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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

Food and Nutrition Service

7 CFR Part 250

[FNS–2007–0039]

RIN 0584–AD45

Management of Donated Foods in Child Nutrition Programs, the Nutrition Services Incentive Program, and Charitable Institutions

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule revises and clarifies requirements for the management, distribution, and use of donated foods in the National School Lunch Program and other child nutrition programs, in the Nutrition Services Incentive Program, and by charitable institutions. In response to an audit by the USDA Office of Inspector General, the rule establishes specific requirements to ensure that recipient agencies in child nutrition programs receive the benefit and value of all donated foods received and provided to food service management companies to conduct the food service. The rule also incorporates legislative changes affecting the distribution of donated foods in the Nutrition Services Incentive Program, and reduces reporting and administrative requirements for donated foods provided to charitable institutions. Lastly, the rule restructures and revises regulatory provisions in a plain language format to make them easier to read and understand.

DATES: *Effective Date:* This final rule is effective November 6, 2008.

Implementation Date: State agencies and recipient agencies are required to implement the provisions of this final rule by November 6, 2008, except for the new contract requirements in §§ 250.50 to 250.54. State agencies and recipient agencies must implement those requirements according to the implementation schedule in section II.I of the preamble of this rule.

FOR FURTHER INFORMATION CONTACT: Lillie F. Ragan, Assistant Branch Chief, Policy Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, Room 500, 3101 Park Center Drive, Alexandria, Virginia 22302–1594, or telephone (703) 305–2662. A regulatory impact analysis has been prepared for this rule. You may request a copy of the analysis by contacting us at the above address or by e-mail to *Robert.Delorenzo@fns.usda.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On June 8, 2006, the Department of Agriculture (the Department or USDA) published a proposed rule in the **Federal Register** (71 FR 33344) to amend provisions in 7 CFR part 250, which contain the general regulations for USDA domestic food distribution. The proposals were intended to accomplish the following objectives:

- Establish requirements to ensure that recipient agencies in child nutrition programs receive the benefit and value of all donated foods received and provided to food service management companies for use in the recipient agencies' meal service;
- Revise and clarify requirements for the use and management of donated foods in the National School Lunch Program (NSLP) and other child nutrition programs;
- Reduce the paperwork burden associated with the distribution of donated foods to charitable institutions and summer camps;
- Revise provisions for the distribution of donated foods in the Nutrition Services Incentive Program (NSIP) to reflect legislative changes; and
- Restructure and rewrite revised provisions in a plain language format, including new subparts and sections, to make the regulations easier to read and understand.

II. Analysis of Comments Received

The Department received a total of 668 comment submissions to the proposed rule, including 576 schools, 7 school associations, 35 State agencies, 49 members of industry and outside organizations, and one member of Congress. The comments are discussed in detail below.

A. Definitions, 7 CFR 250.3

In the proposed rule, we proposed to remove, add, and revise definitions in 7 CFR 250.3 to provide program administrators and recipients with a better understanding of the requirements contained in 7 CFR part 250. We received three comments expressing general support for the proposed changes in definitions.

We received one comment objecting to the proposed removal of the definition of ''Offer and acceptance system'', stating that it supports the current means of ordering donated foods through the Electronic Commodity Ordering System (ECOS). While true, we believe that 7 CFR 250.58 of this final rule clearly describes the requirements for the distributing agency to offer, order, and provide, donated foods to school food authorities for their use, making the definition unnecessary. Since we did not receive any other comments, this final rule will remove definitions, as proposed, of ''Nonprofit summer camps for children'', ''Nonresidential child or adult care institution'', ''Nutrition program for the elderly'', ''Offer and acceptance system'', ''Program'', and ''Students in home economics''.

Since we did not receive any comments in response, this final rule will add definitions, as proposed, of ''Adult care institution'', ''AoA'', ''Bonus foods'', ''CACFP'', ''Child care institution'', ''Commodity offer value'', ''DHHS'', ''Elderly nutrition project'', ''Entitlement'', ''Entitlement foods'', ''National per-meal value'', ''Nonprofit organization'', ''Nonprofit school food service account'', ''NSIP'', ''NSLP'', ''Reimbursable meals'', ''SBP'', ''7 CFR part 3016'', ''7 CFR part 3019'', ''SFSP'', ''Single inventory management'', and ''Summer camp''.

We received two comments on the proposed revision of the definition of ''Food service management company''. One commenter was unsure if a company that was hired to repair refrigerators would be characterized as a food service management company. Another commenter questioned if a company operating only as a consultant would be required to credit the recipient agency for donated foods, in accordance with the proposed requirements for food

service management companies. Under the proposed definition, a food service management company is an entity that manages any aspect of a recipient agency's food service. We believe that this definition clearly excludes a company that simply repairs refrigerators, since this activity would not constitute management of the food service. We also believe that it is clear, in 7 CFR 250.51(a) of this final rule, that a commercial enterprise performing only a consulting service with respect to donated foods would not have to provide a credit for the value of donated foods, since they are not receiving and using such foods in the food service. However, to provide further clarification, in this final rule we refine the definition of ''Food service management company'' to include the statement in proposed 7 CFR 250.50(a) that, to the extent that such management includes the use of donated foods, the food service management company is subject to the applicable requirements in this part. As discussed in section II.E of the preamble, we are removing the characterization of a food service management company in 7 CFR 250.50 of this final rule.

We did not receive any other comments in objection to proposed revisions to definitions, and received one comment in support of the revised definition of ''Charitable institutions''. Accordingly, this final rule will revise definitions, as proposed, of ''Charitable institutions'', ''Child nutrition program'', ''Commodity school'', ''End product'', '' Processing'', ''Processor'', ''Recipient agencies'', ''Recipients'', ''Section 311'', ''Service institutions'', and ''State Agency on Aging''.

B. Agreements and Contracts, 7 CFR 250.12

In the proposed rule, we proposed to remove reference to agreements between the Department and State Agencies on Aging, in 7 CFR 250.12(a), and to remove 7 CFR 250.12(d), which addresses contract requirements with food service management companies, in conjunction with the proposed new requirements for the use of donated foods under such contracts in proposed subpart D of 7 CFR part 250. We also proposed to remove 7 CFR 250.12(e) and (f), as requirements relative to storage facility and processor contracts or agreements are currently addressed in 7 CFR 250.14, and in subpart C of 7 CFR part 250, respectively. Lastly, we proposed to revise the section heading to *Agreements.* Since we did not receive any comments in response to these proposals, this final rule retains the amendments to 7 CFR 250.12, as proposed.

C. Reviews, 7 CFR 250.19

In the proposed rule, we proposed to clarify or revise required procedures in the distributing agency's review system in 7 CFR 250.19(b)(1), by which the distributing agency ensures compliance with the requirements in 7 CFR part 250. We proposed to amend the introductory text to clarify that the listed requirements may apply to some, but not all, programs that receive donated foods. While we did not receive any comments in response to this proposal, we have further revised the introductory text in this final rule to provide additional clarification.

We proposed to remove the requirement that review procedures must include on-site reviews of recipient agencies in NSIP, since oversight of this program is currently the responsibility of the Department of Health and Human Services (DHHS). We proposed to streamline and clarify the requirement to conduct on-site reviews of charitable institutions and summer camps, and the food service management companies under contract with them. Since we did not receive any comments in response to these proposals, this final rule retains them.

We also proposed to include a requirement that the distributing agency's review procedures include on-site reviews of recipient agencies in NSLP, the Child and Adult Care Food Program (CACFP), and the Summer Food Service Program (SFSP) that have contracts with food service management companies in order to ensure compliance with the proposed requirements for the use of donated foods under such contracts. However, we proposed to permit the distributing agency to enter into an agreement with the appropriate State administering agency (if a different agency) to include its review as part of the State administering agency's required on-site review of such recipient agencies.

We received thirteen comments in response to this proposal. Twelve of the commenters indicated that requiring State agency on-site reviews of recipient agencies to ensure compliance with requirements for the use of donated foods in food service management company contracts would impose a significant additional burden. Commenters indicated that State agencies often do not have sufficient personnel to conduct such reviews, or sufficient funds to permit travel throughout the State. Additionally, commenters noted that State agency personnel often have limited expertise in reviewing contract provisions and ensuring that the value of all Federal resources provided to school food authorities and other recipient agencies has accrued to them. One commenter indicated that the cost of conducting such reviews would likely be passed on to schools.

We agree with commenters that the proposed review requirements would impose an additional burden on the State distributing agency, which does not currently conduct on-site reviews of recipient agencies in NSLP, CACFP, and SFSP. This would be especially true in States in which a large number of recipient agencies have contracts with food service management companies. However, the State agency responsible for administering these programs (usually the State Education Agency) currently conducts on-site reviews of these recipient agencies to ensure compliance with requirements set forth in contracts with food service management companies. Additionally, in accordance with a final rule published in the **Federal Register** on October 31, 2007 at 72 FR 61479, such State agencies are required to review and approve all school food authority contracts with food service management companies prior to their execution. Accordingly, the proposed requirement that the distributing agency's review system must include an on-site review of recipient agencies in NSLP, CACFP, and SFSP has been removed in this final rule. In accordance with the removal of the proposal described above, this final rule removes current 7 CFR 250.19(b)(1)(v), rather than redesignating and revising it, as proposed.

One commenter suggested that compliance with requirements in food service management company contracts should be determined by auditors, in accordance with Federal audit requirements under the Single Audit Act and Office of Management and Budget (OMB) Circular A–133, and codified in departmental regulations in 7 CFR part 3052. Under the audit requirements, a State or local government or nonprofit agency that expends at least $500,000 in Federal awards in a school or fiscal year (including the value of donated foods) must obtain a single audit (or, in some cases, a program-specific audit) for that year. Audits can be an effective tool in helping State agencies to ensure that Federal resources are used for the intended purpose, and in accordance with Federal requirements. However, auditors do not, as a rule, determine compliance with requirements for donated foods in contracts with food

service management companies in conducting the required Federal audit, and including such determination would likely increase the cost of obtaining the audits for school food authorities and other recipient agencies. Accordingly, we do not believe it would be in the best interest of the child nutrition programs served to include the audit as a replacement for the State agency on-site review in ensuring compliance with the requirements for donated foods in contracts with food service management companies. We also received one comment indicating that agreements between State agencies and recipient agencies should include assurance of compliance with requirements relating to the use of donated foods in food service management company contracts. However, we believe that current agreement provisions requiring that recipient agencies distribute and use donated foods in accordance with the requirements in 7 CFR part 250, and that hold them responsible for noncompliance with such requirements, are sufficient.

We proposed to remove 7 CFR 250.19(d), which requires the monitoring of funds in NSIP to ensure purchase of only U.S. agricultural products. As previously indicated, DHHS is currently responsible for the oversight of NSIP. Since we did not receive any comments in response to this proposal, 7 CFR 250.19(d) is removed in this final rule.

D. Distributing Agency Performance Standards, 7 CFR 250.24

In 7 CFR 250.24 of the proposed rule, we proposed to revise current performance standards required of the distributing agency with respect to the ordering of donated foods and their distribution to school food authorities, in accordance with proposed changes in 7 CFR 250.58. We proposed to revise 7 CFR 250.24(d)(8) to state that distributing agencies are responsible for providing recipient agencies with ordering options and commodity values, and considering the specific needs and capabilities of such agencies in ordering donated foods. We received four comments indicating that distributing agencies do not always consider the needs of recipient agencies in ordering donated foods. Two of the commenters indicated that distributing agencies may instead order those donated foods that generate higher delivery fees, or may charge such fees for donated foods delivered directly to a processor. Two other commenters suggested requiring distributing agencies to permit school food authorities capable of accepting full truckload shipments to submit donated food orders to FNS. In 7 CFR 250.58 in this final rule, we are requiring the distributing agency to ensure that all school food authorities have an opportunity to state their food preferences each year before the distributing agency submits donated food orders to FNS. The revision of 7 CFR 250.24(d)(8), as proposed, would ensure that the distributing agency complies with this requirement. However, as discussed in section II.F.3 of the preamble, we have chosen to reserve any revision of requirements relating to the distributing agency's system of donated food distribution for future proposed rulemaking. We received one comment stating that recipient agencies are guaranteed ordering options and visibility of donated food values through ECOS, making this performance standard unnecessary. However, not all distributing agencies utilize ECOS for all food distribution programs. Accordingly, 7 CFR 250.24(d)(8) is revised as proposed.

We proposed to revise 7 CFR 250.24(d)(9) to state that distributing agencies are responsible for offering school food authorities participating in NSLP the commodity offer value of donated food assistance, at a minimum, and for determining an adjusted assistance level in consultation with school food authorities, as appropriate, in accordance with the proposed 7 CFR 250.58. Since we did not receive any comments in response to this proposal, 7 CFR 250.24(d)(9) is revised as proposed in this final rule.

In 7 CFR 250.24(d)(10), we proposed to state that distributing agencies be responsible for providing each school food authority participating in the NSLP with the opportunity to order, or select, donated foods from the full list of available foods, and to distribute the selected donated foods to each school food authority, to the extent that distribution of such foods to, and within, the State would be cost-effective. In accordance with the amendments to the proposed 7 CFR 250.58 in this final rule, we have revised 7 CFR 250.24(d)(10) in this final rule to state that distributing agencies are responsible for ensuring that all school food authorities participating in the NSLP are aware of the full list of available donated foods, have the opportunity to provide input at least annually in determining the donated foods from the full list that they may select for their food service, and receive all such selected donated foods that may be cost-effectively distributed to them.

The proposed rule included a restructuring of some sections of 7 CFR part 250, including:

- The removal of current subpart E.
- The revision of subpart D to include new sections with proposed requirements for the use and management of donated foods in contracts with food service management companies.
- The addition of a new subpart E to include revisions and clarifications in current requirements for the use of donated foods in the NSLP and other child nutrition programs.
- The addition of a new subpart F to include current requirements, without change, for household programs.
- The addition of a new subpart G to include revisions and clarifications in requirements for the use of donated foods by charitable institutions and summer camps, and in NSIP, and to include current requirements, without change, for the use of donated foods in disasters and situations of distress.

Since we received no comments in response to the proposed restructuring, it is retained as proposed in this final rule. The comments received in response to the specific new or revised requirements proposed in each of these subparts are described below.

E. Subpart D—Donated Foods in Contracts with Food Service Management Companies

We proposed to revise Subpart D of 7 CFR part 250 to include, in six new sections, specific requirements to ensure that recipient agencies receive the benefit and value of donated foods in contracts with food service management companies. As previously indicated, this subpart would replace the current 7 CFR 250.12(d). In the first two sections, we proposed to include the contract and procurement requirements for recipient agencies in retaining the services of a food service management company, and the specific activities relating to donated foods that a food service management company may perform in accordance with the contract.

We also proposed to clarify the distinction between a food service management company and a processor. However, since this distinction is clearly made in the definitions of these two entities in 7 CFR 250.3, as revised in this final rule, we are removing it in this subpart. Consequently, we are consolidating the proposed 7 CFR 250.50 and 250.51 into 7 CFR 250.50 in this final rule, and revising the heading of this section to *Contract requirements and procurement.* Accordingly, proposed 7 CFR 250.52 through 250.55

are redesignated as 7 CFR 250.51 through 250.54, respectively, in this final rule. The specific comments are described below under the pertinent sections.

1. Contract Requirements and Procurement, 7 CFR 250.50

We proposed to clarify that the recipient agency must enter into a contract with a food service management company, in accordance with Federal requirements in 7 CFR parts 210, 220, 225, or 226, as applicable, and that the contract must ensure that all donated foods received for use by the recipient agency in the school or fiscal year, as applicable, are used to benefit the recipient agency's food service. We proposed to require that contracts between child nutrition program recipient agencies and food service management companies also ensure compliance with other requirements in this subpart. We also proposed to clarify the two types of contracts—fixed-price and cost-reimbursable—that may be used, and the differences between them. Since we did not receive any comments in response to these proposals, this final rule retains the proposed provisions relating to contract requirements and types of contracts in 7 CFR 250.50(a) and (b), respectively, with one exception. In 7 CFR 250.50(a) of this final rule, we require that the contract ensure that all donated foods received for use by the recipient agency in the school or fiscal year, as applicable, are used in (instead of benefit) the recipient agency's food service. This change is made in accordance with the revised requirements for the use of donated foods in 7 CFR 250.51(d) of this final rule, as discussed in section II.E.2 of the preamble.

We proposed to clarify that the recipient agency must meet Departmental procurement requirements in 7 CFR part 3016 or 3019, and in 7 CFR parts 210, 220, 225, or 226, as applicable, in obtaining the services of a food service management company, and to require that procurement documents, as well as contract provisions, include the donated food activities that the food service management company is to perform. We also proposed to indicate some of the donated food activities that the food service management company may perform, in accordance with its contract, such as preparing and serving meals, and ordering or storing donated foods. We proposed to specifically prohibit a food service management company from entering into a contract or agreement with a processor to process donated foods or finished end products for use in the recipient agency's food service.

Six commenters indicated that the food service management company must play a role in ordering or selecting donated foods, in order to ensure that the selected foods are those that may be most effectively used in the food service. We agree, and 7 CFR 250.50(d), as finalized in this rule, will permit the food service management company to order or select donated foods for use in the food service, in coordination with the recipient agency.

Seven commenters indicated that the food service management company should be permitted to enter into processing contracts, or to procure processed end products, on behalf of recipient agencies, since it would permit those agencies to benefit from the food service management company's purchasing expertise and buying power. Two other commenters indicated that, as most processing agreements are between the processor and the distributing agency, and not the recipient agency, the significance of prohibiting food service management companies from entering into such agreements is unclear. The parties to the processing agreements required in subpart C of 7 CFR part 250 are usually the distributing agency and the processor. Such agreements permit the distributing agency to ensure compliance with the processing requirements in subpart C of 7 CFR part 250, which include the processing of donated foods into approved end products, compliance with processing yields of donated foods, and maintenance of donated food inventories at approved levels. The distributing agency may permit recipient agencies to enter into processing agreements, and to ensure compliance with the processing requirements. However, it would be inappropriate to delegate such oversight of a commercial enterprise (i.e., the processor) to another commercial enterprise (i.e., the food service management company). Hence, we retain in this final rule the prohibition of a food service management company from entering into the processing agreement with the processor required in subpart C of 7 CFR part 250.

