions of North Cascades National Park in Washington. To further understand the location of these designated areas, please see the associated maps found within this final rule (also available at our Web site: *http://mountain-prairie.fws.gov/species/mammals/lynx/*).

Table 1. Critical Habitat Units designated for the lynx. Area Proposed for Designation includes the area meeting the definition of critical habitat for the lynx (see the November 9, 2005 (70 FR 68294) proposed rule for a detailed description). Excluded Area includes the area excluded from the final critical habitat designation. Area Designated includes the final designated area.

Critical habitat units	Area proposed for designation km² (mi²)	Excluded area km² (mi²)	Land ownership	Area designated km² (mi²)
Unit 1: Maine	27,530 (10,633)	27,530 (10,633)	None designated	0
Unit 2: Minnesota	9,183 (3,546)	8363 (3,229)	Voyageurs National Park	822 (317)
Unit 3: Northern Rocky Mountains (MT and ID).	9,192 (3,549)	5,594 (2,160)	Glacier National Park	3598 (1,389)
Unit 4: North Cascades	785 (303)	435 (168)	North Cascades National Park	348 (135)
Total				4,768 (1,841)

Below we provide a description of those lands being designated as critical habitat for the Canada lynx in this final rule. Please refer to the November 9, 2005 (70 FR 68294) proposed rule for a detailed description of the lands proposed.

Unit 1: Maine

All lands essential to the conservation of the Canada lynx that meet the definition of critical habitat have been excluded from this unit pursuant to section 4(b)(2) of the Act. Please refer to the Application of Section 3(5)(A) of the Endangered Species Act Exclusions Under Section 4(b)(2) of the Act sections below.

Unit 2: Minnesota

Voyageurs National Park constitutes the lands designated as critical habitat in this unit. All other lands that met the definition of critical habitat have been excluded from this unit pursuant to section 4(b)(2) of the Act. Please refer to the Application of Section 3(5)(A) of the Endangered Species Act Exclusions Under Section 4(b)(2) of the Act sections below. This unit supports the PCE and requires special management to address the lack of direction in the General Management Plan specific to conserve lynx.

Unit 3: Northern Rocky Mountains

The lands of Glacier National Park above 4,000 ft (122 m) on the west side of the Continental Divide and to the Park borders east of the Continental Divide constitute the critical habitat designation in this unit. All other lands that met the definition of critical habitat have been excluded from this unit pursuant to section 4(b)(2) of the Act. Please refer to the Application of Section 3(5)(A) of the Endangered Species Act Exclusions Under Section 4(b)(2) of the Act sections below. This unit supports the PCE and requires special management to address the lack of direction in the General Management Plan specific to conserve lynx.

Unit 4: North Cascades

The lands of North Cascades National Park above 4,000 feet elevation east of the Cascade Crest, including Lake

Chelan National Recreation Area, constitute the critical habitat designation in this unit. All other lands that met the definition of critical habitat have been excluded from this unit pursuant to section 4(b)(2) of the Act. Please refer to the Application of Section 3(5)(A) of the Endangered Species Act Exclusions Under Section 4(b)(2) of the Act sections below. This unit supports the PCE and requires special management to address the lack of direction in the General Management Plan specific to conserve lynx.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7 of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to destroy or adversely modify critical habitat. In our regulations at 50 CFR 402.02, we define destruction or adverse modification as ''a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical.'' However, recent decisions by the 5th and 9th Circuit Court of Appeals have invalidated this definition. Pursuant to current national policy and the statutory provisions of the Act, destruction or adverse modification is determined on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional (or retain the current ability for the primary constituent elements to be functionally established) to serve the intended conservation role for the species.

Section 7(a) of the Act requires Federal agencies, including the Service, to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is proposed or designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402.

Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. This is a procedural requirement only. However, once a proposed species becomes listed, or proposed critical habitat is designated as final, the full prohibitions of section 7(a)(2) apply to any Federal action. The primary utility of the conference procedures is to maximize the opportunity for a Federal agency to adequately consider proposed species and critical habitat and avoid potential delays in implementing their proposed action as a result of the section 7(a)(2) compliance process, should those species be listed or the critical habitat designated.

Under conference procedures, the Service may provide advisory conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The Service may conduct either informal or formal conferences. Informal conferences are typically used if the proposed action is not likely to have any adverse effects to the proposed species or proposed critical habitat. Formal conferences are typically used when the Federal agency or the Service believes the proposed action is likely to cause adverse effects to proposed species or critical habitat, inclusive of those that may cause jeopardy or adverse modification.

The results of an informal conference are typically transmitted in a conference report; the results of a formal conference are typically transmitted in a conference opinion. Conference opinions on proposed critical habitat are typically prepared according to 50 CFR 402.14, as if the proposed critical habitat were designated. We may adopt the conference opinion as the biological opinion when the critical habitat is designated, if no substantial new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)). As noted above, any conservation recommendations in a conference report or opinion are strictly advisory.

If a species is listed or critical habitat is designated, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. As a result of this consultation, compliance with the requirements of section 7(a)(2) will be documented through the Service's issuance of: (1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or (2) a biological opinion for Federal actions that may affect, and are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to result in jeopardy to a listed species or the destruction or adverse modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. ''Reasonable and prudent alternatives'' are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid jeopardy to the listed species or destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where a new species is listed or critical habitat is subsequently designated that may be affected and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions may affect subsequently listed species or designated critical habitat or adversely modify or destroy proposed critical habitat.

Federal activities that may affect the lynx or its designated critical habitat will require section 7 consultation under the Act. Activities on State, tribal, local or private lands requiring a Federal permit (such as a permit from the Corps under section 404 of the Clean Water Act or a permit under section 10(a)(1)(B) of the Act from the Service) or involving some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency) will also be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat, and actions on State, tribal, local or private lands that are not federally-funded, authorized, or permitted, do not require section 7 consultations.

Application of the Jeopardy and Adverse Modification Standards for Actions Involving Effects to the Lynx and Its Critical Habitat

Jeopardy Standard

Prior to and following designation of critical habitat, the Service has applied an analytical framework for lynx jeopardy analyses that relies heavily on the importance of core area populations to the survival and recovery of the lynx. The section 7(a)(2) analysis is focused not only on these populations but also on the habitat conditions necessary to support them.

The jeopardy analysis usually expresses the survival and recovery needs of the lynx in a qualitative fashion without making distinctions between what is necessary for survival and what is necessary for recovery. Generally, if a proposed Federal action is incompatible with the viability of the affected core area population(s), inclusive of associated habitat conditions, a jeopardy finding is considered to be warranted, because of the relationship of each core area population to the survival and recovery of the species as a whole.

Adverse Modification Standard

The analytical framework described in the Director's December 9, 2004, memorandum is used to complete section 7(a)(2) analyses for Federal actions affecting lynx critical habitat. The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional (or retain the current ability for the primary constituent elements to be functionally established) to serve the intended conservation role for the species.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat may also jeopardize the continued existence of the species.

Activities that may destroy or adversely modify critical habitat are those that alter the PCEs to an extent that the conservation value of critical habitat for the lynx is appreciably reduced. Activities that, when carried out, funded, or authorized by a Federal agency, may affect critical habitat and therefore result in consultation for the lynx include, but are not limited to:

(1) Actions that would reduce or remove understory vegetation within boreal forest stands on a scale proportionate to the large landscape used by lynx. Such activities could include, but are not limited to, fuels treatment of forest stands. These activities could significantly reduce the quality of snowshoe hare habitat such that the landscape's ability to produce adequate densities of snowshoe hares to support persistent lynx populations is at least temporarily diminished.

(2) Actions that would cause permanent loss or conversion of the boreal forest on a scale proportionate to the large landscape used by lynx. Such activities could include, but are not limited to, recreational area developments; certain types of mining activities and associated developments; and road building. Such activities could eliminate and fragment lynx and snowshoe hare habitat.

(3) Actions that would increase traffic volume and speed on roads that divide lynx critical habitat. Such activities could include, but are not limited to, transportation projects to upgrade roads or development of a new tourist destination. These activities could reduce connectivity within the boreal forest landscape for lynx and could result in increased mortality of lynx within the critical habitat units, as lynx are highly mobile and frequently cross roads during dispersal, exploratory movements or travel within their home ranges.

If you have questions regarding whether specific activities may constitute destruction or adverse modification of critical habitat, contact the Supervisor of the appropriate Ecological Services Field Office (see list below).

State	Address	Phone No.
Minnesota	4101 East 80th Street Bloomington, Minnesota 55425	(612) 725–3548
Montana	585 Shepard Way Helena, Montana 59601	(406) 449–5225
Washington	11103 E. Montgomery Drive Spokane, Washington 99206	(509) 893–8015

All of the units designated as critical habitat, as well as those specific areas that have been excluded or that do not meet the definition of critical habitat, contain features essential to the conservation of the lynx. All units are within the geographic range of the species, and all were occupied by the species at the time we last formally reviewed the status of the species under the Act in 2003, based on surveys and research documenting the presence and reproduction of lynx (68 FR 40076, July 3, 2003). Federal agencies already consult with us on activities in areas currently occupied by the lynx, or if the species may be affected by the action, to ensure that their actions do not jeopardize the continued existence of the lynx.

Application of Section 3(5)(A) of the Endangered Species Act

Section 3(5)(A) of the Act defines critical habitat as the specific areas within the geographical area occupied by the species on which are found those physical and biological features (i) essential to the conservation of the species, and (ii) which may require special management considerations or protection. Therefore, areas within the geographical area occupied by the species that do not contain the features essential to the conservation of the species are not, by definition, critical habitat. Similarly, areas within the geographical area occupied by the species that require no special management or protection also are not, by definition, critical habitat.

There are multiple ways to provide management for species habitat. Statutory and regulatory frameworks that exist at a local level can provide such protection and management, as can lack of pressure for change, such as areas too remote for anthropogenic disturbance. Finally, State, local, or private management plans, as well as management under Federal agency jurisdiction can provide protection and management to avoid the need for designation of critical habitat. When we consider a plan to determine its adequacy in protecting habitat, we consider whether the plan, as a whole, will provide the same level of protection that designation of critical habitat would provide. The plan need not lead to exactly the same result as a designation in every individual application, as long as the protection it provides is equivalent, overall. In making this determination, we examine

whether the plan provides management, protection, or enhancement of the PCE that is at least equivalent to that provided by a critical habitat designation, and whether there is a reasonable expectation that the management, protection, or enhancement actions will continue into the foreseeable future. Each review is particular to the species and the plan, and some plans may be adequate for some species and inadequate for others.

During development of final critical habitat for the lynx, we first determined which physical and biological features are essential to the species' conservation and delineated the specific areas that contain those features and recent verified records of lynx presence and reproduction. Next, we refined the delineation of the designation to include only those lands that contained essential features that require special management or protection pursuant to the definition of critical habitat in 3(5)(A) of the Act.

During this process, we identified several areas where current land management results in no special management or protection being necessary. These areas include National Forests that are covered under a conservation agreement between us and the USFS (USFS and Service 2006 entire), or lands with management plans that adequately conserve the lynx and its habitat.

National Forest Service Lands Covered by a Conservation Agreement for Lynx

Since we proposed to list the lynx in 1999, the USFS has been an active partner in lynx conservation and recovery. The cooperation of the USFS in lynx conservation and recovery has been essential because the USFS manages the majority of lynx habitat in the contiguous United States. Thus, the USFS has substantial influence in addressing the primary threat to lynx identified at time of listing, that of inadequate regulatory mechanisms on Federal lands. The USFS was an instrumental partner in the development of the Lynx Conservation and Assessment Strategy (LCAS) (Ruediger *et al.* 2000, entire). The LCAS, described in more detail below, constitutes the best available information for conserving lynx. In 2000, we signed a conservation agreement with the USFS wherein the USFS committed to largely avoiding adverse effects to lynx until their LRMPs could be amended to incorporate lynx conservation (USFS and Service 2000, entire). The conservation agreement has been renewed twice (USFS and Service 2005 and 2006, entire). The 2006 agreement expires December 31, 2010, unless renewed (USFS and Service 2006, p. 8).

At the time of this final rule, the conservation agreement applies to all National Forests that have not yet amended their Land Resource Management Plans (LRMPs) to provide measures for lynx conservation (USFS and Service 2006, entire). The agreement applies to 31 national forests (USFS and Service 2006, Table 1). Of these, we determined that seven national forests meet the first prong of the definition of critical habitat under 3(5)(A) of containing physical or biological features essential to the conservation of lynx (see Table 2). Our next step was to evaluate whether these areas may require special management or protection pursuant to the definition of critical habitat in 3(5)(A) of the Act. The conservation agreement ensures that these seven forests will continue to be managed for lynx conservation by: (1) continuing to manage these lands consistent with the LCAS until their LRMPs are revised to provide guidance to conserve lynx, which we have determined largely avoids adverse effects to lynx in the interim period (Service 2000, p. 47); and (2) ensuring sufficient conservation of the lynx and its habitat upon revision of LRMPs with guidance to conserve lynx. All projects in lynx habitat on USFS lands undergo section 7 review and we have no indication the USFS is not adhering to the guidance in the conservation agreement.

TABLE 2.—NATIONAL FORESTS COVERED BY THE CANADA LYNX CONSERVATION AGREEMENT WITHIN AREAS WITH FEATURES ESSENTIAL TO THE CONSERVATION OF LYNX

Critical habitat unit	National forest
North Cascades	Okanogan-Wenatchee National Forest.
	Flathead National Forest.
	Helena National Forest.
Northern Rocky Mountains	Idaho Panhandle National Forests.
	Kootenai National Forest.
	Lewis and Clark National Forest.
	Lolo National Forest.
Minnesota	None.
Maine	None.

The USFS is actively in the process of amending LRMPs in all the forests listed above except for the Okanogan-Wenatchee National Forest. Until such time as the plans are amended to provide guidance for lynx, the USFS will largely avoid projects that would have any adverse effects to lynx within these seven forests (USFS and Service 2006, p. 6). The more protective standards in the conservation agreement will be implemented the longest in the Okanogan-Wenatchee National Forest, where revision of the Forest Plan has recently been initiated. *The commitment to avoid adverse effects in the conservation agreement is extremely protective of the lynx and its habitat, and is well beyond any protections or conservation benefits that would result from the designation of critical habitat.* This is because under normal section 7, projects with adverse effects on lynx habitat could proceed without modification as long as the adverse effects do not reach levels that adversely modify critical habitat. According to the LCAS, projects that adversely affect lynx habitat adversely affect lynx as well. Thus under the conservation agreement, the vast majority of projects that adversely affect lynx habitat cannot proceed until Forest Plans are amended.

To determine the level of protection that lynx within the forests identified in Table 2 (with the exception of the Okanogan-Wenatchee National Forest as indicated above) are likely to receive upon LRMP amendment, we analyzed three documents that constitute the best available information on the subject. These documents are the USFS draft Environmental Impact Statement for the Northern Rockies Lynx Amendment (DEIS) (USFS 2004, entire); a biological

assessment prepared for the Northern Rockies Lynx Amendment (USFS 2005, entire); and a supplement to the biological assessment (USFS 2006, entire). On January 5, 2004, the USFS announced the availability of the Draft Environmental Impact Statement (DEIS) that included a preferred alternative to conserve lynx while addressing issues related to wildland fire (USFS 2004, pp. 30–53). On November 23, 2005, the USFS requested formal consultation from us on the effects of their proposed action to amend management plans for 18 national forests to include lynx conservation while addressing wildland fire issues (Kimbell 2005, entire). We have not finalized our biological opinion but anticipate doing so in early 2007. The proposed action in the USFS's biological assessment indicates that the USFS will continue to conserve lynx habitat in the future as they have over the past 6 years.

We have analyzed the proposed action in the Biological Assessment (USFS 2005) for the purposes of this final rule to determine whether the six forests within the Northern Rockies that we identified as meeting the first prong of the definition of critical habitat are in need of special management or protection pursuant to 3(5)(A) of the Act. We have determined that the proposed LRMP amendments incorporate substantial and relevant conservation measures from the LCAS, or the equivalent thereof, based on updated information. Overall, the proposed action would increase conservation for lynx over the direction in the current LRMPs. Essential lynx habitat may be adversely affected by some of the proposed actions, mostly from fire and fuels management and a small amount of pre-commercial thinning activities. However, given adherence to LCAS guidelines that are proposed, these adverse effects would not amount to adverse modification, as the guidelines have been written to avoid significant large scale effects. Furthermore, these adverse effects are counterbalanced by a commitment to lynx conservation that applies to 94 percent of lynx habitat within the six Northern Rockies Forests containing the features essential to the conservation of the lynx, which provides a net conservation benefit for lynx.

Both the conservation agreement and the proposed plan amendments that follow from the agreement address the single most important threat identified at time of listing: the inadequacy of existing regulatory mechanisms. The conservation agreement and proposed amendments ensure that adequate habitat of sufficient quality is available to support the long-term persistence of lynx populations on these seven forests and would provide for connectivity between adjacent lynx populations in Canada or the United States. The conservation agreement and proposed amendments address the primary threat to the lynx (inadequate regulatory measures) by addressing the major adverse impacts of Federal land management on lynx, as well as several other potential impacts or influences that do not rise to the level of a threat to the lynx. Thus, special management or protection pursuant to 3(5)(A) of the Act is not required for the seven national forests identified in Table 3. Because Federal lands within these seven national forests do not meet the definition of critical habitat pursuant to section 3(5)(A) of the Act, we have not included these lands in the final critical habitat designation.

Lands With Management Plans That Conserve Lynx

Several management plans have been amended or revised to incorporate the lynx management strategy as outlined in the Lynx Conservation Assessment and Strategy (LCAS) (Ruediger *et al.* 2000, entire) or comparable programs. The USFS, Bureau of Land Management (BLM), National Park Service (NPS), and the Service developed the LCAS using the best available science specifically to provide a consistent and effective approach to conserve lynx and lynx habitat on Federal lands (Ruediger *et al.* 2000, p. 1). The overall goals of the LCAS were to recommend lynx conservation measures, to provide a basis for reviewing the adequacy of USFS and BLM land and resource management plans with regard to lynx conservation, and to facilitate conferencing and consultation under section 7 of the Act. The LCAS identifies an inclusive list of 17 potential risk factors for lynx or lynx habitat that may be addressed under programs, practices, and activities within the authority and jurisdiction of Federal land management agencies. By addressing these potential risk factors, the Federal agencies could address the primary threat identified in the 2000 listing rule for the lynx, that of inadequate regulatory mechanisms to protect lynx on Federal lands.

The risks identified in the LCAS are based on effects to either individual lynx, lynx populations, both, or lynx habitat. Potential risk factors the LCAS addresses that may affect lynx productivity include: timber management, wildland fire management, recreation, forest/backcountry roads and trails, livestock grazing, and other human developments (Ruediger *et al.* 2000, pp. 2–2—2–15). Potential risk factors the LCAS addresses that may affect lynx mortality include: trapping, predator control, incidental or illegal shooting, competition and predation as influenced by human activities and highways (Ruediger *et al.* 2000, pp. 2–15—2–17). Potential risk factors the LCAS addresses that may affect lynx movement include: highways, railroads and utility corridors, land ownership pattern, and ski areas and large resorts (Ruediger *et al.* 2000, pp. 2–17—2–19). Other potential large-scale risk factors for lynx addressed by the LCAS include: fragmentation and degradation of lynx refugia, lynx movement and dispersal across shrub-steppe habitats and habitat degradation by non-native and invasive plant species (Ruediger *et al.* 2000, pp. 2–19—2–21).

The LCAS ensures the appropriate mosaic of habitat is provided for lynx on Federal lands. To facilitate use of the LCAS in project planning and allow for the assessment of the potential effects of a project on an individual lynx, the USFS and BLM delineated Lynx Analysis Units (LAUs). The scale of an LAU approximates the size of area used by an individual lynx (25 to 50 mi^2 (65 to 130 km^2)) (Ruediger *et al.* 2000, p. 7-3). The LCAS recognizes that LAUs will likely encompass both lynx habitat and other areas (*e.g.*, lakes, low elevation ponderosa pine (*Pinus ponderosa*) forest, and alpine tundra). The LCAS provides habitat-related standards to address potential risks include: (1) If more than 30 percent of lynx habitat in an LAU is currently in unsuitable condition, no further reduction of suitable condition shall occur as a result of vegetation management activities by Federal agencies; (2) within an LAU, maintain denning habitat in patches generally larger than 5 acres, comprising at least 10 percent of lynx habitat; (3) maintain habitat connectivity within and between LAUs; (4) management actions (*e.g.*, timber sales, salvage sales) shall not change more than 15 percent of lynx habitat within an LAU to an unsuitable condition within a 10-year period; (5) pre-commercial thinning will only be allowed when stands no longer provide snowshoe hare habitat; (6) on Federal lands in lynx habitat, allow no net increase in groomed or designated over-the-snow routes and snowmobile play areas by LAU (Ruediger *et al.* 2000, pp. 7–3—7–9).

Lynx conservation depends on supporting boreal forest landscapes of sufficient size to encompass the temporal and spatial changes in habitat and snowshoe hare populations to

support interbreeding lynx populations or metapopulations over time. We have determined that management plans that incorporate the LCAS provide adequate management or protection for lynx because they meet the three criteria identified above. Specifically—(1) the management plans have been finalized and incorporate the provisions of the LCAS, which provides the best scientifically-based conservation measures known for lynx at this time; at a minimum, the incorporation of the LCAS conservation measures to address risk factors affecting lynx productivity into a management plan provides adequate management and protection for lynx and features essential to the conservation of lynx; (2) where Federal agencies and non-federal entities (including Tribes) have amended or revised their management plans to incorporate provisions of the LCAS, these provisions become the management direction for that particular land base; conservation measures in the LCAS are designed to be implemented at the programmatic and project level scale; and (3) the land management entities have incorporated provisions of the LCAS in order the provide for the conservation of the lynx; the conservation measures in the LCAS are intended to conserve lynx and to reduce or eliminate adverse effects from the spectrum of management activities on Federal lands (or other lands where the conservation measures are applied). At this time, there is no other scientifically-based land management guidance available for lynx; these management plans are in effect until future plan revisions or plan amendments supercede the current plans.

We evaluated areas to determine if they meet the definition of critical habitat by (1) containing physical or biological features essential to the conservation of the lynx, and (2) if the essential features may require special management or protection. We determined that these lands did contain features essential to the conservation of the lynx. However, based on the provisions in the LCAS beneficial to the lynx, we determined that the essential features on lands covered by management programs or plans that have been revised or amended to adopt the LCAS do not require special management or protection and, therefore, these lands do not meet the definition of critical habitat pursuant to section 3(5)(A) of the Act. These lands, described below, are not included in the designation:

Superior National Forest

The Superior National Forest located in northeastern Minnesota has revised its Land and Resource Management Plan (LRMP) to include specific measures to conserve lynx based on the LCAS (Ruediger *et al.* 2000, entire; USFS 2004a, Appendix E; USFS 2004b, p. 16; Service 2004, p. 2). Much of the boreal forest habitat in northeastern Minnesota is found on Superior National Forest (Service 2004, p. 28), and a large proportion of the recent lynx records in Minnesota have been detected on the Superior National Forest (Moen *et al.* 2004, p. 10; Minnesota DNR 2005 Web page). The revised LRMP went through stakeholder meetings, section 7 consultation with the Service, and public review. The LRMP will guide day-to-day management decisions for the next 15 years, whereupon the LRMP will again undergo revision (USFS 2004a section 1, pp. 2 and 4).

The Superior LRMP adopted the standards, guidelines, and objectives of the LCAS (Ruediger *et al.* 2000, entire; McAllister 2002, entire) that the USFS determined were appropriate and relevant to lynx conservation in Minnesota, in consultation with the Service. To remove redundancies with other management direction, the LRMP excluded certain LCAS standards, guidelines, and objectives and reclassified some to increase their potential to benefit lynx, to avoid confusion with terms found elsewhere in the LRMP, and to allow for management flexibility that would not compromise lynx conservation. In addition, it designated the Boundary Waters Canoe and Wilderness Area as a Lynx Refugium, in which natural processes will be the predominant determinant of lynx habitat conditions with some active management that would be ''compatible with wilderness values'' (USFS 2004a, Appendix E, p. 5 and section 3, p. 58).

The Superior National Forest has delineated Lynx Analysis Units (LAUs) within which it applies the lynx conservation measures prescribed in the LRMP. The LAUs are the smallest landscape scale analysis units upon which direct, indirect, and cumulative effects analyses for lynx will be performed (Ruediger *et al.* 2000, p. 7–2; USFS 2004a Appendix E, p. 4). They encompass lynx habitat (on all ownerships) within the administrative unit that has been mapped (in coordination with adjacent management agencies and the Service) using specific criteria to identify appropriate vegetation and environmental conditions (U.S. Forest Service 2004a Appendix E, p. 4).

On the basis of the conservation benefits afforded the lynx from the measures in the approved, revised LRMP and the definition of critical habitat contained in section 3(5)(A) of the Act, we have not included those lands encompassed in LAUs mapped by the Superior National Forest or delineated by the Forest as a Lynx Refugium in this designation because we have determined that special management or protection of these lands and the features essential to the conservation of the lynx is not required. The Superior National Forest manages its lands within the LAUs with measures to conserve lynx and features essential to its conservation and takes into consideration habitat conditions for lynx throughout a LAU regardless of land ownership. Therefore, the numerous small non-federal inholdings within the proclamation boundary of the Forest were removed from the designation because, although such lands may support lynx habitat, they have a negligible influence on the features essential to the conservation of the lynx compared to the significant role of the Superior National Forest lands.

Based on public comments and information received following the publication of the proposed designation, we coordinated with the Superior National Forest on those lands that remained within the proposed designation. We reevaluated these lands relative to the LRMP for the Superior National Forest to determine if the essential features within these areas were being managed for and protected under the plan. Based on our discussions with the National Forest and a further review of the plan, we have determined that the features within these lands are being adequately managed and protected for lynx conservation, and therefore do not meet the definition of critical habitat pursuant to section 3(5)(A) of the Act. As such, these lands have been removed from the final designation of critical habitat for the lynx.

Garnet Resource Area, Bureau of Land Management

The BLM's Garnet Resource Management plan has been amended to incorporate all provisions of the LCAS (BLM 2003, entire; Wilson 2004, entire). The Garnet Resource Area supports blocks of boreal forest that currently support lynx populations on the southern edge of the Northern Rockies Unit. The amendment to the management plan went through public review and consultation with us under

section 7 of the Act; a finding of no significant impact was issued by BLM in 2004 (BLM 2003, entire; Wilson 2004, entire).

On the basis of the conservation benefits afforded the lynx and features essential to its conservation from the measures in the amended Garnet Resource Management Plan and the definition of critical habitat contained in section 3(5)(A) of the Act, we have not included those lands that are within the boundaries of the approved Garnet Resource Management Plan in this designation of critical habitat for the lynx. These lands, and essential features thereon, are being adequately managed and protected for lynx and, as a result, do not meet the definition of critical habitat pursuant to section 3(5)(A) of the Act. Because the BLM already manages these lands, and features thereon, consistent with lynx conservation, we have determined that no special management or protection pursuant to section 3(5)(A) of the Act is required.

Flathead Indian Reservation

The tribal lands in the Northern Rockies unit (portions of the Flathead Indian Reservation) are managed by the Confederated Salish and Kootenai Tribes (CSKT) under their Forest Management Plan that incorporates the provisions of the LCAS (CSKT 2000, p. 285). On the basis of the conservation benefits afforded the lynx from the measures in the CSKT's Forest Management Plan and the definition of critical habitat contained in section 3(5)(A) of the Act, we have not included lands that are within the boundaries of the Flathead Indian Reservation in this designation of critical habitat for the lynx. These lands, and physical or biological features essential to the conservation of the lynx thereon, are being adequately managed and protected for lynx and, as a result, do not meet the definition of critical habitat. Because the Tribes already manage these lands, and essential features thereon, consistent with lynx conservation, no special management or protection pursuant to section 3(5)(A) of the Act is required.

Spokane District, Bureau of Land Management

Small portions of lands administered by the BLM's Spokane District are encompassed in the area containing features essential to the conservation of the lynx in the North Cascades unit in Washington. The BLM Spokane District Resource Management Plan was modified in 2003 to incorporate all of the provisions of the LCAS through what is called ''Resource Management Plan Maintenance'' (BLM 2003, entire).

On the basis of the conservation benefits afforded the lynx and the physical and biological features essential to its conservation from the measures in the approved Spokane District Resource Management Plan Maintenance and the definition of critical habitat contained in section 3(5)(A) of the Act, we have not included those lands that are within the boundaries of the BLM's Spokane District Resource Management Plan in this designation of critical habitat for the lynx. The BLM already manages this area, and essential features thereon, consistent with lynx conservation; therefore, special management or protection pursuant to 3(5)(A)of the Act is not required.

In summary, we find that these management plans protect essential lynx features and habitat and provide appropriate management to provide for the conservation of lynx and features essential to its conservation. The management plans have been finalized and incorporate the provisions of the LCAS, which, as described above provides the best, scientifically-based conservation measures for lynx and features essential to its conservation known at this time. Federal land and resource management plans provide the overarching direction under which Federal lands are managed until future plan revisions or plan amendments supercede the current plans.

The conservation measures in the LCAS are intended to conserve lynx and to reduce or eliminate adverse effects from the spectrum of management activities on Federal lands (or other lands where the conservation measures are applied). At this time, it constitutes the best and only scientifically-based land management guidance available for lynx. By not including areas in the designation that are already being managed for lynx conservation, land managers are encouraged to proactively institute lynx conservation measures and reduce administrative effort and costs associated with engaging in consultations for critical habitat pursuant to section 7 of the Act.

Exclusions Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that critical habitat shall be designated, and revised, on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact, of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the Secretary is afforded broad discretion and the Congressional record is clear that in making a determination under this section, the Secretary has discretion regarding which factors will be used and how much weight will be given to any factor.

Under section 4(b)(2), in considering whether to exclude a particular area from the designation, we must identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and determine whether the benefits of exclusion outweigh the benefits of inclusion. If an exclusion is contemplated, then we must determine whether excluding the area would result in the extinction of the species. In the following sections, we address a number of general issues that we considered relevant to the benefits of including and excluding lands. The text of these sections applies to all lands that we have excluded from this designation.

Conservation Partnerships on Non-Federal Lands

Most federally listed species in the United States will not recover without the cooperation of non-federal landowners. More than 60 percent of the United States is privately owned (National Wilderness Institute 1995) and at least 80 percent of endangered or threatened species occur either partially or solely on private lands (Crouse *et al.* 2002). Stein *et al.* (1995) found that only about 12 percent of listed species were found almost exclusively on Federal lands (that is, 90 to100 percent of their known occurrences restricted to Federal lands) and that 50 percent of federally listed species are not known to occur on Federal lands at all.

Given the distribution of listed species with respect to land ownership, conservation of listed species in many parts of the United States is dependent upon working partnerships with a wide variety of entities and the voluntary cooperation of many non-federal landowners (Wilcove and Chen 1998; Crouse *et al.* 2002; James 2002). Building partnerships and promoting voluntary cooperation of landowners is essential to understanding the status of species on non-federal lands and is necessary to implement recovery actions such as reintroducing listed species,

habitat restoration, and habitat protection.

Many non-Federal landowners derive satisfaction in contributing to endangered species recovery. The Service promotes these private-sector efforts through the Four Cs philosophy—conservation through communication, consultation, and cooperation. This philosophy is evident in Service programs such as Habitat Conservation Plans, Safe Harbor Agreements, Candidate Conservation Agreements, Candidate Conservation Agreements with Assurances, and conservation challenge cost-share. Many private landowners, however, are wary of the possible consequences of encouraging endangered species to their property, and there is mounting evidence that some regulatory actions by the Federal Government, while well-intentioned and required by law, under certain circumstances can have unintended negative consequences for the conservation of species on private lands (Wilcove *et al.* 1996; Bean 2002; Conner and Mathews 2002; James 2002; Koch 2002; Brook *et al.* 2003). Many landowners fear a decline in their property value due to real or perceived restrictions on land-use options where threatened or endangered species are found. Consequently, harboring endangered species is viewed by many landowners as a liability, resulting in anti-conservation incentives because maintaining habitats that harbor endangered species represents a risk to future economic opportunities (Main *et al.* 1999; Brook *et al.* 2003).

The purpose of designating critical habitat is to contribute to the conservation of threatened and endangered species and the ecosystems upon which they depend. The outcome of the designation, triggering regulatory requirements for actions funded, authorized, or carried out by Federal agencies under section 7 of the Act, can sometimes be counterproductive to its intended purpose on non-federal lands. According to some researchers, the designation of critical habitat on private lands significantly reduces the likelihood that landowners will support and carry out conservation actions (Main *et al.* 1999; Bean 2002; Brook *et al.* 2003). The magnitude of this negative outcome is greatly amplified in situations where active management measures (such as reintroduction, fire management, control of invasive species) are necessary for species conservation (Bean 2002).

The Service believes that the judicious use of excluding specific areas of non-federally owned lands from critical habitat designations can contribute to species recovery and provide a superior level of conservation than critical habitat alone. The Department of the Interior's Four Cs philosophy—conservation through communication, consultation, and cooperation—is the foundation for developing the tools of conservation. These tools include conservation grants, funding for Partners for Fish and Wildlife Program, the Coastal Program, and cooperative-conservation challenge cost-share grants. Our Private Stewardship Grant program and Landowner Incentive Program provide assistance to private land owners in their voluntary efforts to protect threatened, imperiled, and endangered species, including the development and implementation of Habitat Conservation Plans.

Conservation agreements with non-Federal landowners (such as Habitat Conservation Plans (HCPs), contractual conservation agreements, easements, and stakeholder-negotiated State regulations) enhance species conservation by extending species protections beyond those available through section 7 consultations. In the past decade, we have encouraged non-Federal landowners to enter into conservation agreements, based on a view that we can achieve greater species conservation on non-Federal land through such partnerships than we can through coercive methods (61 FR 63854; December 2, 1996).

Educational Benefits of Critical Habitat

A benefit of including lands in critical habitat is that the designation of critical habitat serves to educate landowners, State and local governments, and the public regarding the potential conservation value of an area. The designation can help focus and promote conservation efforts by other parties by clearly delineating areas of high conservation value for the lynx. In general, the educational benefit of a critical habitat designation always exists, although in some cases it may be redundant with other educational effects. For example, Federal land management plans have significant public input and may largely duplicate the educational benefit of a critical habitat designation. This benefit is closely related to a second, more indirect benefit: that designation of critical habitat would inform State agencies and local governments about areas that could be conserved under State laws or local ordinances.

General Principles of Section 7 Consultations Used in the 4(b)(2) Balancing Process

The most direct, and potentially largest, regulatory benefit of critical habitat is that federally authorized, funded, or carried out activities require consultation pursuant to section 7 of the Act to ensure that they are not likely to destroy or adversely modify critical habitat. There are two limitations to this regulatory effect. First, it only applies where a Federal action or ''nexus'' occurs—if there is no Federal nexus, designation itself does not restrict actions that destroy or adversely modify critical habitat. Second, it only limits destruction or adverse modification. By its nature, the prohibition on adverse modification is designed to ensure those areas that contain the physical and biological features essential to the conservation of the species or unoccupied areas that are essential to the conservation of the species are not eroded. Critical habitat designation alone, however, does not require specific steps toward recovery.