The actual procurement of processed end products from processors (or commercial distributors), however, is usually conducted by recipient agencies. Such procurement must be conducted in accordance with Departmental procurement requirements in 7 CFR parts 3016 or 3019, as applicable, and with requirements in subpart C of 7 CFR part 250. Although we included the payment of processing fees or remittance of refunds from a processor among the donated food activities that a food service management company may perform on behalf of a recipient agency, we did not specifically include the procurement of processed end products among such activities. However, such procurement is not prohibited. Furthermore, we agree with commenters that recipient agencies could benefit from food service management company procurements of processed end products on their behalf, since it would reduce their time and labor in conducting such activity, and may result in decreased purchase costs. Thus, we specifically include the procurement of processed end products as an activity that the food service management company may perform on behalf of the recipient agency in 7 CFR 250.50(d) of this final rule. However, we also clarify that such procurement must ensure compliance with the requirements in subpart C of 7 CFR part 250, and with the provisions of distributing or recipient agency processing agreements, and must ensure crediting of the recipient agency for the value of donated foods contained in processed end products at the processing agreement value. Other donated food activities included in the proposed rule are retained in 7 CFR 250.50(d) of this final rule, with some consolidation.

2. Crediting for, and Use of, Donated Foods, 7 CFR 250.51

In the proposed rule, we proposed to include requirements to ensure that recipient agencies in child nutrition programs receive the benefit and value of donated foods in the meal service provided by food service management companies. We proposed to require the recipient agency to ensure that the food service management company, in both fixed-price and cost-reimbursable contracts, credits it for the value of all donated foods received for use in the recipient agency's food service in a school year or fiscal year (including both entitlement and bonus foods), with the exception of donated foods contained in processed end products. We proposed to include the accepted means by which crediting for the value of donated foods must be achieved, the required frequency of such crediting, and that, in all cases, crediting be clearly documented.

One commenter suggested that we require crediting for donated foods as they are used (rather than as they are received), to avoid a situation in which credit is provided for donated foods that may not be used during the contract

period—e.g., due to receipt of a shipment late in the year. However, requiring crediting for the value of donated foods only as they are used would provide a disincentive to use them. Additionally, we do not want to create a situation in which school food authorities with food service management company contracts must monitor donated food inventories to ensure proper crediting, as such monitoring would impose an additional burden, and would be very difficult under a single inventory management system, in which school food authorities (and, in accordance with 7 CFR 250.52(b) of this final rule, food service management companies) may commingle donated foods and commercially purchased foods.

We received two comments expressing uncertainty whether crediting must occur for donated foods delivered to processors for processing into end products when the end products are delivered to the recipient agency, or when the food service management company uses the end products in the recipient agency's food service. As we described in the proposed rule, the processor (or commercial distributor, as applicable) must credit the recipient agency for donated foods contained in processed end products in the sale of such end products to the recipient agency, in accordance with the requirements in subpart C of 7 CFR part 250. Hence, the value of the donated foods accrues to the recipient agency's nonprofit food service in its purchase of the processed end products. Although the food service management company must use such end products in the recipient agency's food service, it is not required to provide an additional credit for the value of donated foods contained in them when they are used, or received for use, in the food service. However, an exception would be if the food service management company's contract requires it to procure processed end products on behalf of the recipient agency, or to act as an intermediary in passing the donated food value in such end products on to the recipient agency, in accordance with 7 CFR 250.50(d) of this final rule. Hence, in 7 CFR 250.51(a) of this final rule, we clarify that, in such cases, the food service management company must also credit the recipient agency for the value of donated foods contained in processed end products.

We include the proposed methods of crediting permitted, and the required frequency of crediting, together in 7 CFR 250.51(b) of this final rule, in the interest of clarity. We proposed to include ''pre-crediting'' as an accepted means of crediting for the value of donated foods in fixed-price contracts. In pre-crediting, the food service management company deducts the value of donated foods the recipient agency is expected to receive from the fixed-price bid submitted during procurement of the food service management company to conduct the food service. In contracts with school food authorities, this deduction is usually for the per-meal value of donated food assistance established in accordance with section 6(c) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1755(c)). However, school food authorities may receive a greater value of donated food assistance for the school year. This may result for a number of reasons (some of which are described in 7 CFR 250.58(d) of this final rule), but is most commonly due to the receipt of surplus, or bonus, foods purchased by the Department to remove market surpluses, and donated to school food authorities and other recipient agencies later in the year.

As indicated in the Office of Inspector General (OIG) audit (#27601–0027–CH) referenced in the proposed rule, food service management companies that utilize ''pre-crediting'' sometimes fail to credit school food authorities for the additional foods received later in the year. Hence, in the proposed rule, we also proposed to require the food service management company to provide an additional credit for the value of any donated foods not accounted for in the fixed-price per meal.

We received nine comments indicating that this requirement would discourage food service management companies from efficiently using donated foods, since providing recipient agencies with an additional credit for the value of donated foods received later in the year would reduce their revenue. However, as the proposal would require crediting for all donated foods received in the school or fiscal year, and not just those donated foods that are actually used, it would not discourage the use of donated foods. We received four comments questioning whether a recipient agency would have to reimburse the food service management company if it actually received less than the pre-credited value of donated foods. This may occur, for example, if a school food authority does not select donated foods offered by the distributing agency equal to its commodity offer value (i.e., the legislated per-meal value), or if selected foods may not be purchased, due to market conditions or other factors. However, the proposed requirement is intended only to ensure that the recipient agency is credited for the value of all donated foods received. It would not require reimbursement of the food service management company if such crediting is in excess of that value. However, such reimbursement may be established by the food service management company and the recipient agency, in accordance with their contract.

One commenter contended that some recipient agencies are more interested in a guaranteed cost of the service (i.e., in the fixed-price per meal), rather than assurance that credit is received for the value of all donated foods. Another commenter suggested that additional credits be excused when a food service management company does not include other related costs, such as storage, in the fixed price. However, permitting any exceptions to the requirement that the recipient agency receive credit for the value of all donated foods would not meet the primary intent of the regulations, or address the concerns expressed in the OIG audit. Notwithstanding this requirement, a recipient agency may consider storage or handling costs in establishing the value of donated foods to be used in crediting, as permitted in 7 CFR 250.51(c) of this final rule. Another commenter questioned the accuracy of the term ''fixed-price'' contract if deductions for the value of donated foods are required on invoices. While technically true, this designation is commonly used, and use of an alternate term would be confusing.

We proposed to permit ''crediting by disclosure'' in cost-reimbursable contracts. Under such contracts, the food service management company bills the recipient agency for costs incurred in conducting the food service, and also charges a fixed management fee. However, one commenter was unsure if crediting by disclosure meant disclose to the recipient agency the value of donated foods received during the period covered by the invoice, or actually credit funds to the recipient agency for such foods. We agree with the commenter that the meaning is not clear. Therefore, we are amending the language in 7 CFR 250.51(b) of this final rule to clarify that, in crediting by disclosure, the food service management company credits the recipient agency for the value of donated foods by disclosing, in its billing for food costs submitted to the recipient agency, the savings resulting from the receipt of donated foods for the billing period. However, it does not require a reduction of the fee charged for conducting the food service, or any other type of payment for the value of donated foods.

We proposed to require the recipient agency to ensure that crediting for the value of donated foods be performed not less frequently than annually. Two commenters were unsure if the food service management company must credit the recipient agency for the value of donated foods when such foods are delivered to the recipient agency, or when the food service management company actually uses the donated foods in the recipient agency's food service. The proposal did not include a specific time that crediting must be performed, only that it be performed at least annually. Hence, the recipient agency may require a food service management company to credit it for donated foods upon delivery, quarterly, or all at once at the end of the year (provided that, for a school food authority, such a one-time credit would not result in its cash resources exceeding the limits established in 7 CFR 210.9(b)(2)). The recipient agency may also permit crediting for donated foods as they are used in the food service. However, the recipient agency must ensure that the food service management company credits it for the value of all donated foods received during the year; permitting the food service management company to credit for donated foods as they are used may not ensure that this requirement is met. Additionally, it may be difficult to track donated foods as they are used if the entity responsible for storing them is using a single inventory management system.

Another commenter indicated that it should be clear exactly when crediting for the value of donated foods must be achieved, as a food service management company might offer to provide an upfront payment for such value as an inducement to winning the bid for the contract. However, such an upfront payment for the value of donated foods would be acceptable if this method of crediting were provided for in procurement documents and in contract provisions, as required in this final rule. It would be unlikely, though, to include crediting for all donated foods received in the school or fiscal year, and would, therefore, necessitate additional crediting at a later time.

Accordingly, we have retained the allowed methods of crediting for donated foods, as proposed, in 7 CFR 250.51(b) of this final rule, with the clarification of crediting by disclosure in cost-reimbursable contracts. We have also retained, as proposed, the required frequency of crediting, and the requirement that all forms of crediting provide clear documentation of the value received from the donated foods. As in the proposed rule, we have indicated that a school food authority must also ensure that the required method and frequency of crediting does not cause its cash resources to exceed the limits established in 7 CFR 210.9(b)(2).

In the proposed rule, we proposed to provide some flexibility in determining the value of donated foods to be used in crediting, in order to permit the recipient agency to ensure that the donated foods received provide a good value to its food service. Hence, rather than require use of the donated food value utilized by the distributing agency in crediting the recipient agency's donated food ''entitlement'' (as described in 7 CFR 250.58(e) of this final rule), we proposed to permit the use of an alternate value determined by the recipient agency, and approved by the distributing agency. We proposed to require that the method of determining the donated food values to be utilized in crediting be included in procurement documents and in the contract. We received two comments stating that the donated food values used by food service management companies in crediting school food authorities should be the same as the values used by distributing agencies in crediting the school food authority's donated food ''entitlement''. Three commenters indicated that school food authorities do not have the time or expertise to determine alternate donated food values. We agree that most school food authorities would not have the time or expertise to determine alternate donated food values for use in crediting, and will likely use the values established by the distributing agency. However, we believe that having the flexibility to use alternate values may benefit some school food authorities or other recipient agencies. We received three comments indicating that the proposed flexibility in valuation of donated foods, while commendable, may be confusing to the parties responsible (e.g., the distributing agency or the State administering agency) for ensuring that recipient agencies have received credit for the value of all donated foods. We agree that the use of different values in crediting may be confusing to such parties. However, as previously indicated, most recipient agencies will likely use the values established by the distributing agency, rather than use alternate values—which, in any case, would have to be approved by the distributing agency. Additionally, in 7 CFR 250.54(a) of this final rule, we require recipient agencies to maintain a record of the donated food values used in crediting, which will help State agencies or other entities to determine compliance with requirements for crediting of the donated food value.

Accordingly, we have included the options for valuing donated foods as proposed in 7 CFR 250.51(c) of this final rule. We have included, as proposed, the requirement that the method of determining the donated food values to be utilized in crediting be included in procurement documents and in the contract. We have also included, as proposed, the requirement that the method of valuation specified must result in the determination of actual values, and may not permit any negotiation of such values. Lastly, we have included, as proposed, the requirement that the recipient agency must ensure that the specified method of valuation of donated foods permits crediting to be achieved in accordance with regulatory requirements and the provisions of the contract.

We also proposed to provide some flexibility in the use of donated foods by the food service management company, especially in its contracts with school food authorities to conduct the meal service. Under the proposal, the food service management company would not be required to use those donated foods that are not included in school menu plans, with a few exceptions (although it must provide a credit for all donated foods received). Rather, the food service management company could use its food purchasing capacity to provide other foods that meet nutritional requirements in place of those donated foods that do not fit easily into the school menu plans. We received 641 comments in opposition to this proposal. Almost all of them indicated that food service management companies should be required to use all donated foods in the school food service, or should use either the donated foods or a commercial substitute of the same type, of U.S. origin, and of equal or better quality (as required of processors under subpart C of 7 CFR part 250). Many commenters saw the proposal as providing school food authorities under contract with food service management companies with the opportunity to receive cash in exchange for donated foods (i.e., for those donated foods not used in the food service)—an option not available to school food authorities that operate their own food service. Some of the commenters feared that this might lead to a ''cash-out'' of NSLP. Other commenters feared that the proposal would permit sale of donated foods on the open market and wondered if the Federal government would be liable for donated foods that went out-

of-condition and were sold by a food service management company to another party.

In the proposal, we sought to provide school food authorities and food service management companies with the flexibility needed to integrate donated foods into the food service as effectively as possible. It was not meant to provide an advantage to school food authorities with food service management company contracts, or to signal a move to discontinue the distribution of donated foods in NSLP, and provide cash instead. However, we are sensitive to the perception that the proposal would provide a ''cash for food'' option, and would create an unfair playing field, to the disadvantage of those school food authorities that operate their own food service. Therefore, we have amended the proposed requirements for the use of donated foods by food service management companies in 7 CFR 250.51(d) of this final rule. We require that the food service management company use all donated ground beef, donated ground pork, and all end products, in the recipient agency's food service. We also require that the food service management company use all other donated foods, or commercially purchased foods of the same generic identity, of U.S. origin, and of equal or better quality than the donated foods, in the recipient agency's food service. However, the recipient agency may choose to prohibit the food service management company from using commercial substitutes in place of the donated foods, in accordance with its contract.

In the proposed rule, we addressed the disposition of donated foods upon termination of the contract in this section. However, in the interest of clarity, we have moved this provision to the next section, which includes requirements for storage and inventory management of donated foods, in this final rule.

3. Storage and Inventory Management of Donated Foods, 7 CFR 250.52

In the proposed rule, we proposed to include requirements for the storage and inventory management of donated foods by food service management companies. We did not receive any comments in response to the proposal that the food service management company comply with the general storage and inventory management requirements in 7 CFR 250.14. Therefore, we have retained this requirement, as proposed, in 7 CFR 250.52(a) of this final rule. However, as the general storage and inventory requirements are in 7 CFR 250.14(b), we have amended the regulatory citation accordingly in this final rule in the interest of clarity.

We proposed to permit the food service management company to store and inventory donated foods together with commercially purchased foods–i.e., utilize a single inventory management system, as defined in this final rule–if allowed in its contract with the recipient agency. However, we proposed to require that the food service management company store donated ground beef, donated ground pork, and all end products in a manner that ensures they will be used in the recipient agency's food service. We received one comment stating that ensuring the use of donated ground beef and ground pork, and end products, under a single inventory management system will be impractical. Another commenter stated that single inventory management should apply to all school food authorities, irrespective of their contracts with food service management companies. In single inventory management, a school food authority may store and inventory its donated foods together with its commercially purchased foods, unless the distributing agency requires the donated foods to be distinguished from commercially purchased foods in storage and inventoried separately. This applies to all school food authorities, with or without food service management company contracts. Likewise, a food service management company may store and inventory donated foods together with foods it has purchased commercially for use in the school food authority's food service. However, it may store and inventory such foods together with other foods only to the extent that such a system may ensure compliance with the requirements for the use of donated foods in 7 CFR 250.51(d)—i.e., use all donated ground beef and ground pork, and all end products in the food service, and use all other donated foods or commercially purchased foods of the same generic identity, of U.S. origin, and of equal or better quality than the donated foods, in the food service. In the interest of clarity, we have included this revised language in 7 CFR 250.52(b) of this final rule. We have also included, without change, the requirement that, in cost-reimbursable contracts, the system of inventory management must ensure that the recipient agency is not charged for donated foods.

We proposed that, upon termination of the contract, the food service management company return all unused donated ground beef, donated ground pork, and end products, and that it return other donated foods, at the recipient agency's discretion, or pay the recipient agency for the value of the donated foods. One commenter indicated that the recipient agency should take ownership of all unused donated foods upon termination of the contract, in accordance with the contention that all donated foods should be used in the recipient agency's food service. However, if the food service management company is storing donated foods together with foods purchased commercially for the recipient agency, as permitted in this final rule, the return of donated foods remaining in inventory upon termination of the contract may be achieved only if all such foods ''owned'' by the recipient agency are returned. Such disposition of unused foods would be a matter for the recipient agency and the food service management company to resolve, in accordance with their contract. Therefore, in 7 CFR 250.52(c) of this final rule, we have retained the requirement that the food service management company return all unused donated ground beef, donated ground pork, and end products, and that it return other donated foods at the recipient agency's discretion. However, rather than providing the option of payment for the value of the donated foods, we have included the requirement that the recipient agency must ensure that the food service management company has credited it for the value of all donated foods received for use in its food service in the school or fiscal year. Accordingly, we have revised the heading of this section to *Disposition of donated foods and credit reconciliation upon termination of the contract*.

4. Contract Provisions, 7 CFR 250.53

In the proposed rule, we proposed to require specific contract provisions to ensure compliance with the proposed requirements for the use of donated foods in contracts with food service management companies. The provisions of 7 CFR 250.53 of this final rule include those contract provisions required to ensure compliance with such requirements in this final rule. It clarifies that the contract must include any activities relating to donated foods that the food service management company will be responsible for, in accordance with 7 CFR 250.50(d), and assurance that such activities will be performed in accordance with the applicable requirements in 7 CFR part 250. It also clarifies that contract provisions must assure compliance with storage and inventory requirements for donated foods, and that an on-site review of the food service management

company's operation may include a review of required records.

One commenter indicated that the proposed contract provisions will require State agencies to amend prototype contracts, or to communicate the new requirements to recipient agencies to ensure their inclusion in their contracts with food service management companies, which will impose an additional burden on State agencies. We agree that it will require additional work for State and recipient agencies to implement the new contract requirements. However, once implemented, the additional burden would be minimal. As previously indicated, the inclusion of the contract provisions is necessary to ensure compliance with the requirements in this subpart. Additionally, in accordance with a final rule published in the **Federal Register** on October 31, 2007 at 72 FR 61479, the State administering agency is required to review and approve all school food authority contracts with food service management companies prior to their execution.