Once consultation under section 7 of the Act is triggered, the process may conclude informally when the Service concurs in writing that the proposed Federal action is not likely to adversely affect the listed species or its critical habitat. However, if the Service determines through informal consultation that adverse impacts are likely to occur, then formal consultation would be initiated. Formal consultation concludes with a biological opinion issued by the Service on whether the proposed Federal action is likely to jeopardize the continued existence of a listed species or result in destruction or adverse modification of critical habitat, with separate analyses being made under both the jeopardy and the adverse modification standards. For critical habitat, a biological opinion that concludes in a determination of no destruction or adverse modification may contain discretionary conservation recommendations to minimize adverse effects to primary constituent elements, but it would not contain any mandatory reasonable and prudent measures or terms and conditions. Mandatory reasonable and prudent alternatives to the proposed Federal action would only be issued when the biological opinion results in a jeopardy or adverse modification conclusion.

We also note that for 30 years prior to the Ninth Circuit Court's decision in *Gifford Pinchot,* the Service equated the jeopardy standard with the standard for destruction or adverse modification of critical habitat. The Court ruled that the

Service could no longer equate the two standards and that adverse modification evaluations require consideration of impacts on the recovery of species. Thus, under the *Gifford Pinchot* decision, critical habitat designations may provide greater benefits to the recovery of a species. However, we believe the conservation achieved through implementing Federal land management plans, habitat conservation plans (HCPs), or other habitat management plans is typically greater than what would be achieved through multiple site-by-site, project-by-project, section 7 consultations involving consideration of critical habitat. This is especially true for lynx populations that require differing successional stages of habitat juxtaposed appropriately throughout large landscapes. The majority of lynx habitat is located on large land ownerships, including Federal, State, county, conservation organization, and private corporate forestlands, capable of influencing forest management at a landscape-scale. Management plans or other commitments on these large land holdings can commit resources to implement long-term management and protection to particular habitat for at least one, and possibly other, listed or sensitive species. Section 7 consultations only commit Federal agencies to prevent adverse modification to critical habitat caused by the particular project; they are not committed to provide conservation or long-term benefits to areas not affected by the proposed project. Thus, in most cases, an HCP or management plan which considers enhancement or recovery as the management standard will always provide as much or more benefit than a consultation for critical habitat designation conducted under the standards required by the Ninth Circuit in the *Gifford Pinchot* decision.

Benefits of Excluding Lands From Critical Habitat With Management Plans or HCPs

The benefits of excluding lands with management plans or HCPs from critical habitat designation include relieving landowners, communities, counties, and States of any additional regulatory burden that might be imposed by a critical habitat designation even if it is only the administrative burden of confirming no harm to the critical habitat. Most conservation plans take many years to develop and, upon completion, are, in most cases, consistent with the recovery objectives for listed species that are covered within the plan area. In fact, designating critical habitat in areas covered by a pending conservation plan or HCP could result in the loss of some species' benefits if participants abandon the planning process, in part because of the strength of the perceived additional regulatory compliance that such designation would entail. For example, the time and cost of regulatory compliance for a critical habitat designation do not have to be quantified for the regulated public to perceive them as additional Federal regulatory burden sufficient to discourage continued participation in plans targeting listed species' conservation.

A related benefit of excluding lands within management plans from critical habitat designation is the unhindered, continued ability to seek new partnerships with future plan participants including States, counties, local jurisdictions, conservation organizations, and private landowners, which together can implement conservation actions that we would be unable to accomplish otherwise. If lands within approved management plan areas are designated as critical habitat, it would likely have a negative effect on our ability to establish new partnerships to develop these plans, particularly plans that address landscape-level conservation of species and habitats. For example, by excluding these lands, we preserve our current partnerships and encourage additional conservation actions in the future.

Furthermore, a Federal land management plan or an HCP application must itself be consulted upon. Such a consultation would review the effects of all activities covered by the management plan or HCP which might adversely impact the species under a jeopardy standard, including possibly significant habitat modification (see definition of ''harm'' at 50 CFR 17.3), even without the critical habitat designation. Similarly, land management plans on private lands paid for by Federal landowner incentive programs (e.g., NRCS Healthy Forest Reserve Program, USFWS Landowner Incentive Program) must also be consulted upon. In addition, Federal actions not covered by the management plan or HCP in areas occupied by listed species would still require consultation under section 7 of the Act even absent a critical habitat designation and would be reviewed for possibly significant habitat modification in accordance with the definition of harm referenced above.

After consideration under section 4(b)(2) of the Act, specific lands have been excluded from the designation of critical habitat for the lynx. A detailed analysis of our exclusion of these lands under section 4(b)(2) of the Act by critical habitat unit is provided in the paragraphs that follow.

Relationship of Critical Habitat to Tribal Lands

Tribal lands included in the proposed designation were those of the Houlton Band of Maliseet Indians, Aroostook Band of Micmac Indians, Passamaquoddy Tribe, and Penobscot Indian Nation in the Maine unit and Grand Portage Indian Reservation and Vermillion Lake Indian Reservation in the Minnesota unit. The amount of tribal lands proposed was relatively small in size (totaling approximately 223 km^2 (86 mi^2) in the Maine unit and 192 km^2 (74 mi^2) in the Minnesota unit). As previously mentioned, we contacted and met with a number of tribes to discuss the proposed designation and we also received comments from tribes requesting that their lands not be designated as critical habitat because of their sovereign rights, in addition to concerns about economic impacts and the effect on their ability to manage natural resources.

Benefits of Inclusion

The benefit of including these tribal lands in critical habitat for the lynx is low. The lands are fairly small in size relative to the large landscape required to sustain the lynx population in these areas. The larger landscape in Maine is lands managed for commercial forestry, and in Minnesota the larger landscape is managed by the Superior National Forest that has revised its forest plan to address the needs for lynx. Therefore, although these tribal lands support lynx habitat and the PCE, they have a minor role in lynx conservation compared to the commercial forestlands in Maine and Superior National Forest in Minnesota.

Benefits of Exclusion

In accordance with Secretarial Order 3206, ''American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act'' (June 5, 1997); the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951); Executive Order 13175 ''Consultation and Coordination with Indian Tribal Governments;'' and the relevant provision of the Departmental Manual of the Department of the Interior (512 DM 2), we believe that fish, wildlife, and other natural resources on tribal lands are better managed under tribal authorities, policies, and programs than through Federal regulation wherever possible and practicable. Such designation is often viewed by tribes as

an unwanted intrusion into tribal self governance, thus compromising the government-to-government relationship essential to achieving our mutual goals of managing for healthy ecosystems upon which the viability of threatened and endangered species populations depend.

For example, through Federal grant programs, the Passamaquoddy Tribe is conducting surveys and habitat models for lynx and snowshoe hare, the Houlton Band of Maliseet Indians is conducting lynx surveys and lynx habitat is being assessed on Grand Portage Reservation lands. Information from these efforts will be used to inform management plans or strategies to promote the conservation of lynx on Tribal lands. Additionally, we received general comments from Tribes and/or authorities representing the natural resource interests of Tribes voicing their commitment to ensuring that lynx remain a viable part of the ecosystem.

Benefits of Exclusion Outweigh Benefits of Inclusion

We believe that conservation of lynx can be achieved off of Tribal lands within the critical habitat unit and on tribal lands with the cooperation of Tribes. Given the importance of our government-to-government relationship with Tribes, the benefit of maintaining our commitment to the Executive Order by excluding these lands outweighs the benefit of including them in critical habitat. Therefore, Tribal lands have not been designated as critical habitat pursuant to section 4(b)(2) of the Act.

Unit 1 (Maine)

Lands Managed for Commercial Forestry

This category of specific properties include private lands on which timber is grown, harvested, and processed for wood and wood fiber for the manufacture of pulp and paper, and the production of solid and engineered wood products. These lands are generally large in size and comprise the majority of the lands in Maine we considered for inclusion in our critical habitat designation.

Benefits of Inclusion

As previously discussed, we believe that there may be some education benefits to designating critical habitat for lynx on lands managed for commercial forestry. However, we believe that there is already substantial awareness of the lynx and conservation issues related to the lynx through the species being listed; through the public review process for the critical habitat proposal; information provided to the public from Maine Department of Inland Fisheries and Wildlife, North Maine Woods Association; information provided from University of Maine Department of Wildlife Ecology, Maine Cooperative Fish and Wildlife Research Unit, and the Maine Cooperative Forestry Research Unit; the Service's numerous contacts with Federal agencies that may have projects in northern Maine; the State-listing process in 2006; and extensive media coverage on the status of the Canada lynx in Maine.

Commercial forest lands in northern Maine are considered to be occupied by the lynx. Detailed habitat maps and habitat models (Hoving *et al.* 2004, p. 290, 2005, p. 747 Robinson 2006 pp. 107–119) and a lynx occurrence database maintained by Maine Inland Fisheries and Wildlife provide the Service with the most recent interpretation of the distribution of lynx and their habitat. For Federal actions, consultation under section 7 of the Act is required if an action may affect the lynx or its habitat. Accordingly, there are few opportunities for the Service to influence silviculture in Maine through Section 7 of the Act, especially at a landscape scale. Forest management and associated activities require no Federal permits, and Federal funding is rarely employed on private forest lands. Since listing the lynx in 2000, the Service has consulted on fewer than 50 projects in Maine under Section 7 of the Act. Consultation has been limited primarily to small woodlot owners and tribes applying for Federal assistance. All consultations were concluded informally with fewer than five requiring any measures to conserve lynx. Most have been small projects (less than 6 ha (15 ac)), are located on small ownerships (less than 202 ha (500 ac)), and were located on the periphery of the lynx range in Maine. Given the historically low level of consultations, the opportunity to address forestry practices on private lands managed for commercial forestry, especially at a large landscape scale, through consultation is limited.

Accordingly, we believe the benefits of inclusion are few. Because of our limited opportunities to consult under section 7 we believe we will achieve greater benefit from the ongoing management and partnerships than from the regulation that results from designating critical habitat on private lands in northern Maine. Maintaining a strong working relationship with both the State and private landowners is essential to ensuring continued voluntary management that conserves lynx, past and continuing voluntary forest management has been and continues to be beneficial to lynx in Maine. Timber salvaging associated with the eastern spruce budworm (*Choristoneura fumiferana*) outbreak of 1972 to 1986 resulted in hundreds of thousands of acres of clearcuts, which created contiguous stands of regenerating spruce-fir as large as 2,023 ha (5,000 ac) across much of northern Maine. These areas are now in an advanced stage of regeneration and support high hare densities (Fuller and Harrison 2005, p. 716; Homyack *et al.* 2006; Robinson 2006, p. 9), which is sustaining the lynx population (Hoving *et al.* 2004, pp. 291–292; Fuller 2006, pp. 36–47; Robinson 2006, p. 122). Spruce budworm salvage created extensive mosaics of habitat within Maine that support lynx and features essential to the conservation of the lynx, such as structure for denning and dense understories within boreal forest able to support snowshoe hares and lynx. These optimal habitat conditions will persist for the next 10 to 15 years until the regenerating clearcut stands mature to an age and structure (~30 years old) when they will no longer provide optimal habitat for hares and lynx.

Forest practices in Maine generally are favorable to lynx. For example, many of the timber lands in Maine considered for inclusion in lynx critical habitat are managed under forest certification programs (e.g., Sustainable Forestry Initiative (SFI), Forest Stewardship Council (FSC)) that require members to maintain coarse woody debris, which provides lynx denning habitat (although denning habitat does not seem to be limited in northern Maine). Land managers participating in these programs are audited regularly for compliance (for example, Plum Creek is SFI certified and was audited as recently as 2005).

The Huber Resource Corporation provided maps of current and future lynx habitat based on the Maine Forest Products Council analysis (see below). Currently, 36 percent of their 102,291 ha (252,766 ac) of forest ownership is in large blocks of early successional softwoods (spruce and fir). J. D. Irving concluded there would be no significant change in the spatial arrangement or amount of habitat in the next 10 to 20 years (Gilbert 2006, p2). Plum Creek provided information to the Service demonstrating that they have four lynx habitat units (47,000, 43,000, 33,000, and 30,000 acres) that contain optimal mid-regeneration conditions for lynx in the Moosehead Lake area.

The Maine Forest Products Council provided a comprehensive lynx

landscape-level habitat analysis of current and future lynx habitat (20 years hence) for their member landowners and landowner representative lands, which comprise the majority of the proposed critical habitat. The map suggests that about 404,686 ha (1 million ac) of lynx habitat currently exists in Maine and 404,686 ha (1 million ac) of future lynx habitat will be present 20 years hence and widely distributed on the landscape. Lynx habitat models for Maine (Hoving *et al.* 2004 , pp. 291–292, 2005; Robinson 2006, p. 122) corroborate the fact that current habitat is prevalent and widely distributed. We agree that lynx habitat in Maine is abundant and widespread, and acknowledge that this is largely due to management for timber harvest.

Most of the lands we considered for inclusion as lynx critical habitat are in unorganized townships and within the jurisdiction of the Maine Land Use Regulation Commission. Most of the area is zoned for commercial forestry, and development is sparse except for a few organized towns around the periphery of the proposed critical habitat.

The Maine Land Use Regulation Commission and Plum Creek have recently shared plans with the Service for a proposed rezoning of about 172,396 ha (426,000 ac) in the Moosehead Lake area to implement a concept plan to develop 975 new residential lots, resorts, and other facilities covering approximately 1,497 ha (3,700 ac). Plum Creek is offering mitigation in the form of a 162,684-ha (402,000-ac) Conservation Framework, including a 108,860-ha (269,000-ac) conservation easement (some donated) and 21,044 ha (52,000 ac) sale to conservation groups. This is the largest development project in Maine's history. The Maine Land Use Regulation Commission will make a determination on the concept plan in 2007. The proposed developments occur within the areas we considered for inclusion as lynx critical habitat and include areas that are known to be occupied by lynx. Major developments such as this proposal usually require Clean Water Act permits, which provide a Federal nexus for a consultation under section 7 of the Act. Any Federal actions related to development of these lands that may affect the lynx will undergo consultation between with the Service and Federal permitting agencies. We believe the current scale of the development project can be effectively evaluated through section 7 consultation in a way to protect lynx and conserve its habitat with or without a critical habitat designation because the project is not likely to be at a scale that would adversely modify the critical habitat.

The area of the proposed lynx critical habitat is highly roaded with small, single-lane, gravel or dirt logging roads. Road density typically varies from 50–120 km of road/100km^2 township (31–75 mi of road/38mi^2 township). Lynx road mortality (12 animals) documented in Maine has occurred on logging roads (n = 9) and paved public roads (n = 3) (MDIFW, unpub. data). Most logging road mortality occurred on two-lane haul roads where higher traffic volume and speed would occur. We do not know if mortality is from forestry-related or visitor vehicles because these roads are open to the public. Road complexes on commercial forest land have largely been built out. It is unlikely that a substantial number of new woods roads will be built in northwestern Maine. It is also unlikely that roads will be upgraded or paved into two-lane high speed roads that would increase risk to lynx. Road building for forest purposes is exempt from Clean Water Act wetland permits and thus, there is no Federal nexus to address forest roads through Section 7. However, we do not anticipate an increase in forest road building in northern Maine in the foreseeable future.

Benefits of Exclusion

Forest landowners in Maine expressed concerns about the stigma, ''shadow-effect,'' or uncertainty associated with imposing a new far-reaching Federal regulation on their lands. Until recently, the traditional owners of large tracts of forest lands in northern Maine were forest products companies with their own mills and their own timberland base to supply fiber. Landowners expressed concerns that another Federal regulation over their land would add a layer of uncertainty that could affect land valuation, deter investors, or cause hardships through costly litigation.

In addition, the current environment of timber land sales and mill closures in Maine has led to efforts to conserve the north Maine woods. Conservation groups have purchased conservation easements on hundreds of thousands of acres of forestland. These easements are negotiated with private timber companies to assure protection from development and promote sustainable forestry and wildlife management. Most of these easements have required significant Federal funds, especially from Forest Legacy and the North American Wetland Conservation Act. Currently, about 809,371 ha (2 million ac) of the of 2.6 million ha (6.4 million ac) in Maine considered for inclusion in lynx critical habitat are under permanent easements, with several hundred thousand acres more under negotiation. Easement negotiations are often tenuous, and several landowners expressed concern that designation of critical habitat may create a Federal nexus that would discourage landowners against accepting Federal funding and participating in future easement negotiations. Maine Inland Fisheries and Wildlife expressed concerns that if these landscape-level conservation efforts fail in the future because of this perception, conservation of lynx will be set back. Landowners expressed sincere concerns about the uncertainty of legal actions related to a critical habitat designation and how this would affect their interest in entering into future conservation easement agreements.

The primary benefit of excluding corporate forest lands from critical habitat is preserving the partnerships that have been and will be developed to conserve habitat for the lynx. The Service believes that partnerships and cooperative conservation have proved to be beneficial in Maine and are the most effective means of achieving conservation for the lynx on private lands. Partnerships have many benefits, including access by researchers and State and Federal biologists to private lands; cooperation with industry in funding research, monitoring, and management; and development of forest management plans on private lands.

Maine forest industry has demonstrated cooperation by providing access to State and Federal wildlife agencies. For example, since 1999, Clayton Lake Woodlands, Seven Islands, and J. D. Irving Limited provided access and housing to Maine Inland Fisheries and Wildlife biologists to conduct radio-telemetry studies of lynx. Many landowners have granted permission for State and Federal biologists to conduct winter snow tracking surveys for lynx. Many landowners have granted permission for University of Maine graduate students to access lands to conduct studies and assess snowshoe hare populations. Landowners have also provided access to sensitive corporate data on forest stands to help State and Federal agencies with lynx and hare research. Landowners have suggested that future access to lands and data may be limited if critical habitat is designated, which would preclude us from getting valuable information on lynx distribution in Maine and which would be counter to lynx recovery efforts.

Since 1975, corporate landowners have pooled research funds to support research to improve forest management through the University of Maine's Cooperative Forestry Research Unit. The Unit currently consists of 27 members, including most of the large corporate landowners within the Maine critical habitat unit. Since 2000, the effect of forest management on snowshoe hares and lynx has been a research priority. The Unit has joined the Service in funding six graduate students studying forest management, hares, and lynx. Many landowners are also members of the National Council for Air and Stream Improvement, Inc., which has also provided substantial funding support for the aforementioned research projects. The Maine Cooperative Fish and Wildlife Research Unit and University of Maine Department of Wildlife Ecology have been instrumental in conducting this research. These partnerships have allowed open dialogue and productive information sharing between landowners and Federal, State, and university biologists. Landowners have expressed concerns that designating critical habitat could jeopardize these valuable partnerships. These partnerships are essential for conserving lynx in Maine.

The Maine Forest Products Council has represented Maine forest industry for over 40 years and currently has about 400 member companies. Collectively, their members own 2.2 million ha (5.4 million ac) (~84 percent) of the land we considered for inclusion in lynx critical habitat within Maine. Fourteen of their members own greater than 20,234 ha (50,000 ac) and will have a significant role in conserving current and future lynx habitat in Maine. The Council received unanimous backing from their members to act on their behalf and submitted comments to the Service regarding the critical habitat proposal. Included in their comments was a proposal in the form of a *Conservation Strategy for the Canada Lynx in Maine*. The strategy would provide a 10-year commitment to forestry practices that maintain and enhance lynx habitat by regenerating spruce fir forests, conducting a landscape assessment of lynx habitat every 5 years, continuing to support lynx and hare research, and meeting with the State and Federal wildlife agencies annually to share information and discuss research priorities. The specifics of this conservation strategy were provided to the Service in a draft Memorandum of Understanding. While the MOU has not yet been finalized it demonstrates the Council's commitment to continued lynx conservation. According to the Strategy, at the end of the 10-year period, the Council, Service, and State would conduct a joint evaluation to determine if the lynx strategy should be renewed for another 10-year period.

Maine forest industry's *Conservation Strategy for the Canada Lynx in Maine* offers a framework for the Service to work in partnership with forest landowners to achieve recovery for the lynx and provides substantial benefits over what can be achieved through adverse modification standards of critical habitat through section 7 of the Act. The Strategy provides planning and cooperation at a landscape level meaningful to lynx; allows the opportunity for coordination and planning for lynx habitat across multiple land ownerships; allows researchers access to corporate landscape-level habitat information; and promotes continued funding support by corporate landowners for habitat-related research that will inform future conservation planning. Most importantly, the Strategy establishes a framework for landowners, Federal and State governments and university researchers to work together to protect and enhance lynx habitat in Maine while preserving and enhancing Maine's working forest. The Service acknowledges that forest practices have created the abundant lynx habitat in Maine today and can continue to do so in the future.

Individual landowner lynx management plans are important for the recovery of lynx in the Northeast. The Service's recovery outline for the Canada lynx notes that ''timber harvest and associated activities on non-federal lands exert the most influence to lynx habitat in the Northeast and have created the favorable conditions that currently exist for lynx and snowshoe hares in northern Maine'' (Service 2005, p. 9), and that one of the most important recovery actions needed is to ''establish management commitments in core areas that will provide for adequate quality and quantity of habitat such that there is a reasonable expectation that persistent lynx populations can be supported * * * for at least the next 100 years.'' The Maine Forest Products Council offers a memorandum of understanding or agreement whereby the Service ''will work with and provide incentives to the Council and its members to develop forest management plans whose objectives are to promote the strategy and preserve Maine's working forest environment.'' Our lynx recovery outline (Service 2005, p. 12) provides a recovery action ''on non-Federal core areas, develop and implement best management practices and long-term management agreements for lynx with key State, private, and/or tribal forest managers.''

In July, 2006, the Natural Resources Conservation Service (NRCS) and Service offered financial incentives to landowners to prepare lynx management plans through the pilot Healthy Forest Reserve Program. NRCS successfully enrolled three landowners in the Maine Unit, the Passamaquoddy Tribe, the Maine Chapter of the Nature Conservancy, and the Forest Society of Maine acting on behalf of a conservation easement holder for the West Branch Project, which will result in lynx management plans on 201,533 ha (498,000 ac), or about 8 percent of the lands considered for inclusion in lynx critical habitat in Maine. Other large landowners in Maine attended the Healthy Forest information meetings and expressed interest in these kinds of programs. The Service believes this demonstrates the interest and willingness of landowners to step down the Maine Forest Products Council Strategy to individual landowner plans, especially if Healthy Forest or other cooperative conservation incentives are provided in the future.

The genuine commitment of Maine forest industry to develop individual and collective lynx management plans represents a significant benefit of excluding corporate forest landowners from the critical habitat. The discussion of lynx habitat planning has been greatly accelerated during our development of this critical habitat rule. Throughout the process, the Maine forest industry has been open and forthright about its commitments and its offer of a strategy, and the memorandum of understanding documents this commitment. These commitments may be off the table if critical habitat is designated, which would be a major setback to lynx recovery. The Service believes lynx forest management plans can conserve lynx at the landscape scales meaningful to lynx and will be far more effective at achieving the conservation essential to the recovery of lynx than small-scale site-by-site evaluations of adverse modification in Section 7 consultations.

We have evaluated the recent past and current forestry practices for lands managed for commercial forestry within the proposed designation of critical habitat for the lynx in Maine and found that they have produced a mosaic of lands important for lynz conservation. We also recognize that it is unlikely federal section 7 consultations could

achieve the same conservation and recovery benefits provided by these voluntary activities. Based on this evaluation, we find that the benefits of excluding these specific lands include: maintaining relationships with existing partners, encouraging new partnerships with landowners, and avoiding potential costly regulations having limited conservation benefits. The preservation and/or initiation of partnerships is essential for the conservation and recovery of lynx in part because it is crucial to the ongoing research and surveys for lynx, snowshoe hare, and lynx habitat relationships.

Benefits of Exclusion Outweigh the Benefits of Inclusion

Based on the above considerations, and consistent with the direction provided in section 4(b)(2) of the Act, we have determined that the benefits of excluding lands managed for commercial forestry as critical habitat outweigh the benefits of including them as critical habitat for the lynx. As we discuss above, we believe that there would be greater benefit from excluding lands managed for commercial forestry from the final designation because it will maintain or encourage partnerships and allow for continued access to these lands for research and monitoring of lynx, snowshoe hares, and their habitat. Further, as indicated in the final rule listing the lynx (March 24, 2000; 65 FR 16052), the primary threat to the lynx was the lack of Federal land management plan guidance to conserve lynx. We have concluded that the threats to the lynx in Maine have been ameliorated through voluntary actions of the Maine Forest Products Council. In addition, the proposed *Conservation Strategy for the Canada Lynx in Maine*, which covers more than 85 percent of the lands containing features essential to the conservation of the lynx in Maine demonstrates the Council's voluntary commitment extends into the future. Subsequent lynx forest management plans with individual landowners will further strengthen landscape-level habitat protection. In addition, we believe that critical habitat designation provides little gain in the way of increased public recognition and education because of the information provided from ongoing research and monitoring, material provided on various Web sites, and other information provided to the public in Maine. We also believe that there would be few, if any, little additional conservation benefit realized through the regulatory burden of a critical habitat designation on these lands under section 7 of the Act because Federal actions are uncommon. Therefore, on the basis of the above discussion and the conservation measures provided the lynx and features essential to its conservation through the Maine Forest Products Council *Conservation Strategy for the Canada Lynx in Maine*, we do not believe that the exclusion of lands managed for commercial forestry in this unit would result in the extinction of the lynx.

State Lands

State land ownership (about 225,441 ha (557,077 ac), or about 9 percent of the lands considered for inclusion in lynx critical habitat in Maine) is comprised of Baxter State Park (83,137 ha (205,436 ac)), Maine Department of Conservation Bureau of Parks and Lands (140,295 ha (346,676 ac)), and Maine Inland Fisheries and Wildlife management areas (2,009 ha (4,965 ac)). A small part of Baxter State Park, the Scientific Forest Management Area, and many Bureau of Parks and Public Lands lots are managed for sustainable forestry. Collectively, these lands comprise a small part of the landscape occupied by lynx.

Benefits of Inclusion

We believe that there may be some education benefits to designating critical habitat for lynx on State-owned lands. However, we believe that there is already substantial awareness of the lynx and conservation issues related to the lynx through the species being listed, through the public review process for considering the lynx for State listing in 2006, information provided from Maine Department of Inland Fisheries and Wildlife, and research being conducted through the University of Maine's Department of Wildlife Ecology, Cooperative Fish and Wildlife Research Unit, and Maine Cooperative Forestry Research Unit, and through the publication, and subsequent outreach and public hearings for the proposed critical habitat.

Other benefits of including State lands in critical habitat are low. Lands under State ownership are considered to be occupied by the lynx. As such, Federal actions require consultation under section 7 of the Act if the action may affect the lynx or its habitat. On these State lands, it is uncommon for there to be a Federal action that triggers consultation under section 7 of the Act, therefore little benefit would be realized through section 7 consultation if such lands were included in the designation. Since the lynx was listed in 2000, there have been no consultations on Federal expenditures or permits on State-owned lands in the area of Maine considered for inclusion in critical habitat. Therefore, if there are few consultations, critical habitat would not be of much benefit to lynx.

Further, the benefits of inclusion are low because of appropriate current management of State lands. We believe the benefits of including State lands managed for commercial forestry in the designation are low due to recent past and current silviculture practices on managed State lands that are similar to those on adjacent corporate forest land that have created mosaics of habitat supporting lynx and features essential to the conservation of the lynx, such as structure for denning and dense understories within boreal forest able to support snowshoe hares and lynx. At this time we have no specific evidence to suggest that large-scale changes in these practices are planned on State lands. Other State lands (the majority of Baxter State Park, Allagash Wilderness Waterway, and other small State parks) are managed in a ''forever wild'' status. Given that lynx in Maine respond to young forests regenerating from a disturbance, there is little opportunity to manage for lynx in State parks unless natural disturbance regimes—fire, insect infestation, wind throw—create habitat conditions favorable to lynx. We are aware of no State policies or management in State parks that would adversely modify critical habitat.

The Maine Bureau of Parks and Lands has an Integrated Resource Policy (*http://www.maine.gov/doc/parks/programs/planning/*) that requires 10-year management plans on public reserved and nonreserved lands that require ''exemplary land management practices, including silvicultural, wildlife, and recreation practices as a demonstration of State policies governing forested and related types of lands.'' These plans require identification of important wildlife areas, including a policy to work with the Service and Maine Inland Fisheries and Wildlife to conserve biodiversity and habitat for federally State-listed endangered and threatened species. Plans for the Seboomook and Flagstaff units and Allagash Wilderness Waterway (all considered for inclusion as critical habitat) are under development. The Service is unaware whether the plans being drafted incorporate habitat planning for lynx, but we believe the State will incorporate habitat planning for lynx per their policies.

Benefits of Exclusion

The primary benefit of excluding State lands from critical habitat is the partnerships that have and will be

developed to conserve habitat for the lynx. The Service believes that partnerships and cooperative conservation are the most effective means of achieving conservation for the lynx on private lands. Partnerships have many benefits, including funding research, monitoring, and management; and development of forest management. The State of Maine has been an excellent partner for lynx conservation.

The Benefits of Exclusion Outweigh the Benefits of Inclusion

Based on the above considerations, and consistent with the direction provided in section 4(b)(2), we have determined that the benefits of excluding State lands in the Maine Unit as critical habitat outweigh the benefits of including them as critical habitat for the lynx. As we discuss above, we believe there would be greater benefit from excluding State lands because it will maintain or encourage partnerships and allow for continued access to these lands for research and monitoring of lynx, snowshoe hares and their habitat. Further, as indicated in the final rule listing the lynx (March 24, 2000; 65 FR 16052), the primary threat to the lynx was the lack of Federal land management plan guidance to conserve lynx. We believe that the threats to the lynx have been ameliorated because of the Maine Bureau of Parks and Lands policy to manage parks for multiple-use, including managing habitat for endangered species, and requiring the development of management plans. In addition, we believe that critical habitat designation provides little gain in the way of increased public recognition and education because of the information provided from ongoing research and monitoring, material provided on various Web sites and other information provided to the public in Maine. We also believe that there would be little additional conservation benefit realized through the regulatory burden of a critical habitat designation on these lands under section 7 of the Act because Federal actions are uncommon. Therefore, on the basis of the above discussion and the conservation measures required by the policies of the Maine Bureau of Parks and Lands, we do not believe that the exclusion of State lands in this unit would result in the extinction of the lynx.

Lands Owned by the Nature Conservancy

Lands owned by The Nature Conservancy (over 80,937 ha (200,000 ac), or about 3 percent of the lands considered for inclusion in critical habitat within Maine) are comprised of the St. John River unit, Katahdin Forest, and Debsconeag Lakes unit. In addition, The Nature Conservancy is the conservation easement holder on several hundred thousand acres of private commercial forest land within the area proposed as critical habitat in Maine.

Benefits of Inclusion

We believe that there may be some education benefits to designating critical habitat for lynx on lands owned by The Nature Conservancy in the Maine Unit. However, we believe that there is already substantial awareness of the lynx and conservation issues related to the lynx through the species being listed, through the public review process for considering the lynx for State listing in 2006, information provided from Maine Department of Inland Fisheries and Wildlife, and research being conducted through the University of Maine's Department of Wildlife Ecology, Cooperative Fish and Wildlife Research Unit, and Maine Cooperative Forestry Research Unit, and through the publication, and subsequent outreach and public hearings for the proposed critical habitat.

Lands owned by The Nature Conservancy are considered to be occupied by the lynx. For Federal actions, consultation under Section 7 of the Act is required if the action may affect the lynx or its habitat. On these lands, it is uncommon for there to be a Federal action that triggers consultation under section 7 of the Act, therefore little benefit would be realized through section 7 consultation if such lands were included in the designation. Since the lynx was listed in 2000, there have been no consultations on Federal expenditures or permits on The Nature Conservancy lands in Maine. Therefore the benefit of including The Nature Conservancy lands is low because there is seldom a Federal action on these lands.

The benefit of inclusion of The Nature Conservancy lands is also low because of ongoing management of the lands for conservation. The Nature Conservancy is committed to continued forest management on their largest 72,843-ha (180,000-ac) ownership in the upper St. John River region. The Conservancy's management plan includes plans for maintaining lynx habitat. The Conservancy recently enrolled its St. John River lands in the Healthy Forest Reserve Program and is committed to developing a forest management plan using Canada lynx as an umbrella species for young forest species and pine marten as an umbrella species for mature forest species. The plan will incorporate lynx management guidelines and will be developed with the cooperation of The Forest Society of Maine, University of Maine Department of Wildlife Ecology, Maine Inland Fisheries and Wildlife, and the Service. We believe the benefits of including managed lands in the designation are low because the recent past and current forestry practices on Conservancy lands are similar to those on adjacent corporate forest land, which have created mosaics of habitat supporting lynx and features essential to the conservation of the lynx, such as structure for denning and dense understories within boreal forest able to support snowshoe hares and lynx. At this time we have no specific evidence to suggest that large-scale changes in these practices are planned. Other Conservancy lands (the majority of Debsconeag Lakes Unit, 16,592 ha (41,000 ac) will be managed in a ''forever wild'' status as ecological reserves. We are aware of no Conservancy policies or management in their ecological reserve lands that would adversely modify critical habitat.

Benefits of Exclusion

The Conservancy has policies regarding biodiversity and endangered species conservation (*www.nature.org*) that compliment the State and Service missions to conserve endangered wildlife. The Service has no reservations about the quality of lynx habitat conservation plans that The Nature Conservancy will develop for their lands in Maine. Therefore, the Service believes that its ongoing partnership with The Nature Conservancy will be improved from the exclusion of these lands from critical habitat.

Benefits of Exclusion Outweigh Benefits of Inclusion

Based on the above considerations, and consistent with the direction provided in section 4(b)(2) of the Act, we have determined that the benefits of excluding The Nature Conservancy lands in Maine as critical habitat outweigh the benefits of including them as critical habitat for the lynx. As discussed above, we believe there would be greater benefit from excluding The Nature Conservancy lands because it will maintain or encourage partnerships and allow for continued access to these lands for research and monitoring of lynx, snowshoe hares and their habitat. Further, as indicated in the final rule listing the lynx (March 24, 2000; 65 FR 16052), the primary threat to the lynx was the lack of Federal land management plan guidance to conserve lynx. We believe that the threats to the

lynx have been ameliorated because of The Nature Conservancy policies to manage their lands for biodiversity and endangered species. In addition, we believe that critical habitat designation provides little gain in the way of increased public recognition and education because of the information provided from ongoing research and monitoring, material provided on various Web sites and other information provided to the public in Maine. We also believe there would be little additional conservation benefits realized through the regulatory burden of a critical habitat designation on these lands under section 7 of the Act because Federal actions are uncommon. Therefore, on the basis of the above discussion and the conservation measures required by the policies of The Nature Conservancy, we do not believe that the exclusion of Conservancy lands in this unit would result in the extinction of the lynx.

Small Landowners and Lands Not Managed for Commercial Forestry

Lands owned by small landowners and lands not managed for commercial forestry (about 100,128 ha (247,421 ac), or about 4 percent of the area considered for inclusion in lynx critical habitat in Maine) are primarily comprised of small woodlot owners near the towns of Ashland, Millinocket, Eagle Lake, Smyrna Mills, and Greenville. Such lands also include National Park Service lands consisting of a linear buffer along the Appalachian Trail to its northern terminus at Mt. Katahdin. Collectively, these lands comprise a small percentage of the area occupied by lynx.

Benefits of Inclusion

We believe that there may be some education benefits to designating critical habitat for lynx on lands owned by small landowners and other lands not managed for commercial forestry in Maine. However, we believe that there is already substantial awareness of the lynx and conservation issues related to the lynx through the species being listed, through the public review process for considering the lynx for State listing in 2006, information provided from Maine Department of Inland Fisheries and Wildlife, and research being conducted through the University of Maine's Department of Wildlife Ecology, Cooperative Fish and Wildlife Research Unit, and Maine Cooperative Forestry Research Unit, and through the publication, and subsequent outreach and public hearings for the proposed critical habitat.

Lands owned by small landowners and lands not managed for commercial forestry are considered to be occupied by the lynx. As such, for Federal actions, consultation under section 7 of the Act is required if those actions may affect the lynx or its habitat. On these lands it is uncommon for there to be a Federal action that triggers consultation under section 7 of the Act, therefore little benefit would be realized through section 7 consultation if such lands were included in the designation. Maine averages about 10 to 15 consultations per year that involve Canada lynx. Most of these lynx consultations in Maine have involved small landowners (less than 121 ha (300 ac) ownerships) requesting Federal assistance through the Natural Resource Conservation Service's Wildlife Habitat Incentive Program or Maine Forest Service's Woodswise Program (U.S. Forest Service funding). Nearly all of these forestry projects are small (less than 4 ha (10 ac)), occur around the periphery of the Maine Unit, and have no adverse effects on lynx because of the small scale and nature of the projects. Because actions on these lands rarely, if ever, adversely affect lynx, designation of critical habitat would be of little conservation value.

We believe the benefits of including these lands in the designation are low because such lands are fairly small in size relative to the large landscape required by an individual lynx to support its home range. Therefore, although such lands may support lynx habitat, they have a negligible influence on the features essential to the conservation of the lynx, especially compared to the significant role of the corporate lands managed for commercial forestry.

Benefits of Exclusion

We have evaluated lands owned by small landowners and lands not managed for commercial forestry within the proposed designation of critical habitat for the lynx. Based on this evaluation, we find that the benefits of excluding these specific lands include maintaining relationships with landowners and a reduction of potential regulations having limited conservation benefits. Partnerships are essential for the conservation and recovery of lynx, in part because they are crucial to the ongoing research and surveys for lynx, snowshoe hare, and lynx habitat relationships. The educational benefits of critical habitat, including informing the public of areas that are essential for the long-term conservation of the lynx, are still accomplished from ongoing research and surveys as discussed above, various Web sites, and through public notice-and-comment procedures.

Benefits of Exclusion Outweigh Benefits of Inclusion

Based on the above considerations, and consistent with the direction provided in section 4(b)(2) of the Act, we have determined that the benefits of excluding small landowners and lands not managed for forestry in Maine as critical habitat outweigh the benefits of including them as critical habitat for the lynx. As discussed above, we believe there would be greater benefit from excluding these lands because it will maintain or encourage partnerships and allow for continued access to these lands for research and monitoring of lynx, snowshoe hares and their habitat. Further, as indicated in the final rule listing the lynx (March 24, 2000; 65 FR 16052), the primary threat to the lynx was the lack of Federal land management plan guidance to conserve lynx. We believe that critical habitat designation provides little gain in the way of increased public recognition and education because of the information provided from ongoing research and monitoring, material provided on various Web sites and other information provided to the public in Maine. We also believe that there would be little additional conservation benefits realized through the regulatory burden of a critical habitat designation on these lands under section 7 of the Act because Federal actions are uncommon and because of the small scale, adverse modification is very unlikely. Therefore, on the basis of the above discussion, we do not believe that the exclusion of small landowners and lands not managed for forestry in this unit would result in the extinction of the lynx.

Unit 2 (Minnesota)

Lands Managed for Commercial Forestry

This category of specific properties includes private, county, and State lands on which timber is grown, harvested, and processed for wood and wood fiber for the manufacture of pulp and paper, and the production of solid and engineered wood products. These lands constitute a relatively large land base within the area considered for inclusion as critical habitat, and are generally adjacent to the much larger Superior National Forest, which supports the majority of lands containing features essential to the conservation of the lynx in Minnesota.

Benefits of Inclusion

As previously discussed, we believe there may be some education benefits to designating critical habitat for lynx on lands managed for commercial forestry. However, we believe there is already substantial awareness of the lynx and conservation issues related to the lynx through the species being listed, through the public review process for revision and implementation of the Superior National Forest Land and Resource Management Plan, information provided by Minnesota Department of Natural Resources (*http://www.dnr.state.mn.us/ecological_services/nhnrp/research/lynx_sightings.html*), research being conducted by the University of Minnesota's Natural Resources Research Institute (*http://www.nrri.umn.edu/lynx/*), and through the publication of the proposed critical habitat and associated outreach and public hearings.

Lands under this category are considered to be occupied by the lynx. As such, for Federal actions, consultation under section 7 of the Act is required if those actions may affect the lynx or its habitat. Some forestry practices may affect the lynx or its habitat. However, the ability to address such forestry practices through consultation is limited because, since the lynx has been listed, instances where a Federal action occurred on non-federal lands managed for commercial forestry that would trigger consultation under section 7 of the Act have been infrequent, therefore, the benefit of including these lands is low.

Further, we believe the benefits of including these lands in the designation are low because of recent past and current forestry practices that have created a mosaic of differing successional boreal forest stages within this unit. Some components of this mosaic support lynx and features essential to the conservation of the lynx, including dense understories within boreal forest able to support snowshoe hares and lynx and structure for denning. At this time we have no specific evidence to suggest that large-scale changes in these practices are planned. Thus, because of the limited Federal nexuses and the recent past and current forestry practices, we believe there would be little benefit obtained from including these lands in the designation.

Many of the lands managed for commercial forestry are enrolled in the Sustainable Forestry Initiative (SFI) program. The SFI program, which is described in more detail above in response to comment number 8, has a number of principles and objectives that generally pertain to overall forest health. The SFI objective that is most pertinent to lynx conservation is ''To manage the quality and distribution of wildlife habitats and contribute to the conservation of biological diversity by developing and implementing stand- and landscape-level measures that promote habitat diversity and the conservation of forest plants and animals, including aquatic fauna.'' As discussed above, recent past and current forestry practices have created a mosaic of differing successional boreal forest stages within this unit that supports lynx and features essential to the conservation of the lynx; SFI participation has provided some oversight for these land management activities. Thus, because SFI participation has partially been responsible for the forestry practices that have created the extensive mosaic of lynx habitat in this unit, we believe there would be little benefit from including these lands in the designation.

Finally, the primary factor causing the lynx to be listed was inadequate regulatory mechanisms on Federal lands. In Minnesota, the Superior National Forest lands are the most important for the conservation of lynx because they support the majority of lynx occurrence records and lynx habitat containing the features essential to the conservation of lynx. Since the lynx was listed, the Superior National Forest has revised its Land and Resource Management Plan to incorporate conservation measures for lynx (see 3(5)(A) discussion above). Because factors on non-Federal lands played a subordinate role in the listing and conservation of the lynx compared to National Forest and BLM lands, we believe there is little benefit of including non-Federal lands managed for commercial forestry in the designation.

Benefits of Exclusion

We have evaluated the recent past and current practices for lands managed for commercial forestry within the proposed designation of critical habitat for the lynx. Based on this evaluation, we find that the benefits of excluding these specific lands include maintaining relationships with existing partners and encouraging the potential establishment of new partnerships with public and private landowners. Partnerships are essential for the conservation and recovery of lynx in part because it is crucial to the ongoing research and surveys for lynx, snowshoe hare, and lynx habitat relationships. For example, these landowners allow lynx researchers access to their lands, without access to these lands, research and monitoring that inform our understanding of lynx ecology would be severely restricted. The educational benefits of critical habitat, including informing the public of areas that are essential for the long-term conservation of the lynx, are still accomplished from ongoing research and surveys as discussed above and outreach.

Benefits of Exclusion Outweigh the Benefits of Inclusion

Based on the above considerations, and consistent with the direction provided in section 4(b)(2) of the Act, we have determined that the benefits of excluding lands managed for commercial forestry as critical habitat outweigh the benefits of including them as critical habitat for the lynx. As we discuss above, we believe that there would be greater benefit from excluding lands managed for commercial forestry from the final designation because it will maintain or encourage partnerships and allow for continued access to these lands for research and monitoring of lynx, snowshoe hares and their habitat. Further, as indicated in the final rule listing the lynx (March 24, 2000; 65 FR 16052) the primary threat to the lynx was the lack of Federal land management plan guidance to conserve lynx. We believe that within this unit the threats to the lynx have been ameliorated because the Superior National Forest, which supports the majority of lands containing features essential to the conservation of the lynx in this unit, has revised its LRMP to provide conservation measures for the lynx. Thus, while non-Federal lands managed for commercial forestry provide habitat for lynx, they only supplement those lynx management efforts on Superior National Forest. In addition, we believe that critical habitat designation provides little gain in the way of increased public recognition and education. The public may become aware of the location and importance of lynx habitat via the information provided from ongoing research and monitoring, information provided to the public (e.g., on various Web sites), and from the publication of the proposed critical habitat and associated outreach and public hearings. We also have concluded that there would be little additional conservation benefits realized through the regulatory burden of a critical habitat designation on these lands under section 7 of the Act because Federal actions are uncommon. Therefore, on the basis of the above discussion and the conservation

measures provided the lynx and features essential to its conservation through the Superior National Forest, we do not believe that the exclusion of lands managed for commercial forestry in this unit would result in the extinction of the lynx.

Small Landowners and Lands Not Managed for Commercial Forestry

This category of specific properties includes private, county, municipal, National Monument, and State lands that have a myriad of uses and individually are small compared to the large spatial scale required by lynx. Cumulatively, these lands constitute a limited land base within the proposed critical habitat unit compared to the Superior National Forest lands and are scattered throughout the proposed unit.

Benefits of Inclusion

As previously discussed, we believe that there may be some educational benefits to designating critical habitat for lynx on non-Federal lands not managed for commercial forestry. However, we believe that there is already substantial awareness of the lynx and conservation issues related to the lynx as a result of ongoing outreach conducted by the Service and its partners.

Lands under this category are considered to be occupied by the lynx. As such, for actions having a Federal nexus, consultation under section 7 of the Act is required if a Federal action may affect the lynx or its habitat. Federal actions having adverse affects on lynx on these lands may be addressed through a section 7 consultation. Since the lynx was listed the opportunity to address such actions through consultation has been limited because there is infrequently a Federal nexus on these lands. Therefore, the benefit of designation of these lands as critical habitat is low because there are few instances in which a Federal nexus occurs.

Further, we believe the benefits of including these lands in the designation are low because such lands are fairly small in size relative to the large landscape required by an individual lynx to support its home range and they are scattered throughout the proposed unit. Therefore, although such lands may support lynx habitat, they have a minor influence on the features essential to the conservation of the lynx, especially compared to the significant role of the Superior National Forest lands. Thus, due to the negligible affect of these small properties and lands not managed for commercial forestry on the features essential to the conservation of lynx and the infrequency of Federal actions we believe that there would be little benefit obtained from including these lands in the designation.

Benefits of Exclusion

We have evaluated lands not managed for commercial forestry within the proposed designation of critical habitat for the lynx. Based on this evaluation, we find that the benefits of excluding these specific lands include maintaining the potential to develop relationships with landowners. Partnerships are essential for the conservation and recovery of lynx in part because it is crucial to the ongoing research and surveys for lynx, snowshoe hare, and lynx habitat relationships. These landowners allow researchers access to their lands, without which, research and monitoring would be hampered. As previously discussed, we believe that there may be some educational benefits to designating critical habitat for lynx on small properties and lands not managed for commercial forestry. However, we believe that there is already substantial awareness of the lynx and conservation issues related to the lynx as a result of ongoing outreach conducted by the Service and its partners.

Benefits of Exclusion Outweigh the Benefits of Inclusion

Based on the above considerations, and consistent with the direction provided in section 4(b)(2) of the Act, we have determined that the benefits of excluding lands not managed for commercial forestry as critical habitat outweigh the benefits of including them as critical habitat for the lynx. As we discuss above, we believe that there would be greater benefit from excluding these smaller properties and lands not managed for commercial forestry from the final designation because it will maintain relationships and allow for continued access to these lands for research and monitoring of lynx, snowshoe hares and their habitat. Further, as indicated in the final rule listing the lynx (March 24, 2000; 65 FR 16052) the primary threat to the lynx was the lack of Federal land management plan guidance to conserve lynx. We believe that within this unit the threats to the lynx have been ameliorated because the Superior National Forest, which supports the majority of lands containing features essential to the conservation of the lynx in this unit, has revised its LRMP to provide conservation measures for the lynx. Smaller land holdings that are not managed for commercial forestry have a minor influence on the features essential to the conservation of lynx compared to the National Forest lands. In addition, we believe that critical habitat designation provides little gain in the way of increased public recognition and education because of the information provided from ongoing research and monitoring. We also believe that there would be little additional conservation benefits realized through the regulatory burden of a critical habitat designation on these lands under section 7 of the Act because Federal nexuses are uncommon. Therefore, on the basis of the above discussion and the conservation measures provided the lynx and features essential to its conservation through the Superior National Forest, we do not believe that the exclusion of lands not managed for commercial forestry in this unit would result in the extinction of the lynx.

Unit 3 (Northern Rockies—(Montana and Idaho))

Montana Department of Natural Resources and Conservation Forested Trust Land Habitat Conservation Plan (MDNRC HCP)

The MDNRC HCP encompasses 241,108 ac (377 mi^2) (97,573 ha/976 km^2) of State Forested Trust lands distributed throughout northwestern, southwestern and central Montana. Lynx have been documented to occur throughout these areas, primarily in the northwest and southwest areas where MDNRC has delineated Lynx Management Areas (LMAs). A portion of these lands occur within the area proposed as critical habitat. Although the MDNRC HCP is not yet final, the lynx conservation strategy portion of the HCP has undergone technical and public review (Pierce 2005, entire); MDNRC entered into an agreement with the Service wherein the MDNRC committed to develop an HCP using Congressionally appropriated funding (USFWS and MDNRC 2000, entire, Clinch 2002, entire; Wilson 2003, entire); scoping for an Environmental Impact Statement (EIS) is complete and development of the EIS is underway (81 FR 22412 Apr 28, 2003; Parametrix 2004, entire). The incidental take permit for the HCP is anticipated to be issued in 2008 (O'Herron 2006).

The MDNRC HCP contains measures to minimize and mitigate potential impacts to the lynx and its habitat from forest management activities. The primary components for minimization and mitigation include: minimizing potential for disturbance to known active den sites; mapping winter foraging habitat, young foraging habitat,

other suitable habitat and temporary non-suitable habitat; providing stand structure or attributes that offer habitat for prey species, particularly in winter; retaining coarse woody debris and other denning attributes on managed sites; limiting conversion of suitable lynx habitat to temporary non-suitable habitat per decade in key geographic areas of notable importance for lynx (LMAs); ensuring that adequate amounts of foraging habitat are maintained in defined LMAs; providing for habitat connectivity on the landscape where vegetation and ownership patterns allow; providing assurances for maintenance of suitable lynx habitat on DNRC scattered lands outside LMAs (MDNRC 2005, entire). All of these measures provide the features essential to the conservation of the lynx.

The MDNRC HCP and its accompanying Implementing Agreement, which will delineate the responsibilities of the Service and MDNRC for the implementation of the HCP, are designed to minimize the impacts of forest management activities on lynx and to manage for habitat elements important for lynx and prey that contribute to their landscape-scale occurrence.

Furthermore, MDNRC has had lynx habitat management guidance in place since 1998, prior to lynx being listed under the Act. In 2003, MDNRC developed a mapping protocol for identifying lynx habitat on State lands and adopted administrative rules for lynx conservation.

Benefits of Inclusion

We expect the MDNRC HCP to provide substantial protection of features essential to the conservation of lynx on MDNRC Forested Trust Lands and to provide a greater level of management for the lynx on these State lands than would designation of critical habitat on State lands. Habitat management provisions for lynx are already in place on MDNRC lands. Moreover, inclusion of these non-Federal lands as critical habitat would not necessitate additional management and conservation activities that would exceed the MDNRC HCP and its implementing agreement upon approval. As a result, we do not anticipate any action on these lands would destroy or adversely modify the areas designated as critical habitat. Therefore, we do not believe that including these lands in the final designation would lead to any changes to actions on the MDNRC Forested Trust lands to avoid destroying or adversely modifying that habitat.

On these State lands it is uncommon for there to be a Federal action that triggers consultation under section 7 of the Act, therefore little benefit would be realized through section 7 consultation if such lands were included in the designation. The MDNRC HCP will undergo section 7 consultation prior to permit issuance.

As previously discussed, we believe there may be some education benefits to designating critical habitat for lynx on MDNRC Forested Trust lands. However, we believe there is already substantial awareness of the lynx and conservation issues related to the lynx through the species being listed, through the public review process for the MDNRC HCP and the USFS Northern Rockies Lynx Amendment, lynx and snowshoe hare research being conducted by the USFS Rocky Mountain Research Station and the University of Montana, surveys conducted by Montana Fish, Wildlife and Parks, and independent researchers, various Web sites and through the publication of the proposed critical habitat and associated outreach and public hearings.

Benefits of Exclusion

The exclusion of these lands from critical habitat will help preserve the partnerships that we have developed with the MDNRC, particularly in the development of the MDNRC HCP, which provides for long-term lynx conservation. Comments received from MDNRC explain that the agency has a long history of lynx conservation efforts and, therefore, designation on MDNRC lands is unnecessary and inappropriate (Sexton 2006, p. 2). The educational benefits of critical habitat, including informing the public of areas that are essential for the long-term conservation of the lynx, are still accomplished from ongoing research and surveys as discussed above, various Web sites, and through public notice-and-comment procedures. For these reasons, we believe that designating critical habitat has little benefit in areas covered by the MDNRC HCP.

Benefits of Exclusion Outweigh the Benefits of Inclusion

Based on the above considerations, and consistent with the direction provided in section 4(b)(2) of the Act, we have determined that the benefits of excluding MDNRC Forested Trust Lands as critical habitat outweigh the benefits of including them as critical habitat for the lynx. As we discuss above, we believe that there would be greater benefit from excluding MDNRC Forested Trust Lands from the final designation because it will preserve our partnership with MDNRC. The provisions of the MDNRC HCP are expected to provide greater benefits to the features essential to the conservation of lynx than would be provided under a critical habitat designation.

We also believe that there would be little additional conservation benefits realized through the regulatory burden of a critical habitat designation on these lands under section 7 of the Act because Federal nexuses are uncommon. Therefore, on the basis of the above discussion and the habitat conservation measures that are already being provided to the lynx on MDNRC lands and the detailed minimization and mitigation measures of the pending MDNRC HCP that will further address the features essential to conservation of the lynx, we do not believe that the exclusion of MDNRC lands would result in the extinction of the lynx.

Lands Managed for Commercial Forestry

This category of specific properties includes private lands on which timber is grown, harvested, and processed for wood and wood fiber for the manufacture of pulp and paper, and the production of solid and engineered wood products. These lands constitute a substantially smaller land base than that of the National Forests (Flathead National Forest, Helena National Forest, Idaho Panhandle National Forests, Kootenai National Forest, Lewis and Clark National Forest, and the Lolo National Forest) that constitute the vast majority of habitat containing the features essential to the conservation of lynx in this unit. The owner of the majority of private lands managed for commercial forestry in this unit is Plum Creek Timber Company.

Benefits of Inclusion

As previously discussed, we believe there may be some education benefits to designating critical habitat for lynx on lands managed for commercial forestry in Montana. However, we believe there is already substantial awareness of the lynx and conservation issues related to the lynx through the species being listed, through the USFS Northern Rockies Lynx Amendment, lynx and snowshoe hare research being conducted by the USFS Rocky Mountain Research Station and the University of Montana, surveys conducted by Montana Fish, Wildlife and Parks and independent researchers, various Web sites and through the publication of the proposed critical habitat and associated outreach and public hearings. For example, Plum Creek Timber Company is clearly aware

of issues related to the Act, in general, and lynx, in particular, based on comments the company submitted on the critical habitat proposal (Kraft 2006a, b, entire).

Lands under this category are considered to be occupied by the lynx. As such, for Federal actions, consultation under section 7 of the Act is required if those actions may affect the lynx or its habitat. Some forestry practices may affect the lynx or its habitat, however, the ability to address such forestry practices through consultation is limited because, since the lynx has been listed, it is uncommon for there to be a Federal action on private lands managed for commercial forestry that would trigger consultation under section 7 of the Act. Because there is a low likelihood of projects involving a Federal action on these lands, the benefits of inclusion are low.

Many of the lands managed for commercial forestry are enrolled in the SFI program. The SFI program, which is described in more detail above in response to comment number 8, has a number of principles and objectives that generally pertain to overall forest health. The SFI objective most pertinent to lynx conservation is ''To manage the quality and distribution of wildlife habitats and contribute to the conservation of biological diversity by developing and implementing stand- and landscape-level measures that promote habitat diversity and the conservation of forest plants and animals, including aquatic fauna.'' As discussed above, lands managed for commercial forestry in this unit support lynx and lynx habitat. SFI participation has provided some oversight for these land management activities. Plum Creek Timber Company is a participant in the SFI program. Plum Creek notes its structure retention program that provides lynx denning habitat as an example of its compliance with the above objective (Kraft 2006a, p. 7 technical comments). Additionally, Plum Creek cites implementation examples for Montana that include its continued experimentation with alternative precommercial thinning methods to enhance snowshoe hare habitat (based on university research) and distributing a biodiversity and threatened species brochure to over 500 small private landowners to broaden the practice of sustainable forestry, including management practices to benefit lynx (Kraft 2006a p. 7, technical comments).

Thus, because SFI participation has partially been responsible for the forestry practices that have created the extensive mosaic of lynx habitat in this unit, we believe there would be little benefit from including these lands in the designation.

Finally, the primary factor causing the lynx to be listed was inadequate regulatory mechanisms on Federal lands. In the Northern Rockies, six National Forests and BLM lands provide an extensive mosaic of boreal forest supporting different successional stages that provide features essential to the conservation of lynx. These Forests are in the process of amending their LRMPs to incorporate conservation measures for lynx (see 3(5)(A) discussion above). Currently, these six Forests adhere to a conservation agreement that ensures that these Forests will continue to be managed for lynx conservation by: (1) continuing to manage these lands consistent with the LCAS until their LRMPs are revised, which we have determined largely avoids adverse effects to lynx in the interim period (Service 2000, p. 47); and (2) ensuring sufficient conservation of the lynx and its habitat upon revision of LRMPs (see Application of Section 3(5)(A) of the Endangered Species Act discussion, above). Because factors on non-federal lands played a subordinate role in the listing and conservation of the lynx compared to National Forest and BLM lands, we believe there is little benefit of including non-federal lands managed for commercial forestry in the designation.

Benefits of Exclusion

We have evaluated lands managed for commercial forestry within the proposed designation of critical habitat for the lynx. Based on this evaluation, we find that the benefits of excluding these specific lands include maintaining relationships with existing partners and encouraging the establishment of new partnerships with landowners and a reduction of potential regulations having limited conservation benefits. Partnerships are essential for the conservation and recovery of lynx in part because it is crucial to the ongoing research and surveys for lynx, snowshoe hare, and lynx habitat relationships. For example, these landowners, especially Plum Creek, allow researchers access to their lands; without access to these lands, research and monitoring that informs our understanding of lynx ecology would be severely restricted. Additionally, Plum Creek provides funding and other resources to enable lynx and snowshoe hare research. Plum Creek Timber Company has demonstrated its willingness to be a partner in the conservation of fish and wildlife through its Native Fish Habitat Conservation Plan and from being a signatory to the Swan Valley Grizzly Bear Conservation Agreement, both of which provide some ancillary benefits to lynx. The educational benefits of critical habitat, including informing the public of areas that are essential for the long-term conservation of the lynx, are still accomplished from ongoing research and surveys as discussed above, various Web sites and through public notice-and-comment procedures.

Benefits of Exclusion Outweigh the Benefits of Inclusion

Based on the above considerations, and consistent with the direction provided in section 4(b)(2) of the Act, we have determined that the benefits of excluding lands managed for commercial forestry as critical habitat outweigh the benefits of including them as critical habitat for the lynx. As we discuss above, we believe that there would be greater benefit from excluding lands managed for commercial forestry from the final designation because it will maintain or encourage partnerships and allow for continued access to these lands for research and monitoring of lynx, snowshoe hares and their habitat. Further, as indicated in the final rule listing the lynx (March 24, 2000; 65 FR 16052) the primary threat to the lynx was the inadequacy of regulatory mechanisms on Federal lands. National Forest lands support the vast majority of lynx habitat and the features essential to the conservation of lynx in the Northern Rockies. We believe that within this unit the threats to the lynx have been ameliorated because the USFS adheres to a conservation agreement that ensures that these Forests will continue to be managed for lynx conservation. Thus, while non-federal lands managed for commercial forestry provide habitat for lynx, they only supplement those lynx habitat management efforts on National Forest lands. In addition, we believe that critical habitat designation provides little gain in the way of increased public recognition and education because of the information provided from ongoing research and monitoring, materials provided on various Web sites, through the public review process for the MDNRC HCP and the USFS Northern Rockies Lynx Amendment, and through the publication of the proposed critical habitat and associated outreach and public hearings. As described above, based on Plum Creek Timber Company's comments on the critical habitat proposal, the company is aware of issues related to the Act, in general, and lynx, in particular. We also believe that there would be little additional conservation benefits realized through the regulatory burden of a critical habitat designation on these lands under

section 7 of the Act because Federal actions that would trigger consultation are uncommon. Therefore, on the basis of the above discussion and the conservation measures provided the lynx and features essential to its conservation through the National Forests, we do not believe that the exclusion of lands managed for commercial forestry in this unit would result in the extinction of the lynx.

Small Landowners and Lands Not Managed for Commercial Forestry

This category of specific properties includes private, county, municipal government, conservation lands (e.g., The Nature Conservancy), Federal (except National Forest or National Park lands) and State lands that have a myriad of uses and individually are small-scale compared to the large spatial scale required by lynx. Cumulatively, these lands constitute an extremely limited land base within the proposed critical habitat unit compared to the amount of lynx habitat provided by seven National Forests, and are scattered throughout the proposed unit.

Benefits of Inclusion

As previously discussed, we believe that there may be some education benefits to designating critical habitat for lynx on lands not managed for commercial forestry. However, we believe that these is already substantial awareness of the lynx and conservation issues related to the lynx through the species being listed, through the public review process for the MDNRC HCP and the USFS Northern Rockies Lynx Amendment, lynx and snowshoe hare research being conducted by the USFS Rocky Mountain Research Station and the University of Montana, surveys conducted by Montana Fish, Wildlife and Parks, and independent researchers, various Web sites (e.g., *http://www.nature.org/wherewework/northamerica/states/montana/press/press2654.html*) and through the publication of the proposed critical habitat and associated outreach and public hearings.

Lands under this category are considered to be occupied by the lynx. As such, for Federal actions, consultation under section 7 of the Act is required if a Federal action may affect the lynx or its habitat. While actions having adverse affects for lynx may be addressed through a consultation, since the lynx was listed the opportunity to address such actions through consultation has been extremely limited because there have been few consultations under section 7 of the Act for actions on these lands because there is rarely a Federal action. Therefore the benefits of inclusion are low because of the few instances in which projects are federally funded, permitted or approved on these lands.

Further, we believe the benefits of including these lands in the designation are low because such lands are fairly small in size relative to the large landscape required by an individual lynx to support its home range and these lands are scattered throughout the proposed unit. Therefore, although such lands may support lynx habitat, they have a negligible influence on the features essential to the conservation of the lynx, especially compared to the significant role of the National Forest lands. Thus, due to the negligible affect of these small properties on the features essential to the conservation of lynx and the infrequency of Federal actions we believe that there would be little benefit obtained from including these lands in the designation.

Benefits of Exclusion

We have evaluated lands not managed for commercial forestry within the proposed designation of critical habitat for the lynx. Based on this evaluation, we find that the benefits of excluding these specific lands include maintaining relationships with landowners and a reduction of potential regulations having limited conservation benefits. Partnerships are essential for the conservation and recovery of lynx in part because it is crucial to the ongoing research and surveys for lynx, snowshoe hare, and lynx habitat relationships. The educational benefits of critical habitat, including informing the public of areas that are essential for the long-term conservation of the lynx, are still accomplished from ongoing research and surveys as discussed above, various Web sites, and through public notice-and-comment procedures.

Benefits of Exclusion Outweigh the Benefits of Inclusion

Based on the above considerations, and consistent with the direction provided in section 4(b)(2) of the Act, we have determined that the benefits of excluding lands not managed for commercial forestry as critical habitat outweigh the benefits of including them as critical habitat for the lynx. As we discuss above, we believe that there would be greater benefit from excluding these smaller properties from the final designation because it will maintain relationships and allow for continued access to these lands for research and monitoring of lynx, snowshoe hares and their habitat. Further, as indicated in the final rule listing the lynx (March 24, 2000; 65 FR 16052) the primary threat to the lynx was the inadequacy of regulatory mechanisms on Federal lands. National Forest lands support the vast majority of lynx habitat and the features essential to the conservation of lynx in the Northern Rockies. We believe that within this unit the threats to the lynx have been ameliorated because the USFS adheres to a conservation agreement that ensures that these Forests will continue to be managed for lynx conservation. These smaller properties that are not managed for commercial forestry have a minor influence on the features essential to the conservation of lynx compared to that of the National Forest lands. In addition, we believe that critical habitat designation provides little gain in the way of increased public recognition and education because of the information provided from ongoing research and monitoring, materials provided on various Web sites, through the public review process for the MDNRC HCP and the USFS Northern Rockies Lynx Amendment, and through the publication of the proposed critical habitat and associated outreach and public hearings. We also believe that there would be little additional conservation benefits realized through the regulatory burden of a critical habitat designation on these lands under section 7 of the Act because Federal actions are rare. Therefore, on the basis of the above discussion and the conservation measures provided the lynx and features essential to its conservation through the National Forests, we do not believe that the exclusion of lands not managed for commercial forestry in this unit would result in the extinction of the lynx.

Unit 4 (North Cascades (Washington))

Washington Department of Natural Resources Lynx Habitat Management Plan for DNR-Managed Lands (WDNR HMP)

The WDNR HMP encompasses 126,212 ac (197 mi^2) (51,076 ha/511 km^2) of WDNR-managed lands distributed throughout northcentral and northeastern Washington in areas delineated as Lynx Management Zones in the Washington state recovery plan for the lynx (Stinson 2001, p. 39; WDNR 2006 pp. 5–13 (January draft). The WDNR HMP was finalized in 2006 and is a revision of the lynx plan that WDNR has been implementing since 1996 (WDNR 1996, entire). The 1996 plan was developed as a substitute for a species-specific critical habitat designation required by Washington Forest Practices rules in response to the

lynx being State-listed as threatened (WDNR 2006, p. 5). The 2006 HMP provides further provisions to avoid the incidental take of lynx (Martin 2002, entire; WDNR 2006, p. 6). Washington DNR is committed to following the HMP until 2076 or until the lynx is delisted, whichever is shorter (WDNR 2006, p. 6).

The WDNR HMP contains measures to guide WDNR in creating and preserving quality lynx habitat through its forest management activities. The objectives and strategies of the HMP are developed for multiple planning scales (Ecoprovince and Ecodivision, Lynx Management Zone, Lynx Analysis Unit (LAU), and Ecological community) and include: encouraging genetic integrity at the species level by preventing bottlenecks between British Columbia and Washington by limiting size and shape of temporary non-habitat along the border and maintaining major routes of dispersal between British Columbia and Washington; maintaining connectivity between subpopulations by maintaining dispersal routes between and within zones and arranging timber harvest activities that result in temporary non-habitat patches among watersheds so that connectivity is maintained within each zone; maintaining the integrity of requisite habitat types within individual home ranges by maintaining connectivity between and integrity within home ranges used by individuals and/or family groups; and providing a diversity of successional stages within each LAU and connecting denning sites and foraging sites with forested cover without isolating them with open areas by prolonging the persistence of snowshoe hare habitat and retaining coarse woody debris for denning sites (WDNR 2006, p. 29). The plan identifies specific guidelines to achieve the objectives and strategies at each scale; it also describes how WDNR will monitor and evaluate the implementation and effectiveness of the HMP (WDNR 2006, pp. 29–63).

Benefits of Inclusion

We expect the WDNR HMP to provide substantial protection of features essential to the conservation of lynx on WDNR managed lands and to provide a greater level of management for the lynx on these State lands than would designation of critical habitat on State lands. The measures contained in the WDNR HMP exceed any measures that may result from critical habitat designation because the HMP provides lynx-specific objectives and strategies for different planning scales, provides guidelines to meet the objectives and monitoring to evaluate the implementation and effectiveness of the HMP. As a result, we do not anticipate any action on these lands would destroy or adversely modify the areas designated as critical habitat. Therefore, we do not expect that including these areas in the final designation would lead to any changes to actions on the WDNR managed lands to avoid destroying or adversely modifying that habitat, and therefore the benefits of inclusion are low. Furthermore, on these State lands it is uncommon for there to be a Federal action that triggers consultation under section 7 of the Act, therefore little benefit would be realized through section 7 consultation if such lands were included in the designation.

As previously discussed, we believe there may be some education benefits to designating critical habitat for lynx on WDNR managed lands. However, we believe there is already substantial awareness of the lynx and conservation issues related to the lynx through the species being listed both under the Act and Washington State law; through the public review process for the WDNR HMP, Washington's Lynx Recovery Plan and the revision of the Okanogan-Wenatchee Forest Plan; lynx and snowshoe hare research being conducted by the USFS Pacific Northwest Research Station, Washington State University, University of Washington, and the University of Montana, among others; surveys conducted by Washington Department of Fish and Wildlife and the USFS; State of Washington Web sites, among others (e.g., *http://wdfw.wa.gov/wlm/diversty/soc/recovery/lynx/lynx.htm, www.dnr.wa.gov/htdocs/amp/sepa/lynx/1_toc.pdf*) and through the publication of the proposed critical habitat and associated outreach and public hearings.