5. Recordkeeping and Reviews, 7 CFR 250.54

In the proposed rule, we proposed to include specific recordkeeping requirements for recipient agencies and food service management companies in order to clearly document compliance with the requirements in this subpart. We did not receive any comments in response to the proposals. However, in accordance with 7 CFR 250.51(a) of this final rule, we clarify, in 7 CFR 250.54(a) and (b), that documentation of crediting for the value of donated foods must include crediting for such foods in processed end products, as applicable. Additionally, in accordance with 7 CFR 250.50(d) of this final rule, we clarify, in 7 CFR 250.54(b), that the food service management company must include documentation of its procurement of processed end products on behalf of the recipient agency, as applicable.

We also proposed to include specific review requirements for recipient agencies and distributing agencies, in order to ensure compliance with the requirements in this subpart. We proposed to require that the recipient agency include a review of food service management company activities relating to the use of donated foods as part of its required monitoring of the food service operation, in accordance with 7 CFR parts 210, 220, 225, or 226, as applicable. We also proposed to require that the recipient agency conduct a reconciliation to ensure that the food service management company has credited it for the value of all donated foods received for use in the food service in the school or fiscal year, as applicable.

One commenter indicated that the reconciliation process should be formalized to provide clear guidance on accounting for donated foods, including beginning and ending inventories, processing yields, and theft or damage. However, the recipient agency is not required to monitor the food service management company's beginning and ending donated food inventories as part of the proposed review requirement, or to make a separate accounting of donated food loss. Although the recipient agency would have to ensure crediting for donated foods contained in processed end products procured by the food service management company on its behalf, it would not have to monitor processing yields as part of its reconciliation. We received two comments indicating that the food service management company and the school food authority must receive accurate and timely data on food values to ensure that crediting for the value of donated foods is accurate. While true, the distributing agency is required to provide recipient agencies with information on donated food values, in accordance with 7 CFR 250.24(d)(8) of this final rule.

We received seven comments indicating that the proposed review requirements would impose additional costs on school food authorities, and that such requirements should be reviewed for their impact on schools. Another commenter suggested that FNS test the proposals to assess their impact on a cost-benefit basis. We agree that the proposed requirement to ensure crediting for the value of donated foods through a reconciliation process would require school personnel to commit more time to this activity, and thus has the potential to increase costs. However, we believe the flexibility provided in the method and frequency of crediting for donated foods will permit school food authorities to minimize such an impact. A school food authority may find that it works best to require a one-time refund for the value of all donated foods near the end of the year, or may choose to require that donated food value be credited each month or quarter through reductions on invoices. In short, we expect that school food authorities will find the method that is most cost-effective and efficient for them. Hence, in 7 CFR 250.54(c) of this final rule, we retain the review requirements for recipient agencies as proposed. However, we clarify that the required reconciliation must also ensure crediting for the value of donated foods contained in processed end products, in accordance with the requirements in 7 CFR 250.51(a), and that such reconciliation must be conducted at least annually, and upon termination of the contract.

In accordance with the removal of the proposal in this final rule that the distributing agency's review system include an on-site review of recipient agencies in NSLP, CACFP, and SFSP with food service management company contracts, as described in section II.C of the preamble, this final rule removes the proposed reference to such review requirement in this section.

Lastly, we proposed to indicate that the Department may also conduct reviews of food service management company operations with respect to the use and management of donated foods, in order to ensure compliance with the requirements of 7 CFR part 250. As we did not receive any comments in response to this proposal, it is retained in 7 CFR 250.54(d) of this final rule.

F. Subpart E—National School Lunch Program (NSLP) and Other Child Nutrition Programs

In the proposed rule, we proposed to provide a clearer, more comprehensive, description of the requirements relating to donated foods in NSLP and other child nutrition programs in a new subpart E of 7 CFR part 250, which includes seven new sections. This subpart would replace the current 7 CFR 250.48, 250.49, and 250.50. Since we received no comments in response to the proposed restructuring of these requirements, it is retained in this final rule. Comments received in response to proposed revisions or clarifications of specific requirements are discussed below in the pertinent sections.

1. Provision of Donated Foods in NSLP, 7 CFR 250.56

In 7 CFR 250.56 of the proposed rule, we proposed to include a general description of the provision of donated foods in NSLP, including the types and amounts provided, and to reference applicable regulatory requirements, in addition to 7 CFR part 250. We also included a streamlined description of the quantity of donated foods provided to distributing agencies each school year, in accordance with Section 6(c) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1755(c)), and the values of donated foods utilized in determining the quantities provided. Lastly, we included the current description of the cash option offered to States previous to 1974, in lieu of receiving donated foods. We received

one comment indicating that the general description, and the types and amounts of donated foods provided, do not add any value to the regulations, and are, therefore, unnecessary. However, we believe that these provisions help to clarify the role of donated foods in NSLP, and have retained them, as proposed, in 7 CFR 250.56 of this final rule.

2. Commodity Schools, 7 CFR 250.57

In 7 CFR 250.57 of the proposed rule, we proposed to describe the provision of donated foods to commodity schools, including a streamlined description of the determination of the quantity of donated foods provided to distributing agencies for commodity schools each school year, in accordance with section 6(c) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1755(c)). We also included the types of donated foods available to commodity schools. Since we received no comments in response to the proposals, 7 CFR 250.57 is retained in this final rule as proposed.

3. Ordering Donated Foods and Their Provision to School Food Authorities, 7 CFR 250.58

In 7 CFR 250.58 of the proposed rule, we proposed to describe the means by which the distributing agency orders donated foods and provides them to school food authorities for use in the school food service. We included, in 7 CFR 250.58(a), a description of ECOS, the web-based system implemented in 2003 to permit the distributing agency to submit donated food orders to FNS. We proposed to require that, before submitting orders to FNS, the distributing agency provide the school food authority with the opportunity to order, or select, donated foods for its food service from the full list of available donated foods. We received eighteen comments indicating that, because of the wide variety of donated foods available, this proposal is impractical, and would impose a significant additional burden on distributing agencies. Many orders submitted by school food authorities could not be fulfilled, since they would not constitute full truckload shipments, and would necessitate the submission of alternate selections. This would make the process of submitting food orders to FNS more time-consuming and work-intensive. Several commenters also indicated that, in current practice, distributing agencies ''filter out'' some foods from the full list, using information received in advance from school food authorities with respect to those foods that are most desired and useful for their food service. Such information may be obtained through annual advisory councils, periodic surveys, or by other means. Seven commenters supported the proposal, indicating the importance of having a ''request-driven'' ordering system, in which all school food authorities have input, and of providing all schools with the opportunity to order and receive the donated foods that they need and want.

We have amended the proposal in response to the comments received. In 7 CFR 250.58(a) of this final rule, we have required the distributing agency, before submitting orders to FNS, to ensure that all school food authorities are aware of the full list of available donated foods, and have the opportunity to provide input at least annually in determining the donated foods from the full list that are made available to them for ordering or selection. This requirement will ensure that all school food authorities have a chance to submit to the distributing agency their food preferences each year, with knowledge of the full list of foods available, while also permitting the distributing agency to ''filter out'' some foods from that list, based on the input received, in order to ensure efficient ordering and distribution of donated foods.

We also proposed to require that the distributing agency ensure distribution of all donated foods selected by the school food authority that may be cost-effectively distributed to it, and that the distributing agency explore all available storage and distribution options to determine if such distribution may be performed cost-effectively. In making such determination, the distributing agency may not prohibit the use of split shipments—*i.e.*, donated food shipments with more than one stop-off or delivery location. We received five comments in support of the proposal that the distributing agency may not prohibit the use of split shipments. We received two comments indicating that the distributing agency may not be aware of, or have the capacity to explore, all available storage and distribution options, and to determine the most cost-effective option. The commenters recommended that the distributing agency be required to permit school food authorities to accept full truckload shipments, rather than use the State distribution system. Two other commenters indicated that the distributing agency should be required to permit recipient agencies to divert donated foods to processors for processing. Another commenter indicated that requiring the distributing agency to explore other storage and distribution options would necessitate costly logistics studies.

The proposal to require the distributing agency to explore all available storage and distribution options was intended to help ensure that school food authorities receive the donated foods that they desired, and could most effectively use in their food service. A few States currently order limited varieties of donated foods for delivery to a distributing agency storage facility with limited storage space, rather than permit direct shipments to school food authorities or to processors. For example, one commenter stated that permitting school food authorities to order from the full list of donated foods would increase the amount of storage space that the State must rent, and that the additional cost would be passed on to school food authorities. However, we agree with commenters that requiring the exploration of all available storage and distribution options could be costly and time-consuming for the distributing agency. Furthermore, the comments received reveal the issue of the cost-effectiveness of the food distribution system to be more complex than simply assuring that school food authorities have access to the donated foods that they desire for their food service. In light of these concerns, this final rule does not require that, in determining the cost-effectiveness of distribution, the distributing agency must explore all available storage and distribution options. However, we have retained in this final rule the proposed requirement, in 7 CFR 250.58(a), that the distributing agency must ensure distribution to school food authorities of all such selected donated foods that may be cost-effectively distributed to them, and may not prohibit the use of split shipments in determining such cost-effectiveness. Since we have consolidated the requirements for ordering and distribution of donated foods in 7 CFR 250.58(a) of this final rule, we have revised the section heading to *Ordering and distribution of donated foods*. We will review current requirements in 7 CFR 250.14 for the distributing agency to evaluate its storage and distribution system to ensure cost-effective delivery of donated foods to recipient agencies, and may include any proposals for change in future rulemaking as appropriate.

We proposed to remove the current regulatory provision that permits the distributing agency to utilize an ''offer and refusal'' system, which provides school food authorities with a more limited assurance of receiving the donated foods that they desire for their food service. Since we did not receive

any comments in response to this proposal, that provision is removed in this final rule.

We proposed to describe the value of donated foods that the distributing agency must offer to school food authorities each school year, in accordance with section 6(c)(2) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1755(c)(2)), and the value of donated foods that the distributing agency must offer to commodity schools each school year, in accordance with section 14(f) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1762(f)). We also included the eligibility of the school food authority to receive bonus foods in addition to the Section 6 foods. We proposed to remove the current option provided to the distributing agency to use another method to determine the value of donated foods offered to school food authorities that would provide them with an equitable share of foods. Since we received no comments in response to these proposals, they are retained in 7 CFR 250.58(b) of this final rule as proposed.

For the purpose of clarity, we proposed to describe some factors that might result in a school food authority receiving less than the commodity offer value of donated foods, or an ''adjusted assistance level'', and to describe circumstances in which a school food authority might receive more than the commodity offer value of donated foods. We received two comments indicating that, if a school food authority does not utilize its full commodity offer value, the distributing agency should be required to permit it to carry over the remaining value into the next school year. If the school food authority does not utilize such value in that year, then it must be offered in the following year to other school food authorities on a fair-share basis. Currently, the regulations do not restrict the distributing agency in allocating the remaining value of donated foods if a school food authority does not utilize its full commodity offer value. School food authorities are not ''entitled'' to receive a specific amount of donated foods but must only be offered the commodity offer value. Accordingly, the distributing agency may choose to permit the school food authority to carry over the remaining donated food value into the next year, or may reallocate it in the current year to other school food authorities. Since the distributing agency is in the best position to determine how donated foods may be most efficiently utilized, we have concluded that the regulations should not restrict such decision-making. Therefore, we have retained the proposed list of factors relating to receipt of the commodity offer value in 7 CFR 250.58(c) and (d) in this final rule without change.

We proposed to include the current options in 7 CFR 250.13(a)(5) that the distributing agency may use to value donated foods in crediting school food authorities for the commodity offer value (or adjusted assistance level), but to clarify the meaning of the USDA purchase price. Since we received no comments in response to the proposal, these options are included in 7 CFR 250.58(e) of this final rule as proposed.

4. Storage and Inventory Management of Donated Foods, 7 CFR 250.59

In 7 CFR 250.59 of the proposed rule, we proposed to include the requirements for the storage and inventory management of donated foods, including the general requirements in current 7 CFR 250.14, and the specific requirements for distributing agencies and school food authorities. Since we received no comments in response to the reference to the general storage and inventory requirements, it is retained in 7 CFR 250.59(a) of this final rule.

In accordance with 7 CFR 250.14(b)(4), the distributing agency, or subdistributing agency, must store and inventory donated foods in a manner that permits donated foods to be distinguished from commercially purchased foods or other foods. However, a school food authority may utilize single inventory management—i.e., may commingle donated foods and commercially purchased foods in storage, and maintain a single inventory record of such commingled foods, unless the distributing agency imposes other storage and inventory requirements. We received one comment indicating that single inventory management should also be permitted for distributing agencies, since it would save money in contracting with commercial distributors. However, the distributing (or subdistributing) agency must remain accountable for donated foods in its storage facilities, or in those of its commercial distributors, and ensure their distribution to school food authorities. Such accountability cannot be achieved if donated foods are commingled with other foods at the distributing agency level. While retaining the storage and inventory requirements for the distributing agency, as proposed, we have amended 7 CFR 250.59(b) in this final rule to clarify that such storage must permit donated foods to be distinguished from commercially purchased foods or other foods (rather than actual physical separation at the storage facility) in order to ensure compliance with the requirements for the distribution and control of donated foods in this part. In a similar manner, we have retained the single inventory management option for the school food authority, as proposed, in 7 CFR 250.59(c) of this final rule. Such option may be exercised unless the distributing agency requires donated foods to be distinguished from commercially purchased foods in storage and inventoried separately at the school food authority level.

We also proposed to clarify that a commercial storage facility under contract with the school food authority may store and inventory donated foods together with commercially purchased foods it is storing for the school food authority, unless prohibited in its contract. However, the commercial enterprise may not commingle foods it is storing for a school food authority with foods it is storing for a commercial enterprise or other entity, since this might jeopardize the use of the donated foods provided in the school food service. Since we received no comments in response to the proposal, 7 CFR 250.59(d) is retained in this final rule as proposed.

5. Use of Donated Foods in the School Food Service, 7 CFR 250.60

In 7 CFR 250.60 of the proposed rule, we proposed to include the requirements for school food authorities in the use of donated foods in the school food service. We proposed to require that the school food authority use donated foods, as far as practical, in the school lunches, but that they may also use donated foods in other nonprofit school food service activities. Such activities are listed in 7 CFR 250.60(a), and include, for example, school breakfasts, a la carte foods sold to children, and meals served to adults directly involved in the operation and administration of the food service. Revenues received from all such activities must accrue to the school food authority's nonprofit school food service account. We proposed to state that donated foods should not be used in food service activities that do not benefit primarily schoolchildren, such as banquets or catered events. However, we recognized that their use in such activities may not always be avoided—e.g., if a school food authority utilizes a single inventory management system. Hence, we proposed to require that the school food authority ensure reimbursement to the nonprofit school food service account for the value of the

donated foods used in such activities, in addition to its responsibility to ensure reimbursement for any other resources utilized from that account.

The only comment received in response to the proposals indicated that school food authorities should be permitted to use donated foods only in those a la carte meals that may be claimed as reimbursable meals, in accordance with the nutritional requirements for such meals in 7 CFR part 210. However, the intent of the proposal was to ensure that schoolchildren receive the nutritional benefits provided by the donated foods, which they would receive whether those foods were included in the reimbursable meals or in the a la carte foods provided. Therefore, we have retained the requirements in 7 CFR 250.60(a) and (b) of this final rule as proposed, with one clarification. In addition to permitting donated foods to be used in meals served to adults directly involved in the operation and administration of the food service, this final rule permits their use in meals served to other school staff as well.

We proposed to include in this section the option for the school food authority to use donated foods in a contract with a food service management company to provide meals for use in its food service, in accordance with the requirements in subpart D of 7 CFR part 250. We proposed to require the school food authority to assure that a food service management company ensures reimbursement to the nonprofit food service account for donated foods used in catered meals or other activities outside of the nonprofit school food service. We also proposed to state that a school food authority may use donated foods to provide a meal service to other school food authorities, in accordance with an agreement between the parties. Under such an agreement, a school food authority providing the food service may commingle its own donated foods and the donated foods of the other school food authorities that are parties to the agreement. Since we received no comments in response to the proposals, they are retained in 7 CFR 250.60(c) and (d) of this final rule as proposed, except that the reference to ''catered meals'' in 7 CFR 250.60(c) is changed to ''meals for banquets or catered events'', in order to be consistent with the use of this term in 7 CFR 260.60(b).

6. Donated Foods in CACFP, 7 CFR 250.61

In 7 CFR 250.61 of the proposed rule, we proposed to describe the provision of donated foods in CACFP, through the distributing agency, for use in serving lunches and suppers to eligible participants in child care and adult care institutions. We proposed to include, in streamlined form, the determination of the minimum value of donated foods provided for distribution to such institutions participating in CACFP, in accordance with section 6(c) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1755(c)). We proposed to indicate that the number of reimbursable lunches and suppers may be adjusted during, or at the end of the year, in accordance with 7 CFR part 226. We also proposed to include the types of donated foods that the distributing agency may receive for distribution to child and adult care institutions. Since we did not receive any comments in response to the proposals, they are retained in 7 CFR 250.61(a) and (b) of this final rule as proposed, with only the following clarification. In 7 CFR 250.61(b), we clarify that, for each school year, the distributing agency receives, at a minimum, the national per-meal value of donated food assistance, or cash in lieu of donated foods, for each lunch and supper served in the previous year.

We proposed to include the responsibility of the State administering agency to determine whether child care and adult care institutions wish to receive donated foods or cash, and to work with the distributing agency (if a different agency) to ensure that donated foods are provided to those institutions that wish to receive them. We also proposed to include in this section the option for child care and adult care institutions to use donated foods in a contract with a food service management company to provide meals for use in its food service, in accordance with the requirements in subpart D of 7 CFR part 250. Lastly, we proposed to indicate that the requirements in this subpart relating to the ordering, storage and inventory management, and use of donated foods in NSLP, also apply to CACFP, except that a child care or adult care institution that uses donated foods to prepare and provide meals to other such institutions is considered a food service management company. Since we received no comments in response to the proposals, they are retained in 7 CFR 250.61(c), (d), and (e) of this final rule.