Benefits of Exclusion

The exclusion of these lands from critical habitat will help preserve the partnerships that we have developed with the WDNR over the years of development and implementation of both this 2006 HMP and the original 1996 lynx plan, which provides for long-term lynx conservation. The educational benefits of critical habitat, including informing the public of areas that are essential for the long-term conservation of the lynx, are still accomplished from ongoing research and surveys as discussed above, various Web sites, and through public notice-and-comment procedures. For these reasons, we believe that designating critical habitat has little benefit on State lands covered by the WDNR HMP.

Benefits of Exclusion Outweigh Benefits of Inclusion

Based on the above considerations, and consistent with the direction provided in section 4(b)(2) of the Act, we have determined that the benefits of excluding WDNR managed lands as critical habitat outweigh the benefits of including them as critical habitat for the lynx. As we discuss above, we believe that there would be greater benefit from excluding WDNR managed lands from the final designation because it will preserve our partnership with WDNR. The provisions of the WDNR HMP will provide greater benefits to the features essential to the conservation of lynx than would be provided under a critical habitat designation.

We also believe that there would be little additional conservation benefits realized through the regulatory burden of a critical habitat designation on these lands under section 7 of the Act because Federal actions are uncommon. Therefore, on the basis of the above discussion and the habitat conservation measures that are already being provided to the lynx on WDNR managed lands under the WDNR HMP that address the features essential to conservation of the lynx, we do not believe that the exclusion of WDNR HMP lands would result in the extinction of the lynx.

Small Landowners and Lands Not Managed for Commercial Forestry

This category of specific properties includes private lands that are small-scale compared to the large spatial scale required by lynx. Cumulatively, these lands constitute an extremely limited land base within the proposed critical habitat unit compared to the amount of lynx habitat provided by the Okanogan-Wenatchee National Forest, and are scattered fragments within the proposed unit.

Benefits of Inclusion

As previously discussed, we believe that there may be some education benefits to designating critical habitat for lynx on small private lands not managed for commercial forestry. However, we believe there is already substantial awareness of the lynx and conservation issues related to the lynx through the species being listed both under the Act and Washington State law; through the public review process for the WDNR HMP, Washington's Lynx Recovery Plan and the revision of the Okanogan-Wenatchee Forest Plan; lynx and snowshoe hare research being conducted by the USFS Pacific Northwest Research Station,

Washington State University, University of Washington, University of Montana, among others; surveys conducted by Washington Department of Fish and Wildlife and the USFS; State of Washington Web sites, among others, and through the publication of the proposed critical habitat and associated outreach and public hearings.

On these private lands it is rare for there to be a Federal action that triggers consultation under section 7 of the Act, therefore, little benefit would be realized through section 7 consultation if such lands were included in the designation.

Further, we believe the benefits of including these lands in the designation are low because such lands are extremely small in size relative to the large landscape required by an individual lynx to support its home range. Therefore, although such lands may support lynx habitat, they have a negligible influence on the features essential to the conservation of the lynx, especially compared to the significant role of the National Forest lands in this area. Thus, due to the negligible affect of these small properties on the features essential to the conservation of lynx and the infrequency of Federal actions triggering consultation, we believe that there would be little benefit obtained from including these lands in the designation.

Benefits of Exclusion

We have evaluated small private lands not managed for commercial forestry within the proposed designation of critical habitat for the lynx. Based on this evaluation, we find that the benefits of excluding these specific lands include maintaining relationships with landowners and a reduction of potential regulations having limited conservation benefits. Partnerships are essential for the conservation and recovery of lynx in part because it is crucial to the ongoing research and surveys for lynx, snowshoe hare, and lynx habitat relationships. These landowners might allow researchers access to their lands, without which, research and monitoring would be hampered. The educational benefits of critical habitat, including informing the public of areas that are essential for the long-term conservation of the lynx, are still accomplished from ongoing research and surveys as discussed above, various Web sites and through public notice-and-comment procedures.

Benefits of Exclusion Outweigh the Benefits of Inclusion

Based on the above considerations, and consistent with the direction provided in section 4(b)(2) of the Act, we have determined that the benefits of excluding small private lands not managed for commercial forestry as critical habitat outweigh the benefits of including them as critical habitat for the lynx. As we discuss above, we believe that there would be greater benefit from excluding these smaller properties from the final designation because it will maintain relationships to promote research and monitoring of lynx, snowshoe hares and their habitat. Further, as indicated in the final rule listing the lynx (March 24, 2000; 65 FR 16052) the primary threat to the lynx was the inadequacy of regulatory mechanisms on Federal lands. National Forest lands support the vast majority of lynx habitat and the features essential to the conservation of lynx in the North Cascades. These smaller properties that are not managed for commercial forestry have a minor influence on the features essential to the conservation of lynx compared to that of the Okanogan-Wenatchee National Forest lands. In addition, we believe that critical habitat designation provides little gain in the way of increased public recognition and education because of the information provided from ongoing research and monitoring, materials provided on various Web sites, through the public review process for the WDNR HMP, Washington's Lynx Recovery Plan and the revision of the Okanogan-Wenatchee Forest Plan; lynx and snowshoe hare research being conducted by the USFS Pacific Northwest Research Station, Washington State University, University of Washington, University of Montana, among others; and through the publication of the proposed critical habitat and associated outreach and public hearings. We also believe that there would be little additional conservation benefits realized through the regulatory burden of a critical habitat designation on these lands under section 7 of the Act because Federal actions are rare. Therefore, on the basis of the above discussion and the conservation measures provided the lynx and features essential to its conservation through the National Forests, we do not believe that the exclusion of small private lands not managed for commercial forestry in this unit would result in the extinction of the lynx.

Correction of Administrative Error

In this final rule, we are correcting an administrative error that occurred in the listing of the Canada lynx. The State of Pennsylvania should not be listed in the Historic Range column for this species in the table in 50 CFR 17.11(h). Therefore, we are removing Pennsylvania from the list of States in the Historic Range column.

Economic Analysis

Section 4(b)(2)of the Act requires us to designate critical habitat on the basis of the best scientific information available and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species concerned.

Following the publication of the proposed critical habitat designation, we conducted an economic analysis to estimate the potential economic effect of the designation. The draft analysis was made available for public review on September 11, 2006 (71 FR 53355). We accepted comments on the draft analysis until October 11, 2006.

The primary purpose of the economic analysis is to estimate the potential economic impacts associated with the designation of critical habitat for the lynx. This information is intended to assist the Secretary in making decisions about whether the benefits of excluding particular areas from the designation outweigh the benefits of including those areas in the designation. This economic analysis considers the economic efficiency effects that may result from the designation, including habitat protections and conservation efforts that may be co-extensive with the listing of the species. It also addresses distribution of impacts, including an assessment of the potential effects on small entities and the energy industry. This information can be used by the Secretary to assess whether the effects of the designation might unduly burden a particular group or economic sector.

This analysis focuses on the direct and indirect costs of the rule. However, economic impacts to land use activities can exist in the absence of critical habitat. These impacts may result from, for example, local zoning laws, State and natural resource laws, and enforceable management plans and best management practices applied by other State and Federal agencies. Economic

impacts that result from these types of protections are not included in the analysis, as they are considered to be part of the regulatory and policy baseline.

As discussed in the September 11, 2006, notice announcing the availability of the draft economic analysis ((71 FR 53355), the draft analysis estimates the potential total future costs to range from $175 million to $889 million in undiscounted dollars over the next 20 years. Discounted future costs are estimated to be from $125 million to $411 million over 20 years ($8.38 million to $27.6 million annually) using a 3 percent discount rate, or $99.9 million to $259 million over 20 years ($9.43 million to $24.4 million annually) using a 7 percent discount rate. After taking into consideration public comment on the proposal, the draft economic analysis and the draft NEPA document, we evaluated the benefits of conservation programs, plans, and partnerships relative to the regulatory benefits of critical habitat pursuant to section 4(b)(2) of the Act. Please refer to Exclusions Under Section 4(b)(2) of the Act section of this final rule. As a result, we are only finalizing critical habitat for the lynx lands within Voyageurs, Glacier, and North Cascades National Parks. Based on our final analysis of potential economic cost resulting from this designation, we have determined that the annualized potential cost to the National Parks would be approximately $18,150.

A copy of the draft and final economic analysis with supporting documents are included in our administrative record and may be obtained by contacting U.S. Fish and Wildlife Service, Montana Field Office (see **ADDRESSES** section) or for downloading from the Internet at *http://mountain-prairie.fws.gov/species/mammals/lynx/criticalhabitat.htm.*

Pursuant to section 4(b)(2) of the Act, we must consider relevant impacts in addition to economic ones. We have determined that no lands being designated as critical habitat for the lynx are owned or managed by the Department of Defense. We anticipate no impact to national security, partnerships, or HCPs from this final critical habitat designation. Further, we do not believe that this final designation will result in any substantial and disproportionate economic impacts.

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule in that it may raise novel legal and policy issues, but it is not anticipated to have an annual effect on the economy of $100 million or more or affect the economy in a material way. Due to the tight timeline for publication in the **Federal Register,** the Office of Management and Budget (OMB) has not formally reviewed this rule.

Further, Executive Order 12866 directs Federal Agencies promulgating regulations to evaluate regulatory alternatives (Office of Management and Budget, Circular A–4, September 17, 2003). Pursuant to Circular A–4, once it has been determined that the Federal regulatory action is appropriate, the agency will then need to consider alternative regulatory approaches. Since the determination of critical habitat is a statutory requirement pursuant to the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), we must then evaluate alternative regulatory approaches, where feasible, when promulgating a designation of critical habitat.

In developing our designations of critical habitat, we consider economic impacts, impacts to national security, and other relevant impacts pursuant to section 4(b)(2) of the Act. Based on the discretion allowable under this provision, we may exclude any particular area from the designation of critical habitat, providing the benefits of such exclusion outweigh the benefits of specifying the area as critical habitat and that such exclusion would not result in the extinction of the species. As such, we believe that the evaluation of the inclusion or exclusion of particular areas, or combination thereof, in a designation constitutes our regulatory alternative analysis.

In the development of this final designation we took into consideration conservation partnerships, programs, and management plans. On the basis of our evaluation of the benefits of including lands covered under these programs, plans or partnerships, we determined that greater conservation benefits for the lynx would be realized from the exclusion of these lands from this final designation. As a result, we are only finalizing critical habitat for the lynx lands within Voyageurs, Glacier, and North Cascades National Parks. Based on our final analysis of potential economic cost resulting from this designation, we have determined that the annualized potential cost to the National Parks would be approximately $18,150. Thus, this final designation of critical habitat for the lynx will not have an annual effect on the economy of $100 million or more or affect the economy in a material way.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.,* small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the Regulatory Flexibility Act (RFA) to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

The Service has concluded that there will not be a substantial impact on a significant number of small entities as a result of this final rule. The only areas designated are owned by the National Park Service (NPS). The NPS said, in its comments on this rule, it would likely not change its management of park lands as a result of this proposal. Any small entities likely to be affected by this rule would be park concessionaires or contractors. However, activities that are conducted by these small businesses are unlikely to result in adverse modification of lynx critical habitat. Therefore, there will be no impact on small entities from this rule.

Executive Order 13211

On May 18, 2001, the President issued an Executive Order (Number 13211) on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This final rule to designate critical habitat for the lynx is considered a significant regulatory action under Executive Order 12866, as it may raise novel legal and policy issues. However, because this final designation is restricted to National Park Service lands, it is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501), the Service makes the following findings:

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute or regulation that would impose an enforceable duty upon State, local, tribal governments, or the private sector and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or tribal governments'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding,'' and the State, local, or tribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; AFDC work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-federal government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-federal entities receiving Federal funding, assistance, or permits, or otherwise requiring approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply; nor would critical habitat shift the costs of the large entitlement programs listed above on to State governments.

(b) We do not believe that this rule will significantly or uniquely affect small governments, because this final designation is restricted to National Park Service lands; towns and developed areas have been excluded. As such, we do not believe that a Small Government Agency Plan is not required.

Takings

In accordance with Executive Order 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), we have analyzed the potential takings implications of designating critical habitat for the lynx in a takings implications assessment. The takings implications assessment concludes that this designation of critical habitat for the lynx does not pose significant takings implications.

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior policy, we requested information from, and coordinated development of, the critical habitat designation with appropriate State resource agencies in Idaho, Maine, Minnesota, Montana, and Washington. We believe that this resulting final designation of critical habitat for the lynx will have little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments in that the areas important to the conservation of the species are more clearly defined, and the primary constituent element of the habitat essential to the survival and conservation of the species is specifically identified. While making this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning (rather than waiting for case-by-case section 7 consultations to occur).

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have designated critical habitat in accordance with the provisions of the Act. This final designation uses standard property descriptions and identifies the primary constituent element within the designated areas to assist the public in understanding the habitat needs of the lynx.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This final rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act. This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. 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.

National Environmental Policy Act

We have undertaken a NEPA analysis for this critical habitat designation and notified the public of the availability of the draft environmental assessment for the proposed rule on September 11, 2006. The final environmental assessment, as well as a Finding of No Significant Impact (FONSI), is available upon request from the Field Supervisor, Montana Fish and Wildlife Office (see **ADDRESSES** section) or on our Web site at *http://mountain-prairie.fws.gov/species/mammals/lynx/criticalhabitat.htm.*

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations With Native American Tribal Governments'' (59 FR 22951), Executive Order 13175 ''Consultation and Coordination With Indian Tribal Governments,'' and the Department of the Interior Manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal tribes on a government-to-government basis. Tribal lands have been excluded from this critical habitat designation. Please refer to our discussion of tribal lands under the Relationship of Critical Habitat to Tribal Lands section of this final rule.

References Cited

A complete list of all references cited in this rulemaking is available on the Web site *http://mountain-prairie.fws.gov/species/mammals/lynx/* or upon request from the Field Supervisor, Montana Field Office (see **ADDRESSES**).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

■ Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. In § 17.11(h), revise the entry for ''Lynx, Canada'' under ''MAMMALS'' to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Mammals							
*	*	*	*	*	*		*
Lynx, Canada	*Lynx canadensis*	U.S.A. (AK, CO, ID, CO, ID, ME, MI, MN, MT, NH, NY, OR, UT, VT, WA, WI, WY), Canada, circumboreal.	CO, ID, ME, MI, MN, MT, NH, NY, OR, UT, VT, WA, WI, WY.	T	692	17.95(a)	17.40(k)
*	*	*	*	*	*		*

■ 3. In § 17.95(a), add critical habitat for ''Canada lynx'' in the same alphabetical order as this species occurs in § 17.11(h) to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

(a) *Mammals.*

* * * * *

Canada lynx (*Lynx canadensis*)

(1) Critical habitat units are depicted on the maps below for the following States and counties:

(i) Minnesota: Koochiching and St. Louis counties;

(ii) Montana: Flathead and Glacier counties; and

(iii) Washington: Chelan County.

(2) Within these areas, the primary constituent elements for the Canada lynx are boreal forest landscapes supporting a mosaic of differing successional forest stages and containing:

(i) Presence of snowshoe hares and their preferred habitat conditions, which include dense understories of young trees or shrubs tall enough to protrude above the snow;

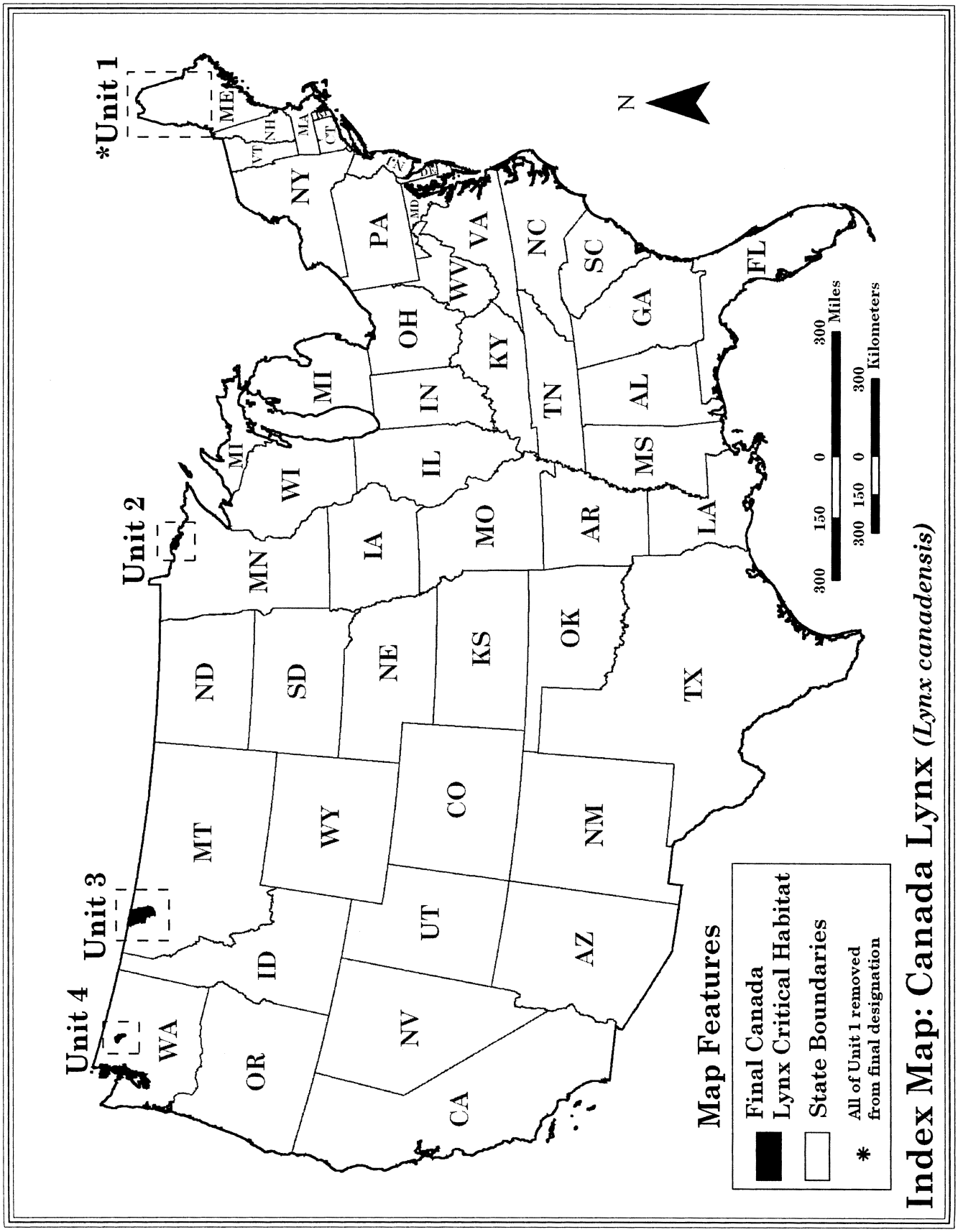
(ii) Winter snow conditions that are generally deep and fluffy for extended periods of time; and

(iii) Sites for denning having abundant, coarse woody debris, such as downed trees and root wads.

(3) Critical habitat does not include waterbodies, including lakes, reservoirs, or rivers, or human-made structures existing on the effective date of this rule, such as buildings, paved and gravel roadbeds, and the land on which such structures are located.

(4) Note: Index map for Canada lynx critical habitat follows:

BILLING CODE 4310–55–P



Index Map: Canada Lynx (*Lynx canadensis*)

(5) Unit 1: Maine Unit; all lands within Unit 1 (Maine) were excluded from the final designation of critical habitat for the Canada lynx pursuant to section 4(b)(2) of the Act.

(6) Unit 2: Minnesota Unit; Koochiching, and St. Louis Counties, Minnesota. Coordinate Projection: UTM, NAD83, Zone 15, Meters; Coordinate Definition: (easting, northing)

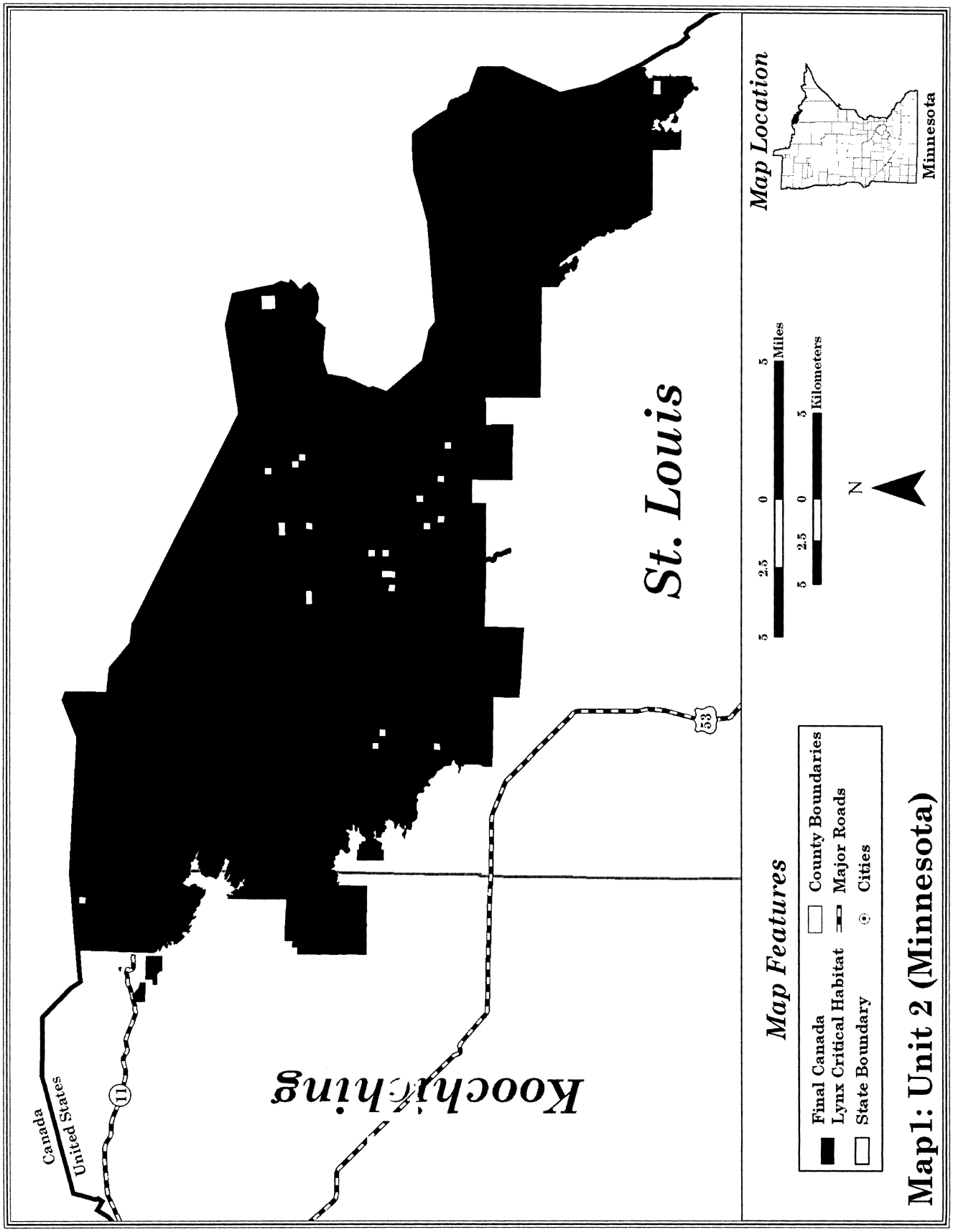
(i) Starting at the intersection (coordinate: 488708, 5385732) of the Minnesota/Canada border and Voyageurs National Park (NP) boundary, follow the Voyageurs NP boundary to the beginning.

(ii) Starting at coordinate (485661, 5382447), follow the Voyageurs NP boundary to the beginning.

(iii) Starting at coordinate (486994, 5381780), follow the Voyageurs NP boundary to the beginning.

(iv) Starting at coordinate (487475, 5383250), follow the Voyageurs NP boundary to the beginning.

(v) Note: Map 1: Unit 2 (Minnesota) follows:



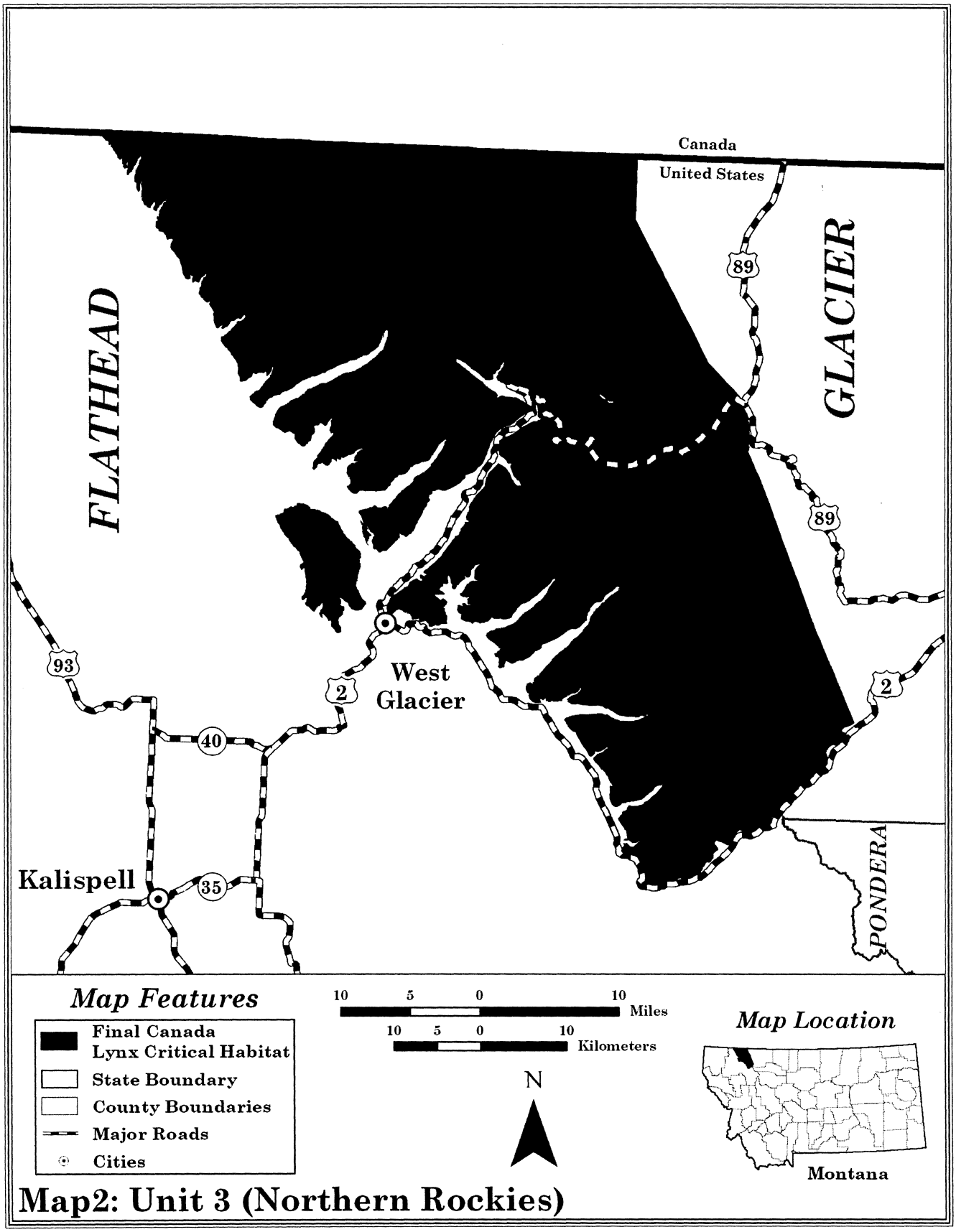
Map1: Unit 2 (Minnesota)

(7) Unit 3: Northern Rocky Mountains Unit; Flathead and Glacier counties, Montana. Coordinate Projection: UTM, NAD83, Zone 12, Meters; Coordinate Definition: (easting, northing).

(i) Starting at the intersection (coordinate: 309104, 5430544) of the Montana/Canada border and Glacier National Park (NP) boundary, follow the Glacier NP boundary to the intersection with the 4,000-foot elevation contour at coordinate (309305, 5346020). Follow the 4,000-foot elevation contour to the intersection of the Montana/Canada border at coordinate (247220, 5433213). Follow the Montana/Canada border to the intersection with the 4,000-foot elevation contour at coordinate (247373, 5433204). Follow the 4000 foot elevation contour to the intersection with the Montana/Canada border at coordinate (247562, 5433194). Follow the Montana/Canada border to the beginning. This area is found within the following USGS 1:24000 Quads; Trailcreek, Kintla Lake, Kintla Peak, Mount Carter, Porcupine Ridge, Mount Cleveland, Gable Mountain, Chief Mountain, Polebridge, Quartz Ridge, Vulture Peak, Mount Geduhn, Ahern Pass, Many Glacier, Lake Sherburne, Babb, Demers Ridge, Camas Ridge West, Camas Ridge East, Mount Cannon, Logan Pass, Rising Sun, Saint Mary, McGee Meadow, Lake McDonald West, Lake McDonald East, Mount Jackson, Mount Stimson, Cut Bank Pass, Kiowa, West Glacier, Nyack, Stanton Lake, Mount Saint Nicholas, Mount Rockwell, Squaw Mountain, East Glacier Park, Pinnacle, Essex, Blacktail, Summit, Nimrod, and Mount Bradley.

(ii) Starting at coordinate (269763, 5390173), follow the 4,000-foot elevation contour to beginning. This area is found within the following USGS 1:24000 Quads: Huckleberry Mountain, McGee Meadow, and Hungry Horse.

(iii) Note: Map 2: Unit 3 (Northern Rockies) follows:

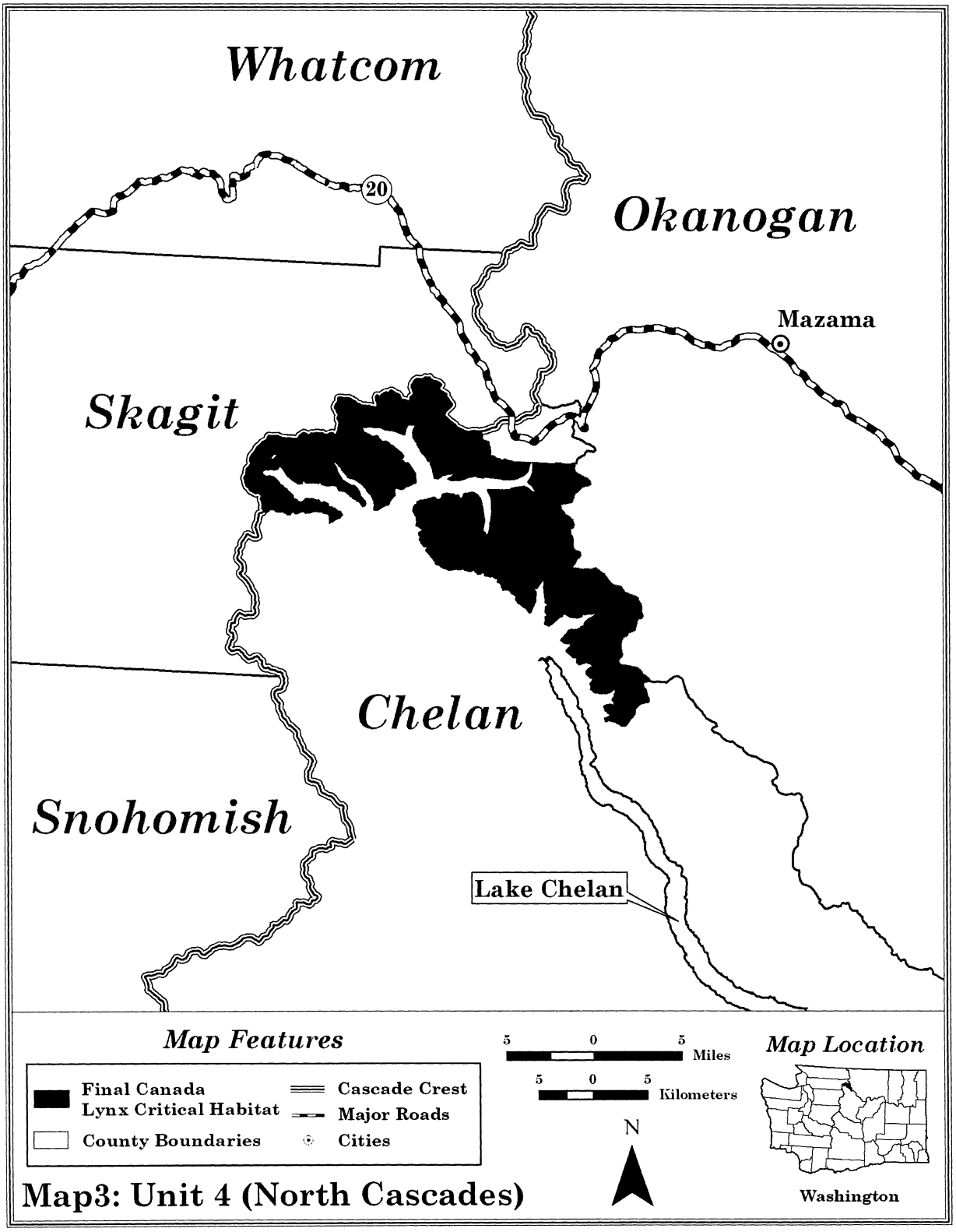


Map2: Unit 3 (Northern Rockies)

(8) Unit 4: North Cascades Unit; Chelan County, Washington. Coordinate Projection: UTM, NAD83, Zone 11, Meters; Coordinate Definition: (easting, northing).

(i) Starting at the intersection (coordinate: 221473, 5379664) of the ''Cascade Crest'' and the North Cascades National Park (NP) boundary, follow the North Cascades NP/Lake Chelan National Recreation Area boundary to the intersection of the 4,000-foot elevation contour at coordinate (232788, 5352734). Follow the 4,000-foot elevation contour to the intersection of the North Cascades NP boundary at coordinate (207433, 5371068). Follow the North Cascades NP boundary to intersection with the ''Cascade Crest'' at coordinate (201400, 5372276). Follow the ''Cascade Crest'' to the beginning. This area is found within the following USGS 1:24000 Quads: Mount Logan, Mount Arriva, McGregor Mountain, McAlester Mountain, Gilbert, Sun Mountain, Stehekin, Goode Mountain, and Cascade Pass.

(ii) Note: Map 3: Unit 4 (North Cascades) follows:



* * * * *

Dated: October 30, 2006.