7. Donated Foods in SFSP, 7 CFR 250.62

In 7 CFR 250.62 of the proposed rule, we proposed to describe the provision of donated foods to service institutions participating in SFSP for use in serving meals to needy children primarily in the summer months, in their nonprofit food service programs. We proposed to describe the types and quantities of donated foods received by the distributing agency in SFSP. We proposed to indicate that the distributing agency provides donated foods to service institutions based on the number of meals served that are eligible for donated food support, in accordance with 7 CFR part 225. We also proposed to include in this section the option for service institutions to use donated foods in a contract with a food service management company to provide meals for use in its food service, in accordance with the requirements in subpart D of 7 CFR part 250. Lastly, we proposed to indicate that the requirements in this subpart relating to the ordering, storage and inventory management, and use of donated foods in NSLP, also apply to SFSP. Since we received no comments in response to the proposals, they are retained in 7 CFR 250.62 of this final rule.

G. Subpart F—Household Programs

In the proposed rule, we proposed to include, in a new subpart F of 7 CFR part 250, current requirements in 7 CFR 250.45, 250.46, 250.47, and 250.51, and redesignate them as 7 CFR 250.63 through 250.66, respectively, but otherwise without change. Since we received no comments in response to the proposed restructuring, it is included in this final rule as proposed.

H. Subpart G—Other Donated Food Outlets

In the proposed rule, we proposed to add a new subpart G of 7 CFR part 250 to include the distribution of donated foods to other outlets, including charitable institutions, NSIP, and to organizations assisting in situations of disasters and distress. In this new subpart, we proposed to include requirements for the distribution of donated foods to charitable institutions and to summer camps together in 7 CFR 250.67, which would replace current 7 CFR 250.40 and 250.41. We proposed to include requirements for the distribution of donated foods in NSIP in 7 CFR 250.68, which would replace the current 7 CFR 250.42. We proposed to include the current requirements in 7 CFR 250.43 and 250.44 for the distribution of donated foods in disasters and situations of distress in redesignated 7 CFR 250.69 and 250.70, but otherwise without change. Since we received no comments in response to the proposed redesignation and restructuring, it is included in this final rule as proposed. The following sections describe the specific changes to the current requirements for charitable institutions and NSIP.

1. Charitable Institutions, 7 CFR 250.67

In the proposed rule, we proposed to remove current requirements that a charitable institution's agreement with the distributing agency include information on the institution's days of operation and number of participants and meals served, data relating to the number of needy persons served, and a statement assuring that proper inventory controls will be maintained. We also proposed to remove current requirements that a summer camp's agreement with the distributing agency include data on the number of adults participating at camps relative to the number of children. We proposed to list some types of charitable institutions that may receive donated foods, if they meet the eligibility requirements in this section (including summer camps that do not participate in child nutrition programs), as well as some organizations that may not receive donated foods as charitable institutions. We proposed to streamline the qualifying criteria with respect to the rehabilitation programs of adult correctional institutions, which determine if such institutions may receive donated foods as charitable institutions. Since we received no comments in response to the proposals, they are retained in 7 CFR 250.67(a) and (b) of this final rule.

We proposed to include the appropriate data for the distributing agency to use in determining if an institution or organization serves predominantly needy persons, which is a requirement to meet the revised definition of ''Charitable institution'' in this final rule. The distributing agency may use, for example, socioeconomic data on the area in which the organization is located, or on the clientele served by the organization. We received one comment indicating that the proposal seems cumbersome considering the amount of donated foods provided to charitable institutions; for example, summer camps are often located in remote economically poor areas, but some participants may be from financially secure families. However, such a summer camp would be eligible to receive donated foods under the proposed requirements. The wide array of data permitted to determine if an institution serves predominantly needy persons would be considerably less of a burden on a distributing agency than the currently required submission and review of data on meals and participants served, or, for summer camps, data on the number of adults compared to the number of children at the camp. Thus, the proposals are retained in 7 CFR 250.67(c) of this final rule without change.

We proposed to include the types of donated foods that charitable institutions are eligible to receive—i.e., surplus donated foods, as available, which may be purchased under section 4(a), 32, 416, or 709. We proposed to include the requirement that the distributing agency distribute donated foods to charitable institutions based on the amounts that they may effectively utilize without waste, and the total amounts available for distribution to such institutions. Since we received no comments in response to the proposals, they are retained in 7 CFR 250.67(d) of this final rule.

Lastly, we proposed to include the option that a charitable institution may use donated foods in a contract with a food service management company, which must ensure that all donated foods received for use by the charitable institution in a fiscal year are used to benefit the charitable institution's food service. We did not receive any comments in response to this proposal. However, in accordance with the amended requirement in7 CFR 250.50(a) of this final rule, we have amended 7 CFR 250.67(e) in this final rule to require that all such donated foods must be used in (instead of benefit) the charitable institution's food service.

2. Nutrition Services Incentive Program (NSIP), 7 CFR 250.68

As described in the proposed rule, amendments to the Older Americans Act of 1965 (42 U.S.C. 3030a) in 2000 and 2003 made changes in the allocation of resources in, and the administration of, NSIP. In order to incorporate the legislative changes, we proposed to revise current requirements to indicate the role of the DHHS Administration on Aging (AoA) in administering the allocation of resources in NSIP, and the USDA role in purchasing and providing donated foods to those State Agencies on Aging requesting them as part of their NSIP grant. However, since the publication of the proposed rule, further amendments to the Older Americans Act of 1965 have been made. The Older Americans Act Amendments of 2006 (Pub. L. 109–365), enacted on October 17, 2006, removed the option for State Agencies on Aging to receive all or part of their NSIP grant as donated foods for fiscal year 2007. The enactment of the Older Americans Reauthorization Technical Corrections Act (Pub. L. 110–19), on April 23, 2007, restored this option for fiscal year 2008 and subsequent years. The latter legislation also requires a transfer of funds from AoA to FNS for the cost of purchasing donated foods and for expenses related to such purchases, rather than provide for reimbursement for such expenses. Lastly, the legislation authorizes FNS to carry over unused funds to make donated food purchases for the appropriate State Agencies on Aging in the subsequent fiscal year, rather than require the return of such funds to AoA for disbursal to State Agencies on Aging. Other procedures for the purchase and distribution of donated foods in NSIP were not changed by legislation, nor did we receive any comments in response to the clarification of such procedures in the proposed rule. Accordingly, 7 CFR 250.68, as finalized in this rule, incorporates the nondiscretionary legislative changes, as follows:

(1) 7 CFR 250.68(a) describes the transfer of funds from AoA to FNS for the purpose of purchasing donated foods and for related expenses; and

(2) 7 CFR 250.68(e) describes the carryover of any unused funds that have been transferred, to make donated food purchases in the following fiscal year, rather than the return of such funds to AoA.

I. Implementation of New Requirements

We received ten comments indicating that FNS should provide adequate time for implementation of new requirements, for updating of program information, and for amendment of agreements between distributing and recipient agencies. We received two comments indicating that extensive training will be needed to ensure effective implementation of the requirements. We agree that the requirements imposed by this final rule may necessitate some changes in procedures, including those related to recordkeeping and reviews, for distributing and recipient agencies, as well as amendments to agreements. Therefore, we have made this final rule effective 90 days after its publication in the **Federal Register**, rather than the more common 30- or 60-day period, to provide additional time to implement new procedures and agreement provisions. We are also committed to providing any necessary training to ensure effective implementation of the new requirements, and will work closely with distributing agencies, FNS Regional Offices, and with other parties, as appropriate, to ensure that such training is provided.

We received seven comments questioning how the proposed changes in food service management company contract requirements would affect existing contracts and contract

extensions. In a final rule published in the **Federal Register** on October 31, 2007 at 72 FR 61479, an implementation schedule was established to balance the need for prompt implementation of new food service management company contract requirements established in that rule with consideration of the need to honor existing contracts and procurements. The schedule was established in accordance with the one-year duration of food service management company contracts, with an option for up to four additional one-year renewals. In the interest of consistency, we will use the same basic implementation schedule for the new contract requirements established in this final rule, as follows:

(1) The requirements will be applicable for all new procurement solicitations initiated on or after the effective date of this final rule.

(2) For all procurement solicitations for contracts issued prior to the effective date of this final rule:

a. Recipient agencies and State agencies with contracts with a term of 12 months or fewer remaining are exempt from applying the provisions of this rulemaking to those contracts; and

b. With State administering agency approval, recipient agencies with contracts that have annual renewal provisions may delay implementation until expiration of the current contract plus one 12-month renewal period.

As in the final rule referenced in the previous paragraph, the State administering agency may choose to establish shorter time frames for implementation, or may require some recipient agencies to implement the requirements sooner than others. However, in no case may a recipient agency be permitted to delay implementation beyond the timeframes specified above.

III. Procedural Matters

A. Executive Order 12866

This rule has been determined to be significant and was reviewed by the Office of Management and Budget (OMB) in conformance with Executive Order 12866.

B. Regulatory Impact Analysis

1. Need for Action

This action is needed to respond to an OIG audit, which found that, in contracting with food service management companies, school food authorities did not always receive the full value of the donated foods provided for use in the NSLP. It also incorporates amendments to the Older Americans Act of 1965 (42 U.S.C. 3030a) that affect the NSIP, and revises and clarifies other requirements to ensure the efficient and effective management and use of donated foods.

2. Benefits

The regulatory changes help to ensure that recipient agencies receive the full benefit and value of donated foods provided to food service management companies for use in the recipient agencies' meals programs. The changes also remove reporting requirements used to determine the amount of surplus donated foods that charitable institutions may receive for service to needy persons. FNS quantified these benefits using audit results reported by the OIG. If the size and nature of the accounting problems uncovered by the OIG are indicative of problems with FSMC contracts nationwide, then an effective rule could generate benefits as high as $36 million over five years. However, given that the OIG did not choose a nationally representative sample for audit, this estimate is subject to considerable uncertainty.

3. Costs

This action is not expected to significantly increase costs of State and local agencies, or their commercial contractors, in using donated foods. FNS estimates five-year costs of roughly $243,000. Despite uncertainty with the estimate of potential benefits, the rule is undoubtedly cost-effective.

C. Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). The Under Secretary of Food, Nutrition, and Consumer Services, Nancy Montanez Johner, has certified that this action will not have a significant economic impact on a substantial number of small entities. Although the rule requires specific procedures for food service management companies, State distributing agencies, and recipient agencies to follow in using donated foods, USDA does not expect them to have a significant impact on such entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 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, FNS 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 FNS 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 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 the private sector of $100 million or more in any one year. This rule is, therefore, not subject to the requirements of sections 202 and 205 of the UMRA.

E. Executive Order 12372

The donation of foods in USDA food distribution and child nutrition programs, and to charitable institutions and elderly nutrition projects in NSIP, is included in the Catalog of Federal Domestic Assistance under 10.550. For the reasons set forth in the final rule in 7 CFR part 3015, subpart V and related Notice published at 48 FR 29114, June 24, 1983, the donation of foods in such programs is included in the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

F. Federalism Summary Impact Statement

In accordance with Executive Order 13132, FNS has considered the impact of the regulatory actions on State and local governments. The following paragraphs describe FNS's considerations in terms of the three categories called for under section (6)(b)(2)(B) of Executive Order 13132.

1. Prior Consultation With State Officials

The programs affected by the regulatory proposals in this rule are all State-administered, Federally-funded programs. FNS headquarters and regional offices have formal and informal discussions with State and local officials on an ongoing basis regarding program issues relating to the distribution of donated foods. FNS meets annually with the American Commodity Distribution Association, a national group with State, local, and industry representation, and the School Nutrition Association, to discuss issues relating to donated foods.

2. Nature of Concerns and the Need to Issue This Rule

The rule addresses concerns identified in an OIG audit with respect to the benefit and value of donated foods received by recipient agencies in their contracts with food service management companies. While the regulatory requirements imposed by this rule may increase the workload of State and local agencies to a certain extent, the provisions will help to ensure that recipient agencies receive the benefit and value of the donated foods provided for their use.

3. Extent to Which We Meet those Concerns

FNS has considered the impact of this final rule on State and local agencies. FNS has established compliance timeframes that give due consideration to the need for changes in contract requirements and in the procedures necessary to assure compliance with such requirements.

G. Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This 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 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.

H. Civil Rights Impact Analysis

FNS has reviewed this 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 minorities, women, and persons with disabilities. After a careful review of the rule's intent and provisions, FNS has determined that this rule will not in any way limit or reduce the ability of participants to receive the benefits of donated foods in food distribution programs on the basis of an individual's or group's race, color, national origin, sex, age, or disability. FNS found no factors that would negatively and disproportionately affect any group of individuals.

I. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; see 5 CFR part 1320) requires that the Office of Management and Budget (OMB) approve all collections of information by a Federal agency before they can be implemented. In the publication of the proposed rule on June 8, 2006, FNS solicited comments on the burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and ways to minimize the burden on respondents, including the use of automated collection techniques or other forms of information technology. Although FNS sought public comments specific to the estimated reporting and recordkeeping burden detailed in the proposed rule, no comments were received and the information collection burden associated with the proposed rule, OMB No. 0584–0293, was approved on August 8, 2006. However, since the publication of the proposed rule, FNS has found that the total estimated annual burden for OMB No. 0584–0293 should reflect a decrease to 1,070,452 hours, rather than the decrease to 1,085,814 hours included in the proposed rule. The discrepancy is a result of mathematical errors in calculating the burden hours. Additionally, in the most recent survey of school food authorities (SFAs) conducted in school year 2003–04, it was estimated that 13.4 percent of SFAs had contracts with FSMCs. Hence, for school year 2005–06, it is estimated that 2,783 of the 20,770 SFAs participating in NSLP had such contracts, rather than the 1,765 included in the proposed rule. This adjustment results in an increase of 1,272 burden hours for this particular activity, making the total estimated annual burden for OMB No. 0584–0293 1,071,724 hours, which is still a decrease from the proposed rule. The resulting changes in the reporting and recordkeeping burdens associated with food service management contracts, from both current levels, and those included in the proposed rule, are shown in the following table.

Section		Number of respondents	Number responses per respondent	Total annual responses	Hours per response	Total hours
Reporting						
250.12(d)	Current	300	0.25	75	0.33	24.75
250.54	Proposed	1,765	1	1,765	1	1,765
250.53	Final	2,783	1	2,783	1	2,783
Recordkeeping						
250.12(d)	Current	300			0.08	24
250.54/250.55	Proposed	1,765			0.25	442
250.53/250.54	Final	2,783			0.25	696

Estimated total number of respondents: 18,552.

Estimated total annual responses: 1,160,746.

Estimated annual burden: 1,071,724.

FNS will request an adjustment in the total annual burden associated with OMB No. 0584–0293 to reflect the changes indicated above. Additionally, these requirements will not become effective until approved by OMB. When these information collection requirements have been approved, FNS will publish separate action in the **Federal Register** announcing OMB's approval.

J. E-Government Act Compliance

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

List of Subjects in 7 CFR Part 250

Administrative practice and procedure, Food assistance programs, Grant programs, Social programs, Indians, Reporting and recordkeeping requirements, Surplus agricultural commodities.

■ Accordingly, 7 CFR part 250 is amended as follows:

PART 250—DONATION OF FOODS FOR USE IN THE UNITED STATES, ITS TERRITORIES AND POSSESSIONS AND AREAS UNDER ITS JURISDICTION

■ 1. The authority citation for part 250 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 612c, 612c note, 1431, 1431b, 1431e, 1431 note, 1446a–1, 1859, 2014, 2025; 15 U.S.C. 713c; 22 U.S.C. 1922; 42 U.S.C. 1751, 1755, 1758, 1760, 1761, 1762a, 1766, 3030a, 5179, 5180.

■ 2. In § 250.3:

■ a. Remove definitions of *Nonprofit summer camps for children, Nonresidential child or adult care institution, Nutrition program for the elderly, Offer-and-acceptance system, Program, and Students in home economics.*

■ b. Revise definitions of *Charitable institutions, Child nutrition program, Commodity school, End product, Food service management company, Processing, Processor, Recipient agencies, Recipients, Section 311, Service institutions,* and *State Agency on Aging.*

■ c. Add definitions, in the appropriate alphabetical order, of *Adult care institution, AoA, Bonus foods, CACFP, Child care institution, Commodity offer value, DHHS, Elderly nutrition project, Entitlement, Entitlement foods, National per-meal value, Nonprofit organization, Nonprofit school food service account, NSIP, NSLP, Reimbursable meals, SBP, 7 CFR part 3016, 7 CFR part 3019, SFSP, Single inventory management,* and *Summer camp.*

The revisions and additions read as follows:

§ 250.3 Definitions.

Adult care institution means a nonresidential adult day care center that participates independently in CACFP, or that participates as a sponsoring organization, in accordance with an agreement with the distributing agency.

AoA means the Administration on Aging, which is the DHHS agency that administers NSIP.

Bonus foods means Section 32, Section 416, and Section 709 donated foods, as defined in this section, which are purchased under surplus removal or price support authority, and provided to distributing agencies in addition to legislatively authorized levels of assistance.

CACFP means the Child and Adult Care Food Program, 7 CFR part 226.

Charitable institutions means public institutions or nonprofit organizations, as defined in this section, that provide a meal service on a regular basis to predominantly needy persons in the same place without marked changes. Charitable institutions include, but are not limited to, emergency shelters, soup kitchens, hospitals, retirement homes, elderly nutrition projects; schools, summer camps, service institutions, and child and adult care institutions that do not participate in a child nutrition program, or as a commodity school, as they are defined in this section; and adult correctional institutions that conduct rehabilitation programs for a majority of inmates.

Child care institution means a nonresidential child care center that participates independently in CACFP, or that participates as a sponsoring organization, in accordance with an agreement with the distributing agency.

Child nutrition program means NSLP, CACFP, SFSP, or SBP.

* * * * *

Commodity offer value means the minimum value of donated foods that the distributing agency must offer to a school food authority participating in NSLP each school year. The commodity offer value is equal to the national per-meal value of donated food assistance multiplied by the number of reimbursable lunches served by the school food authority in the previous school year.

Commodity school means a school that operates a nonprofit food service, in accordance with 7 CFR part 210, but that receives additional donated food assistance rather than the cash assistance available to it under Section 4 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1753).

* * * * *

DHHS means the United States Department of Health and Human Services.

* * * * *

Elderly nutrition project means a recipient agency selected by the State or Area Agency on Aging to receive donated foods in NSIP, for use in serving meals to elderly persons.

End product means a food product that contains processed donated foods.

Entitlement means the value of donated foods a distributing agency is authorized to receive in a specific program, in accordance with program legislation.

Entitlement foods means donated foods that USDA purchases and provides in accordance with levels of assistance mandated by program legislation.

* * * * *

Food service management company means a commercial enterprise, nonprofit organization, or public institution that is, or may be, contracted with by a recipient agency to manage any aspect of a recipient agency's food service, in accordance with 7 CFR parts 210, 225, or 226, or, with respect to charitable institutions, in accordance with this part. To the extent that such management includes the use of donated foods, the food service management company is subject to the applicable requirements in this part. However, a school food authority participating in NSLP that performs such functions is not considered a food service management company. Also, a commercial enterprise that uses donated foods to prepare meals at a commercial facility, or to perform other activities that meet the definition of processing in this section, is considered a processor in this part, and is subject to the requirements in subpart C of this part.

* * * * *

National per-meal value means the value of donated foods provided for each reimbursable lunch served in NSLP in the previous school year, and for each reimbursable lunch and supper served in CACFP in the previous school year, as established in Section 6(c) of the Richard B. Russell National School Lunch Act.

* * * * *

Nonprofit organization means a private organization with tax-exempt status under the Internal Revenue Code. Nonprofit organizations operated exclusively for religious purposes are automatically tax-exempt under the Internal Revenue Code.

* * * * *

Nonprofit school food service account means the restricted account in which all of the revenue from all food service operations conducted for the school food authority principally for the benefit of school children is retained and used only for the operation or improvement of the nonprofit school food service.

NSIP means the Nutrition Services Incentive Program, which is administered by the United States Department of Health and Human Services, in accordance with Section 311 of the Older Americans Act of 1965 (42 U.S.C. 3030a).

NSLP means the National School Lunch Program, 7 CFR part 210.

* * * * *

Processing means a commercial enterprise's use of a commercial facility to:

(a) Convert donated foods into an end product;

(b) Repackage donated foods; or

(c) Use donated foods in the preparation of meals.

Processor means a commercial enterprise that processes donated foods at a commercial facility.

Recipient agencies means agencies or organizations that receive donated foods, in accordance with agreements signed with a distributing agency, or with another recipient agency.

Recipients means persons receiving donated foods, or meals containing donated foods, provided by recipient agencies.

* * * * *

Reimbursable meals means meals that meet the nutritional standards established in Federal regulations pertaining to NSLP, SFSP, and CACFP, and that are served to eligible recipients.

SBP means the School Breakfast Program, 7 CFR part 220.

* * * * *

Section 311 means Section 311 of the Older Americans Act of 1965 (42 U.S.C. 3030a), which authorizes State Agencies on Aging under Title III of that Act, and any Title VI grantee (Indian Tribal Organization) under that Act, to receive all, or part, of their NSIP grant as donated foods.

* * * * *

Service institutions means recipient agencies that participate in SFSP.

7 CFR part 3016 means the Department's regulations establishing uniform administrative requirements for Federal grants and cooperative agreements and subawards to State, local, and Indian tribal governments.

7 CFR part 3019 means the Department's regulations establishing uniform administrative requirements for Federal grants and cooperative agreements awarded to institutions of higher education, hospitals, and other nonprofit organizations.

SFSP means the Summer Food Service Program, 7 CFR part 225.

* * * * *

Single inventory management means the commingling in storage of donated foods and foods from other sources, and the maintenance of a single inventory record of such commingled foods.

* * * * *

State Agency on Aging means:

(a) The State agency that has been designated by the Governor and approved by DHHS to administer the Nutrition Services Incentive Program; or

(b) The Indian Tribal Organization that has been approved by DHHS to administer the Nutrition Services Incentive Program.

* * * * *

Summer camp means a nonprofit or public camp for children aged 18 and under.

* * * * *

■ 3. In § 250.12:

■ a. Revise the section heading to read, as set forth below.

■ b. Remove the last sentence in paragraph (a).

■ c. Remove paragraphs (d), (e), and (f).

The revision reads as follows:

§ 250.12 Agreements.

* * * * *

■ 4. In § 250.19:

■ a. Revise the introductory text of paragraph (b)(1).

■ b. Remove paragraphs (b)(1)(i) and (b)(1)(v), and redesignate paragraphs (b)(1)(ii), (b)(1)(iii), and (b)(1)(iv), as paragraphs (b)(1)(i), (b)(1)(ii), and (b)(1)(iii), respectively.

■ c. Revise newly redesignated paragraph (b)(1)(i).

■ d. Remove paragraph (d).

The revision reads as follows:

§ 250.19 Reviews.

* * * * *

(b) * * * (1) As part of its review system, each distributing agency must establish procedures to ensure compliance with the requirements of this part, and with other Federal regulations, as applicable. Such procedures must include, for example, requirements relating to eligibility of recipient agencies and recipients, ordering, storage, and inventory of donated foods, reporting and recordkeeping, and civil rights, as they apply to specific programs. They must also include:

(i) An on-site review of all charitable institutions, or the food service management companies under contract with them, at a minimum, whenever the distributing agency identifies actual or probable deficiencies in the use of donated foods by such institutions, or by their contractors, through audits, investigations, complaints, or any other information.

* * * * *

■ 5. In § 250.24, revise paragraphs (d)(8), (d)(9), and (d)(10), to read as follows:

§ 250.24 Distributing agency performance standards.

* * * * *

(d) * * *

(8) Providing recipient agencies with ordering options and commodity values, and considering the specific needs and capabilities of such agencies in ordering donated foods;

(9) Offering school food authorities participating in NSLP, or as commodity schools, the commodity offer value of donated food assistance, at a minimum, and determining an adjusted assistance level in consultation with school food authorities, as appropriate, in accordance with § 250.58; and

(10) Ensuring that all school food authorities in NSLP are aware of the full list of available donated foods, have the opportunity to provide input at least annually in determining the donated foods from the full list that they may select for their food service, and receive all such selected donated foods that may be cost-effectively distributed to them.

* * * * *

■ 6. Add the heading for new subpart F to read as follows:

Subpart F—Household Programs

■ 7. Redesignate §§ 250.45, 250.46, 250.47, and 250.51, as §§ 250.63, 250.64, 250.65, and 250.66, respectively, and transfer them from subpart D to new subpart F.

■ 8. Add a new subpart G, consisting of §§ 250.67 and 250.68, to read as follows:

Subpart G—Other Donated Food Outlets

§ 250.67 Charitable institutions.

(a) *Distribution to charitable institutions.* The Department provides donated foods to distributing agencies for distribution to charitable institutions, as defined in this part. A charitable institution must have a signed agreement with the distributing agency in order to receive donated foods, in accordance with § 250.12(b). However, the following organizations may not receive donated foods as charitable institutions:

(1) Schools, summer camps, service institutions, and child and adult care institutions that participate in child nutrition programs or as commodity schools; and

(2) Adult correctional institutions that do not conduct rehabilitation programs for a majority of inmates.

(b) *Types of charitable institutions.* Some types of charitable institutions that may receive donated foods, if they meet the requirements of this section, include:

(1) Hospitals or retirement homes;

(2) Emergency shelters, soup kitchens, or emergency kitchens;

(3) Elderly nutrition projects or adult day care centers;

(4) Schools, summer camps, service institutions, and child care institutions that do not participate in child nutrition programs; and

(5) Adult correctional institutions that conduct rehabilitation programs for a majority of inmates.

(c) *Determining service to predominantly needy persons.* To determine if a charitable institution

serves predominantly needy persons, the distributing agency must use:

(1) Socioeconomic data of the area in which the organization is located, or of the clientele served by the organization;

(2) Data from other public or private social service agencies, or from State advisory boards, such as those established in accordance with 7 CFR 251.4(h)(4); or

(3) Other similar data.

(d) *Types and quantities of donated foods distributed.* A charitable institution may receive donated foods under Section 4(a), Section 32, Section 416, or Section 709, as available. The distributing agency must distribute donated foods to charitable institutions based on the quantities that each may effectively utilize without waste, and the total quantities available for distribution to such institutions.

(e) *Contracts with food service management companies.* A charitable institution may use donated foods in a contract with a food service management company. The contract must ensure that all donated foods received for use by the charitable institution in a fiscal year are used in the charitable institution's food service. However, the charitable institution is not subject to the other requirements in subpart D of this part relating to the use of donated foods under such contracts.

§ 250.68 Nutrition Services Incentive Program (NSIP).

(a) *Distribution of donated foods in NSIP.* The Department provides donated foods in NSIP to State Agencies on Aging and their selected elderly nutrition projects, for use in providing meals to elderly persons. NSIP is administered at the Federal level by DHHS' Administration on Aging (AoA), which provides an NSIP grant each year to State Agencies on Aging. The State agencies may choose to receive all, or part, of the grant as donated foods, on behalf of its elderly nutrition projects. The Department is responsible for the purchase of the donated foods and their delivery to State Agencies on Aging. AoA is responsible for transferring funds to the Department for the cost of donated food purchases and for expenses related to such purchases.

(b) *Types and quantities of donated foods distributed.* Each State Agency on Aging, and its elderly nutrition projects, may receive any types of donated foods available in food distribution or child nutrition programs, to the extent that such foods may be distributed cost-effectively. Each State Agency on Aging may receive donated foods with a value equal to its NSIP grant. Each State Agency on Aging and elderly nutrition projects may also receive donated foods under Section 32, Section 416, and Section 709, as available, and under Section 14 (42 U.S.C. 1762(a)).

(c) *Role of distributing agency.* The Department delivers NSIP donated foods to distributing agencies, which distribute them to elderly nutrition projects selected by each State or Area Agency on Aging. The distributing agency may only distribute donated foods to elderly nutrition projects with which they have signed agreements. The agreements must contain provisions that describe the roles of each party in ensuring that the desired donated foods are ordered, stored, and distributed in an effective manner.

(d) *Donated food values used in crediting a State Agency on Aging's NSIP grant.* FNS uses the average price (cost per pound) for USDA purchases of a donated food made in a contract period in crediting a State Agency on Aging's NSIP grant.

(e) *Coordination between FNS and AoA.* FNS and AoA coordinate their respective roles in NSIP through the execution of annual agreements. The agreement ensures that AoA transfers funds to FNS sufficient to purchase the donated foods requested by State Agencies on Aging, and to meet expenses related to such purchases. The agreement also authorizes FNS to carry over any such funds that are not used in the current fiscal year to make purchases of donated foods for the appropriate State Agencies on Aging in the following fiscal year.

§§ 250.43 and 250.44 [Redesignated as §§ 250.69 and 250.70]

■ 9. Redesignate §§ 250.43 and 250.44 as §§ 250.69 and 250.70, respectively, and transfer them from subpart D to new subpart G.

■ 10. Revise subparts D and E to read as follows:

Subpart D—Donated Foods in Contracts with Food Service Management Companies

250.50 Contract requirements and procurement.
250.51 Crediting for, and use of, donated foods.
250.52 Storage and inventory management of donated foods.
250.53 Contract provisions.
250.54 Recordkeeping and reviews.

Subpart E—National School Lunch Program (NSLP) and Other Child Nutrition Programs

250.56 Provision of donated foods in NSLP.
250.57 Commodity schools.
250.58 Ordering donated foods and their provision to school food authorities.
250.59 Storage and inventory management of donated foods.
250.60 Use of donated foods in the school food service.
250.61 Child and Adult Care Food Program (CACFP).
250.62 Summer Food Service Program (SFSP).

Subpart D—Donated Foods in Contracts With Food Service Management Companies

§ 250.50 Contract requirements and procurement.

(a) *Contract requirements.* Prior to donated foods being made available to a food service management company, the recipient agency must enter into a contract with the food service management company. The contract must ensure that all donated foods received for use by the recipient agency for a period specified as either the school year or fiscal year are used in the recipient agency's food service. Contracts between recipient agencies in child nutrition programs and food service management companies must also ensure compliance with other requirements in this subpart relating to donated foods, as well as other Federal requirements in 7 CFR parts 210, 220, 225, or 226, as applicable. Contracts between other recipient agencies—i.e., charitable institutions and recipient agencies utilizing TEFAP foods—and food service management companies are not subject to the other requirements in this subpart.

(b) *Types of contracts.* Recipient agencies may enter into a fixed-price or a cost-reimbursable contract with a food service management company, except that recipient agencies in CACFP are prohibited from entering into cost-reimbursable contracts, in accordance with 7 CFR part 226. Under a fixed-price contract, the recipient agency pays a fixed cost per meal provided or a fixed cost for a certain time period. Under a cost-reimbursable contract, the food service management company charges the recipient agency for food service operating costs, and also charges fixed fees for management or services.

(c) *Procurement requirements.* The recipient agency must meet Departmental procurement requirements in 7 CFR parts 3016 or 3019, as applicable, in obtaining the services of a food service management company, as well as applicable requirements in 7 CFR parts 210, 220, 225, or 226. The recipient agency must ensure that procurement documents, as well as contract provisions, include any donated food activities that a food service management company is to perform, such as those activities listed in paragraph (d) of this section. The procurement and contract must also specify the method used to determine the donated food values to be used in

crediting, or the actual values assigned, in accordance with § 250.51. The method used to determine the donated food values may not be established through a post-award negotiation, or by any other method that may directly or indirectly alter the terms and conditions of the procurement or contract.

(d) *Activities relating to donated foods.* A food service management company may perform specific activities relating to donated foods, such as those listed in this paragraph (d), in accordance with procurement documents and its contract with the recipient agency. Such activities may also include the procurement of processed end products on behalf of the recipient agency. Such procurement must ensure compliance with the requirements in subpart C of this part and with the provisions of the distributing or recipient agency's processing agreements, and must ensure crediting of the recipient agency for the value of donated foods contained in such end products at the processing agreement value. Although the food service management company may procure processed end products on behalf of the recipient agency, it may not itself enter into the processing agreement with the processor required in subpart C of this part. Other donated food activities that the food service management company may perform include:

(1) Preparing and serving meals;

(2) Ordering or selection of donated foods, in coordination with the recipient agency, and in accordance with § 250.58(a);

(3) Storage and inventory management of donated foods, in accordance with § 250.52; and

(4) Payment of processing fees or submittal of refund requests to a processor on behalf of the recipient agency, or remittance of refunds for the value of donated foods in processed end products to the recipient agency, in accordance with the requirements in subpart C of this part.

§ 250.51 Crediting for, and use of, donated foods.

(a) *Crediting for donated foods.* In both fixed-price and cost-reimbursable contracts, the food service management company must credit the recipient agency for the value of all donated foods received for use in the recipient agency's meal service in a school year or fiscal year (including both entitlement and bonus foods). Such requirement includes crediting for the value of donated foods contained in processed end products if the food service management company's contract requires it to:

(1) Procure processed end products on behalf of the recipient agency; or

(2) Act as an intermediary in passing the donated food value in processed end products on to the recipient agency.

(b) *Method and frequency of crediting.* The recipient agency may permit crediting for the value of donated foods through invoice reductions, refunds, discounts, or other means. However, all forms of crediting must provide clear documentation of the value received from the donated foods—e.g., by separate line item entries on invoices. If provided for in a fixed-price contract, the recipient agency may permit a food service management company to pre-credit for donated foods. In pre-crediting, a deduction for the value of donated foods is included in the established fixed price per meal. However, the recipient agency must ensure that the food service management company provides an additional credit for any donated foods not accounted for in the fixed price per meal—e.g., for donated foods that are not made available until later in the year. In cost-reimbursable contracts, crediting may be performed by disclosure; i.e., the food service management company credits the recipient agency for the value of donated foods by disclosing, in its billing for food costs submitted to the recipient agency, the savings resulting from the receipt of donated foods for the billing period. In all cases, the recipient agency must require crediting to be performed not less frequently than annually, and must ensure that the specified method of valuation of donated foods permits crediting to be achieved in the required time period. A school food authority must also ensure that the method, and timing, of crediting does not cause its cash resources to exceed the limits established in 7 CFR 210.9(b)(2).

(c) *Donated food values required in crediting.* The recipient agency must ensure that, in crediting it for the value of donated foods, the food service management company uses the donated food values determined by the distributing agency, in accordance with § 250.58(e), or, if approved by the distributing agency, donated food values determined by an alternate means of the recipient agency's choosing. For example, the recipient agency may, with the approval of the distributing agency, specify that the value will be the average price per pound for a food, or for a group or category of foods (e.g., all frozen foods or cereal products), as listed in market journals over a specified period of time. However, the method of determining the donated food values to be used in crediting must be included in procurement documents and in the contract, and must result in the determination of actual values; e.g., the average USDA purchase price for the period of the contract with the food vendor, or the average price per pound listed in market journals over a specified period of time. Negotiation of such values is not permitted. Additionally, the method of valuation must ensure that crediting may be achieved in accordance with paragraph (b) of this section, and at the specific frequency established in procurement documents and in the contract.

(d) *Use of donated foods.* The food service management company must use all donated ground beef, donated ground pork, and all processed end products, in the recipient agency's food service, and must use all other donated foods, or commercially purchased foods of the same generic identity, of U.S. origin, and of equal or better quality than the donated foods, in the recipient agency's food service (unless the contract specifically stipulates that the donated foods, and not such commercial substitutes, be used).

§ 250.52 Storage and inventory management of donated foods.

(a) *General requirements.* The food service management company must meet the general requirements in § 250.14(b) for the storage and inventory management of donated foods.