David M. Verhey,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 06–9090 Filed 11–8–06; 8:45 am]

BILLING CODE 4310–55–C

Federal Register

Thursday,
November 9, 2006

Part IV

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants for Source Categories: Gasoline Distribution Bulk Terminals, Bulk Plants, Pipeline Facilities, and Gasoline Dispensing Facilities; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2006–0406, FRL–8240–1]

RIN 2060–AM74

National Emission Standards for Hazardous Air Pollutants for Source Categories: Gasoline Distribution Bulk Terminals, Bulk Plants, Pipeline Facilities, and Gasoline Dispensing Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action proposes national emission standards for hazardous air pollutants for certain area source facilities. Specifically, this proposal sets forth two regulatory alternatives. The first alternative (Regulatory Alternative 1) proposes emission standards for bulk gasoline terminals, pipeline facilities, and bulk gasoline plants. The second alternative (Regulatory Alternative 2) is identical to the first alternative, except that it also proposes emission standards for gasoline dispensing facilities. We are proposing these emission standards for hazardous air pollutants pursuant to Clean Air Act section 112(c)(3) and 112(d)(5). This action also announces that we are not regulating the above-noted facilities under Clean Air Act section 112(c)(6).

We estimate that the proposed standards would result in an annual reduction of about 3,300 and 3,400 tons of hazardous air pollutant emissions (including about 120 and 125 tons of benzene), and about 45,000 and 46,200 tons of volatile organic compound emissions for the proposed Regulatory Alternatives 1 and 2, respectively. This represents about a 9 and 10 percent reduction of emissions from area sources in the gasoline distribution source category for the proposed Regulatory Alternatives 1 and 2, respectively.

DATES: *Comments.* Comments must be received on or before January 8, 2007. Under the Paperwork Reduction Act, comments on the information collection provisions must be received by the Office of Management and Budget (OMB) on or before December 11, 2006.

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing by November 29, 2006, a public hearing will be held on December 7, 2006.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2006–0406, by one of the following methods:

- *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- E-mail: *a-and-r-docket@epa.gov.*
- Fax: (202) 566–1741.
- Mail: By U.S. Postal Service send your comments to: Air and Radiation Docket, EPA, Mailcode: 6102T, 1200 Pennsylvania Ave., NW, Washington, DC 20460. Please include a total of two copies. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: Desk Officer for EPA, 725 17th St. NW., Washington, DC 20503.
- Hand Delivery: In person or by courier, deliver your comments to: Air and Radiation Docket, EPA, 1301 Constitution Ave., NW, Room B–102, Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2006–0406. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through 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.*

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 *http://www.regulations.gov* or in hard copy at the Air and Radiation Docket, EPA/DC, EPA West Building, Room B–102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742.

Note: The EPA Docket Center suffered damage due to flooding during the last week of June 2006. The Docket Center is continuing to operate. However, during the cleanup, there will be temporary changes to Docket Center telephone numbers, addresses, and hours of operation for people who wish to make hand deliveries or visit the Public Reading Room to view documents. Consult EPA's **Federal Register** notice at 71 FR 38147 (July 5, 2006) or the EPA Web site at *http://www.epa.gov/epahome/dockets.htm* for current information on docket operations, locations, and telephone numbers. The Docket Center's mailing address for U.S. mail and the procedure for submitting comments to *www.regulations.gov* are not affected by the flooding and will remain the same.

FOR FURTHER INFORMATION CONTACT:

General and Technical Information: Mr. Stephen Shedd, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Coatings and Chemicals Group (E143–01), EPA, Research Triangle Park, NC 27711, telephone (919) 541–5397, facsimile number (919) 685–3195, electronic mail (e-mail) address: *shedd.steve@epa.gov.*

Economic Analysis Information: Mr. Art Rios, Office of Air Quality Planning and Standards, Health and Environmental Impacts Division, Air Benefit and Cost Group (C339–01), EPA, Research Triangle Park, NC 27711, telephone (919) 541–4883, facsimile number (919) 541–0839, electronic mail (e-mail) address: *Rios.Arturo@epamail.epa.gov.*

SUPPLEMENTARY INFORMATION:

Regulated Entities. The regulated categories and entities affected by these proposed national emission standards include:

Category	NAICS [a]	Examples of regulated entities
Industry	324110 493190 486910 424710 447110 447190	Operations at area sources that transfer and store gasoline, including bulk terminals, bulk plants, pipeline facilities, and gasoline dispensing facilities.
Federal/State/local/tribal governments.		

[a] North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by the national emission standards. To determine whether your facility would be affected by the national emission standards, you should examine the applicability criteria in this proposed rule. If you have any questions regarding the applicability of the national emission standards to a particular entity, consult either the air permit authority for the entity or your EPA regional representative as listed in 40 CFR 63.13.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of this proposed rule is also available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of this proposed rule will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at the following address: *http://www.epa.gov/ttn/oarpg/.* The TTN provides information and technology exchange in various areas of air pollution control.

Public Hearing. If a public hearing is held, it will begin at 10 a.m. and will be held at the EPA Facility Complex located at 109 T.W. Alexander Drive, Research Triangle Park, NC, or at an alternate facility nearby. Persons interested in presenting oral testimony or inquiring as to whether a public hearing is to be held must contact Mr. Stephen Shedd, listed in the **FOR FURTHER INFORMATION CONTACT** section, at least 2 days in advance of the hearing. The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning the proposed action.

Outline. The information presented in this preamble is organized as follows:

I. Background
II. Summary of Proposed Rule for Area Sources
A. What source category would be affected by this proposed rule?
B. What would be the affected sources and emission points?
C. What would be the emission limits, equipment standards, and work practice standards?
D. What would be the testing and initial compliance requirements?
E. What would be the notification, recordkeeping, and reporting requirements?
III. Not Regulating This Source Category Under CAA Section 112(c)(6)
IV. Rationale for This Proposed Rule
A. How did we select the source category?
B. How did we select the affected sources and emission points?
C. How did we determine the level of this proposed rule?
D. How did we select the format for this proposed rule?
E. How did we select the proposed testing and monitoring requirements?
F. How did we select the proposed notification, recordkeeping, and reporting requirements?
G. How did we decide to exempt gasoline distribution area sources from the CAA title V permit requirements?
H. How did we determine the compliance date for existing facilities?
V. Summary of Environmental, Energy, Cost, and Economic Impacts
A. What are the air impacts?
B. What are the cost impacts?
C. What are the economic impacts?
D. What are the non-air environmental and energy impacts?
VI. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act

I. Background

Section 112 of the Clean Air Act (CAA) generally regulates major source facilities separately from area source facilities. On December 14, 1994 (59 FR 64303) we promulgated national emission standards for hazardous air pollutants (NESHAP) for major source facilities within the gasoline distribution source category (see 40 CFR part 63, subpart R (Major Source NESHAP)). The Major Source NESHAP imposed control requirements on sources within the source category that met the definition of major sources, e.g., a source that emits 10 tons per year or more of any individual hazardous air pollutant (HAP) or 25 tons per year or more of any combination of HAP. Gasoline vapors normally contain nine HAP: benzene, ethylbenzene, hexane, toluene, xylenes, isooctane, naphthalene, cumene, and methyl tert-butyl ether. Some gasoline distribution terminals and pipeline facilities were found to be major sources by themselves or to be located at major sources. Gasoline storage tanks at bulk terminals and pipeline breakout stations, loading racks at bulk terminals, vapor leaks from gasoline cargo tanks, and equipment components in gasoline service were emission sources that were regulated under the Major Source NESHAP. Area sources of HAP emissions within the source category (many bulk terminals and pipeline breakout stations and all pipeline pumping stations, bulk plants, and gasoline dispensing facilities) were not required to implement controls under the Major Source NESHAP.

CAA Section 112(k)(3)(B) requires EPA to identify not less than 30 HAP which, as the result of emissions from area sources, present the greatest threat to public health in the largest number of urban areas, and Section 112(c)(3) requires us to list sufficient area source categories or subcategories to ensure that emissions representing 90 percent of the 30 listed HAP (area source HAP) are subject to regulation under section 112(d) of the CAA. The Urban Air Toxics Strategy (Strategy), issued on July 19, 1999 (64 FR 38706) included a list of 30 area source HAP and a list of area source categories emitting the listed HAP.

CAA Section 112(d) standards include new and existing source maximum achievable control technology (MACT) standards, health threshold standards, and generally available control technology (GACT)/management practices standards for area sources. The standards that are the subject of this proposed rule are based on GACT pursuant to CAA section 112(d)(5).

Gasoline vapors contain 2 HAP (benzene and ethylene dichloride (EDC)) included among the 33 HAP listed under the Strategy. Gasoline distribution (Stage I) was listed in the Strategy because these facilities contributed approximately 36 percent of the national urban emissions of benzene and 2 percent of the EDC from stationary sources at area sources. Today we are proposing to add a subpart to 40 CFR part 63 to address gasoline distribution area sources and to fulfill our obligation under CAA section 112(c)(3) to regulate stationary sources of benzene. EDC emissions have already been controlled under the lead phase-down provisions of section 218 of the CAA.

CAA Section 112(c)(6) requires us to list those source categories emitting at least 90 percent of the aggregate emissions of each of 7 specific pollutants and to develop MACT or health threshold standards to reduce the emissions of these pollutants. On November 8, 2002 (67 FR 68124), we revised the list of area sources under CAA section 112(c)(6) and added gasoline distribution to control emissions of polycyclic organic matter (POM), one of the CAA section 112(c)(6) pollutants. As discussed later in this action, we have concluded that it is not necessary to regulate the gasoline distribution source category under CAA section 112(c)(6).

II. Summary of Proposed Rule for Area Sources

We are proposing and taking public comment on two regulatory alternatives. The first alternative (Regulatory Alternative 1) requires controls at bulk gasoline distribution facilities, which include bulk gasoline terminals, pipeline facilities, and bulk gasoline plants. The second alternative (Regulatory Alternative 2) requires controls at both bulk gasoline distribution facilities and gasoline dispensing facilities.

A. What source category would be affected by this proposed rule?

The source category that would be affected by this proposed rule is gasoline distribution (Stage I) area source facilities. This source category includes area source facilities that perform the operations necessary to distribute gasoline, beginning at the point the gasoline leaves the refinery production process and ending when the gasoline is loaded into the storage tanks at gasoline dispensing facilities (these operations are referred to as ''Stage I'' distribution). The five types of facilities that make up this distribution chain are identified in the following paragraphs. Vehicle refueling (Stage II distribution) is not covered by this proposed rule because, as stated in the Strategy, we believe this is consistent with Congress' intent to regulate these emissions through CAA sections 182(b)(3) and 202(a)(6).

Bulk gasoline terminals are large storage facilities that receive gasoline directly from the refineries via pipelines, barges, or tankers (or are co-located at refineries). Gasoline from the bulk terminal storage tanks is loaded into cargo tanks (tank trucks or railcars) for distribution to smaller, intermediate storage facilities (bulk plants) or directly to gasoline dispensing facilities (retail public service stations and private service stations).

There are two types of pipeline facilities found at various intervals along gasoline distribution pipelines. Pipeline breakout stations receive gasoline via pipelines, store it in storage tanks, and re-inject it into pipelines as needed to meet the demand from downstream facilities. Pipeline pumping stations are located along the entire length of a pipeline at about 40 mile intervals. Their purpose is to provide the extra ''push'' needed to move the product through the pipeline. They do not normally have gasoline storage capability.

Bulk gasoline plants are intermediate storage and distribution facilities that normally receive gasoline from bulk terminals via tank trucks or railcars. Gasoline from bulk plants is subsequently loaded into tank trucks for transport to local dispensing facilities.

Gasoline dispensing facilities include both retail public outlets and private dispensing operations such as rental car agencies, fleet vehicle refueling centers, and various government motor pool facilities. Gasoline dispensing facilities receive gasoline via tank trucks from bulk terminals or bulk plants. As mentioned earlier, the source category only includes the delivery of gasoline at gasoline dispensing facilities and does not include the vehicle refueling activities or equipment.

B. What would be the affected sources and emission points?

Under Regulatory Alternative 1, the affected sources to which this proposed rule would apply are each bulk gasoline terminal, pipeline breakout station, pipeline pumping station, and bulk gasoline plant. Under Regulatory Alternative 2, the affected sources are those listed above plus each gasoline dispensing facility. You are subject to the requirements in this subpart if you own or operate one or more of the affected sources identified above and they are area sources.

For each of the facility types, the emission points subject to control under this proposed rule include the transfer and storage equipment in gasoline service. The sources of emissions at bulk terminals that would be subject to control under this proposed rule include gasoline storage tanks, cargo tank loading racks, cargo tanks being loaded, and equipment components in liquid or vapor gasoline service. At pipeline breakout stations and pumping stations, gasoline storage tanks and equipment components in liquid or vapor service would be emission points subject to control under this proposed rule. At bulk plants this proposed rule would control emissions from the loading of gasoline into storage tanks and the emissions from the loading of gasoline cargo tanks. If we decide to promulgate Regulatory Alternative 2, then controls would also be required at gasoline dispensing facilities to control emissions from the loading of gasoline into storage tanks.

C. What would be the emission limits, equipment standards, and work practice standards?

This proposed rule would require that emissions from storage tanks that meet the applicability criteria at area source bulk gasoline terminals and pipeline breakout stations be reduced by 95 percent, either through the use of specified floating roofs and seals or through an alternative technology such as a closed vent system and control device. This proposed rule would also require that cargo tank loading rack emissions at bulk gasoline terminals be reduced to a level of 80 milligrams, or less, per liter of gasoline loaded into cargo tanks.

Bulk terminal owners and operators also must not allow the loading of cargo tanks that do not have the appropriate vapor tightness testing documentation. Before loading at an affected bulk terminal, the owner or operator of a cargo tank must present documentation of passing the vapor tightness test to demonstrate, using EPA Reference Method 27 or equivalent, that they meet a maximum pressure or vacuum decay rate of 3 inches of water, or less, during a 5-minute test period. Some States have other practices or requirements to ensure that vapor tight cargo tanks are vapor tested and those alternative requirements will be allowed, as specified, under this proposed rule as well.

This proposed rule would require the implementation of a monthly equipment leak inspection at bulk terminals, bulk

plants, pipeline breakout stations, and pipeline pumping stations. The standards allow a sight, sound, and smell inspection of all equipment components in gasoline liquid or vapor service. Any leaking equipment components would have to be repaired within a specified time period.

At bulk plants in all counties nationwide this proposed rule would require the use of submerged filling of gasoline storage tanks and cargo tanks. If we decide to promulgate Regulatory Alternative 2, then gasoline dispensing facilities in Urban 1 and Urban 2 areas [1] will be required to use submerged filling of gasoline storage tanks. The submerged filling requirement could be met by either bottom filling or the use of a fill pipe that extends to within 6 inches of the bottom of the tank being filled.

D. What would be the testing and initial compliance requirements?

This proposed rule would require that control devices being used to reduce emissions from loading racks at bulk terminals be tested to demonstrate that they comply with the emission limit. Closed vent systems and control devices used to reduce emissions from storage tanks would also have to be tested to demonstrate that they comply with the emission limit. There are, however, options that allow for the use of recent performance tests or documentation that the devices are complying with enforceable State, local, or tribal operating permits in lieu of performing a new test.

Affected facilities that utilize control devices (vapor processors) to comply with the emission limits for storage tanks or loading racks at bulk terminals would be required to monitor an operating parameter to demonstrate continuous compliance with the emission limits. The monitored operating parameter value would be determined during a performance test or by engineering assessment. An operating parameter monitoring approach approved by the permitting authority, and included in an enforceable operating permit, would also be allowed as an alternative.

Annual inspections of storage tank roofs and seals would be required for bulk terminals and pipeline breakout stations. Such inspections would be conducted using the same procedures required in 40 CFR part 60, subpart Kb, Standards of Performance for Volatile Organic Liquid Storage Vessels (Storage Vessels New Source Performance Standards (NSPS)).

In addition, each owner or operator of a bulk gasoline terminal would be required to monitor the loading of gasoline into gasoline cargo tanks to limit the loading to vapor-tight gasoline cargo tanks. The owner or operator of each gasoline cargo tank loading at an affected bulk terminal would, therefore, be required to perform vapor tightness testing on each cargo tank to demonstrate compliance with the maximum allowable pressure and vacuum change of 3 inches of water, or less, in 5 minutes. Vapor tightness testing would be performed using EPA Reference Method 27. Railcar cargo tanks can use the alternative ''Railcar Bubble Leak Test Procedures'' or an approved equivalent.

E. What would be the notification, recordkeeping, and reporting requirements?

Affected sources that are subject to the control requirements under this proposed rule would be required to submit four types of notifications or reports as set forth in the General Provisions: (1) Initial Notification; (2) Notification of Compliance Status; (3) periodic reports; and (4) other reports. The Initial Notification apprises the regulatory authority of applicability for existing sources or of construction for new sources. This notification also includes a statement as to whether the facility can achieve compliance by the required compliance date. The Notification of Compliance Status demonstrates that compliance has been achieved. This notification contains the results of initial performance tests and a list of equipment subject to the standard. Periodic reports would be required on a semiannual basis. The semiannual compliance report would inform the regulatory authority of the results of required inspections or additional testing results. An excess emissions report, if applicable, would be submitted with the semiannual compliance report and would be required if excess emission events occur. Excess emission events would include events such as the loading of a cargo tank that does not have documentation of vapor tightness testing, deviations from acceptable operating parameter values, or equipment leaks that are not repaired within the required time.

Other reports are also required under the General Provisions, generally on a one-time basis, for events such as a notification before a performance test or a storage vessel inspection. Reporting these events allows the regulatory authority the opportunity to have an observer present.

Reporting requirements for owners or operators of bulk plants and gasoline dispensing facilities would be limited in most cases to the Initial Notification and the Notification of Compliance Status. Those bulk plants that are located in States that require the use of submerged fill would not be required to submit these notifications. The same would be true for gasoline dispensing facilities if we pursue Regulatory Alternative 2 in the final rule. Because these facilities are subject to only submerged fill requirements (plus equipment leak inspections at bulk plants), we believe that additional reporting after compliance is achieved is unnecessary.

Records required under this proposed rule must be kept for 5 years. These include records of cargo tank vapor tightness test certifications, records of storage tank and equipment component inspections, and records of monthly throughput.

III. Not Regulating This Source Category Under CAA Section 112(c)(6)

Section 112(c)(6) of the CAA requires us to list those source categories emitting at least 90 percent of the aggregate emissions of each of seven specific pollutants and to develop MACT or health threshold standards for the sources listed under this provision. Alkylated lead compounds and POM are the only two of the seven CAA section 112(c)(6) pollutants that were identified in gasoline.

Historically, the use of lead as a gasoline additive in onroad vehicles contributed significantly to the nationwide inventory of alkylated lead emissions. However, section 211(n) of the CAA prohibited the distribution or sale of leaded gasoline for use in motor vehicles as of December 31, 1995. This prohibition has eliminated alkylated lead emissions from the gasoline distribution (Stage I) source category. Lead emissions presented in the 1990 inventory of the seven CAA section 112(c)(6) pollutants were based on Department of Energy gasoline consumption data indicating that 1 percent of the onroad motor vehicle fuel distributed was leaded fuel. The distribution of this leaded fuel was estimated to result in 0.086 tons of alkylated lead emissions. The data used in developing the 1990 inventory are, however, not applicable since the ban

[1] *Urban 1 areas* means counties are part of a metropolitan statistical area with a population greater than 250,000, based on the 1990 and the most current U.S. Census Bureau statistical decennial census data. *Urban 2 areas* means counties where more than 50 percent of the population is classified by the U.S. Census Bureau as urban, based on the 1990 and most current U.S. Census Bureau statistical decennial census data.

on the sale of leaded gasoline went into effect. Additionally, as we explained when listing other source categories of alkylated lead (see 67 FR 17838, April 10, 1998), the ban on leaded gasoline in onroad vehicles was recognized and the gasoline distribution (Stage I) source category was not listed for alkylated lead emissions.

On November 8, 2002 (67 FR 68124), the area source gasoline distribution (Stage I) source category was added to the list of source categories for development of standards under CAA section 112(c)(6) toward the 90 percent requirement for POM. As explained in the November 8, 2002 **Federal Register** notice, one surrogate for POM is the sum of 16 polynuclear aromatic hydrocarbon compounds (16–PAH) measured in EPA Test Method 610. Naphthalene is the only estimated and reported 16–PAH in the 1990 inventory emitted from gasoline distribution (Stage I) facilities. We estimated and reported the 1990 inventory for major source and area source naphthalene emissions from this source category to be 35.5 tons and 320 tons, respectively. The total 1990 inventory for all source categories for 16–PAH was presented as 8,405 tons. According to inventory support documentation, naphthalene emission calculations were based on 0.05 weight percent naphthalene in gasoline vapors.

The American Petroleum Institute (API) submitted data in late 2005 to support their concern that we had over-estimated the naphthalene emissions. We evaluated the API data along with the data from other external sources, and from EPA, that were used for the original listing inventory, and concluded that instead of using a naphthalene content in gasoline vapor of 0.05 weight percent, we should use a value of 0.00027 weight percent.

Using the corrected fraction in gasoline vapor, we now estimate that the 1990 inventory for major source and area source naphthalene emissions from this source category should be 0.19 tons and 1.73 tons, respectively. In addition, the total 1990 inventory of 16–PAH is reduced to 8,051 tons. Thus, gasoline distribution facilities (area sources) contribute only 0.02 percent of the total 16–PAH (1.73 tons out of 8,051 tons) and is not needed to meet the 90 percent requirement for POM in CAA section 112(c)(6).

As a result of this revision to the 1990 naphthalene inventory, we do not intend to regulate this source category under CAA section 112(c)(6).

IV. Rationale for This Proposed Rule

A. How did we select the source category?

We listed area source gasoline distribution (Stage I) facilities in July 1999 pursuant to section 112(c)(3) of the CAA to ensure that area sources representing 90 percent of the area source emissions of the 30 HAP that present the greatest threat to public health in the largest number of urban areas are subject to regulation under CAA section 112. This listing was based on information showing that emissions from the gasoline distribution source category (Stage I) contribute at least 36 percent and 2 percent of the national urban emissions of benzene and EDC, respectively, two of the 33 listed area source HAP.

EDC was added to leaded gasoline to serve as a lead scavenger and prevent the unwanted buildup of lead deposits in engines. With the implementation of restrictions on the sale of leaded gasoline (as discussed in Section III of this preamble) for use in passenger vehicles, however, the use of EDC was also discontinued. Thus, while no regulatory actions were implemented specifically to address EDC emissions from gasoline distribution, its use has been eliminated. As a result of these actions, the gasoline distribution source category is no longer a significant contributor to nationwide EDC emissions and its use will not be discussed further in this preamble.

The gasoline distribution (Stage I) source category's contribution to the total nationwide emissions of benzene is, therefore, the reason this source category was selected for regulatory development.

B. How did we select the affected sources and emission points?

1. Affected Sources

As summarized in this preamble at Section II.A, Regulatory Alternative 1 proposes to regulate HAP emission points at bulk terminals, pipeline breakout stations, pipeline pumping stations, and bulk plants. Regulatory Alternative 2 proposes to regulate all of the HAP emission points covered by Regulatory Alternative 1, and gasoline dispensing facilities, which are not covered by Regulatory Alternative 1. Each of these five types of facilities that make up the Stage I gasoline distribution chain were analyzed during the preparation of the CAA section 112 listing inventory and each type of facility contributes to the 36 percent of nationwide benzene emissions from this source category.

2. Emission Points

During the development of the proposed rule, we evaluated each emission point at each of the five types of affected sources as candidates for additional control requirements. We found that there are available control techniques applicable to each of the emission points within the source category. In addition, emission points at major source bulk terminals and pipeline breakout stations are subject to Federal regulation under the Major Source NESHAP, the 1983 New Source Performance Standards for Bulk Gasoline Terminals (the Bulk Terminals NSPS), and the Storage Vessels NSPS. The control techniques used to comply with these Federal rules are also applicable to the corresponding emission points at area sources. We also found that there are numerous State standards that apply to these emission points at many area source gasoline distribution facilities, including those facilities located in ozone non-attainment areas and in States that have implemented air toxics programs. The following paragraphs provide a summary of our analysis of each emission point.

Bulk Terminals. The four emission points at bulk terminals are: (1) Emissions from loading racks when gasoline is loaded into cargo tanks, (2) fugitive leakage of vapors from cargo tanks during loading of gasoline, (3) evaporation of gasoline from storage tanks, and (4) equipment leaks from pumps, valves, and other components.

Emissions occur at loading racks when gasoline that is loaded into cargo tanks displaces vapors inside these containers. These emissions may occur either uncontrolled (when facilities are not using vapor collection and processing equipment) from cargo tank compartments or from the outlet vents of control systems used to process these displaced vapors.

Emissions from loading racks are typically controlled by venting the displaced vapors to a control device, such as a thermal oxidizer or a carbon adsorber. Loading racks at major sources are controlled under the Bulk Terminals NSPS and the Major Source NESHAP, and many States also require controls on these sources. Considering the current control level that is applied to this emission point by State and local rules, we estimate the baseline emissions from this emission point to be 2,353 tons of HAP per year, nationwide.

Fugitive emissions from leaking cargo tanks may occur, even at controlled loading racks (those equipped with vapor collection and processing

systems), through the dome or hatch covers, pressure-vacuum relief valves or vents, hose couplings, or even the cracks in the welds of the cargo tank shell.

Vapor tightness testing is used as a means of identifying and controlling fugitive emissions from leaking cargo tanks. The Bulk Terminals NSPS and the Major Source NESHAP require vapor tightness testing for cargo tanks loading at major sources and many States in ozone non-attainment areas require that affected source bulk terminals limit the loading of gasoline into cargo tanks that have been tested and certified to be vapor tight. Baseline emissions from leaking cargo tanks, considering current control requirements, are estimated to be about 2,323 tons of HAP per year, nationwide.

Storage tanks at bulk terminals may be of either fixed roof, external floating roof, or fixed roof with an internal floating roof construction. Although the precise mechanisms involved vary between the different types of storage tanks, emissions originate from storage tanks when liquid gasoline in the tank is exposed to air, resulting in the evaporation of the liquid. The vapors that are produced by this evaporation are subsequently released to the atmosphere either directly (in the case of an external floating roof tank), when it is displaced by incoming gasoline, or when the pressure of the vapor buildup in the tank is sufficient to open a pressure/vacuum vent in the tank.

The primary means of controlling emissions from storage tanks is the use of systems that reduce the exposed surface area of the liquid in the tank. Floating roofs, with various types of rim seals and gasketed fittings around penetrations in the roof, are typically required at major sources by applicable Federal rules (the Major Source NESHAP and the Storage Vessels NSPS). Many State standards have similar requirements for storage tanks at area source facilities. We have estimated that the baseline emissions from storage tanks at bulk terminals, considering current control requirements, are about 4,000 tons of HAP per year, nationwide.

Equipment leaks from pumps, valves, and other equipment components occur when the seals found in these items become worn or damaged. Emissions from pumps arise from liquid gasoline leaking from packed or mechanical seals in the pumps used to move the product through the pipeline. Leaks also occur from seals around stems of valves and other equipment components that control or isolate gasoline from the environment such as connections, drain lines, and pressure relief devices.

Periodic inspection of equipment components is the only control technique that we have identified in the applicable Federal and State rules. These inspections typically are required on a monthly or quarterly basis, are performed using sight, sound, and smell observations, and any leaking components are required to be repaired within a specified period of time. We have estimated that the baseline emissions from equipment leaks at bulk terminals, considering current control requirements, are 37 tons of HAP per year, nationwide.

Pipeline Breakout Stations. The two emission points typically found at pipeline breakout stations are gasoline storage tanks and equipment leaks. Storage tank and equipment component (pumps and valves) leak emissions at pipeline breakout stations are identical in the manner of their occurrence and the applicable control techniques to those described above for bulk terminals. However, HAP emission rates are not the same due to differences in turnover rates and storage tank sizes as well as differences in the numbers of estimated equipment components in the process line piping between the two facility types. We have estimated that the nationwide baseline emissions from storage tanks and equipment leaks at pipeline breakout stations, considering current control requirements, are 1,100 and 160 tons of HAP per year, respectively.

Pipeline Pumping Stations. At pipeline pumping stations the only type of HAP emission sources that are normally found are equipment leaks from components such as pumps and valves. We found that fugitive emissions from equipment leaks at pipeline pumping stations are typically unregulated by States. However, this emission source and the applicable control technique are the same as those found at bulk terminals and pipeline breakout stations. We have estimated that the baseline emissions from equipment leaks at pipeline breakout stations, considering current control requirements, are 7 tons of HAP per year, nationwide.

Bulk Plants. The types of gasoline distribution activities and emission sources found at bulk plants are similar to those found at bulk terminals. Because of the size and throughput differences between these two types of affected sources, however, there are differences in the equipment configurations and the types of emission controls normally found at bulk plants.

Storage tanks at bulk plants are typically fixed roof tanks and below the size cutoff criteria for floating roof requirements in Federal and State rules. While there may be some storage tanks at bulk plants that are large enough to be subject to the control requirements typically applicable at bulk terminals, most are uncontrolled. Because bulk plants typically receive gasoline from cargo tanks, the loading of gasoline into the storage tanks at bulk plants can be a significant source of emissions if the tanks are not equipped for submerged filling. We found that some States do not regulate bulk plants, while those States with applicable standards typically require that the loading of storage tanks utilize submerged filling and the vapor balancing of the storage tank with the delivery vehicle. By utilizing vapor balancing, the gasoline vapors that would be released to the atmosphere are instead routed into the cargo tank for return to the bulk terminal for vapor processing. We have estimated the nationwide baseline HAP emissions from the loading of storage tanks at bulk plants to be about 4,350 tons of HAP per year.

The loading of cargo tanks at some bulk plants is also done by top loading (splash filling) gasoline into the cargo tank compartments. This method results in increased emissions compared to bottom loading. Those States that regulate this activity typically require the use of submerged filling and a vapor balancing system to route the vapors displaced from the cargo tank back into the bulk plant storage tank. We have estimated the nationwide baseline HAP emissions from the loading of cargo tanks at bulk plants to be about 2,170 tons of HAP per year.

Fugitive emissions from bulk plants are similar to those at bulk terminals in that they originate from liquid or vapor leaks in equipment components. Because bulk plants are much smaller than bulk terminals, however, both the number of fugitive emission sources and the magnitude of the fugitive emissions are typically much less than those found at bulk terminals. Periodic equipment leak inspections are the only control technique identified that would be applicable to reduce emissions from equipment leaks. We found that equipment leak emissions at bulk plants are, however, typically unregulated. We have estimated the nationwide baseline HAP emissions from equipment leaks at bulk plants to be 15 tons of HAP per year.

Gasoline Dispensing Facilities. The only Stage I activities that occur at gasoline dispensing facilities are the loading of gasoline into the storage tanks and the subsequent storage of the gasoline in these tanks. There are, however, various configurations of

equipment used in these activities. Most gasoline dispensing facilities utilize underground storage tanks and the emissions from these tanks occur primarily as a result of the displacement of vapors during the filling of the tanks. In addition, storage tanks at some gasoline dispensing facilities are not equipped for submerged filling and filling is accomplished by simply ''splash-filling.''

We found that many States require that the filling of storage tanks at gasoline dispensing facilities be controlled through the use of submerged filling and by a vapor balance system where the displaced vapor from the storage tank is collected and routed back to the cargo tank during delivery. The vapor collected in the cargo tank is then returned to the bulk terminal and routed to a vapor processor when the cargo tank is loaded. We have estimated the nationwide baseline HAP emissions from the filling of storage tanks at gasoline dispensing facilities to be about 19,000 tons of HAP per year.

C. How did we determine the level of this proposed rule?

1. Approach

Our approach to determining the level of this proposed rule was based on the statutory requirements of CAA section 112(c)(3). Section 112(c)(3) requires standards that comply with CAA section 112(d), which specifies that standards may be developed using either the MACT approach, a health threshold approach, or the GACT and management practices approach.

As discussed earlier, this source category was listed for benzene emissions. Many carcinogens, including benzene, do not have a health threshold, thus the health threshold approach was not evaluated. Therefore, our approach was to assess the regulatory options based on the GACT, management practices, and MACT levels of control. Under this approach we evaluated each emission point within the source category and identified the control options that we found to be applicable to each emission point within the source category. As we discuss later in this section of the preamble, we developed three regulatory alternatives based on our analysis of current levels of control and progressively adding more stringent levels of control. In adding more stringent levels of control, we did not reach, prior to making the proposed decision, the MACT (average of the best performing 12 percent of the sources) level of control for all emission sources. The three regulatory alternatives that we discuss later and considered in this proposal are GACT levels of control.

2. Control Options

Our first step in developing the control options for each emission point under this proposed rule was an evaluation of the existing controls required by the various Federal, State, and local agencies that regulate gasoline distribution facilities. We found that most States regulate some or all of the emissions points at area sources in the gasoline distribution source category. In addition, many of these emission points are subject to control under the Bulk Terminals NSPS, the Major Source NESHAP, and the Storage Vessels NSPS at the major source bulk terminals and pipeline breakout stations.

For each emission point, we identified and evaluated the various levels of control that are currently required by Federal and State standards. Each discrete level of control that we evaluated was considered to be a control option for the emission point. For example, three discrete levels of control were identified in State standards and in the Bulk Terminals NSPS and the Major Source NESHAP for emissions from loading racks at bulk terminals. These levels are expressed in terms of milligrams of total organic compounds emitted per liter of gasoline loaded into cargo tanks (mg/l) and are 80 (in several State rules), 35 (in some State rules and in the Bulk Terminals NSPS), and 10 (in some State rules and in the Major Source NESHAP). Therefore, in evaluating potential levels of control for this proposed rule, we analyzed each of these three levels of control as a control option for bulk terminal loading racks.

The process of identifying and evaluating control options was repeated for each of the gasoline distribution source category emission points that were discussed in Section B.2 of this preamble.

3. Regulatory Alternatives

After we identified and evaluated the control options for each emission point within the source category we developed a series of regulatory alternatives. Each regulatory alternative consisted of one control option for each emission point at each facility type. We began our regulatory alternatives development with the most cost effective control options as Regulatory Alternative 1 and then added the more stringent control options found in subsequent regulatory alternatives.

We also included in our development of regulatory alternatives a baseline or ''no additional control'' control option for the emission points. Including this control option for certain emission points provided us the flexibility to develop a regulatory alternative that required, for example, additional controls for larger emitting facilities, but not for smaller facilities.

Another factor we considered when developing the regulatory alternatives was whether to require the controls in all counties nationwide or to make the standards applicable only in urban areas. We presented our position on this issue in the Strategy. We stated that while our expectations are to apply area source standards under CAA section 112(k) in all counties nationwide, we would also determine for each area source standard whether it is more appropriate to apply that particular standard in all counties nationwide or only in urban areas. For this proposal, we started with the Urban 1 and Urban 2 area definitions we used in the Strategy.[2] These definitions were used to identify a list of counties based on the 1990 census data. We then modified the list of counties to add new Urban 1 and Urban 2 counties based on the 2000 census data. We are requesting comment on using this Urban 1 and Urban 2 approach to defining urban areas, and on any other approach or definition that would better define where people live in urban areas, such as densely populated areas with 2,500, 50,000, or 250,000 people.

Using the factors presented in the preceding paragraphs, we developed numerous regulatory alternatives for consideration. We evaluated the potential HAP reductions, capital and annualized costs, and cost-effectiveness of each regulatory alternative. (Our analyses can be found in Docket ID No. EPA–HQ–OAR–2006–0406.) We then ranked the regulatory alternatives starting with the most cost-effective and progressing to those that were less cost-effective and, in most cases, required more stringent control. Based on our evaluation of the series of regulatory alternatives, we determined that three regulatory alternatives were viable candidates for evaluation and discussion.

Regulatory Alternative 1. The first regulatory alternative that we considered for the proposed rule was based on those control options that were found to be the most cost effective controls for the larger bulk facilities (bulk terminals, bulk plants, pipeline breakout stations, and pipeline pumping stations). Under this regulatory

[2] *Urban 1 areas* means counties are part of a metropolitan statistical area with a population greater than 250,000. *Urban 2 areas* means counties where more than 50 percent of the population is classified by the U.S. Census Bureau as urban.

alternative, gasoline dispensing facilities would not be subject to control requirements beyond those already implemented by State and local standards, unless they have storage tanks with a capacity greater than 20,000 gallons. We selected this regulatory alternative for consideration because facilities in the bulk segment of the source category are larger facilities.

We chose to apply the controls required under Regulatory Alternative 1 to all counties nationwide rather than only in urban areas. As discussed earlier, we generally develop area source standards that are applicable to all counties nationwide unless we believe it is more appropriate to apply standards only in urban areas. The emission controls required under this regulatory alternative would result in a net credit to the affected facilities because they would prevent the loss (through evaporation) of enough gasoline to more than pay for the costs of the controls. Therefore, this is an appropriate alternative for all facilities and locations.

Under Regulatory Alternative 1, the level of control for large (greater than 20,000 gallon capacity) storage tanks is the same as that required under the Major Source NESHAP. Storage tanks of this size are typically found at bulk terminals and pipeline facilities, although in rare cases they may be at bulk plants or gasoline dispensing facilities. These tanks would be controlled by installation of floating roof technology with the best rim seals on all tanks and fitting controls on external floating roof tanks. As discussed in the Major Source NESHAP final rule notice, fitting controls on internal floating roof tanks have a poor HAP cost-effectiveness. Therefore, they are not included under this regulatory alternative. As an alternative to the installation of floating roof technology, storage tanks may be equipped with a closed vent system and control device designed and operated to reduce emissions by 95 percent. This level of control has been found to be the most cost-effective level available. Our analysis of current control requirements indicated that about 1,000 of the estimated 6,300 storage tanks at area source bulk terminals currently comply with this level of control for both rim and fitting seals. Approximately 1,560 additional storage tanks currently have the required rim seals and would only need to be upgraded by adding fitting seals. We estimate that the nationwide annual volatile organic compounds (VOC) and HAP reductions under this level of control would be 43,000 and 3,100 tons, the capital cost would be $57 million, and the annualized cost would be a credit of about $6 million. The nationwide cost-effectiveness of this level of control is, therefore, a savings of about $2,000 per ton of HAP reduction. Because the potential for evaporative losses of gasoline from these tanks is large, control options that are less stringent are less cost-efficient, after the recovery credit is considered.

The performance testing of control devices and the inspection of seals and gaskets, as required under the Major Source NESHAP, would also be required under Regulatory Alternative 1.

Loading racks at bulk terminals would also be subject to control under Regulatory Alternative 1. We found during our evaluation of State rules that these loading racks are generally required to install and operate vapor processors that are capable of controlling emissions to a level of no more than 80 milligrams of total organic compounds emitted per liter of gasoline loaded (mg/l). This level of control has been found to be the most cost-effective level available for vapor processing. Although we expect that a small number of uncontrolled facilities exist, we did not identify any bulk terminals during our analysis that are not meeting a control level of 80 mg/l. Since our analysis was completed, industry has collected information on these small terminals, as discussed in the next paragraph. While some State rules require emissions to be limited to 35 mg/l, and the MACT standard for major sources is 10 mg/l, the incremental cost-effectiveness of requiring these more stringent control levels is poor, especially if replacement of an existing vapor processor was necessary (about $40,000 per ton of HAP reduction). Therefore, since many terminals still have vapor processors meeting the 80 mg/l limit and they are cost-effective controls that are in widespread use, we are proposing a limit of 80 mg/l for bulk terminal loading racks in Regulatory Alternative 1. As mentioned above, we were unable to develop a reliable estimate of the small number of facilities that are not currently meeting a level of 80 mg/l at their loading racks. Therefore, rather than attempt to estimate nationwide emission reductions and costs, we estimated the potential impacts on an average sized loading rack. We estimated that this average facility would, through the installation of a carbon adsorber to meet the 80 mg/l control level, reduce their VOC and HAP emissions by about 620 and 45 tons. The capital expenditure for this control would be almost $1 million. After considering the value of the recovered product, however, the annualized cost would be a credit of about $54,000. The cost-effectiveness of this level of control for this average facility is, therefore, a credit of about $1,200 per ton of HAP reduction.

Recently, industry has gathered loading rack conversion and vapor processor installation costs (as well as small storage tank secondary seal costs) to demonstrate that these controls are not cost effective at small bulk terminals. We are currently reviewing this information and it is contained in the docket for public review and comment. Based on our review of this data and comments and data received during the comment period, we will consider requiring small terminals (based on a yet to be determined daily throughput) to use submerged fill without processing the vapors to 80 mg/l.

To ensure that vapors in cargo tanks would be displaced into vapor processors, bulk terminal owners and operators would also be required, under Regulatory Alternative 1, to limit the loading of cargo tanks at their facilities to those cargo tanks that have passed a vapor tightness test. The requirement for an annual vapor tightness test of cargo tanks is found in many State rules and is also in the Bulk Terminals NSPS and the Major Source NESHAP. Vapor tightness is tested by EPA Reference Method 27, and is measured in terms of the change in pressure or vacuum observed, from an initial pressure of 18 inches of water or an initial vacuum of -6 inches of water, over a 5-minute test period. Many States have adopted a requirement specifying a maximum allowable change in pressure of 3 inches of water. This is also the level specified in the Bulk Terminals NSPS for new loading racks. Our analysis of cargo tank tightness testing requirements indicated that approximately 22,000 cargo tanks out of an estimated 23,800 vapor collection-equipped cargo tanks already comply with this control level. We estimate that the nationwide annual VOC and HAP reductions under this level of control would be about 1,220 and 90 tons. Because maintenance costs and testing costs are the only costs associated with this option, there is no capital cost associated with this option, and the annualized cost would be about $0.2 million. The nationwide cost-effectiveness of this level of control is, therefore, about $2,250 per ton of HAP reduction. However, because the vapor processor control requirement and vapor tightness requirement for cargo tanks ensures that vapors are controlled, the combined cost-effectiveness of these controls is about $1,000 per ton of HAP controlled.

Some other States, and the Major Source NESHAP, specify a maximum change of 1 inch of water. Because our analysis showed that the incremental cost-effectiveness of requiring the 1-inch maximum pressure decay versus the 3-inch maximum pressure decay was high (about $30,000 per additional ton of HAP reduced), we chose to keep the 3-inch maximum pressure decay level in Regulatory Alternative 1.

Our analysis of the emission points and controls applicable to bulk plants led us to conclude that the most cost-effective means of reducing HAP emissions is the conversion from splash filling to submerged filling of storage tanks and cargo tanks. Approximately 5,500 out of 5,900 bulk plants are estimated to utilize submerged fill. We estimate that the nationwide annual VOC and HAP reductions under this level of control would be about 860 and 108 tons, the capital cost would be $2 million, and the annualized cost would be $30,000. The nationwide cost-effectiveness of this level of control is, therefore, about $300 per ton of HAP reduction when converting to submerged filling of both the storage tanks and cargo tanks. Because bulk plants are typically much smaller facilities than bulk terminals, and have much lower storage capacity and gasoline throughput, the types of controls that are normally cost-effective at bulk terminals are much less cost-effective at bulk plants. For example, bulk plant storage tanks are normally below the size in which internal floating roof technology is typically installed. Also, while the use of vapor balancing between storage tanks and cargo tanks is required by some States, the cost-effectiveness of this requirement was estimated to be about $10,000 per ton of HAP reduced. As a result of the difference in cost-effectiveness, we have elected to include in Regulatory Alternative 1 the requirement that bulk plants utilize submerged filling of storage tanks and cargo tanks.

Also included in Regulatory Alternative 1 is the requirement that bulk terminals, bulk plants, pipeline breakout stations, and pipeline pumping stations perform a monthly equipment leak inspection. During the development of the Major Source NESHAP, we concluded that an equipment leak inspection program utilizing sight, smell, and sound techniques was an effective way to identify leaking components in gasoline service. Although leaking equipment components are normally a small source of HAP emissions compared to some of the other emission points in the source category, the fact that owners or operators generally perform inspections for safety reasons makes the inspection program an attractive option. We did not attempt to quantify the emissions reductions and costs for this level of control because the percentage of owners or operators who are already doing similar inspections, while believed to be a large percentage, is not known. If, as believed, a large percentage of facilities are already being inspected for equipment leaks, the added emission reductions and costs associated with this proposed rule would be small.

We also included in Regulatory Alternative 1 a work practice standard that requires all affected sources to handle gasoline in a manner that reduces vapor releases. This requirement includes steps such as minimizing spills and not storing gasoline in open containers. As with the equipment leak inspection program, these simple actions have been included as a work practice standard in Regulatory Alternative 1.

The implementation of Regulatory Alternative 1 would result in an estimated HAP reduction of about 3,300 tons per year, of which about 120 tons would be benzene. As discussed later in this preamble, we estimate that this alternative will reduce incidences of cancer from benzene exposure by 0.037 cases per year. These reductions would be achieved with an initial capital investment estimated at $60 million nationwide. Because of the value of the product that is prevented from evaporating as a result of these control measures, however, the annualized cost of Regulatory Alternative 1 is estimated to be a credit of approximately $6 million per year. The cost-effectiveness of this Alternative, therefore, would be a credit of about $1,800 per ton of HAP reduced.

As an option to regulatory Alternative 1, we are also considering the adoption of a seals and floating roof technology for storage tanks at bulk terminals and pipeline facilities and controlling emissions from loading racks at bulk terminals. This option would reduce HAP emissions by 3,100 tons per year and VOC emissions by 43,000 tons per year. This option would achieve 94 and 90 percent of the emission reductions of Alternative 1 and 2 (discussed below), respectively. This option would reduce cancer incidence by roughly 0.035 cancers per year. We estimate that this option would require capital expenditures of $57 million, but because of the reduced loss of gasoline, this option would yield an annual cost savings of $6 million per year.

Regulatory Alternative 2. As discussed earlier, our approach in developing the regulatory alternatives was to first look at the most cost-effective controls at the larger bulk facilities, then to look at smaller (gasoline dispensing) facilities, typically located closer to the population. Regulatory Alternative 2, therefore, would require that storage tanks at gasoline dispensing facilities in Urban 1 and Urban 2 areas be filled using submerged fill and would also include all of the requirements of Regulatory Alternative 1. This Alternative would lead to additional HAP emission reductions in more populated areas compared to Regulatory Alternative 1.

As discussed in Section IV.B. of this preamble, the use of submerged filling results in about a 60 percent reduction in emissions compared to splash filling of storage tanks. We estimate that this technology is already used for the delivery of about 99 percent of the gasoline to gasoline dispensing facilities. However, because the remaining 1 percent accounts for over 1.3 billion gallons of gasoline, we estimated that an additional 100 tons of HAP emission reductions (1,370 tons of VOC) would be achieved through the implementation of the submerged fill requirement at gasoline dispensing facilities as specified in Regulatory Alternative 2. As discussed later in this preamble, we estimate that submerged fill will reduce incidences of cancer from benzene exposure by 0.002 cases per year. These additional reductions would be achieved at an additional $5 million in capital cost and an increase in the annualized cost of approximately $47,000. The cost-effectiveness of submerged fill at gasoline dispensing facilities is, therefore, about $470 per ton of HAP emissions reduced.

Our analysis showed that if the submerged fill requirement was applied in all counties nationwide rather than only in Urban 1 and Urban 2 areas (Regulatory Alternative 2), the additional HAP reductions would be about 36 tons per year from the approximately 700 additional facilities that would be required to add submerged fill. The total capital cost would increase by about $2 million and the annualized cost would increase by about $18,800. However, as stated earlier, our approach when adding controls for smaller facilities, in this case gasoline dispensing facilities, is to apply controls in the more populated areas. This focuses the emission reductions from this industry segment in urban areas, results in a larger percentage of the population receiving the benefits of reduced emissions and

exposure to HAP, and reduces the overall cost of the rule. Therefore, we chose to only include in Regulatory Alternative 2 those gasoline dispensing facilities located in the more populated urban (Urban 1 and Urban 2) areas.

Regulatory Alternative 3. Continuing our approach of considering increasingly more stringent control levels, the next level of control that we considered for gasoline dispensing facilities was the requirement to vapor balance the loading of storage tanks. Regulatory Alternative 3 would include the requirement that all gasoline dispensing facilities located in Urban 1 areas utilize vapor balancing when loading gasoline into their storage tanks and would also include all of the requirements of Regulatory Alternative 2. Our analysis indicated that vapor balancing is already used for the delivery of about 68 percent of the gasoline to gasoline dispensing facilities.

For Regulatory Alternative 3, we evaluated a vapor balancing requirement based on typical State standards for gasoline dispensing facilities. We evaluated a control approach that included equipment and work practice standards and also allowed an option of demonstrating that alternative control techniques selected by owners or operators were equally effective. Under this approach, the equipment and work practice standards would specify the components and operation of an acceptable vapor balance system. The owners or operators would be allowed, however, to utilize other equipment configurations if they successfully demonstrated through performance testing that their system was capable of reducing emissions from the loading of their storage tanks by 95 percent. This regulatory approach is utilized by many State and local agencies because of the flexibility it allows.

The use of vapor balanced loading of storage tanks achieves significantly more HAP reductions compared to submerged filling. It is, however, much more costly and is a much less cost-effective requirement. Adding vapor balancing to gasoline dispensing facilities in Urban 1 areas would achieve over twice the HAP emissions reduction and incidences of cancer avoided of Regulatory Alternative 2 (7,000 tons per year compared to 3,400 tons per year, and 0.08 cases per year compared to 0.039 cases per year). These greater reductions would require the expenditure of an additional $99 million in capital cost and $38 million in annualized control cost. We estimate an incremental cost effectiveness of about $10,700 per ton of additional HAP reduced and a cost-effectiveness of about $4,600 per ton of HAP controlled for the combined alternative.

As was the case for Regulatory Alternative 2, we examined the impacts of applying standards in all counties nationwide versus applying standards only in urban areas. We chose to minimize the overall control cost of this Alternative by only requiring vapor balancing in the most populated (Urban 1) areas. If Regulatory Alternative 3 were applied in Urban 2 areas (as well as Urban 1 areas) or in all counties nationwide, the cost-effectiveness would be the same, but the HAP reductions would increase by about 100 tons per year and 180 tons per year, respectively, and the annualized costs would increase by about $30 million and $60 million, respectively.

4. Proposed Level of the Emission Limit and Work Practice Standards

Based on our analysis of the three regulatory alternatives presented here, we have decided to propose both Regulatory Alternatives 1 and 2 in this proposed rule. These Alternatives achieve significant HAP emissions reduction (3,300 or 3,400 tons per year), and, because most of the control measures included prevent the evaporation of gasoline, accomplishes those reductions at a credit of about $1,800 or $1,750 per ton of HAP reduction on a nationwide basis, respectively. While Regulatory Alternative 2 achieves only an additional 100 tons of HAP reduction, the incremental cost to achieve those reductions are small ($47,000 annualized cost). More importantly, the reductions are achieved at service stations located generally closer to the public and not subject to control under Regulatory Alternative 1. As presented later in this preamble, a rough approximation of incidences of cancer from benzene exposure indicates that gasoline distribution area sources contribute to a small number of annual incidences of cancer. Therefore, the additional incidence reduction between Regulatory Alternatives 1 and 2 is small.

The regulatory text included in this proposed rule implements Regulatory Alternative 2. We have proposed regulatory text for Regulatory Alternative 2 because that Alternative encompasses all of the facilities that would be subject to standards under Regulatory Alternative 1, plus gasoline dispensing facilities. If we finalize Regulatory Alternative 1 we will modify the regulatory text appropriately to remove the provisions applicable to gasoline dispensing facilities. We solicit comment on the proposed regulatory text.

We also solicit comment on whether we should finalize Regulatory Alternative 3 as described above which provides greater emission reductions and cancer incidence reductions than Alternatives 1 and 2.

Additionally, we solicit comment on whether we should select a final rule that is based on installation of seals and floating roof technology for storage tanks at bulk terminals and pipeline facilities and controlling emissions from loading racks at bulk terminals. The additional controls identified in Regulatory Alternatives 1 and 2 compared to this option for Alternative 1 would achieve additional reductions of HAP of 200 and 300 tons per year. These additional reductions represent a further reduction of only 6 to 10 percent of the reduction achieved by this option to Alternative 1. These additional reductions in HAP will yield a reduction in cancer incidence from exposure to benzene by roughly 0.002 to 0.004 cases per year. Controls in these alternatives would also reduce VOC emissions by an additional 2,100 to 3,500 tons per year. We estimate that these additional controls will result in capital costs of roughly $2 to $7 million and annual costs of roughly $230,000 to $280,000 per year. The rationale for adopting this alternative reflects a relatively greater emphasis on the limited additional reduction in HAP and VOC emissions and the limited additional reduction in cancer incidence associated with Alternatives 1 and 2.

Lastly, we are asking for comment on whether Regulatory Alternative 1 and the above option to that alternative should be required in all counties nationwide as proposed or just in urban areas. In addition, as discussed earlier, we are requesting comment on the use of Urban 1 and Urban 2 definitions or some other definitions to better define the urban areas where people live.

D. How did we select the format for this proposed rule?

Many owners or operators of affected sources under this proposed rule also own or operate other sources that are subject to control requirements under State rules or the Major Source NESHAP. The format selected for the proposed standards was developed based on our review of Federal and State rules affecting the same emission points at many facilities within the source category. Our goal was to set a format for each emission point that is compatible with the applicable test methods, that reflects the performance

of the control technology, and is consistent with the formats used in other applicable rules. The proposed standards consist of a combination of several formats: numerical emission limits and operating limits, equipment standards, and work practice standards.

Numerical emission limits are feasible for storage tanks outfitted with a closed vent system and a control device. Because these devices must be tested to determine their performance level, a numerical emission limit is both reasonable and practical. For this control situation, we have proposed a percentage control efficiency (95 percent reduction in total organic compound emissions), which is consistent with the format used in the Major Source NESHAP as well as in the Refinery NESHAP (40 CFR part 63, subpart CC).

A numerical emission limit was also selected for loading racks controlled by vapor processors. We have proposed that emissions from loading racks must not exceed 80 mg of total organic compounds per liter of gasoline loaded through the loading rack. This is the same format that is used in the Bulk Terminals NSPS and the Major Source NESHAP for loading rack control, although the actual numerical limit is different.

You would also have the option of installing floating roof technology with specific types of rim and deck fitting seals for affected storage tanks. The floating roof option has been included in most Federal rules affecting petroleum storage tanks, including the Major Source NESHAP and the Storage Vessels NSPS. In selecting this equipment standard, we have maintained consistency with the control approach that most affected gasoline distribution facilities have used to comply with the Major Source NESHAP. Additionally, we are allowing selected equipment, work practice, monitoring, and recordkeeping standards in the more recent floating roof storage vessel standards (40 CFR 63, subpart WW, National Emission Standards for Storage Vessels (Tanks)—Control Level 2), as an alternative to the rule text in the Storage Vessels NSPS and Major Source NESHAP.

The proposal provides that bulk plants and, under Regulatory Alternative 2, gasoline dispensing facilities, must implement an equipment standard to reduce emissions from the loading of storage tanks and cargo tanks. This equipment standard requires the use of submerged fill pipes for loading activities at these facilities. Similar equipment standards are found in many State rules that affect bulk plants and gasoline dispensing facilities.

For equipment leak emission controls, we have selected a work practice standard, a monthly equipment leak inspection that is consistent with the format found in the Major Source NESHAP for major sources and other industrial standards. This format was selected because, during the development of the Major Source NESHAP, it was found to be as effective as an instrument-based leak detection and repair program for detecting gasoline leaks at bulk terminals. Under this work practice standard, leaks that are discovered must be repaired within 15 days.

Another work practice standard applicable at affected sources requires that gasoline be handled in a manner that reduces fugitive emissions from spills and open containers. This work practice standard is also found as a requirement of the major source NESHAP.

An additional work practice standard in combination with an emission limit has been selected for ensuring that only vapor tight cargo tanks are loaded at bulk terminals so that the gasoline vapors will be transferred to the vapor processor. The proposed standard requires that owners or operators of bulk terminals take steps to ensure that any cargo tank loaded has been tested for vapor tightness as measured by EPA Reference Method 27, or an acceptable alternative. This work practice standard is consistent with the format of the Bulk Terminals NSPS and the Major Source NESHAP for vapor tight cargo tanks and requires that a pressure or vacuum change of no more than 3 inches be achieved during a 5-minute test period.

E. How did we select the proposed testing and monitoring requirements?

In our evaluation of the potential testing and monitoring requirements for this proposed rule, we considered the requirements found in various Federal and State rules. While the Federal requirements we evaluated apply only to major sources within the gasoline distribution source category, the State and Federal new source rules also apply to area sources. As a result of our evaluation, we have elected to include certain testing and monitoring requirements from existing Federal regulations as well as requirements found in some State rules. The testing and monitoring requirements that we have included in this proposed rule are intended to ensure that the objective of achieving significant emission reductions on a continuous basis is met without imposing an undue burden on the affected sources.

The proposed standards require initial performance testing and continuous operating parameter monitoring for vapor processor systems, annual vapor tightness testing of cargo tanks, periodic visual inspections and seal gap measurements of floating roofs, and monthly inspections of equipment components in gasoline service.

We are proposing continuous monitoring of operating parameters as a measure to certify and document continuous compliance of the vapor processing systems. The testing, continuous monitoring, and inspection requirements in this proposed rule are based on those in the Major Source NESHAP. In addition to these requirements, we are proposing the monitoring of the presence of a pilot flame as an alternative to temperature monitoring of thermal oxidation units. Industry has raised concerns with temperature monitoring that leads us to propose this alternative. Due to the cyclic nature of the emissions during loading operations, some facilities have found the selection of an appropriate target temperature problematic. Moreover, to compensate, some facilities may burn excess amounts of supplemental fuel (natural gas) to maintain temperature with no HAP or VOC emission reduction benefit and an increase in nitrogen oxide emissions.

We are requesting comment on the sufficiency of monitoring for the presence of the pilot flame by itself or with additional parameters. Industry has recommended automatic shutdown of the loading operations when the pilot flame is absent, coupled with daily monitoring of the assist blower operation, of the vapor line valve operation, and of the automatic shutdown system. We are requesting additional information on the specifics on how these additional items are monitored and why they or others are appropriate to ensure continuous compliance with the emission limit (80 mg/l). Further details on the industry recommendations are in the docket and we request comments, along with data that support the comments, on their recommendations. We are also attempting to collect additional information and data to support that these additional items are appropriate to monitor. We will evaluate the data presented to us during the public comment period to determine the final rule approach on continuous compliance monitoring.

Industry representatives are also working on and have recommended alternative parameters to monitor for

continuous compliance of carbon adsorption systems. Industry is recommending daily monitoring of carbon adsorption system vacuum levels and other system parameters, and monthly measurements of outlet concentration, instead of continuous monitoring of outlet concentration as required in the Major Source NESHAP and this proposed rule. We are requesting additional information on the specifics on how these parameters are monitored and why they or others are appropriate to ensure continuous compliance with the emission limit (80 mg/l). Further details on the industry recommendations are in the docket and we request comments, along with data that support the comments, on their recommendations. We will evaluate the data presented to us during the public comment period and determine in the final rule whether this alternative approach ensure continuous compliance with the emission standards.

Various alternative testing and monitoring procedures are also included in the proposed rule. These alternatives were selected to allow facilities to utilize ongoing testing and monitoring programs, or to expand programs in use at other facilities, rather than having to implement new programs. Facilities that would be required to conduct performance testing of control devices may instead submit documentation that their control devices are in compliance with the testing and monitoring provisions of enforceable State or local standards that are equivalent in stringency to the proposed rule. Performance tests that have been approved by State or local permitting authorities may be submitted in lieu of a new performance test if they were conducted within the 3 years preceding the effective date of the proposed rule. Operating parameter monitoring programs approved by permitting authorities may also be used in lieu of the development of new monitoring programs for control devices. The periodic bubble leak test for vapor tightness testing of railcar cargo tanks (as allowed under the Major Source NESHAP) will also be allowed as an alternative to EPA Reference Method 27.

F. How did we select the proposed notification, recordkeeping, and reporting requirements?

The notification, recordkeeping, and reporting requirements of the proposed standards were generally based on requirements found in other Federal standards, including the General Provisions, as well as State rules. These requirements were selected because they meet the needs of EPA or the delegated permitting authority with respect to determining initial and ongoing compliance with the proposed standards. We have not made a general determination regarding how best to impose reporting requirements on area sources and seek comment on ways to balance the need for reporting with the burden imposed on sources. The proposed standards would require an owner or operator of a bulk terminal or a pipeline facility to submit the following four types of reports: (1) Initial Notification; (2) Notification of Compliance Status; (3) periodic reports (including excess emissions reports); and (4) other reports.

The purpose and contents of each of these reports are described in this section. The proposed rule requires all reports to be submitted to the ''Administrator.'' The term Administrator refers either to the Administrator of the Agency, an Agency regional office, a State agency, or other entity that has been delegated the authority to implement this rule. In most cases, reports will be sent to State agencies. Addresses are provided in the General Provisions of 40 CFR part 63, subpart A.

Records of reported information and other information necessary to document compliance with the regulations are generally required to be kept for 5 years. Records pertaining to the design and operation of the control and monitoring equipment must be kept for the life of the equipment.

Owners or operators of bulk gasoline plants and, under Regulatory Alternative 2, gasoline dispensing facilities, would be subject to reduced reporting requirements because their only requirement under the proposed rule is submerged fill of storage tanks and cargo tanks and equipment leak inspections at bulk plants. As discussed earlier, most States already require submerged filling at bulk plants and gasoline dispensing facilities, and as much as 99 percent of the gasoline is delivered using this technology. Additionally, confirming compliance with the submerged fill requirement is easily performed in the field. We estimate that approximately 260,000 gasoline dispensing facilities in Urban 1 and Urban 2 areas and 4,400 bulk plants in all counties nationwide currently utilize submerged filling of their storage tanks and cargo tanks due to State or local regulations. As a means of reducing the burden on these smaller facilities, we are proposing that bulk plants and gasoline dispensing facilities located in States that require submerged filling of storage tanks and cargo tanks not be required to submit an Initial Notification and a Notification of Compliance Status. We estimate that the burden of filing these notifications would be as much as $30 million for these facilities that are already complying with the requirements of this proposed rule. We are requesting comment on the elimination of the requirement to file the Initial Notification and Notification of Compliance Status in areas already required to install this equipment.

The Initial Notification and the Notification of Compliance Status would still be required, however, for bulk gasoline plants and, if we select Regulatory Alternative 2, gasoline dispensing facilities in other States (see listing in docket). We are nevertheless proposing to simplify these notifications by providing examples of forms that request only the minimum amount of information that would be necessary. In addition, if an affected bulk plant or gasoline dispensing facility is already in compliance with this proposed rule prior to the date that the Initial Notification is due, the two notifications could be combined. Bulk plant owners or operators would, however, be required to report, in a semiannual compliance report, a failure to repair an identified equipment leak within the specified number of days. There would, however, be no other requirements for routine semiannual compliance reporting for either bulk plants or gasoline dispensing facilities.

1. Initial Notification

The proposed standards would require owners or operators to submit an Initial Notification. This report notifies the Agency of applicability for existing facilities or of construction for new facilities as outlined in 40 CFR 63.5 (the General Provisions), whichever is applicable. A respondent must also report any facility reconstructions as defined in 40 CFR 63.5. This report will establish an early dialogue between the source and the regulatory agency, allowing both to plan for compliance activities. The notice is due within 120 days after the effective date of this proposed rule or within 120 days after the source becomes subject to the relevant standard.

The Initial Notification must include a statement as to whether the source can achieve compliance by the specified compliance date. If an existing source anticipates a delay that is beyond its control, it is important for the owner or operator to discuss the problem with the regulatory authority as early as possible. This report will also include a description of the parameter monitoring system intended to be used in

conjunction with the vapor processing system. Pursuant to section 112(i)(3)(B) of the CAA, the proposed standards contain provisions for a 1-year compliance extension to be granted by the Administrator on a case-by-case basis.

2. Notification of Compliance Status

The Notification of Compliance Status would be submitted no later than 60 days after the facility's initial compliance demonstration. It contains the information necessary to demonstrate that compliance has been achieved, such as the results of the initial performance test on vapor processing systems. The submission of the performance test report will allow the regulatory authority to verify that the source has followed the correct sampling and analytical procedures, and has performed all calculations correctly. Included in the performance test report would be the calculation of the operating parameter value for the selected operating parameter to be monitored in the vapor processing system. The notification must include the data and rationale to support this parameter value as ensuring continuous compliance with the emission limit.

3. Periodic Reports

Periodic reports are required to ensure that the standards continue to be met and that all equipment is operated and maintained properly. Generally, periodic reports would be submitted semiannually. However, the Administrator may request that the owner or operator submit more frequent reports if more frequent reporting is necessary to accurately assess the compliance status of the source.

The semiannual compliance report would include a summary of the results of the continuous parameter monitoring, storage tank inspections, and equipment leak inspections. An excess emissions report would also be submitted along with the semiannual report, if applicable. Excess emissions events would include deviations from the established reference values used for continuous parameter monitoring. For loading racks, each loading of a gasoline cargo tank for which vapor tightness documentation had not been previously obtained by the facility would also be considered a reportable excess emissions event.

Owners and operators are also required to keep records of monthly equipment leak inspections, and to furnish reports on inspection results, as specified in 40 CFR 63.11095(a)(3). Facilities must also retain records and submit reports of annual inspections of storage vessels in accordance with 40 CFR 63.11095(a).

4. Other Reports

There are also a limited number of other, non-routine reports required under the General Provisions. For example, notification before a performance test or a storage vessel inspection is required to allow the regulatory authority the opportunity to have an observer present (as specified in the General Provisions). This type of reporting must be done separately from the periodic reports because some situations require a shorter term response from the reviewing authority.

Reports of start of construction, anticipated and actual startup dates, and modifications, as required under 40 CFR 63.5 and 63.9, are entered into the Agency's Aerometric Information Retrieval System (AIRS) and are used to determine whether emission limits are being met.

Records required under the proposed standards are generally required to be kept for 5 years. General recordkeeping requirements are contained in 40 CFR 63.10(b). These requirements include records of malfunctions and maintenance performed on the vapor processing system and the parameter monitoring system. At bulk gasoline terminals, vapor tightness (annual test) documentation for each gasoline cargo tank loading at the terminal is required. Continuous monitoring data from the parameter monitor on the vapor processor will provide a record of continuous compliance with the emission standard. Records of storage vessel inspections, operating plans, and other details of controlled storage vessels at terminals and pipeline stations are to be kept as specified under either 40 CFR 60.115b or 40 CFR 63.1065, depending on the compliance option chosen.

G. How did we decide to exempt gasoline distribution area sources from the CAA title V permit requirements?

Section 502(a) of the CAA provides that EPA may exempt one or more area sources from the requirements of title V if EPA finds that compliance with such requirements is ''impracticable, infeasible, or unnecessarily burdensome'' on such area sources. EPA must determine whether to exempt an area source from title V at the time we issue the relevant CAA section 112 standard (40 CFR 70.3(b)(2)). We are proposing in today's action to exempt gasoline distribution area sources from the requirements of title V. Gasoline distribution area sources would not be required to obtain title V permits solely as a function of being the subject of today's proposed NESHAP; however, if they were otherwise required to obtain title V permits, such requirement(s) would not be affected by today's proposed exemption.

Consistent with the statute, EPA has found that compliance with title V permitting is ''unnecessarily burdensome'' for gasoline distribution area sources. EPA's inquiry into whether this criterion was satisfied was based primarily upon consideration of the following four factors: (1) Whether title V would result in significant improvements to the compliance requirements that we are proposing for this area source category; (2) whether title V permitting would impose a significant burden on gasoline distribution area sources; (3) whether the costs of title V permitting for gasoline distribution area sources would be justified, taking into consideration any potential gains in compliance likely to occur for such sources; and (4) whether there are implementation and enforcement programs in place that are sufficient for assuring compliance with this NESHAP without relying on title V permits.

Additionally, EPA also considered whether exempting gasoline distribution area sources would adversely affect public health, welfare or the environment. We first determined the extent to which these factors were present for this area source category. We then determined whether those factors collectively demonstrated that compliance with title V requirements would be unnecessarily burdensome for gasoline distribution area sources.

In our consideration of these factors we believe the addition of title V permitting would not result in significant improvements to the compliance requirements that we are proposing for this area source category. We believe we are proposing proper levels of testing, monitoring, reporting, and recordkeeping, thus ensuring continuous compliance. As discussed earlier in this section, the proposed levels of testing and monitoring are based on the current levels of testing and monitoring required by many years of rule implementation under Federal, State, local, and tribal agencies for these emission sources. We are unaware of any additional compliance procedures, in or outside the title V program, which would improve the assurance of significantly more gains in compliance and emission reductions.

We also believe that title V permitting may impose a significant burden on facilities within this source category, some of which are small businesses. For

many facilities, the cost of obtaining a title V permit may far exceed the cost of complying with this proposed rule without significant gains in compliance. In addition, because most of the facilities that are subject to this proposed rule are already subject to State or local rules with the same or similar control requirements, the implementation and enforcement programs in place are sufficient for assuring compliance with this NESHAP without relying on title V permits.

Based on the above analysis, we conclude that title V permitting would be ''unnecessarily burdensome'' for gasoline distribution area sources. We are therefore proposing that this area source category be exempt from title V permitting requirements.

H. How did we determine the compliance date for existing facilities?

Section 112(i)(3)(A) of the CAA directs EPA to establish compliance dates for existing sources that provide for compliance as expeditiously as practicable, but in no event later than 3 years after the effective date of a standard. We are proposing in today's action a compliance date for existing facilities of 3 years after promulgation of the final rule. See 40 CFR 63.11083.

Our selection of a 3-year compliance period was based on several factors. First, for storage tanks and loading racks at bulk terminals and for storage tanks at pipeline breakout stations, the 3-year period is consistent with the requirements found in the Major Source NESHAP. Because today's proposed rule would control the same types of emission sources as the Major Source NESHAP, we concluded that it was reasonable to allow the same compliance period. Some facilities affected by today's proposed rule will be required to install control equipment to comply with the rule. The amount of time necessary to plan, purchase, and install storage tank rim seals or loading rack vapor collection and control devices is expected to be significant. Also, because the area source facilities covered by today's proposed rule are smaller than the facilities covered by the Major Source NESHAP, requiring a shorter compliance period did not appear reasonable.