(b) *Storage and inventory with commercially purchased foods.* The food service management company may store and inventory donated foods together with foods it has purchased commercially for the school food authority's use (unless specifically prohibited in the contract). It may store and inventory such foods together with other commercially purchased foods only to the extent that such a system ensures compliance with the requirements for the use of donated foods in § 250.51(d)—i.e., use all donated ground beef and ground pork, and all end products in the food service, and use all other donated foods or commercially purchased foods of the same generic identity, of U.S. origin, and of equal or better quality than the donated foods, in the food service. Additionally, under cost-reimbursable contracts, the food service management company must ensure that its system of inventory management does not result in the recipient agency being charged for donated foods.

(c) *Disposition of donated foods and credit reconciliation upon termination*

of the contract. When a contract terminates, and is not extended or renewed, the food service management company must return all unused donated ground beef, donated ground pork, and processed end products, and must, at the recipient agency's discretion, return other unused donated foods. The recipient agency must ensure that the food service management company has credited it for the value of all donated foods received for use in the recipient agency's meal service in a school year or fiscal year, as applicable.

§ 250.53 Contract provisions.

(a) *Required contract provisions in fixed-price contracts.* The following provisions relating to the use of donated foods must be included, as applicable, in a recipient agency's fixed-price contract with a food service management company. Such provisions must also be included in procurement documents. The required provisions are:

(1) A statement that the food service management company must credit the recipient agency for the value of all donated foods received for use in the recipient agency's meal service in the school year or fiscal year (including both entitlement and bonus foods), and including the value of donated foods contained in processed end products, in accordance with the contingencies in § 250.51(a);

(2) The method and frequency by which crediting will occur, and the means of documentation to be utilized to verify that the value of all donated foods has been credited;

(3) The method of determining the donated food values to be used in crediting, in accordance with § 250.51(c), or the actual donated food values;

(4) Any activities relating to donated foods that the food service management company will be responsible for, in accordance with § 250.50(d), and assurance that such activities will be performed in accordance with the applicable requirements in 7 CFR part 250;

(5) A statement that the food service management company will use all donated ground beef and ground pork products, and all processed end products, in the recipient agency's food service;

(6) A statement that the food service management company will use all other donated foods, or will use commercially purchased foods of the same generic identity, of U.S. origin, and of equal of better quality than the donated foods, in the recipient agency's food service;

(7) Assurance that the procurement of processed end products on behalf of the recipient agency, as applicable, will ensure compliance with the requirements in subpart C of 7 CFR part 250 and with the provisions of distributing or recipient agency processing agreements, and will ensure crediting of the recipient agency for the value of donated foods contained in such end products at the processing agreement value;

(8) Assurance that the food service management company will not itself enter into the processing agreement with the processor required in subpart C of 7 CFR part 250;

(9) Assurance that the food service management company will comply with the storage and inventory requirements for donated foods;

(10) A statement that the distributing agency, subdistributing agency, or recipient agency, the Comptroller General, the Department of Agriculture, or their duly authorized representatives, may perform onsite reviews of the food service management company's food service operation, including the review of records, to ensure compliance with requirements for the management and use of donated foods;

(11) A statement that the food service management company will maintain records to document its compliance with requirements relating to donated foods, in accordance with § 250.54(b); and

(12) A statement that extensions or renewals of the contract, if applicable, are contingent upon the fulfillment of all contract provisions relating to donated foods.

(b) *Required contract provisions in cost-reimbursable contracts.* A cost-reimbursable contract must include the same provisions as those required for a fixed-price contract in paragraph (a) of this section. Such provisions must also be included in procurement documents. However, a cost-reimbursable contract must also contain a statement that the food service management company will ensure that its system of inventory management will not result in the recipient agency being charged for donated foods.

§ 250.54 Recordkeeping and reviews.

(a) *Recordkeeping requirements for the recipient agency.* The recipient agency must maintain the following records relating to the use of donated foods in its contract with the food service management company:

(1) The donated foods and processed end products received and provided to the food service management company for use in the recipient agency's food service;

(2) Documentation that the food service management company has credited it for the value of all donated foods received for use in the recipient agency's food service in the school or fiscal year, including, in accordance with the requirements in § 250.51(a), the value of donated foods contained in processed end products; and

(3) The actual donated food values used in crediting.

(b) *Recordkeeping requirements for the food service management company.* The food service management company must maintain the following records relating to the use of donated foods in its contract with the recipient agency:

(1) The donated foods and processed end products received from, or on behalf of, the recipient agency, for use in the recipient agency's food service;

(2) Documentation that it has credited the recipient agency for the value of all donated foods received for use in the recipient agency's food service in the school or fiscal year, including, in accordance with the requirements in § 250.51(a), the value of donated foods contained in processed end products; and

(3) Documentation of its procurement of processed end products on behalf of the recipient agency, as applicable.

(c) *Review requirements for the recipient agency.* The recipient agency must ensure that the food service management company is in compliance with the requirements of this part through its monitoring of the food service operation, as required in 7 CFR parts 210, 225, or 226, as applicable. The recipient agency must also conduct a reconciliation at least annually (and upon termination of the contract) to ensure that the food service management company has credited it for the value of all donated foods received for use in the recipient agency's food service in the school or fiscal year, including, in accordance with the requirements in § 250.51(a), the value of donated foods contained in processed end products.

(d) *Departmental reviews of food service management companies.* The Department may conduct reviews of food service management company operations, as necessary, to ensure compliance with the requirements of this part with respect to the use and management of donated foods.

Subpart E—National School Lunch Program (NSLP) and Other Child Nutrition Programs

§ 250.56 Provision of donated foods in NSLP.

(a) *Distribution of donated foods in NSLP.* The Department provides donated foods in NSLP to distributing agencies. Distributing agencies provide donated foods to school food authorities that participate in NSLP for use in serving nutritious lunches or other meals to schoolchildren in their nonprofit school food service. The distributing agency must confirm the participation of school food authorities in NSLP with the State administering agency (if different from the distributing agency). In addition to requirements in this part relating to donated foods, distributing agencies and school food authorities in NSLP must adhere to Federal regulations in 7 CFR part 210, as applicable.

(b) *Types of donated foods distributed.* The Department purchases a wide variety of foods for distribution in NSLP each school year. A list of available foods is posted on the FNS Web site, for access by distributing agencies and school food authorities. In addition to Section 6 foods (42 U.S.C. 1755) as described in paragraph (c) of this section, the distributing agency may also receive Section 14 donated foods (42 U.S.C. 1762(a)), and donated foods under Section 32 (7 U.S.C. 612c), Section 416 (7 U.S.C. 1431), or Section 709 (7 U.S.C. 1446a–1), as available.

(c) *National per-meal value of donated foods.* For each school year, the distributing agency receives, at a minimum, the national per-meal value of donated foods, as established by Section 6(c) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1755(c)), multiplied by the number of reimbursable lunches served in the State in the previous school year. The donated foods provided in this manner are referred to as Section 6 foods, or entitlement foods. The national per-meal value is adjusted each year to reflect changes in the Bureau of Labor Statistic's Producer Price Index for Foods Used in Schools and Institutions, in accordance with the Richard B. Russell National School Lunch Act. The adjusted value is published in a notice in the **Federal Register** in July of each year. Reimbursable lunches are those that meet the nutritional standards established in 7 CFR part 210, and that are reported to FNS, in accordance with the requirements in that part.

(d) *Donated food values used to credit distributing agency entitlement levels.* FNS uses the average price (cost per pound) for USDA purchases of donated food made in a contract period to credit distributing agency entitlement levels.

(e) *Cash in lieu of donated foods.* States that phased out their food distribution facilities prior to July 1, 1974, are permitted to choose to receive cash in lieu of the donated foods to which they would be entitled in NSLP, in accordance with the Richard B. Russell National School Lunch Act (42 U.S.C. 1765) and with 7 CFR part 240.

§ 250.57 Commodity schools.

(a) *Categorization of commodity schools.* Commodity schools are schools that operate a nonprofit school food service in accordance with 7 CFR part 210, but receive additional donated food assistance rather than the general cash payment available to them under Section 4 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1753). In addition to requirements in this part relating to donated foods, commodity schools must adhere to Federal regulations in 7 CFR part 210, as applicable.

(b) *Value of donated foods for commodity schools.* For participating commodity schools, the distributing agency receives donated foods valued at the sum of the national per-meal value and the value of the general cash payment available to it under Section 4 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1753), multiplied by the number of reimbursable lunches served by commodity schools in the previous school year. From the total value of donated food assistance for which it is eligible, a commodity school may elect to receive up to 5 cents per meal in cash to cover processing and handling expenses related to the use of donated foods. In addition to Section 6 and Section 14 foods under the Richard B. Russell National School Lunch Act (42 U.S.C. 1755 and 1762(a)), the distributing agency may also receive donated foods under Section 32 (7 U.S.C. 612c), Section 416 (7 U.S.C. 1431), or Section 709 (7 U.S.C. 1446a–1), as available, for commodity schools.

§ 250.58 Ordering donated foods and their provision to school food authorities.

(a) *Ordering and distribution of donated foods.* The distributing agency orders donated foods through a Web-based system called the Electronic Commodity Ordering System (ECOS). Through ECOS, the distributing agency places orders directly into a centralized computer system. Before submitting orders for donated foods to FNS, the distributing agency must ensure that all school food authorities are aware of the full list of available donated foods, and have the opportunity to provide input at least annually in determining the donated foods from the full list that are made available to them for ordering or selection. The distributing agency must ensure distribution to school food authorities of all such selected donated foods that may be cost-effectively distributed to them, and may not prohibit the use of split shipments in determining such cost-effectiveness.

(b) *Value of donated foods offered to school food authorities.* In accordance with Section 6(c) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1755(c)), the distributing agency must offer the school food authority, at a minimum, the national per-meal value of donated food assistance multiplied by the number of reimbursable lunches served by the school food authority in the previous school year. This is referred to as the commodity offer value. For a commodity school, the distributing agency must offer the sum of the national per-meal value of donated foods and the value of the general cash payment available to it under Section 4 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1753), multiplied by the number of reimbursable lunches served by the school in the previous school year. The school food authority may also receive bonus foods, as available, in addition to the Section 6 foods.

(c) *Receipt of less donated foods than the commodity offer value.* In certain cases, the school food authority may receive less donated foods than the commodity offer value in a school year. This ''adjusted'' value of donated foods is referred to as the adjusted assistance level. For example, the school food authority may receive an adjusted assistance level if:

(1) The distributing agency, in consultation with the school food authority, determines that the school food authority cannot efficiently utilize the commodity offer value of donated foods; or

(2) The school food authority does not order, or select, donated foods equal to the commodity offer value that can be cost-effectively distributed to it.

(d) *Receipt of more donated foods than the commodity offer value.* The school food authority may receive more donated foods than the commodity offer value if the distributing agency, in consultation with the school food authority, determines that the school food authority may efficiently utilize more donated foods than the commodity offer value, and more donated foods are available for distribution. This may occur, for example, if other school food

authorities receive less than the commodity offer value of donated foods for one of the reasons described in paragraph (c) of this section.

(e) *Donated food values required in crediting school food authorities.* The distributing agency must use one of the following values for donated foods in crediting the school food authority for its commodity offer value or adjusted assistance level:

(1) The USDA purchase price (cost per pound), which may be an average price for purchases made for the duration of the contract with the food vendor;

(2) Estimated cost-per-pound data provided by the Department, as included in commodity survey memoranda; or

(3) The USDA commodity file cost as of a date specified by the distributing agency.

§ 250.59 Storage and inventory management of donated foods.

(a) *General requirements.* Distributing agencies, subdistributing agencies, and school food authorities must meet the requirements for storage and inventory of donated foods in § 250.14, in addition to the requirements in this section.

(b) *Storage at distributing agency level.* The distributing or subdistributing agency, or storage facilities with which they have contracts, must store donated foods in a manner that permits them to be distinguished from commercially purchased foods or other foods, in order to ensure compliance with the requirements for the distribution and control of donated foods in this part.

(c) *Storage by school food authorities.* The school food authority may store and inventory donated foods together with commercially purchased foods and other foods, under a single inventory management system, as defined in this part, unless the distributing agency requires donated foods to be distinguished from commercially purchased foods in storage and inventoried separately.

(d) *Storage by storage facilities under contract with school food authorities.* A storage facility under contract with a school food authority may store and inventory donated foods together with commercially purchased foods it is storing for the school food authority, unless its contract with the school food authority prohibits this. However, the storage facility may not commingle foods it is storing for a school food authority with foods it is storing for a commercial enterprise or other entity.

§ 250.60 Use of donated foods in the school food service.

(a) *Use of donated foods in school lunches and other meals or activities.* The school food authority should use donated foods, as far as practical, in the lunches served to schoolchildren, for which they receive an established per-meal value of donated food assistance each school year. However, the school food authority may also use donated foods in other nonprofit school food service activities. Revenues received from such activities must accrue to the school food authority's nonprofit school food service account. Some examples of other activities in which donated foods may be used include:

(1) School breakfasts or other meals served in child nutrition programs;

(2) A la carte foods sold to children;

(3) Meals served to adults directly involved in the operation and administration of the nonprofit food service, and to other school staff; and

(4) Training in nutrition, health, food service, or general home economics instruction for students.

(b) *Use of donated foods outside of the nonprofit school food service.* The school food authority should not use donated foods in meals or food service activities that do not benefit primarily schoolchildren, such as banquets or catered events. However, their use in such meals or activities may not always be avoided, e.g, for a school food authority utilizing single inventory management. In all cases, the school food authority must ensure reimbursement to the nonprofit school food service account for the value of donated foods used in such activities, in addition to reimbursement for other resources utilized from that account. Since school food authorities utilizing single inventory management cannot reimburse the nonprofit school food service account based on actual usage of donated foods outside of the nonprofit school food service, they must establish an alternate method—e.g., by including the current per-meal value of donated food reimbursement in the price charged for the food service activities.

(c) *Use of donated foods in a contract with a food service management company.* A school food authority may use donated foods in a contract with a food service management company to conduct the food service. The contract must meet the requirements in subpart D of this part with respect to donated foods, and must also meet requirements in 7 CFR part 210 and 7 CFR parts 3016 or 3019, as applicable, with respect to the procurement of such contracts. The school food authority must also ensure that a food service management company providing meals for banquets or catered events, or other food service activities that do not benefit primarily schoolchildren, ensure reimbursement to the nonprofit school food service account for donated foods used in such activities, in accordance with paragraph (b) of this section.

(d) *Use of donated foods in providing a meal service to other school food authorities.* A school food authority may use donated foods to provide a meal service to other school food authorities, under an agreement between the parties. A school food authority providing such a service may commingle its own donated foods and the donated foods of other school food authorities that are parties to the agreement.

§ 250.61 Child and Adult Care Food Program (CACFP).

(a) *Distribution of donated foods in CACFP.* The Department provides donated foods in CACFP to distributing agencies, which provide them to child care and adult care institutions participating in CACFP for use in serving nutritious lunches and suppers to eligible recipients. Distributing agencies and child care and adult care institutions must also adhere to Federal regulations in 7 CFR part 226, as applicable.

(b) *Types and quantities of donated foods distributed.* For each school year, the distributing agency receives, at a minimum, the national per-meal value of donated food assistance (or cash in lieu of donated foods) multiplied by the number of reimbursable lunches and suppers served in the State in the previous school year, as established in Section 6(c) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1755(c)). The national per-meal value is adjusted each year to reflect changes in the Bureau of Labor Statistic's Producer Price Index for Foods Used in Schools and Institutions. The adjusted per-meal value is published in a notice in the **Federal Register** in July of each year. Reimbursable lunches and suppers are those meeting the nutritional standards established in 7 CFR part 226. The number of reimbursable lunches and suppers may be adjusted during, or at the end of the school year, in accordance with 7 CFR part 226. In addition to Section 6 entitlement foods (42 U.S.C. 1755(c)), the distributing agency may also receive Section 14 donated foods (42 U.S.C. 1762(a)), and donated foods under Section 32 (7 U.S.C. 612c), Section 416 (7 U.S.C. 1431), or Section 709 (7 U.S.C. 1446a–1), as available, for distribution to child care and adult care institutions participating in CACFP.

(c) *Cash in lieu of donated foods.* In accordance with the Richard B. Russell National School Lunch Act, and with 7 CFR part 226, the State administering agency must determine whether child care and adult care institutions participating in CACFP wish to receive donated foods or cash in lieu of donated foods, and ensure that they receive the preferred form of assistance. The State administering agency must inform the distributing agency (if a different agency) which institutions wish to receive donated foods and must ensure that such foods are provided to them. However, if the State administering agency, in consultation with the distributing agency, determines that distribution of such foods would not be cost-effective, it may, with the concurrence of FNS, provide cash payments to the applicable institutions instead.

(d) *Use of donated foods in a contract with a food service management company.* A child care or adult care institution may use donated foods in a contract with a food service management company to conduct its food service. The contract must meet the requirements in Subpart D of this part with respect to donated foods, and must also meet requirements in 7 CFR part 226 and 7 CFR parts 3016 or 3019, as applicable, with respect to the procurement of such contracts.

(e) *Applicability of other requirements in this subpart to CACFP.* The requirements in this subpart relating to the ordering, storage and inventory management, and use of donated foods in NSLP, also apply to CACFP. However, in accordance with 7 CFR part 226, a child care or adult care institution that uses donated foods to prepare and provide meals to other such institutions is considered a food service management company.

§ 250.62 Summer Food Service Program (SFSP).

(a) *Distribution of donated foods in SFSP.* The Department provides donated foods in SFSP to distributing agencies, which provide them to eligible service institutions participating in SFSP for use in serving nutritious meals to needy children primarily in the summer months, in their nonprofit food service programs. Distributing agencies and service institutions in SFSP must also adhere to Federal regulations in 7 CFR part 225, as applicable.