We are also proposing a 3-year compliance period for the submerged fill requirements at bulk plants and at gasoline dispensing facilities in urban areas. These are typically small facilities and many of them meet the definition of a small business entity. These smaller facilities do not typically have environmental or legal expertise on staff and would, therefore, often need additional time to develop an understanding of the requirements of the proposed rule and to develop and implement a plan of action to comply. Although the estimated costs for these facilities to comply with the requirements is considered reasonable, it may take longer for them to plan for or arrange the funding for purchasing and installing control equipment. For these reasons, we concluded that a 3-year compliance period was reasonable for these smaller facilities. We request comment on the appropriateness of extending the proposed timeframe to the full 3-year period for an existing source to comply with this area source rule.

V. Summary of Environmental, Energy, Cost, and Economic Impacts

As discussed earlier, gasoline distribution activities are carried out at several different types of facilities. These include bulk terminals, pipeline breakout stations, pipeline pumping stations, bulk plants, and gasoline dispensing facilities. Our analysis of the gasoline distribution industry led us to estimate that there were approximately the following numbers of potentially affected area sources within each type of facility: 980 bulk terminals, 400 pipeline breakout stations, 1,800 pipeline pumping stations, 390 bulk plants, and 1,900 gasoline dispensing facilities. The following paragraphs present our estimates of the impacts that this proposed rule would have on these facilities.

A. What are the air impacts?

Nationwide, gasoline distribution facilities emit annually an estimated 475,000 tons of VOC and 35,500 tons of HAP (including 1,300 tons of benzene). As discussed earlier, emissions of EDC have already been eliminated from this source category. If we select Regulatory Alternative 1 as the final standard, we estimate that, after the alternative is implemented, annual HAP emissions will be reduced by 3,300 tons, which includes 120 tons of benzene, from 3,300 facilities. The alternative will also reduce VOC emissions by 45,000 tons per year. This represents about a 9 percent reduction in emissions of these pollutants, compared to the baseline. If we select Regulatory Alternative 2 as the final standard, we estimate that, after the alternative is implemented, annual HAP emissions will be reduced by 3,400 tons, which includes 125 tons of benzene, from 5,200 facilities. The alternative will also reduce VOC emissions by 46,200 tons per year, which represents about a 10 percent reduction in emissions of these pollutants, compared to the baseline.

On March 29, 2006, EPA proposed (71 FR 15804) additional controls on gasoline, passenger vehicles, and portable gasoline containers under the Mobile Source Air Toxics (MSAT) Program. The proposed MSAT rule would require that the benzene content of gasoline be reduced by about 37 percent overall by January 1, 2011. Taking into account the lower benzene content of gasoline that is estimated to result from the implementation of the MSAT rule (if the rule is finalized as proposed), baseline emissions of HAP and benzene from this source category in 2011 would be about 35,145 tons and 820 tons, respectively. Regulatory Alternative 1 is estimated to achieve a HAP reduction of 3,260 tons per year (rather than the 3,300 presented earlier) and a benzene reduction of 77 tons per year (rather than 120 tons) if the MSAT rule is finalized as proposed. Regulatory Alternative 2 is estimated to achieve a HAP reduction of 3,360 tons per year (rather than the 3,400 presented earlier) and a benzene reduction of 80 tons per year (rather than 125 tons) if the MSAT rule is finalized as proposed.

We project that any adverse air impacts associated with this proposed rule will be insignificant. The only control technology utilized to meet the requirements in the proposed rule that would lead to adverse air impacts is the use of thermal oxidizers to control gasoline vapors. These devices typically use natural gas as a supplemental fuel to achieve the required minimum temperatures in the combustion chamber. Emissions from these devices include the products of combustion created by the combustion of natural gas and gasoline vapors. There are, however, alternative control technologies, such as carbon adsorbers, that do not rely on combustion for control of the gasoline vapors. Carbon adsorption devices recover gasoline vapors and provide a cost benefit from the recovered product.

The alternatives being proposed today would reduce benzene emissions in this source category by 120 and 125 tons annually (about a 9 and 10 percent reduction from current total emissions), respectively, from Regulatory Alternatives 1 and 2. Using national data from all stationary benzene emission sources in the 1999 National Air Toxic Assessment (NATA) and ratioing them to the national benzene emissions from this source category, we approximate that this proposal will reduce incidences of cancer from benzene exposure by 0.037 and 0.039 cases per year, respectively, from Regulatory Alternatives 1 and 2. Regulatory Alternative 3 reduces about

20 percent of current benzene emissions from these sources, resulting in a reduction of incidences of cancer from benzene exposure by 0.08 cases per year. These approximations are considered a very rough estimate because no exposure analysis was performed for this source category and the 1999 NATA data should be used cautiously, as the overall quality and uncertainties of the NATA results will vary from location to location as well as from pollutant to pollutant. In addition, EPA's Scientific Advisory Board has cautioned the Agency against using the results of the NATA assessment for regulatory purposes. Further information on the limitations of NATA is discussed at the following Web site: *http://www.epa.gov/ttn/atw/nata1999/index.html.*

B. What are the cost impacts?

The cost of implementing the proposed standards for gasoline distribution area source facilities would include the capital and annualized costs to control storage tanks, loading racks, and equipment leaks, as well as the costs of complying with the testing, monitoring, reporting, and recordkeeping requirements. The proposed standards are estimated to result in capital expenditures of approximately $60 million for Regulatory Alternative 1 and $65 million for Regulatory Alternative 2.

The annualized cost [3] of the capital expenditures is estimated to be about $7.1 million for Regulatory Alternative 1 and $7.6 million for Regulatory Alternative 2. Annual operating and maintenance costs are estimated at about $3.6 million, for each of the alternatives. We have estimated the annual costs of testing, monitoring, reporting, and recordkeeping to be about $23 million for Regulatory Alternative 1 and $24 million for Regulatory Alternative 2. Because of the value [4] of the product that is either recovered or prevented from evaporating, however, we estimate that the annualized cost of the proposed standards is a credit of about $6 million for both alternatives ($47,000 incremental annualized cost between Regulatory Alternatives 1 and 2).

[3] Capital is annualized over 10 years for loading rack equipment, 15 years for submerged fill equipment, and 20 years for storage tank equipment. We used a discount rate of 10 percent for this analysis, and when evaluating public comments we will update the final analysis by using the current economic practice discount rate of 7 percent.

[4] The recovered product value we used in this analysis is $1.70 per gallon for wholesale gasoline.

C. What are the economic impacts?

This proposal affects area sources from pipeline transportation, bulk stations and terminals, local and long-haul trucking, and gasoline stations which make up the gasoline distribution industry. We performed an economic impact analysis with methodology based on a single-market partial-equilibrium analysis of the national gasoline market. The analysis estimates changes in gas prices and outputs for affected sources under the three regulatory alternatives discussed above.

The results of our analysis are as follows. The compliance cost results in an insignificant increase in gasoline prices for each alternative: 0.01 percent increase in price for Regulatory Alternatives 1 and 2, 0.02 percent increase in price for Regulatory Alternative 3. Given the small increase in prices, the corresponding reductions in gasoline output are minor for each alternative: -0.002 percent for Regulatory Alternatives 1 and 2, -0.003 percent for Regulatory Alternative 3. The overall total annual social costs/gains, which reflect changes in consumer and producer behavior in response to the compliance costs, are $6 million in gains for Regulatory Alternatives 1 and 2, and a $32 million cost for Regulatory Alternative 3. The net gains for Regulatory Alternatives 1 and 2 are the result of surplus increases from fuel savings valued at $40 to $41 million.

For more information, please refer to the Economic Impact Analysis report that is in the public docket for this rule.

D. What are the non-air environmental and energy impacts?

Water quality would not be affected by implementation of this proposed rule. This proposed rule does not contain any requirements related to water discharges, wastewater collection, or spill containment, and no additional gasoline is expected to enter these areas as a result of this proposed rule.

We also project that there will be no significant solid waste impact. Neither thermal oxidizers nor condensers generate any solid waste as a by-product of their operation. When carbon adsorption systems are used, the spent activated carbon that cannot be further regenerated may be disposed of in a landfill, which would contribute a small amount of solid waste.

The control devices used to control emissions from loading racks and some storage tanks use electric motor-driven blowers, dampers, or pumps, depending on the type of system, in addition to electronic control and monitoring systems. The installation of these devices would have a small negative energy impact. We believe, however, that there will be very few, if any, new installations of these control devices as a result of this proposed rule. Also, because the liquid being controlled by these systems is gasoline, and some of the applied control measures would keep this fuel in the distribution system, they would have a positive impact on this form of energy. We estimate that this proposed rule would prevent a total of approximately 14.3, 14.7, and 30 million gallons of gasoline from being lost to evaporation annually for Regulatory Alternatives 1, 2, and 3, respectively.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is a ''significant regulatory action.'' The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may ''raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.'' Accordingly, EPA submitted this action to OMB for review under Executive Order 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* An Information Collection Request (ICR) document has been prepared by EPA has been assigned EPA ICR number 2237.01. A copy may be obtained from Susan Auby, Collection Strategies Division (2822T), EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, or by calling (202) 566–1672. A copy may also be downloaded from the public docket for this action (Docket ID number EPA–HQ–OAR–2006–0406), which can be found in *http://www.regulations.gov.*

The information to be collected for the area source rule proposed today are based on notification, recordkeeping, and reporting requirements in the NESHAP General Provisions in 40 CFR part 63, subpart A, which are mandatory for all operators subject to national emission standards. These recordkeeping and reporting requirements are specifically authorized

by section 114 of the CAA (42 U.S.C. 7414). All information submitted to the EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to EPA policies set forth in 40 CFR part 2, subpart B.

The proposed rule would require performance testing of control devices used to control emissions from loading racks at bulk terminals and from some storage tanks at bulk terminals and pipeline breakout stations; annual inspections of storage tanks at bulk terminals and pipeline breakout stations; collection of cargo tank vapor tightness documentation by bulk terminals; and monthly equipment leak inspections at bulk terminals, pipeline breakout stations, pipeline pumping stations, and bulk plants. The proposed rule would not require any notifications or reports beyond those required by the General Provisions. The recordkeeping requirements require only the specific information needed to determine compliance. We have taken steps, as described in section IV.F of this preamble, to minimize the reporting and recordkeeping requirements for the smaller facilities (bulk plants and gasoline dispensing facilities) that are affected by the proposed rule.

The annual monitoring, reporting, and recordkeeping burden to affected sources for this collection (averaged over the first 3 years after the effective date of the promulgated rule) is estimated to be about 204,100 labor hours per year, with a total annual cost of $13.4 million per year. Most of this burden will be spread over approximately 11,160 facilities that will be required to keep records and file reports. Of this total burden, however, about 84,240 labor hours (and $5.7 million) will be incurred by 1,560 of the larger facilities (bulk terminals and pipeline breakout stations). Depending on the facility type, these estimates include two one-time notifications, a one-time performance test and report for control devices, periodic equipment inspections, and semiannual compliance reporting.

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; 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.

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 40 CFR are listed in 40 CFR part 9 and 48 CFR chapter 15.

To comment on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques, EPA has established a public docket for this proposed rule, which includes this ICR, under Docket ID number EPA–HQ–OAR–2006–0406, which can be found in *www.regulations.gov.* Submit any comments related to the ICR for this proposed rule to EPA and OMB. See **ADDRESSES** section at the beginning of this notice for where to submit comments to EPA. Send comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., NW., Washington, DC 20503, Attention: Desk Office for EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after November 9, 2006, a comment to OMB is best assured of having its full effect if OMB receives it by December 11, 2006. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For the purposes of assessing the impacts of this proposed rule on small entities, small entity is defined as: (1) A small business whose parent company has less than $25 million in revenue (NAICS 447110, Gasoline Stations with Convenience Stores), less than $23.5 million in revenue (NAICS 484220 and 484230, Hazardous Materials Trucking [except waste], local and long-distance), and less than $8.0 million in revenue (NAICS 447190, Other Gasoline Stations), and fewer than 100 employees (NAICS 424710, Petroleum Bulk Stations and Terminals), and 1,500 employees (NAICS 486910, Pipeline Transportation of Refined Petroleum Products) based on the Small Business Administration size standards; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. Under these definitions, approximately 60,000 gasoline distribution firms are considered small entities. For more information, refer to *http://www.sba.gov/size/sizetable2002.html.* The economic impacts of the regulatory alternatives are analyzed based on the consumption of gasoline. However, for the small business impact analysis, these impacts are described in terms of comparing the compliance costs to sales revenues for representative entities. For more detail, see the current Economic Impact Analysis in the public docket.

After considering the economic impacts of this proposed rule on small entities, I certify that the proposed rule will not have a significant economic impact on a substantial number of small entities. This certification is based on the economic impact of the proposed rule to affected small entities in the entire gasoline distribution industry. The small entities directly regulated by the proposed rule are industries within the NAICS codes 424710, 447110, 447190, 484220, and 484230. We have determined that Pipeline Transportation of Refined Petroleum Products (NAICS 486910) does not contain any small business entities and, therefore, is not included in the small business impact analysis. For the regulatory alternatives analyzed, all gasoline distribution industry categories that contain small business entities are expected to have an average annual cost to sales ratio of less than 1 percent with cost impacts for all regulated small entities ranging from a cost savings to less than 0.12 percent of sales. In addition, no other adverse impacts are expected to occur to these affected small businesses.

Cost impacts associated with these proposed standards for area sources are presented in Section V.B of this preamble. For more information on the small entity economic impacts associated with the proposed decisions for gasoline distribution industries affected by today's action, please refer to

the Economic Impact and Small Business Analyses in the public docket.

Although the proposed rule would not have a significant economic impact on a substantial number of small entities, we nonetheless tried to reduce the impact of the proposed rule on small entities. When developing the regulatory alternatives, we took special steps to ensure that the burdens imposed on small entities were minimal. We conducted meetings with industry officials to discuss regulatory options and the corresponding burden on industry, such as recordkeeping and reporting.

Following publication of the proposed rule, copies of the **Federal Register** notice and, in some cases, background documents, will be publicly available (see *Docket* in the **ADDRESSES** section of this preamble) to all industries, organizations, and trade associations that have had input during the regulation development, as well as State and local agencies. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires us to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows us to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before we established any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, we must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

We have determined that the options considered in this proposed rule do not contain a Federal mandate that may result in expenditures of $100 million or more to State, local, and tribal governments in the aggregate, or to the private sector in any 1 year. Thus, this proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA. Additionally, for the same reason as above for all governments, we believe the options considered in this proposed rule do not contain requirements that might significantly or uniquely affect small governments.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This proposed 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. Thus, the requirements of the Executive Order do not apply to this proposed rule.

In the spirit of Executive Order 13132 and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

This proposed rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. Thus, Executive Order 13175 does not apply to this proposed rule.

EPA specifically solicits additional comment on this proposed rule from tribal officials.

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

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

We interpret Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This proposed rule is not subject to Executive Order 13045 because it is based on technology performance and not on health or safety risks. No children's risk analysis was performed because no alternative technologies exist that would provide greater stringency at a reasonable cost. Furthermore, this proposed rule has been determined not to be ''economically significant'' as defined under Executive Order 12866.

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

This proposed rule is not an economically significant energy action as defined in Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that this proposed rule is not likely to have any adverse energy impacts.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No. 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. VCS are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by VCS bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable VCS.

This proposed rule does not include any test methods that have not undergone the NTTAA review during the development of the NESHAP for gasoline distribution (Stage I). During the development of amendments to the NESHAP in 2005 we incorporated by reference an industry standard test method for detecting vapor leaks in railcar cargo tanks. This method was found to be an acceptable alternative to EPA Reference Method 27. No other VCS have been identified that are applicable to this proposed rule.

List of Subjects for 40 CFR Part 63

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

Dated: October 31, 2006.

Stephen L. Johnson,

Administrator.

For the reasons set out in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is proposed to be amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

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

2. Part 63 is amended by adding a new subpart BBBBBB to read as follows:

Subpart BBBBBB—National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Distribution Bulk Terminals, Bulk Plants, Pipeline Facilities, and Gasoline Dispensing Facilities

What This Subpart Covers

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63.11081 Am I subject to the requirements in this subpart?
63.11082 What parts of my affected source does this subpart cover?
63.11083 When do I have to comply with this subpart?

Emission Limitations, Operating Limits, and Work Practice Standards

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63.11086 What requirements must I meet if my facility is a bulk gasoline plant?
63.11087 What requirements must I meet for gasoline storage tanks if my facility is a bulk gasoline terminal, pipeline breakout station, or pipeline pumping station?
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63.11089 What requirements must I meet for equipment leak inspections if my facility is a bulk gasoline terminal, pipeline breakout station, or pipeline pumping station?

Testing and Monitoring Requirements

63.11092 What testing requirements must I meet?

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63.11093 What notifications must I submit and when?
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Other Requirements and Information

63.11098 What parts of the General Provisions apply to me?
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Tables to Subpart BBBBBB of Part 63

Table 1 to Subpart BBBBBB of Part 63—Applicability Criteria, Emission Limits, and Work Practice Standards for Storage Tanks

Table 2 to Subpart BBBBBB of Part 63—Applicability Criteria, Emission Limits, and Work Practice Standards for Loading Racks

Table 3 to Subpart BBBBBB of Part 63—Applicability of General Provisions

Subpart BBBBBB—National Emission Standards for Hazardous Air Pollutants for Source Category: Gasoline Distribution Bulk Terminals, Bulk Plants, Pipeline Facilities, and Gasoline Dispensing Facilities

What This Subpart Covers

§ 63.11080 What is the purpose of this subpart?

This subpart establishes national emission limitations, work practice standards, and equipment inspection requirements for organic hazardous air pollutants (HAP) emitted from area source gasoline distribution facilities. This subpart also establishes requirements to demonstrate compliance with the emission limitations, work practice standards, and equipment inspection requirements.

§ 63.11081 Am I subject to the requirements in this subpart?

(a) The affected source to which this subpart applies is each bulk gasoline terminal, pipeline breakout station, pipeline pumping station, bulk gasoline plant, and gasoline dispensing facility identified in paragraphs (a)(1) through (5) of this section. You are subject to the requirements in this subpart if you own or operate one or more of the affected area sources identified in paragraphs (a)(1) through (5) of this section.

(1) A bulk gasoline terminal that is not subject to the control requirements of 40 CFR part 63, subpart R (§§ 63.422, 63.423, and 63.424) or 40 CFR part 63, subpart CC (§§ 63.646, 63.648, 63.649, and 63.650).

(2) A pipeline breakout station that is not subject to the control requirements of 40 CFR part 63, subpart R (§§ 63.423 and 63.424) of this part.

(3) A pipeline pumping station.

(4) A bulk gasoline plant.

(5) A gasoline dispensing facility located in an Urban 1 or Urban 2 area.

(b) If you are an owner or operator of affected sources in (a)(1) through (5) of this section, you are not required to meet the obligation to obtain a permit under 40 CFR part 70 or 40 CFR part 71, provided you are not otherwise required to obtain a permit under 40 CFR 70.3(a) or 40 CFR part 71.3(a).

§ 63.11082 What parts of my affected source does this subpart cover?

The emission sources to which this subpart applies are gasoline storage tanks, gasoline loading racks, vapor collection-equipped gasoline cargo tanks, and equipment components in vapor or liquid gasoline service that meet the criteria specified in Tables 1 through 3 to this subpart.

§ 63.11083 When do I have to comply with this subpart?

(a) If you have a new or reconstructed affected source, you must comply with this subpart according to paragraphs (a)(1) and (2) of this section.

(1) If you startup your affected source before [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], you must comply with the standards in this subpart no later than [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**].

(2) If you start up your affected source after [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], you must comply with the standards in this subpart upon startup of your affected source.

(b) If you have an existing affected source, you must comply with the standards in this subpart no later than [DATE 3 YEARS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**].

(c) If a county where your gasoline dispensing facility resides is reclassified from rural to urban, you must comply with the standards in this subpart as specified in paragraphs (c)(1) through (3) of this section.

(1) If your facility is an existing facility as of the date your county is reclassified, you must comply with the standards in this subpart no later than 3 years after the date of reclassification.

(2) If you commence construction or reconstruction of your gasoline dispensing facility on or after the date of reclassification, and you start up your gasoline dispensing facility before the reclassification, you must comply with the standards in this subpart no later than the date of publication of reclassification.

(3) If you commence construction or reconstruction of your gasoline dispensing facility on or after the date of reclassification, and you start up your gasoline dispensing facility after the date of reclassification, you must comply with the standards in this subpart upon startup of your gasoline dispensing facility.

Emission Limitations, Operating Limits, and Work Practice Standards

§ 63.11085 What requirements must I meet if my facility is a gasoline dispensing facility?

Each owner or operator of an affected gasoline dispensing facility, as defined in § 63.11100, must comply with the requirements of paragraphs (a) through (g) of this section, but is not required to comply with § 63.11086, § 63.11087, § 63.11088, or § 63.11089.

(a) You must utilize submerged filling, as defined in § 63.11100, for the loading of gasoline into storage tanks at your facility.

(b) The emission sources listed in paragraphs (b)(1) and (2) of this section are not required to comply with the control requirements in this subpart.

(1) Gasoline storage tanks with a capacity of less than 250 gallons.

(2) Gasoline storage tanks with a capacity of less than 550 gallons that are used exclusively for fueling implements of husbandry.

(c) You must not allow gasoline to be handled in a manner that would result in vapor releases to the atmosphere for extended periods of time. Measures to be taken include, but are not limited to, the following:

(1) Minimize gasoline spills;

(2) Clean up spills as expeditiously as practicable;

(3) Cover all open gasoline containers with a gasketed seal when not in use;

(4) Minimize gasoline sent to open waste collection systems that collect and transport gasoline to reclamation and recycling devices, such as oil/water separators.

(d) You must submit an initial notification that you are subject to this subpart by [DATE 120 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**] unless you meet the requirements in paragraph (f) of this section. The initial notification must contain the information specified in paragraphs (d)(1) through (3) of this section. The notification must be submitted to the applicable EPA Regional Office, as listed in § 63.13, or the delegated State authority.

(1) The name and address of the owner and the operator.

(2) The address (i.e., physical location) of the gasoline dispensing facility.

(3) A statement that the notification is being submitted in response to 40 CFR part 63, subpart BBBBBB and identifying whether or not the requirements in paragraphs (a), (b), and (c) of this section apply to you.

(e) You must submit a notification of compliance status to the applicable EPA Regional Office or the delegated State authority by the compliance date specified in § 63.11083. The notification of compliance status must be signed by a responsible official who must certify its accuracy and must indicate whether the source has complied with the requirements of this subpart. If your facility is in compliance with the requirements of this subpart at the time the initial notification required under paragraph (d) of this section is due, the notification of compliance status may be submitted in lieu of the initial notification provided it contains the information required under paragraph (d) of this section.

(f) You are not required to submit an initial notification or a notification of compliance status under paragraph (d) or paragraph (e) of this section if, prior to [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], you are meeting a submerged fill (as defined in § 63.11100) requirement under an enforceable State, local, or tribal rule or permit.

(g) You must comply with the requirements of this subpart by the applicable dates specified in § 63.11083.

§ 63.11086 What requirements must I meet if my facility is a bulk gasoline plant?

Each owner or operator of an affected bulk gasoline plant, as defined in § 63.11100, must comply with the requirements of paragraphs (a) through (i) of this section, but is not required to comply with § 63.11085, § 63.11087, or § 63.11088.

(a) Except as specified in paragraph (b) of this section, you must utilize submerged filling, as defined in § 63.11100, for the loading of gasoline into storage tanks at your facility.

(b) The emission sources listed in paragraphs (b)(1) and (2) of this section are not required to comply with the control requirements in this subpart.

(1) Gasoline storage tanks with a capacity of less than 250 gallons.

(2) Gasoline storage tanks with a capacity of less than 550 gallons that are used exclusively for fueling implements of husbandry.

(c) You must utilize submerged filling, as defined in § 63.11100, for the loading of gasoline into gasoline cargo tanks at your facility.

(d) You must perform a monthly leak inspection of all equipment in gasoline service according to the requirements specified in § 63.11089(a) through (f).

(e) You must not allow gasoline to be handled in a manner that would result in vapor releases to the atmosphere for extended periods of time. Measures to be taken include, but are not limited to, the following:

(1) Minimize gasoline spills;

(2) Clean up spills as expeditiously as practicable;

(3) Cover all open gasoline containers with a gasketed seal when not in use;

(4) Minimize gasoline sent to open waste collection systems that collect and transport gasoline to reclamation and recycling devices, such as oil/water separators.

(f) You must submit an initial notification that you are subject to this subpart by [DATE 120 DAYS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**] unless you meet the requirements in paragraph (h) of this section. The initial notification must contain the information specified in paragraphs (f)(1) through (4) of this section. The notification must be submitted to the applicable EPA Regional Office, as listed in § 63.13, or the delegated State authority.

(1) The name and address of the owner and the operator.

(2) The address (i.e., physical location) of the bulk plant.

(3) A statement that the notification is being submitted in response to subpart BBBBBB and identifying the requirements in paragraphs (a), (b), (c), (d), and (e) of this section that apply to you.

(4) A brief description of the bulk plant, including the number of storage tanks in gasoline service, the capacity of each storage tank in gasoline service, and the average monthly gasoline throughput at the affected source.

(g) You must submit a notification of compliance status to the applicable EPA Regional Office or the delegated State authority by the compliance date specified in § 63.11083. The notification of compliance status must be signed by a responsible official who must certify its accuracy and must indicate whether the source has complied with the requirements of this subpart. If your facility is in compliance with the requirements of this subpart at the time the initial notification required under paragraph (f) of this section is due, the notification of compliance status may be submitted in lieu of the initial notification provided it contains the information required under paragraph (f) of this section.

(h) You are not required to submit an initial notification or a notification of compliance status under paragraph (f) or (g) of this section if, prior to [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], you are meeting a submerged fill (as defined in § 63.11100) requirement under an enforceable State, local, or tribal rule or permit.

(i) You must comply with the requirements of this subpart by the applicable dates specified in § 63.11083.

(j) You must keep applicable records and submit reports as specified in § 63.11094(d) and (e) and § 63.11095(b)(4).

§ 63.11087 What requirements must I meet for gasoline storage tanks if my facility is a bulk gasoline terminal, pipeline breakout station, or pipeline pumping station?

(a) You must meet each emission limit and work practice standard in Table 1 to this subpart that applies to your gasoline storage tank.

(b) You must comply with the requirements of this subpart by the applicable dates specified in § 63.11083, except that storage vessels for which construction, reconstruction, or modification commenced before July 23, 1984, and storage vessels equipped with floating roofs, must be in compliance at the first degassing and cleaning activity after [DATE 3 YEARS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], or by [DATE 10 YEARS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], whichever is first.

(c) You must comply with the applicable testing and monitoring requirements specified in § 63.11092(e).

(d) You must submit the applicable notifications as required under § 63.11093.

(e) You must keep records and submit reports as specified in §§ 63.11094 and 63.11095.

(f) If your gasoline storage tank is also subject to the control requirements of 40 CFR part 60, subpart Kb (§§ 60.110b through 60.117b) of this chapter, you must comply only with the provisions of subpart Kb.

§ 63.11088 What requirements must I meet for gasoline loading racks if my facility is a bulk gasoline terminal, pipeline breakout station, or pipeline pumping station?

(a) You must meet the emission limit and work practice standard in Table 2 to this subpart.

(b) Except as provided in paragraph (c) of this section, you must limit the loadings of gasoline into gasoline cargo tanks that are vapor-tight using the procedures specified in § 60.502(e) through (j). For the purposes of this section, the term ''tank truck'' as used in § 60.502(e) through (j) means ''cargo tank'' as defined in § 63.11100.

(c) As an alternative to the requirements of paragraph (b) of this section, if your gasoline loading rack is required under a regulation or an operating permit issued by a State, local, or tribal agency to limit the loadings of gasoline into cargo tanks that are vapor tight, and you are in compliance with all applicable provisions of the regulation or your operating permit, you will be considered to be in compliance with paragraph (b) of this section, provided that you verify the appropriate documentation of vapor tightness testing prior to the loading of the cargo tank. The appropriate documentation may be in the form of a sticker placed on the cargo tank, a copy of the vapor tightness testing results carried on board the cargo tank, or other procedures approved by the State, local, or tribal agency.

(d) As an alternative for railcar cargo tanks to the requirements specified in § 60.502(h) and (i), you may comply with the requirements specified in § 63.422(e).

(e) You must comply with the requirements of this subpart by the applicable dates specified in § 63.11083.

(f) You must comply with the applicable testing and monitoring requirements specified in § 63.11092.

(g) You must submit the applicable notifications as required under § 63.11093.

(h) You must keep records and submit reports as specified in §§ 63.11094 and 63.11095.

§ 63.11089 What requirements must I meet for equipment leak inspections if my facility is a bulk gasoline terminal, pipeline breakout station, or pipeline pumping station?

(a) Each owner or operator of a bulk gasoline terminal, bulk plant, pipeline breakout station, or pipeline pumping station subject to the provisions of this subpart shall perform a monthly leak inspection of all equipment in gasoline service, as defined in § 63.11100. For this inspection, detection methods incorporating sight, sound, and smell are acceptable.

(b) A log book shall be used and shall be signed by the owner or operator at the completion of each inspection. A section of the log book shall contain a list, summary description, or diagram(s) showing the location of all equipment in gasoline service at the facility.

(c) Each detection of a liquid or vapor leak shall be recorded in the log book. When a leak is detected, an initial attempt at repair shall be made as soon as practicable, but no later than 5 calendar days after the leak is detected. Repair or replacement of leaking equipment shall be completed within 15 calendar days after detection of each leak, except as provided in paragraph (d) of this section.

(d) Delay of repair of leaking equipment will be allowed upon a

demonstration to the Administrator that repair within 15 days is not feasible. The owner or operator shall provide the reason(s) a delay is needed and the date by which each repair is expected to be completed.

(e) As an alternative to compliance with the provisions in paragraphs (a) through (d) of this section, owners or operators may implement an instrument leak monitoring program that has been demonstrated to the Administrator as at least equivalent.

(f) You must comply with the requirements of this subpart by the applicable dates specified in § 63.11083.

(g) You must submit the applicable notifications as required under § 63.11093.

(h) You must keep records and submit reports as specified in §§ 63.11094 and 63.11095.

Testing and Monitoring Requirements

§ 63.11092 What testing and monitoring requirements must I meet?

(a) Each owner or operator subject to the emission standard in § 63.11088 for gasoline loading racks must comply with the requirements in paragraphs (a) through (d) of this section.

(1) Conduct a performance test on the vapor processing and collection systems according to either paragraph (a)(1)(i) or paragraph (a)(1)(ii) of this section.

(i) Use the test methods and procedures in § 60.503 of this chapter, except a reading of 500 parts per million shall be used to determine the level of leaks to be repaired under § 60.503(b), or

(ii) Use alternative test methods and procedures in accordance with the alternative test method requirements in § 63.7(f).

(2) If your gasoline loading rack has been permitted by a State or local agency to meet an emission limit of 80 milligrams, or less, per liter of gasoline loaded (mg/l) and you are in compliance with all applicable provisions of your operating permit, a statement by a responsible official of your facility certifying the compliance status may be submitted in lieu of the test required under paragraph (a)(1) of this section.

(3) If you have conducted performance testing on the vapor processing and collection systems within 3 years prior to [DATE OF PUBLICATION OF THE FINAL RULE IN THE **Federal Register**], you may submit the results of such testing in lieu of the test required under paragraph (a)(1) of this section, provided the testing was conducted using the test methods and procedures in § 60.503 of this chapter.

(4) The performance test requirements of § 63.11092(a) do not apply to flares defined in § 63.11100 and meeting the flare requirements in § 63.11(b). The owner or operator shall demonstrate that the flare and associated vapor collection system is in compliance with the requirements in § 63.11(b) and § 60.503(a), (b), and (d), respectively.

(b) For each performance test conducted under paragraph (a)(1) of this section, the owner or operator shall determine a monitored operating parameter value for the vapor processing system using the procedures specified in paragraphs (b)(1) through (5) of this section.

(1) Each owner or operator of a bulk gasoline terminal subject to the provisions of this subpart shall install, calibrate, certify, operate, and maintain, according to the manufacturer's specifications, a continuous monitoring system (CMS) while gasoline vapors are displaced to the vapor processor systems specified in paragraphs (b)(1)(i) through (iv) of this section. During the performance test, continuously record the operating parameter as specified under paragraphs (b)(1)(i) through (iv) of this section.

(i) Where a carbon adsorption system is used, a continuous emission monitoring system (CEMS) capable of measuring organic compound concentration shall be installed in the exhaust air stream.

(ii) Where a refrigeration condenser system is used, a continuous parameter monitoring system (CPMS) capable of measuring temperature shall be installed immediately downstream from the outlet to the condenser section. Alternatively, a CEMS capable of measuring organic compound concentration may be installed in the exhaust air stream.

(iii) Where a thermal oxidation system other than a flare is used, the owner or operator shall monitor the operation of the system as specified in paragraphs (b)(1)(iii)(A) or (B) of this section.

(A) A CPMS capable of measuring temperature shall be installed in the firebox or in the ductwork immediately downstream from the firebox in a position before any substantial heat exchange occurs.

(B) The presence of a thermal oxidation system pilot flame shall be monitored using a heat-sensing device, such as an ultraviolet beam sensor or a thermocouple, installed in proximity to the pilot light to indicate the presence of a flame.

(iv) Monitoring an alternative operating parameter or a parameter of a vapor processing system other than those listed in paragraphs (b)(1)(i) through (iii) of this section will be allowed upon demonstrating to the Administrator's satisfaction that the alternative parameter demonstrates continuous compliance with the emission standard in § 63.11088(a).

(2) Where a flare meeting the requirements in § 63.11(b) is used, a heat-sensing device, such as an ultraviolet beam sensor or a thermocouple, must be installed in proximity to the pilot light to indicate the presence of a flame.

(3) Determine an operating parameter value based on the parameter data monitored during the performance test, supplemented by engineering assessments and the manufacturer's recommendations.

(4) Provide for the Administrator's approval the rationale for the selected operating parameter value, monitoring frequency, and averaging time, including data and calculations used to develop the value and a description of why the value, monitoring frequency, and averaging time demonstrate continuous compliance with the emission standard in § 63.11088(a).

(5) If you have chosen to comply with the performance testing alternatives provided under paragraphs (a)(2) or (a)(3) of this section, the monitored operating parameter value may be determined according to the provisions in paragraphs (b)(5)(i) or (b)(5)(ii) of this section.

(i) Monitor an operating parameter that has been approved by the permitting authority and is specified in your facility's current enforceable operating permit. At the time that the permitting authority requires a new performance test, you must determine the monitored operating parameter value according to the requirements specified in paragraph (b) of this section.