(b) *Types and quantities of donated foods distributed.* The distributing agency receives donated foods available under Section 6 and Section 14 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1755 and 1762), and may also receive donated foods under Section 32 (7 U.S.C. 612c), Section 416 (7 U.S.C. 1431), or Section 709(7 U.S.C. 1446a–1), as available, for distribution to eligible service institutions participating in SFSP. Section 6 donated foods are provided to distributing agencies in accordance with the number of meals served in the State in the previous school year that are eligible for donated food support, in accordance with 7 CFR part 225.

(c) *Distribution of donated foods to service institutions in SFSP.* The distributing agency provides donated food assistance to eligible service institutions participating in SFSP based on the number of meals served that are eligible for donated food support, in accordance with 7 CFR part 225.

(d) *Use of donated foods in a contract with a food service management company.* A service institution may use donated foods in a contract with a food service management company to conduct the food service. The contract must meet the requirements in Subpart D of this part with respect to donated foods, and must also meet requirements in 7 CFR part 225 and 7 CFR parts 3016 or 3019, as applicable, with respect to the procurement of such contracts.

(e) *Applicability of other requirements in this subpart to SFSP.* The requirements in this subpart relating to the ordering, storage and inventory management, and use of donated foods in NSLP, also apply to SFSP.

Dated: July 31, 2008.

Nancy Montanez Johner,

Under Secretary, Food, Nutrition, and Consumer Services.

[FR Doc. E8–18230 Filed 8–7–08; 8:45 am]

BILLING CODE 3410–30–P

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R–1320]

Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; staff commentary.

SUMMARY: The Board is publishing a final rule amending the staff commentary that interprets the requirements of Regulation Z (Truth in Lending). The Board is required to adjust annually the dollar amount that triggers requirements for certain home mortgage loans bearing fees above a certain amount. The Home Ownership and Equity Protection Act of 1994 (HOEPA) sets forth rules for home-secured loans in which the total points and fees payable by the consumer at or before loan consummation exceed the greater of $400 or 8 percent of the total loan amount. In keeping with the statute, the Board has annually adjusted the $400 amount based on the annual percentage change reflected in the Consumer Price Index that is in effect on June 1. The adjusted dollar amount for 2009 is $583. This adjustment does not affect the new rules for ''higher-priced mortgage loans'' adopted by the Board in July 2008.

EFFECTIVE DATE: January 1, 2009.

FOR FURTHER INFORMATION CONTACT: Dana Miller, Attorney, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667. For the users of Telecommunications Device for the Deaf (''TDD'') only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION:

I. Background

The Truth in Lending Act (TILA; 15 U.S.C. 1601–1666j) requires creditors to disclose credit terms and the cost of consumer credit as an annual percentage rate. The act requires additional disclosures for loans secured by a consumer's home, and permits consumers to cancel certain transactions that involve their principal dwelling. TILA is implemented by the Board's Regulation Z (12 CFR part 226). The Board's official staff commentary (12 CFR part 226 (Supp. I)) interprets the regulation, and provides guidance to creditors in applying the regulation to specific transactions.

HOEPA was contained in the Riegle Community Development and Regulatory Improvement Act of 1994 and was enacted as an amendment to TILA. Public Law 103–325, 108 Stat. 2160 (60 FR 15463). In 1995, the Board amended Regulation Z to implement HOEPA. These amendments, contained in §§ 226.32 and 226.34 of the regulation, impose substantive limitations and additional disclosure requirements on certain closed-end home mortgage loans bearing rates or fees above a certain percentage or amount. As enacted, the statute requires creditors to comply with HOEPA's requirements if the total points and fees payable by the consumer at or before loan consummation exceed the greater of $400 or 8 percent of the total loan amount. The statute requires the Board to adjust the $400 figure annually on January 1 based on the annual percentage change in the Consumer Price Index (CPI) that was reported on the preceding June 1. 15 U.S.C.

1602(aa)(3) and 12 CFR 226.32(a)(1)(ii). The Board adjusted the $400 amount to $561 for the year 2008.

The Bureau of Labor Statistics publishes consumer-based indices monthly, but does not report a CPI change on June 1; adjustments are reported in the middle of each month. The Board uses the CPI–U index, which is based on all urban consumers and represents approximately 87 percent of the U.S. population, as the index for adjusting the $400 dollar figure. The adjustment to the CPI–U index reported by the Bureau of Labor Statistics on May 14, 2008, was the CPI–U index in effect on June 1, and reflects the percentage increase from April 2007 to April 2008. The adjustment to the $400 figure below reflects a 3.94 percent increase in the CPI–U index for this period and is rounded to whole dollars for ease of compliance.

II. Adjustment and Commentary Revision

Effective January 1, 2009, for purposes of determining whether a home mortgage transaction is covered by 12 CFR 226.32 (based on the total points and fees payable by the consumer at or before loan consummation), a loan is covered if the points and fees exceed the greater of $583 or 8 percent of the total loan amount. Comment 32(a)(1)(ii)–2, which lists the adjustments for each year, is amended to reflect the dollar adjustment for 2009. Because the timing and method of the adjustment is set by statute, the Board finds that notice and public comment on the change are unnecessary.

This adjustment is being made pursuant to TILA section 103(aa)(3). In July 2008, the Board used its authority in TILA section 129(l)(2) to amend Regulation Z to prohibit certain acts and practices in connection with ''higher-priced mortgage loans.'' These additional protections and the definition of ''higher-priced mortgage loans'' are contained in section 226.35 of Regulation Z. The adjustment being published today pursuant to section 103(aa) does not affect the new rules for ''higher-priced mortgage loans'' adopted by the Board in section 226.35.

III. Regulatory Flexibility Analysis

The Board certifies that this amendment will not have a substantial effect on regulated entities because the only change is to raise the threshold for transactions requiring HOEPA disclosures.

List of Subjects in 12 CFR Part 226

Advertising, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Truth in lending.

■ For the reasons set forth in the preamble, the Board amends Regulation Z, 12 CFR part 226, as set forth below:

PART 226—TRUTH IN LENDING (REGULATION Z)

■ 1. The authority citation for part 226 continues to read as follows:

Authority: 12 U.S.C. 3806; 15 U.S.C. 1604 and 1637(c)(5).

■ 2. In Supplement I to part 226, under *Section 226.32—Requirements for Certain Closed-End Home Mortgages*, under Paragraph 32(a)(1)(ii), paragraph 2.xiv. is added to read as follows:

Supplement I to Part 226—Official Staff Interpretations

* * * * *

Subpart E—Special Rules for Certain Home Mortgage Transactions

* * * * *

Section 226.32—Requirements for Certain Closed-End Home Mortgages

32(a) Coverage

* * * * *

Paragraph 32(a)(1)(ii)

* * * * *

2. *Annual adjustment of $400 amount.*

* * * * *

xiv. For 2009, $583, reflecting a 3.94 percent increase in the CPI–U from June 2007 to June 2008, rounded to the nearest whole dollar.

* * * * *

By order of the Board of Governors of the Federal Reserve System, acting through the Director of the Division of Consumer and Community Affairs under delegated authority.

Dated: August 5, 2008.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E8–18275 Filed 8–7–08; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[USCG–2008–0785]

Drawbridge Operation Regulations; Shrewsbury River, Route 36 Bridge, Highlands, NJ, Schedule Change

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations; request for comments.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Route 36 Bridge, across the Shrewsbury River, mile 1.8, at Highlands, New Jersey. This deviation will test a change to the drawbridge operation schedule to determine whether a permanent change to the schedule is needed. This deviation will allow the bridge to open on signal for all marine traffic once an hour on the hour between 4 p.m. and 7 p.m. on weekends and holidays.

DATES: This deviation is effective from 4 p.m. on August 2, 2008, through 7 p.m. on September 1, 2008. Comments must reach the Coast Guard on or before November 1, 2008.

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG–2008–0785 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) *Online: http://www.regulations.gov.*

(2) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building ground floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(3) *Hand Delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366–9329.

(4) *Fax:* (202) 493–2251.

FOR FURTHER INFORMATION CONTACT: Mr. Gary Kassof, Project Officer, First Coast Guard District, (212) 668–7165.

If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2008–0785), indicate the specific section of this document to which each comment applies, and give the reason for each comment. We recommend that you include your name and mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission. You may submit your comments and materials by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and materials by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov* at any time. Enter the docket number for this rulemaking (USCG–2008–0785) in the Search box, and click ''Go>>.'' You may also visit either the Docket Management Facility in Room W12–140, on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays; or First Coast Guard District, Bridge Branch, One South Street, New York, NY 10004, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment), if submitted on behalf of an association, business, labor union, etc. You may review a Privacy Act, system of records notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Public Meeting

We do not plan to hold a public meeting. But you may submit a request for one to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The Route 36 Bridge has a vertical clearance in the closed position of 35 feet at mean high water and 39 feet at mean low water. The existing drawbridge operation regulations are listed at 33 CFR 117.755(a). The bridge presently opens on the hour and half hour between 7 a.m. and 8 p.m. from May 15 through October 15, and on signal from 8 p.m. to 11 p.m. From 11 p.m. to 7 a.m. the bridge opens on signal after a four-hour advance notice is given.

The Shrewsbury River is navigated predominantly by recreational power boats and sail boats of various sizes.

Currently only one lane of vehicular traffic is open northbound on the Route 36 Bridge due to the Highlands Bridge replacement project presently underway. Two lanes of vehicular traffic were closed in early July 2008, to facilitate the new bridge construction.

As a result of the vehicular travel lane closures traffic congestion has become a major concern to motorists and local officials. The nearby Gateway National Recreation Area, operated by the National Park Service, has been particularly impacted on weekends by traffic delays as a result of the bridge construction and drawbridge openings for vessel traffic.

The National Park Service, the New Jersey Department of Transportation, and local officials have made various adjustments to traffic control to help mitigate the vehicular traffic congestion; however, the traffic congestion on weekends in the afternoon continues to be a major safety concern when motorists are exiting the Sandy Hook area and the Gateway National Recreation Park.

As a result, the National Park Service requested a temporary deviation from the drawbridge operation regulations to test an alternate drawbridge operation schedule to help better balance the needs between vehicular land traffic and marine vessel traffic.

Under this temporary deviation, in effect from August 2, 2008 through September 1, 2008, the Route 36 Bridge at mile 1.8, across the Shrewsbury River, shall operate as follows:

Monday through Friday, the draw shall open on signal, from 7 a.m. to 8 p.m., on the hour and half hour only. From 8 p.m. to 11 p.m. the draw shall open on signal. From 11 p.m. to 7 a.m. the draw shall open on signal after at least a four-hour notice is given by calling 732–872–1052.

Saturday, Sunday and Labor Day, the draw shall open on signal from 7 a.m. to 4 p.m., and 7 p.m. to 8 p.m. on the hour and half hour only. From 4 p.m. to 7 p.m. the draw shall open on signal once an hour, on the hour only. From 8 p.m. to 11 p.m. the draw shall open on signal. From 11 p.m. to 7 a.m. the draw shall open on signal after at least a four-hour advance notice is given by calling 732–872–1052.

In accordance with 33 CFR 117.35(e), the bridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: July 31, 2008.

Gary Kassof,

Bridge Program Manager, First Coast Guard District.

[FR Doc. E8–18312 Filed 8–7–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[USCG–2008–0302]

RIN 1625–AA09

Drawbridge Operation Regulations; Smith Creek at Wilmington, NC

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the drawbridge operation regulations of the S117–S133 Bridge, at mile 1.5, across Smith Creek at Wilmington, NC. This action will allow that the draw need not be opened for the passage of vessels.

DATES: This rule is effective September 8, 2008.

ADDRESSES: Comments and related materials received from the public, as

well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2008–0302 and are available online at *http://www.regulations.gov*. This material is also available for inspection or copying at two locations: the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays and the Commander (dpb), Fifth Coast Guard District, Federal Building, 1st Floor, 431 Crawford Street, Portsmouth, VA 23704–5004 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call Gary S. Heyer, Bridge Management Specialist, Fifth Coast Guard District, at (757) 398–6629. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On May 15, 2008, we published a notice of proposed rulemaking (NPRM) entitled ''Drawbridge Operation Regulations; Smith Creek at Wilmington, NC'' in the **Federal Register** (73 FR 28069). We received no comments on the published NPRM. No public meeting was requested, and none was held.

Background and Purpose

The North Carolina Department of Transportation (NCDOT) is responsible for the operation of the S117–S133 Bridge, at mile 1.5, across Smith Creek at Wilmington, NC. The existing operating regulation is set out in 33 CFR 117.841 and requires the draw to open on signal if at least 24 hour notice is given. In the closed-to-navigation position, the S117–S133 Bridge has a vertical clearance of 12 feet, above mean high water.

From the 1930s to the 1970s, Smith Creek was the main waterway route for commercial vessel traffic servicing lumber mills and factories along the waterfront in Wilmington, NC. There are no longer any commercial interests requiring access upstream. NCDOT has not received a request to open the bridge in over 20 years for waterway navigation, and it has been more than 35 years since the bridge was actually manned by operators.

Due to the lack of requests for vessel openings of the drawbridge for the past 20 years, NCDOT requested to change the current operating regulations that the draw need not be opened for the passage of vessels.

Discussion of Comments and Changes

The Coast Guard received no comments to the NPRM. Based on the information provided, we will implement a final rule with no changes to the NPRM.

Discussion of Rule

The Coast Guard is amending 33 CFR 117.841, which governs the S117–S133 Bridge by revising the paragraph to read that the draw need not be opened for the passage of vessels.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. We reached this conclusion based on the fact that NCDOT has not received a request to open the bridge in over 20 years for waterway navigation.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will not have a significant economic impact on a substantial number of small entities because NCDOT has not received a request to open the bridge in over 20 years for waterway navigation.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to

minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Commandant Instruction M16475.1D and Department of Homeland Security Management Directive 5100.1, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (32) (e) of the Instruction, from further environmental documentation.

Under figure 2–1, paragraph (32)(e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

List of Subjects in 33 CFR Part 117

Bridges.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

■ 2. Revise § 117.841 to read as follows:

§ 117.841 Smith Creek.

The draw of the S117–S133 Bridge, mile 1.5 at Wilmington, need not open for the passage of vessels.

Dated: July 30, 2008.

Fred M. Rosa, Jr.,

Rear Admiral, United States Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. E8–18351 Filed 8–7–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[USCG–2008–0218]

RIN 1625–AA00

Safety Zones: Annual Events Requiring Safety Zones in the Captain of the Port Detroit Zone

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing safety zones for annual events in the Captain of the Port Detroit Zone. This rule consolidates current regulations establishing safety zones for annual fireworks events in the former Captain of the Port Toledo Zone and the former Captain of the Port Detroit Zone. In addition, it adds events not previously published in Coast Guard regulations. These safety zones are necessary to protect spectators, participants, and vessels from the hazards associated with fireworks displays or other events.

DATES: This rule is effective August 8, 2008.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2008–0218 and are available online at *http://www.regulations.gov*. This material is also available for inspection or copying at two locations: the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays and the U.S. Coast Guard, Sector Detroit, 110 Mt Elliot Ave, Detroit, MI 48207 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call CDR Joseph Snowden, Prevention, U.S. Coast Guard Sector Detroit at (313) 568–9580. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On May 22, 2008, we published a notice of proposed rulemaking (NPRM) entitled Safety Zones: Annual Events Requiring Safety Zones in the Captain of the Port Detroit Zone in the **Federal Register** (73 FR 29725). We received zero letters commenting on the rule. No public meeting was requested, and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying this rule would be contrary to the public interest of ensuring the safety and security of the spectators and participants during this event and immediate action is necessary to prevent possible loss of life or property.

Background and Purpose

In 2005, the Coast Guard consolidated the Captain of the Port Toledo Zone and the Captain of the Port Detroit Zone into one zone re-defining the Captain of the Port Detroit Zone. This rule consolidates the regulations found in 33 CFR 165.907, Safety Zones; Annual Fireworks Events in the Captain of the Port Detroit Zone with additional events not previously published in the CFR.

These safety zones are necessary to protect vessels and people from the hazards associated with fireworks displays or other events. Such hazards include obstructions to the waterway that may cause marine casualties and the explosive danger of fireworks and debris falling into the water that may cause death or serious bodily harm.

Discussion of Rule

These safety zones are necessary to ensure the safety of vessels and people during annual firework events in the Captain of the Port Detroit area of responsibility that may pose a hazard to the public. This new section unites all the annual firework events in the recently consolidated COTP Detroit zone into one section of the CFR. In addition, there are several events that are added and some events that have been deleted in this new section.

This rule adds the following events to those already occurring annually: (1) Roostertail Fireworks (land); (2) Roostertail Fireworks (barge); (3) Celebrate America Fireworks; (4) Target Fireworks; (5) Washington Township Summerfest Fireworks; (6) Au Gres City Fireworks; (7) The Old Club Fireworks; (8) Alpena Fireworks; (9) Put-In-Bay Fourth of July Fireworks; (10) Gatzeros Fireworks; (11) Harrisville Fireworks; (12) Harbor Beach Fireworks; (13) Trenton Rotary Roar on the River Fireworks; (14) Nautical Mile Venetian Festival Fireworks; (15) Cheeseburger Festival Fireworks; (16) Detroit International Jazz Festival Fireworks; (17) Marine City Maritime Festival Fireworks; (18) Schoenith Family Foundation Fireworks; (19) Toledo Country Club Memorial Celebration and Fireworks; (20) Luna Pier Fireworks Show; (21) Toledo Country Club 4th of July Fireworks; (22) Pharm Lights Up The Night Fireworks; (23) Perrysburg/Maumee 4th of July Fireworks; (24) Lakeside July 4th Fireworks; (25) Catawba Island Club Fireworks; (26) Red, White and Blues Bang Fireworks; (27) Huron Riverfest Fireworks; (28) Kellys Island, Island Fest Fireworks; (29) Riverfest at the International Docks; (30) Rossford Labor Day Fireworks; (31) Lakeside Labor Day Fireworks; and (32) Catawba Island Club Fireworks.