(ii) Determine an operating parameter value based on engineering assessment and the manufacturer's recommendation and submit the information specified in paragraph (b)(4) of this section for approval by the permitting authority. At the time that the permitting authority requires a new performance test, you must determine the monitored operating parameter value according to the requirements specified in paragraph (b) of this section.

(c) For performance tests performed after the initial test required under paragraph (a) of this section, the owner or operator shall document the reasons for any change in the operating parameter value since the previous performance test.

(d) Each owner or operator of a bulk gasoline terminal subject to the

provisions of this subpart shall operate the vapor processing system in a manner not to exceed or not to go below, as appropriate, the operating parameter value for the parameters described in paragraph (b)(1) of this section. In cases where an alternative parameter pursuant to paragraphs (b)(1)(iv) or paragraph (b)(5) of this section is approved, each owner or operator shall operate the vapor processing system in a manner not to exceed or not to go below, as appropriate, the alternative operating parameter value. Operation of the vapor processing system in a manner exceeding or going below the operating parameter value shall constitute a violation of the emission standard in § 63.11088(a).

(e) Each owner or operator subject to the emission standard in § 63.11087 for gasoline storage tanks shall comply with the requirements in paragraphs (e)(1) through (3) of this section.

(1) If your gasoline storage tank is equipped with an internal floating roof, you must perform inspections of the floating roof system according to the requirements of § 60.113b(a) if you are complying with option ii in Table 1, or according to the requirements of § 63.1063(c)(1) if you are complying with option iv in Table 1.

(2) If your gasoline storage tank is equipped with an external floating roof, you must perform inspections of the floating roof system according to the requirements of § 60.113b(b) if you are complying with option iii in Table 1, or according to the requirements of § 63.1063(c)(2) if you are complying with option iv in Table 1.

(3) If your gasoline storage tank is equipped with a closed vent system and control device, you must conduct a performance test and determine a monitored operating parameter value in accordance with the requirements in paragraphs (a) through (d) of this section, except that the applicable level of control specified in paragraph (a)(2) of this section shall be a 95 percent reduction in inlet TOC levels rather than 80 mg/l of gasoline loaded.

(f) The annual certification test for gasoline cargo tanks shall consist of the test methods specified in paragraphs (f)(1) or (f)(2) of this section.

(1) *Method 27, appendix A, 40 CFR part 60.* Conduct the test using a time period (t) for the pressure and vacuum tests of 5 minutes. The initial pressure (P_i) for the pressure test shall be 460 millimeters (mm) of water (18 inches of water), gauge. The initial vacuum (V_i) for the vacuum test shall be 150 mm of water (6 inches of water), gauge. The maximum allowable pressure and vacuum changes (Δ p, Δ v) for all affected gasoline cargo tanks is 3 inches of water, or less, in 5 minutes.

(2) *Railcar bubble leak test procedures.* As an alternative to the annual certification test required under paragraph (1) of this section for certification leakage testing of gasoline cargo tanks, the owner or operator may comply with paragraphs (f)(2)(i) and (ii) of this section for railcar cargo tanks, provided the railcar cargo tank meets the requirement in paragraph (f)(2)(iii) of this section.

(i) Comply with the requirements of 49 CFR 173.31(d), 49 CFR 179.7, 49 CFR 180.509, and 49 CFR 180.511 for the periodic testing of railcar cargo tanks.

(ii) The leakage pressure test procedure required under 49 CFR 180.509(j) and used to show no indication of leakage under 49 CFR 180.511(f) shall be ASTM E 515–95, BS EN 1593:1999, or another bubble leak test procedure meeting the requirements in 49 CFR 179.7, 49 CFR 180.505, and 49 CFR 180.509.

(iii) The alternative requirements in this paragraph (f)(2) may not be used for any railcar cargo tank that collects gasoline vapors from a vapor balance system permitted under or required by a Federal, State, local, or tribal agency. A vapor balance system is a piping and collection system designed to collect gasoline vapors displaced from a storage vessel, barge, or other container being loaded, and routes the displaced gasoline vapors into the railcar cargo tank from which liquid gasoline is being unloaded.

Notifications, Reports, and Records

§ 63.11093 What notifications must I submit and when?

(a) Each owner or operator of an affected source under this subpart must submit an Initial Notification as specified in § 63.9(b). If your facility is in compliance with the requirements of this subpart at the time the Initial Notification is due, the Notification of Compliance Status required under paragraph (b) of this section may be submitted in lieu of the Initial Notification.

(b) Each owner or operator of an affected source under this subpart must submit a Notification of Compliance Status as specified in § 63.9(h). The Notification of Compliance Status must specify which of the alternative compliance options included in Table 1 is used to comply with this subpart.

(c) Each owner or operator of an affected bulk gasoline terminal under this subpart must submit a Notification of Performance Test, as specified in § 63.9(e), prior to initiating testing required by § 63.11092(a) or (b).

(d) Each owner or operator of any affected source under this subpart must submit additional notifications specified in § 63.9, as applicable.

§ 63.11094 What are my recordkeeping requirements?

(a) Each owner or operator of a bulk gasoline terminal or pipeline breakout station whose storage vessels are subject to the provisions of this subpart shall keep records as specified in § 60.115b of this chapter if you are complying with options i, ii, or iii in Table 1, except records shall be kept for at least 5 years. If you are complying with the requirements of option iv in Table 1, you shall keep records as specified in § 63.1065.

(b) Each owner or operator of a bulk gasoline terminal subject to the provisions of this subpart shall keep records of the test results for each gasoline cargo tank loading at the facility as specified in paragraphs (b)(1) and (3) of this section.

(1) Annual certification testing performed under § 63.11092(f)(1) and periodic railcar bubble leak testing performed under § 63.11092(f)(2).

(2) The documentation file shall be kept up-to-date for each gasoline cargo tank loading at the facility. The documentation for each test shall include, as a minimum, the following information:

(i) Name of test: Annual Certification Test—Method 27 or Periodic Railcar Bubble Leak Test Procedure.

(ii) Cargo tank owner's name and address.

(iii) Cargo tank identification number.

(iv) Test location and date.

(v) Tester name and signature.

(vi) Witnessing inspector, if any: Name, signature, and affiliation.

(vii) Vapor tightness repair: Nature of repair work and when performed in relation to vapor tightness testing.

(viii) Test results: Test pressure; pressure or vacuum change, mm of water; time period of test; number of leaks found with instrument; and leak definition.

(3) If you are complying with the alternative requirements in § 63.11088(d), you must keep records documenting that you have verified the vapor tightness testing according to the requirements of the permitting authority.

(c) As an alternative to keeping records at the terminal of each gasoline cargo tank test result as required in paragraph (b) of this section, an owner or operator may comply with the requirements in either paragraph (c)(1) or paragraph (c)(2) of this section.

(1) An electronic copy of each record is instantly available at the terminal.

(i) The copy of each record in paragraph (c)(1) of this section is an exact duplicate image of the original paper record with certifying signatures.

(ii) The permitting authority is notified in writing that each terminal using this alternative is in compliance with paragraph (c)(1) of this section.

(2) For facilities that utilize a terminal automation system to prevent gasoline cargo tanks that do not have valid cargo tank vapor tightness documentation from loading (e.g., via a card lock-out system), a copy of the documentation is made available (e.g., via facsimile) for inspection by permitting authority representatives during the course of a site visit, or within a mutually agreeable time frame.

(i) The copy of each record in paragraph (c)(2) of this section is an exact duplicate image of the original paper record with certifying signatures.

(ii) The permitting authority is notified in writing that each terminal using this alternative is in compliance with paragraph (c)(2) of this section.

(d) Each owner or operator subject to the equipment leak provisions of § 63.11089 shall prepare and maintain a record describing the types, identification numbers, and locations of all equipment in gasoline service. For facilities electing to implement an instrument program under § 63.11089(e), the record shall contain a full description of the program.

(e) Each owner or operator of an affected source subject to equipment leak inspections under § 63.11089 shall record in the log book for each leak that is detected the information specified in paragraphs (e)(1) through (7) of this section.

(1) The equipment type and identification number.

(2) The nature of the leak (i.e., vapor or liquid) and the method of detection (i.e., sight, sound, or smell).

(3) The date the leak was detected and the date of each attempt to repair the leak.

(4) Repair methods applied in each attempt to repair the leak.

(5) ''Repair delayed'' and the reason for the delay if the leak is not repaired within 15 calendar days after discovery of the leak.

(6) The expected date of successful repair of the leak if the leak is not repaired within 15 days.

(7) The date of successful repair of the leak.

(f) Each owner or operator of a bulk gasoline terminal subject to the provisions of this subpart shall:

(1) Keep an up-to-date, readily accessible record of the continuous monitoring data required under § 63.11092(b) or § 63.11092(e). This record shall indicate the time intervals during which loadings of gasoline cargo tanks have occurred or, alternatively, shall record the operating parameter data only during such loadings. The date and time of day shall also be indicated at reasonable intervals on this record.

(2) Record and report simultaneously with the notification of compliance status required under § 63.11093(b):

(i) All data and calculations, engineering assessments, and manufacturer's recommendations used in determining the operating parameter value under § 63.11092(b) or § 63.11092(e); and

(ii) The following information when using a flare under provisions of § 63.11(b) to comply with § 63.11087(a):

(A) Flare design (i.e., steam-assisted, air-assisted, or non-assisted); and

(B) All visible emissions readings, heat content determinations, flow rate measurements, and exit velocity determinations made during the compliance determination required under § 63.11092(e)(3).

(3) If an owner or operator requests approval to use a vapor processing system or monitor an operating parameter other than those specified in § 63.11092(b), the owner or operator shall submit a description of planned reporting and recordkeeping procedures. The Administrator will specify appropriate reporting and recordkeeping requirements as part of the review of the permit application.

§ 63.11095 What are my reporting requirements?

(a) Each owner or operator of a bulk terminal, pipeline breakout station, or pipeline pumping station subject to the control requirements of this subpart shall include in a semiannual compliance report to the Administrator the following information, as applicable:

(1) For storage vessels, if you are complying with options i, ii, or iii in Table 1, the information specified in § 60.115b(a), § 60.115b(b), or § 60.115b(c) of this chapter, depending upon the control equipment installed; or, if you are complying with option iv in Table 1, the information specified in § 63.1066.

(2) For loading racks, each loading of a gasoline cargo tank for which vapor tightness documentation had not been previously obtained by the facility.

(3) For equipment leak inspections, the number of equipment leaks not repaired within 15 days after detection.

(b) Each owner or operator of an affected source subject to the control requirements of this subpart shall submit an excess emissions report to the Administrator at the time the semiannual compliance report is submitted. Excess emissions events under this subpart, and the information to be included in the excess emissions report, are specified in paragraphs (b)(1) through (4) of this section.

(1) Each instance of a non-vapor-tight gasoline cargo tank loading at the facility in which the owner or operator failed to take steps to assure that such cargo tank would not be reloaded at the facility before vapor tightness documentation for that cargo tank was obtained.

(2) Each reloading of a non-vapor-tight gasoline cargo tank at the facility before vapor tightness documentation for that cargo tank is obtained by the facility in accordance with § 63.11094(b).

(3) Each exceedance or failure to maintain, as appropriate, the monitored operating parameter value determined under § 63.11092(b). The report shall include the monitoring data for the days on which exceedances or failures to maintain have occurred, and a description and timing of the steps taken to repair or perform maintenance on the vapor collection and processing systems or the CMS.

(4) For each occurrence of an equipment leak for which no repair attempt was made within 5 days or for which repair was not completed within 15 days after detection:

(i) The date on which the leak was detected;

(ii) The date of each attempt to repair the leak;

(iii) The reasons for the delay of repair; and

(iv) The date of successful repair.

Other Requirements and Information

§ 63.11098 What parts of the General Provisions apply to me?

Table 3 to this subpart shows which parts of the General Provisions apply to you.

§ 63.11099 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by the U.S. EPA or a delegated authority such as the applicable State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to a State, local, or Tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. Contact the applicable U.S. EPA Regional Office to find out if implementation and enforcement of this

subpart is delegated to a State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under subpart E of this part, the authorities specified in paragraph (c) of this section are retained by the Administrator of U.S. EPA and cannot be transferred to the State, local, or tribal agency.

(c) The authorities that cannot be delegated to State, local, or tribal agencies are as specified in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to the requirements in §§ 63.11085 through 63.11097. Any owner or operator requesting to use an alternative means of emission limitation for storage vessels in Table 1 must follow either the provisions in § 60.114b of this chapter if you are complying with options i, ii, or iii in Table 1, or the provisions in § 63.1064 if you are complying with option iv in Table 1.

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f), as defined in § 63.90, and as required in this subpart.

(3) Approval of major alternatives to monitoring under § 63.8(f), as defined in § 63.90, and as required in this subpart.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f), as defined in § 63.90, and as required in this subpart.

§ 63.11100 What definitions apply to this subpart?

As used in this subpart, all terms not defined herein shall have the meaning given them in the Clean Air Act (CAA); in subparts A, K, Ka, Kb, WW, and XX of part 60 of this chapter; or in subparts A and R of this part. All terms defined in both subpart A of part 60 of this chapter and subparts A and R of this part shall have the meaning given in subparts A and R of this part. For purposes of this subpart, definitions in this section supersede definitions in other parts or subparts.

Administrator means the Administrator of the United States Environmental Protection Agency or his or her authorized representative (e.g., a State that has been delegated the authority to implement the provisions of this subpart).

Bulk gasoline plant means any gasoline storage and distribution facility which receives gasoline by pipeline, ship or barge, or cargo tank and has a gasoline throughput of less than 20,000 gallons per day. Gasoline throughput shall be the maximum calculated design throughput as may be limited by compliance with an enforceable condition under Federal, State or local law and discoverable by the Administrator and any other person.

Bulk gasoline terminal means any gasoline storage and distribution facility which receives gasoline by pipeline, ship or barge, or cargo tank and has a gasoline throughput of 20,000 gallons per day or greater. Gasoline throughput shall be the maximum calculated design throughput as may be limited by compliance with an enforceable condition under Federal, State or local law and discoverable by the Administrator and any other person.

Flare means a thermal oxidation system using an open (without enclosure) flame.

Gasoline cargo tank means a delivery tank truck or railcar which is loading gasoline or which has loaded gasoline on the immediately previous load.

Gasoline dispensing facility means any stationary facility which dispenses gasoline directly into the fuel tank of a motor vehicle.

In gasoline service means that a piece of equipment is used in a system that transfers gasoline or gasoline vapors.

Metropolitan statistical area (MSA) means a geographic entity defined by the Federal Office of Management and Budget for use by Federal statistical agencies, based on the concept of a core area with a large population nucleus, plus adjacent communities having a high degree of economic and social integration with that core. Qualification of an MSA requires the presence of a city with 50,000 or more inhabitants, or the presence of an Urbanized Area (UA) and a total population of at least 100,000 (75,000 in New England). The county or counties containing the largest city and surrounding densely settled territory are central counties of the MSA. Additional outlying counties qualify to be included in the MSA by meeting certain other criteria of metropolitan character, such as a specified minimum population density or percentage of the population that is urban. MSA in New England are defined in terms of minor civil divisions, following rules concerning commuting and population density.

Operating parameter value means a value for an operating or emission parameter of the vapor processing system (e.g., temperature) which, if maintained continuously by itself or in combination with one or more other operating parameter values, determines that an owner or operator has complied with the applicable emission standard. The operating parameter value is determined using the procedures specified in § 63.11092(b).

Pipeline breakout station means a facility along a pipeline containing storage vessels used to relieve surges or receive and store gasoline from the pipeline for re-injection and continued transportation by pipeline or to other facilities.

Pipeline pumping station means a facility along a pipeline containing pumps to maintain the desired pressure and flow of product through the pipeline and not containing storage vessels.

Submerged filling means the filling of a gasoline cargo tank or a stationary storage tank through a submerged fill pipe whose discharge is no more than 6 inches from the bottom of the tank. Bottom filling of gasoline cargo tanks or storage tanks is included in this definition.

Urban means all territory, population, and housing units in urbanized areas and in places of more than 2,500 persons outside of UA. ''Urban'' classification cuts across other hierarchies and can be in metropolitan or non-metropolitan areas.

Urban 1 areas means counties that are part of an MSA with a population greater than 250,000, based on the 1990 and the most current U.S. Census Bureau statistical decennial census data.

Urban 2 areas means counties where more than 50 percent of the population is classified by the U.S. Census Bureau as urban, based on the 1990 and the most current U.S. Census Bureau statistical decennial census data.

Urbanized area (UA) means an area consisting of a central place(s) and adjacent territory with a general population density of at least 1,000 people per square mile of land area that together have a minimum residential population of at least 50,000 people.

Vapor collection-equipped gasoline cargo tank means a gasoline cargo tank that is outfitted with the equipment necessary to transfer vapors, displaced during the loading of gasoline into the cargo tank, to a vapor processor system.

Tables to Subpart BBBBBB of Part 63

TABLE 1.—TO SUBPART BBBBBB OF PART 63—APPLICABILITY CRITERIA, EMISSION LIMITS, AND WORK PRACTICE STANDARDS FOR STORAGE TANKS

If you own or operate	And if	Then you must
A gasoline storage tank with a capacity of greater than or equal to 75 cubic meters (m^3).	Your storage tank is not subject to the control requirements of part 60, subpart Kb (§ 60.112b) of this chapter.	i. Reduce emissions of total organic HAP or Total Organic Compounds (TOC) by 95 weight-percent with a closed vent system and control device as specified in § 60.112b(a)(3) of this chapter, or ii. Equip each internal floating roof gasoline storage tank according to the requirements in § 60.112b(a)(1) of this chapter, except for the requirements in § 60.112b(a)(1)(iv) through (ix) of this chapter, or iii. Equip each external floating roof gasoline storage tank according to the requirements in § 60.112b(a)(2) of this chapter, except that the requirements of § 60.112b(a)(2)(ii) of this chapter shall only be required if such storage tank does not currently meet the requirements of § 60.112b(a)(2)(i) of this chapter, or iv. Equip and operate each floating roof gasoline storage tank according to the requirements in § 63.1063(a)(1) and (b), and equip each external floating roof gasoline storage tank according to the requirements of § 63.1063(a)(2) if such storage tank does not currently meet the requirements of § 63.1063(a)(1).

TABLE 2.—TO SUBPART BBBBBB OF PART 63—APPLICABILITY CRITERIA, EMISSION LIMITS, AND WORK PRACTICE STANDARDS FOR LOADING RACKS

If you own or operate	And if	Then you must
A gasoline loading rack at a bulk gasoline terminal.	Your loading rack is not subject to the control requirements of part 60, subpart XX (§ 60.502); part 63, subpart R (§ 63.422); or to an enforceable State, local, or tribal regulation requiring that emissions from your loading operations be limited to ≤80 milligrams per liter of gasoline loaded into gasoline cargo tanks at the loading rack.	i. Equip your loading rack with a vapor collection system designed to collect the TOC vapors displaced from cargo tanks during product loading, and ii. Reduce emissions of TOC to ≤80 milligrams per liter of gasoline loaded into gasoline cargo tanks at the loading rack, and iii. Design and operate the vapor collection system to prevent any TOC vapors collected at one loading rack from passing to another loading rack, and iv. Limit the loading of gasoline into gasoline cargo tanks that are vapor tight using the procedures specified in § 63.11088(b) through (d).

TABLE 3.—TO SUBPART BBBBBB OF PART 63—APPLICABILITY OF GENERAL PROVISIONS

Citation	Subject	Brief description	Applies to subpart BBBBBB
§ 63.1	Applicability	Initial applicability determination; applicability after standard established; permit requirements; extensions, notifications.	Yes, specific requirements given in § 63.11085.
63.1(c)(2)	Title V permit	Requirements for obtaining a title V permit from the applicable permitting authority.	Yes, § 63.11081(b) of subpart BBBBBB exempts some area sources from the obligation to obtain title V operating permits.
§ 63.2	Definitions	Definitions for part 63 standards	Yes, additional definitions in § 63.11100.
§ 63.3	Units and Abbreviations	Units and abbreviations for part 63 standards	Yes.
§ 63.4	Prohibited Activities and Circumvention.	Prohibited activities; circumvention, severability	Yes.
§ 63.5	Construction/Reconstruction.	Applicability; applications; approvals	Yes.

TABLE 3.—TO SUBPART BBBBBB OF PART 63—APPLICABILITY OF GENERAL PROVISIONS—Continued

Citation	Subject	Brief description	Applies to subpart BBBBBB
§ 63.6(a)	Compliance with Standards/Operation & Maintenance Applicability.	GP apply unless compliance extension; General Provisions apply to area sources that become major.	Yes.
§ 63.6(b)(1)–(4)	Compliance Dates for New and Reconstructed Sources.	Standards apply at effective date; 3 years after effective date; upon startup; 10 years after construction or reconstruction commences for CAA section 112(f).	Yes.
§ 63.6(b)(5)	Notification	Must notify if commenced construction or reconstruction after proposal.	Yes.
§ 63.6(b)(6)	[Reserved]		
§ 63.6(b)(7)	Compliance Dates for New and Reconstructed Area Sources that Become Major.	Area sources that become major must comply with major source standards immediately upon becoming major, regardless of whether required to comply when they were an area source.	No.
§ 63.6(c)(1)–(2)	Compliance Dates for Existing Sources.	Comply according to date in this subpart, which must be no later than 3 years after effective date; for CAA section 112(f) standards, comply within 90 days of effective date unless compliance extension.	No, § 63.11083 specifies the compliance dates.
§ 63.6(c)(3)–(4)	[Reserved]		
§ 63.6(c)(5)	Compliance Dates for Existing Area Sources that Become Major.	Area sources that become major must comply with major source standards by date indicated in this subpart or by equivalent time period (*e.g.*, 3 years).	No.
§ 63.6(d)	[Reserved]		
§ 63.6(e)(1)	Operation & Maintenance	Operate to minimize emissions at all times; correct malfunctions as soon as practicable; and operation and maintenance requirements independently enforceable; information Administrator will use to determine if operation and maintenance requirements were met.	Yes.
§ 63.6(e)(2)	[Reserved]		
§ 63.6(e)(3)	Startup, Shutdown, and Malfunction (SSM) Plan.	Requirement for SSM plan; content of SSM plan; actions during SSM.	No.
§ 63.6(f)(1)	Compliance Except During SSM.	You must comply with emission standards at all times except during SSM.	No.
§ 63.6(f)(2)–(3)	Methods for Determining Compliance.	Compliance based on performance test, operation and maintenance plans, records, inspection.	Yes.
§ 63.6(g)(1)–(3)	Alternative Standard	Procedures for getting an alternative standard	Yes.
§ 63.6(h)(1)	Compliance with Opacity/Visible Emission (VE) Standards.	You must comply with opacity/VE standards at all times except during SSM.	No.
§ 63.6(h)(2)(i)	Determining Compliance with Opacity/VE Standards.	If standard does not state test method, use EPA Method 9 for opacity in appendix A of part 60 of this chapter and EPA Method 22 for VE in appendix A of part 60 of this chapter.	No.
§ 63.6(h)(2)(ii)	[Reserved]		
§ 63.6(h)(2)(iii)	Using Previous Tests to Demonstrate Compliance with Opacity/VE Standards.	Criteria for when previous opacity/VE testing can be used to show compliance with this subpart.	No.
§ 63.6(h)(3)	[Reserved]		
§ 63.6(h)(4)	Notification of Opacity/VE Observation Date.	Must notify Administrator of anticipated date of observation.	No.
§ 63.6(h)(5)(i), (iii)–(v)	Conducting Opacity/VE Observations.	Dates and schedule for conducting opacity/VE observations.	No.
§ 63.6(h)(5)(ii)	Opacity Test Duration and Averaging Times.	Must have at least 3 hours of observation with thirty 6-minute averages.	No.
§ 63.6(h)(6)	Records of Conditions During Opacity/VE Observations.	Must keep records available and allow Administrator to inspect.	No.
§ 63.6(h)(7)(i)	Report Continuous Opacity Monitoring System (COMS) Monitoring Data from Performance Test.	Must submit COMS data with other performance test data.	No.
§ 63.6(h)(7)(ii)	Using COMS Instead of EPA Method 9.	Can submit COMS data instead of EPA Method 9 results even if rule requires EPA Method 9 in appendix A of part 60 of this chapter, but must notify Administrator before performance test.	No.
§ 63.6(h)(7)(iii)	Averaging Time for COMS During Performance Test.	To determine compliance, must reduce COMS data to 6-minute averages.	No.

TABLE 3.—TO SUBPART BBBBBB OF PART 63—APPLICABILITY OF GENERAL PROVISIONS—Continued

Citation	Subject	Brief description	Applies to subpart BBBBBB
§ 63.6(h)(7)(iv)	COMS Requirements	Owner/operator must demonstrate that COMS performance evaluations are conducted according to § 63.8(e); COMS are properly maintained and operated according to § 63.8(c) and data quality as § 63.8(d).	No.
§ 63.6(h)(7)(v)	Determining Compliance with Opacity/VE Standards.	COMS is probable but not conclusive evidence of compliance with opacity standard, even if EPA Method 9 observation shows otherwise. Requirements for COMS to be probable evidence-proper maintenance, meeting Performance Specification 1 in appendix B of part 60 of this chapter, and data have not been altered.	No.
§ 63.6(h)(8)	Determining Compliance with Opacity/VE Standards.	Administrator will use all COMS, EPA Method 9 (in appendix A of part 60 of this chapter), and EPA Method 22 (in appendix A of part 60 of this chapter) results, as well as information about operation and maintenance to determine compliance.	No.
§ 63.6(h)(9)	Adjusted Opacity Standard	Procedures for Administrator to adjust an opacity standard.	No.
§ 63.6(i)(1)–(14)	Compliance Extension	Procedures and criteria for Administrator to grant compliance extension.	Yes.
§ 63.6(j)	Presidential Compliance Exemption.	President may exempt any source from requirement to comply with this subpart.	Yes.
§ 63.7(a)(2)	Performance Test Dates	Dates for conducting initial performance testing; must conduct 180 days after compliance date.	Yes.
§ 63.7(a)(3)	Section 114 Authority	Administrator may require a performance test under CAA section 114 at any time.	Yes.
§ 63.7(b)(1)	Notification of Performance Test.	Must notify Administrator 60 days before the test	Yes.
§ 63.7(b)(2)	Notification of Re-scheduling.	If have to reschedule performance test, must notify Administrator of rescheduled date as soon as practicable and without delay.	Yes.
§ 63.7(c)	Quality Assurance (QA)/ Test Plan.	Requirement to submit site-specific test plan 60 days before the test or on date Administrator agrees with; test plan approval procedures; performance audit requirements; internal and external QA procedures for testing.	Yes.
§ 63.7(d)	Testing Facilities	Requirements for testing facilities	Yes.
§ 63.7(e)(1)	Conditions for Conducting Performance Tests.	Performance tests must be conducted under representative conditions; cannot conduct performance tests during SSM.	Yes.
§ 63.7(e)(2)	Conditions for Conducting Performance Tests.	Must conduct according to this subpart and EPA test methods unless Administrator approves alternative.	Yes.
§ 63.7(e)(3)	Test Run Duration	Must have three test runs of at least 1 hour each; compliance is based on arithmetic mean of three runs; conditions when data from an additional test run can be used.	Yes.
§ 63.7(f)	Alternative Test Method	Procedures by which Administrator can grant approval to use an intermediate or major change, or alternative to a test method.	Yes.
§ 63.7(g)	Performance Test Data Analysis.	Must include raw data in performance test report; must submit performance test data 60 days after end of test with the notification of compliance status; keep data for 5 years.	Yes.
§ 63.7(h)	Waiver of Tests	Procedures for Administrator to waive performance test.	Yes.
§ 63.8(a)(1)	Applicability of Monitoring Requirements.	Subject to all monitoring requirements in standard	Yes.
§ 63.8(a)(2)	Performance Specifications	Performance specifications in appendix B of 40 CFR part 60 apply.	Yes.
§ 63.8(a)(3)	[Reserved]		
§ 63.8(a)(4)	Monitoring of Flares	Monitoring requirements for flares in § 63.11 apply	Yes.
§ 63.8(b)(1)	Monitoring	Must conduct monitoring according to standard unless Administrator approves alternative.	Yes.

TABLE 3.—TO SUBPART BBBBBB OF PART 63—APPLICABILITY OF GENERAL PROVISIONS—Continued

Citation	Subject	Brief description	Applies to subpart BBBBBB
§ 63.8(b)(2)–(3)	Multiple Effluents and Multiple Monitoring Systems.	Specific requirements for installing monitoring systems; must install on each affected source or after combined with another affected source before it is released to the atmosphere provided the monitoring is sufficient to demonstrate compliance with the std; if more than one monitoring system on an emission point, must report all monitoring system results, unless one monitoring system is a backup.	Yes.
§ 63.8(c)(1)	Monitoring System Operation and Maintenance.	Maintain monitoring system in a manner consistent with good air pollution control practices.	Yes.
§ 63.8(c)(1)(i)–(iii)	Routine and Predictable SSM.	Follow the SSM plan for routine repairs; keep parts for routine repairs readily available; reporting requirements for SSM when action is described in SSM plan.	Yes.
§ 63.8(c)(2)–(8)	CMS Requirements	Must install to get representative emission or parameter measurements; must verify operational status before or at performance test.	Yes.
§ 63.8(d)	CMS Quality Control	Requirements for CMS quality control, including calibration, etc.; must keep quality control plan on record for 5 years; keep old versions for 5 years after revisions.	No.
§ 63.8(e)	CMS Performance Evaluation.	Notification, performance evaluation test plan, reports	Yes.
§ 63.8(f)(1)–(5)	Alternative Monitoring Method.	Procedures for Administrator to approve alternative monitoring.	Yes.
§ 63.8(f)(6)	Alternative to Relative Accuracy Test.	Procedures for Administrator to approve alternative relative accuracy tests for CEMS.	Yes.
§ 63.8(g)	Data Reduction	COMS 6-minute averages calculated over at least 36 evenly spaced data points; CEMS 1 hour averages computed over at least 4 equally spaced data points; data that cannot be used in average.	Yes.
§ 63.9(a)	Notification Requirements	Applicability and State delegation	Yes.
§ 63.9(b)(1)–(2), (4)–(5)	Initial Notifications	Submit notification within 120 days after effective date; notification of intent to construct/reconstruct, notification of commencement of construction/reconstruction, notification of startup; contents of each.	Yes.
§ 63.9(c)	Request for Compliance Extension.	Can request if cannot comply by date or if installed best available control technology or lowest achievable emission rate (BACT/LAER).	Yes.
§ 63.9(d)	Notification of Special Compliance Requirements for New Sources.	For sources that commence construction between proposal and promulgation and want to comply 3 years after effective date.	Yes.
§ 63.9(e)	Notification of Performance Test.	Notify Administrator 60 days prior	Yes.
§ 63.9(f)	Notification of VE/Opacity Test.	Notify Administrator 30 days prior	No.
§ 63.9(g)	Additional Notifications When Using CMS.	Notification of performance evaluation; notification about use of COMS data; notification that exceeded criterion for relative accuracy alternative.	Yes; however, there are no opacity standards.
§ 63.9(h)(1)–(6)	Notification of Compliance Status.	Contents due 60 days after end of performance test or other compliance demonstration, except for opacity/VE, which are due 30 days after; when to submit to Federal vs. State authority.	Yes; however, there are no opacity standards.
§ 63.9(i)	Adjustment of Submittal Deadlines.	Procedures for Administrator to approve change when notifications must be submitted.	Yes.
§ 63.9(j)	Change in Previous Information.	Must submit within 15 days after the change	Yes.
§ 63.10(a)	Record-keeping/Reporting	Applies to all, unless compliance extension; when to submit to Federal vs. State authority; procedures for owners of more than one source.	Yes.
§ 63.10(b)(1)	Record-keeping/Reporting	General requirements; keep all records readily available; keep for 5 years.	Yes.
§ 63.10(b)(2)(i)–(iv)	Records Related to Start-up, Shutdown, and Malfunction.	Occurrence of each for operations (process equipment); occurrence of each malfunction of air pollution control equipment; maintenance on air pollution control equipment; actions during SSM.	Yes.
§ 63.10(b)(2)(vi)–(xi)	CMS Records	Malfunctions, inoperative, out-of-control periods	Yes.
§ 63.10(b)(2)(xii)	Records	Records when under waiver	Yes.
§ 63.10(b)(2)(xiii)	Records	Records when using alternative to relative accuracy test.	Yes.

TABLE 3.—TO SUBPART BBBBBB OF PART 63—APPLICABILITY OF GENERAL PROVISIONS—Continued

Citation	Subject	Brief description	Applies to subpart BBBBBB
§ 63.10(b)(2)(xiv)	Records	All documentation supporting initial notification and notification of compliance status.	Yes.
§ 63.10(b)(3)	Records	Applicability determinations	Yes.
§ 63.10(c)	Records	Additional records for CMS	No.
§ 63.10(d)(1)	General Reporting	Requirements Requirement to report	Yes.
§ 63.10(d)(2)	Report of Performance Test Results.	When to submit to Federal or State authority	Yes.
§ 63.10(d)(3)	Reporting Opacity or VE Observations.	What to report and when	No.
§ 63.10(d)(4)	Progress Reports	Must submit progress reports on schedule if under compliance extension.	Yes.
§ 63.10(d)(5)	SSM Reports	Contents and submission	Yes.
§ 63.10(e)(1)–(2)	Additional CMS Reports	Must report results for each CEMS on a unit; written copy of CMS performance evaluation; 2–3 copies of COMS performance evaluation.	No.
§ 63.10(e)(3)(i)–(iii)	Reports	Schedule for reporting excess emissions	Yes; note that § 63.11095 specifies excess emission events for this subpart.
§ 63.10(e)(3)(iv)–(v)	Excess Emissions Reports	Requirement to revert to quarterly submission if there is an excess emissions and parameter monitor exceedances (now defined as deviations); provision to request semiannual reporting after compliance for 1 year; submit report by 30th day following end of quarter or calendar half; if there has not been an exceedance or excess emissions (now defined as deviations), report contents in a statement that there have been no deviations; must submit report containing all of the information in §§ 63.8(c)(7)–(8) and 63.10(c)(5)–(13).	Yes, § 63.11095 specifies excess emission events for this subpart.
§ 63.10(e)(3)(vi)–(viii)	Excess Emissions Report and Summary Report.	Requirements for reporting excess emissions for CMS; requires all of the information in §§ 63.8(c)(7)–(8) and 63.10(c)(5)–(13).	Yes.
§ 63.10(e)(4)	Reporting COMS Data	Must submit COMS data with performance test data	Yes.
§ 63.10(f)	Waiver for Recordkeeping/ Reporting.	Procedures for Administrator to waive	Yes.
§ 63.11(b)	Flares	Requirements for flares	Yes; the section references § 63.11(b).
§ 63.12	Delegation	State authority to enforce standards	Yes.
§ 63.13	Addresses	Addresses where reports, notifications, and requests are sent.	Yes.
§ 63.14	Incorporation by Reference	Test methods incorporated by reference	Yes.
§ 63.15	Availability of Information	Public and confidential information	Yes.

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