The following events in the rule already exist in the current regulation and are only being reorganized in this rule: (33) Bay-Rama Fishfly Festival Fireworks; (34) Jefferson Beach Marina Fireworks; (35) Sigma Gamma Association Fireworks; (36) Lake Erie Metropark Fireworks; (37) City of St. Clair Fireworks; (38) Oscoda Township Fireworks; (39) Port Austin Fireworks; (40) City of Wyandotte Fireworks; (41) Grosse Point Farms Fireworks; (42) Caseville Fireworks; (43) Algonac Pickerel Tournament Fireworks; (44) Port Sanilac Fireworks; (45) St. Clair Shores Fireworks; (46) Port Huron 4th of July Fireworks; (47) Grosse Point Yacht Club 4th of July Fireworks; (48) Lexington Independence Festival Fireworks; (49) City of Ecorse Water Festival Fireworks; (50) Grosse Isle Yacht Club Fireworks; (51) Trenton Fireworks; (52) Belle Maer Harbor 4th of July Fireworks; (53) Tawas City 4th of July Fireworks; and (54) Venetian Festival Boat Parade and Fireworks.

The safety zones will be enforced only immediately before, during, and after events that pose hazard to the public, and only upon notice by the Captain of the Port.

The Captain of the Port Detroit will notify the public that that the safety zones in this rule will be enforced by all appropriate means to the affected segments of the public including publication in the **Federal Register** as practicable, in accordance with 33 CFR 165.7(a). Such means of notification may also include, but are not limited to, Broadcast Notice to Mariners or Local Notice to Mariners. The Captain of the Port will issue a Broadcast Notice to Mariners notifying the public if enforcement of a safety zone established by this section is cancelled.

All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated representative. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Detroit, or his designated representative. The Captain of the Port or his designated representative may be contacted via VHF Channel 16.

Discussion of Comments and Changes

We received no comments with regard to this rule and no changes have been made to this rule.

Regulatory Analyses

We developed this rule after considering numerous statues and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

This determination is based on the minimal time that vessels will be restricted from the zone and the zone is an area where the Coast Guard expects insignificant adverse impact to mariners from the zone's activation.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: The owners of operators of vessels intending to transit or anchor in the areas designated as safety zones in subparagraphs (1) through (49) during the dates and times the safety zones are being enforced.

These safety zones would not have a significant economic impact on a substantial number of small entities for the following reasons: this rule would be in effect for short periods of time, and only once per year, per zone. The safety zones have been designed to allow traffic to pass safely around the zone whenever possible and vessels will be allowed to pass through the zones with the permission of the Captain of the Port. The Coast Guard will give notice to the public via a Broadcast Notice to Mariners that the regulation is in effect. Additionally, the COTP will suspend enforcement of the safety zone if the event for which the zone is established ends earlier than the expected time.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement

Fairness Act of 1996 (Pub. L. 104–121), in the NPRM we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard. We did not receive any comments for this section.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). We did not receive any comments for this section.

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism. We did not receive any comments for this section.

Unfunded Mandates Reform Act

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

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. We did not receive any comments for this section.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. We did not receive any comments for this section.

Protection of Children

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

Indian Tribal Governments

The Coast Guard recognizes the treaty rights of Native American Tribes. Moreover, the Coast Guard is committed to working with Tribal Governments to implement local policies and to mitigate tribal concerns. We have determined that these regulations and fishing rights protection need not be incompatible. We have also determined that this Rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. Nevertheless, Indian Tribes that have questions concerning the provisions of this Rule or options for compliance are encourage to contact the point of contact listed under **FOR FURTHER INFORMATION CONTACT**.

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 5100.1 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded under the Instruction that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. This event establishes a safety zone, therefore paragraph (34)(g) of the Instruction applies.

An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. Revise the authority citation for part 165 to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

§ 165.907 [Removed and Reserved]

■ 2. Remove and reserve § 165.907.

■ 3. Add § 165.941 to read as follows:

§ 165.941 Safety Zones; Annual Fireworks Events in the Captain of the Port Detroit Zone.

(a) *Safety Zones.* The following areas are designated Safety zones: (1) Roostertail Fireworks (barge), Detroit, MI:

(i) *Location:* All waters of the Detroit River within a 300-foot radius of the fireworks launch site located at position 42°21′16.67″ N, 082°58′20.41″ W. (NAD 83). This area is located between Detroit and Belle Isle near the Roostertail restaurant.

(ii) *Expected date:* One evening during the third week in July. The exact dates and times for this event will be determined annually.

(2) Washington Township Summerfest Fireworks, Toledo, OH:

(i) *Location:* All waters of the Ottawa River within a 600-foot radius of the fireworks launch site located at position 41°43′29″ N, 083°28′47″ W (NAD 83). This area is located at the Fred C. Young Bridge, Toledo, OH.

(ii) *Expected date:* One evening during the last week in June or the first week in July. The exact dates and times for this event will be determined annually.

(3) Au Gres City Fireworks, Au Gres, MI:

(i) *Location:* All waters of Saginaw Bay within a 700-foot radius of the fireworks launch site located at position 44°1.4′ N, 083°40.4′ W (NAD 83). This area is located at the end of the pier near the end of Riverside Drive in Au Gres, MI.

(ii) *Expected date:* One evening during the last week in June or the first week in July. The exact dates and times for this event will be determined annually.

(4) The Old Club Fireworks, Harsens Island, MI:

(i) *Location:* All waters of Lake St. Clair within an 850-foot radius of the fireworks launch site located at position 42°32.4′ N, 082°40.1′ W (NAD 83). This area is located near the southern end of Harsen's Island, MI.

(ii) *Expected date:* One evening during the last week of June or the first week of July. The exact dates and times for this event will be determined annually.

(5) Alpena Fireworks, Alpena, MI:

(i) *Location:* All waters of Lake Huron within an 800-foot radius of the fireworks launch site located at position 45°2.7′ N, 083°26.8′ W (NAD 83). This area is located near the end of Mason Street, South of State Avenue, in Alpena, MI.

(ii) *Expected date:* One evening during the last week in of June or the first week of July. The exact dates and times for this event will be determined annually.

(6) Put-In-Bay Fourth of July Fireworks, Put-In-Bay, OH:

(i) *Location:* All waters of Lake Erie within a 1000-foot radius of the fireworks launch site located at position 41°39.7′ N, 082°48.0′ W (NAD 83). This area is located in Put-In-Bay Harbor.

(ii) *Expected date:* One evening during the first week of July. The exact dates and times for this event will be determined annually.

(7) Gatzeros Fireworks, Grosse Point Park, MI:

(i) *Location:* All waters of Lake St. Clair within a 300-foot radius of the fireworks launch site located at position 42° 22.6′ N, 082°54.8′ W (NAD 83). This area is located near Grosse Point Park, MI.

(ii) *Expected date:* One evening during the first week in July. The exact dates and times for this event will be determined annually.

(8) Harrisville Fireworks, Harrisville, MI:

(i) *Location:* All waters of Lake Huron within a 450-foot radius of the fireworks launch site located at position 44°39.7′ N, 083°17.0′ W (NAD 83). This area is located at the end of the break wall at the Harrisville harbor in Harrisville, MI.

(ii) *Expected date:* One evening during the first week in July. The exact dates and times for this event will be determined annually.

(9) Harbor Beach Fireworks, Harbor Beach, MI:

(i) *Location:* All waters of Lake Huron within a 700-foot radius of the fireworks launch site located at position 43°50.8′ N, 082° 38.6′ W (NAD 83). This area is located at the end of the railroad pier east of the end of State Street in Harbor Beach, MI.

(ii) *Expected date:* One evening during the second week in July. The exact dates and times for this event will be determined annually.

(10) Trenton Rotary Roar on the River Fireworks, Trenton, MI:

(i) *Location:* All waters of the Detroit River within a 420-foot radius of the fireworks launch site located at position 42°7.8′ N, 083°10.4 ′ W (NAD 83). This area is located between Grosse Ile and Elizabeth Park in Trenton, MI.

(ii) *Expected date:* One evening during the third week in July. The exact dates and times for this event will be determined annually.

(11) Nautical Mile Venetian Festival Fireworks, St. Clair Shores, MI:

(i) *Location:* All waters of Lake St. Clair within a 210-foot radius of the fireworks launch site located at position 42°28.2′ N, 082°52.5′ W (NAD 83). This area is located near Jefferson Beach Marina in St. Clair Shores, MI.

(ii) *Expected date:* One evening during the second week in August. The exact dates and times for this event will be determined annually.

(12) Cheeseburger Festival Fireworks, Caseville, MI:

(i) *Location:* All waters of Lake Huron within a 300-foot radius of the fireworks launch site located at position 43°56.9′ N, 083°17.2′ W (NAD 83). This area is located near the break wall located at Caseville County Park, Caseville, MI.

(ii) *Expected date:* One evening during the second week in August. The exact dates and times for this event will be determined annually.

(13) Detroit International Jazz Festival Fireworks, Detroit, MI:

(i) *Location:* All waters of the Detroit River within a 560-foot radius of the fireworks launch site located at position 42°19.6′ N, 83°2.6′ W (NAD 83). This area is located in the Detroit River between Cobo Hall and the GM Headquarters in Detroit, MI.

(ii) *Expected date:* One evening during the last week in August or the first week in September. The exact dates and times for this event will be determined annually.

(14) Marine City Maritime Festival Fireworks, Marine City, MI:

(i) *Location:* All waters of the St. Clair River within an 840-foot radius of the fireworks launch site located at position 42°42.9′ N, 082°29.1′ W (NAD 83). This area is located east of Marine City.

(ii) *Expected date:* One evening during the third week in September. The exact dates and times for this event will be determined annually.

(15) Schoenith Family Foundation Fireworks, Detroit, MI:

(i) *Location:* All waters of the Detroit River, within a 210-foot radius of the fireworks launch site located at position 42°21.2′ N, 82°58.4′ W. (NAD 83). This area is located between Detroit and Belle Isle.

(ii) *Expected date:* One evening during the third week in September. The exact dates and times for this event will be determined annually.

(16) Toledo Country Club Memorial Celebration and Fireworks, Toledo, OH:

(i) *Location:* All waters of the Maumee River, within a 250-yard radius of the fireworks launch site located on shore at position 41°35′12.58″ N, 83°36′16.58″ W. (NAD 83). This area is located at the Toledo Country Club's 18th Green and encompasses the fireworks launch site.

(ii) *Expected date:* One evening during the last week in May. The exact dates and times for this event will be determined annually.

(17) Luna Pier Fireworks Show, Luna Pier, MI:

(i) *Location:* All waters of Lake Erie, within a 300-yard radius of the fireworks launch site located at position 41°48′32″ N, 83°26′23″ W. (NAD 83). This area is located at the Clyde E. Evens Municipal Pier.

(ii) *Expected date:* One evening during the first week in July. The exact dates and times for this event will be determined annually.

(18) Toledo Country Club 4th of July Fireworks, Toledo, OH:

(i) *Location:* All waters of the Maumee River, within a 250-yard radius of the fireworks launch site located on shore at position 41°35′12.58″ N, 83°36′16.58″ W. (NAD 83). This area is located at the Toledo Country Club's 18th Green and encompasses the fireworks launch site.

(ii) *Expected date:* One evening during the first week in July. The exact dates and times for this event will be determined annually.

(19) Pharm Lights Up The Night Fireworks, Toledo, OH:

(i) *Location:* All waters of the Maumee River, within a 300-yard radius of the fireworks launch site located at position 41°38′35″ N, 83°31′54″ W. (NAD 83). This position is located at the bow of the museum ship SS WILLIS B. BOYER.

(ii) *Expected date:* One day evening during the first or second weeks in July. The exact dates and times for this event will be determined annually.

(20) Perrysburg/Maumee 4th of July Fireworks, Perrysburg, OH:

(i) *Location:* All waters of the Maumee River, within an 850-foot radius of the fireworks launch site located at position 41°33′27″ N, 83°38′59″ W. (NAD 83). This position is located at the Perrysburg/Maumee Hwy 20 Bridge.

(ii) *Expected date:* One evening during the first week in July. The exact dates and times for this event will be determined annually.

(21) Lakeside July 4th Fireworks, Lakeside, OH:

(i) *Location:* All waters of Lake Erie, within a 560-foot radius of the fireworks launch site located at position 41°32′52″ N, 82°45′03″ W. (NAD 83). This position is located at the Lakeside Association Dock.

(ii) *Expected date:* One evening during the first week in July. The exact dates and times for this event will be determined annually.

(22) Catawba Island Club Fireworks, Catawba Island, OH:

(i) *Location:* All waters of Lake Erie, within a 300-yard radius of the fireworks launch site located at position 41°34′20″ N, 82°51′18″ W. (NAD 83). This position is located at the northwest end of the Catawba Cliffs Harbor Light Pier.

(ii) *Expected date:* One evening during the first week in July. The exact dates and times for this event will be determined annually.

(23) Red, White and Blues Bang Fireworks, Huron, OH:

(i) *Location:* All waters of the Huron River, within a 300-yard radius of the fireworks launch site located at position 41°23′29″ N, 82°32′55″ W. (NAD 83). This position is located at the Huron Ore Docks in Huron, OH.

(ii) *Expected date:* One evening during the first week in July. The exact dates and times for this event will be determined annually.

(24) Huron Riverfest Fireworks, Huron, OH:

(i) *Location:* All waters of Huron Harbor, within a 350-foot radius of the fireworks launch site located at the Huron Ore Docks at position 41°23′38″ N, 82°32′59″ W. (NAD 83).

(ii) *Expected date:* One evening during the second week in July. The exact dates and times for this event will be determined annually.

(25) Kellys Island, Island Fest Fireworks, Kellys Island, OH:

(i) *Location:* All waters of Lake Erie, within a 300-yard radius of the fireworks launch site located at position 41°35′43″ N, 82°43′30″ W. (NAD 83). This position is located at the old Neuman Boat Line Dock.

(ii) *Expected date:* One evening during the third or fourth weeks in July. The exact dates and times for this event will be determined annually.

(26) Riverfest at the International Docks, Toledo, OH:

(i) *Location:* All waters of the Maumee River, extending from the bow of the museum ship SS WILLIS B. BOYER (41°38′35″ N, 83°31′54″ W), then north/north-east to the south end of the City of Toledo Street (41°38′51″ N, 83°31′50″ W), then south-west to the red nun buoy #64 (41°38′48″ N, 83°31′58″), then south/south-east back to the point of origin at the bow of the museum ship SS WILLIS B. BOYER. (NAD 83).

(ii) *Expected date:* One evening during the first week in September. The exact dates and times for this event will be determined annually.

(27) Rossford Labor Day Fireworks, Rossford, OH:

(i) *Location:* All waters of the Maumee River, within a 350-yard radius of the fireworks launch site located at position 41°36′58″ N, 83°33′56″ W. (NAD 83). This position is located at Veterans Memorial Park.

(ii) *Expected date:* One evening during the first week in September. The exact dates and times for this event will be determined annually.

(28) Lakeside Labor Day Fireworks, Lakeside, OH:

(i) *Location:* All waters of Lake Erie, within a 560-foot radius of the fireworks launch site located at position 41°32′52″ N, 82°45′03″ W. (NAD 83). This position is located at the Lakeside Association Dock.

(ii) *Expected date:* One evening during the first week in September. The exact dates and times for this event will be determined annually.

(29) Catawba Island Club Fireworks, Catawba Island, OH:

(i) *Location:* All waters of Lake Erie, within a 300-yard radius of the fireworks launch site located at position 41°34′20″ N, 82°51′18″ W. (NAD 83). This position is located at the northwest end of the Catawba Cliffs Harbor Light Pier.

(ii) *Expected date:* One evening during the first week in September. The exact dates and times for this event will be determined annually.

(30) Bay-Rama Fishfly Festival Fireworks, New Baltimore, MI:

(i) *Location:* All waters of Lake St. Clair-Anchor Bay, off New Baltimore City Park, within a 300-yard radius of the fireworks launch site located at position 42°41′ N, 082°44′ W (NAD 83).

(ii) *Expected date:* One evening during the first week in June. The exact dates and times for this event will be determined annually.

(31) Lake Erie Metropark Fireworks, Gibraltar, MI:

(i) *Location:* All waters of Lake Erie, off Lake Erie Metro Park, within a 300-yard radius of the fireworks launch site located at position 42°03′N, 083°11′W (NAD 83). This position is located off the Brownstown Wave pool area.

(ii) *Expected date:* One evening during the first week in July. The exact dates and times for this event will be determined annually.

(32) City of St. Clair Fireworks, St. Clair, MI:

(i) *Location:* All waters off the St. Clair River near St. Clair City Park, within a 300-yard radius of the fireworks launch site located at position 42°49′ N, 082°29′ W (NAD 83).

(ii) *Expected date:* One evening during the first week in July. The exact dates and times for this event will be determined annually.

(33) Oscoda Township Fireworks, Oscoda, MI:

(i) *Location:* All waters of Lake Huron, off the DNR Boat Launch near the mouth of the Au Sable River within a 300-yard radius of the fireworks launch site located at position 44°19′ N, 083°25′ W (NAD 83).

(ii) *Expected date:* One evening during the first week in July. The exact dates and times for this event will be determined annually.

(34) Port Austin Fireworks, Port Austin, MI:

(i) *Location:* All waters of Lake Huron, off the Port Austin break wall within a 300-yard radius of the fireworks launch site located at position 42°03′ N, 082°40′ W. (NAD 83).

(ii) *Expected date:* One evening during the first week in July. The exact dates and times for this event will be determined annually.

(35) City of Wyandotte Fireworks, Wyandotte, MI:

(i) *Location:* All waters of the Detroit River, off the break wall between Oak and Van Alstyne St., within a 300-yard radius of the fireworks launch site located at position 42°12′ N, 083°09′ W. (NAD 83).

(ii) *Expected date:* One evening during the first week in July. The exact dates and times for this event will be determined annually.

(36) Grosse Pointe Farms Fireworks, Grosse Point Farms, MI:

(i) *Location:* All waters of Lake St. Clair, within a 300-yard radius of the fireworks barge located at position 42°23′ N, 082°52′ W. (NAD 83). This position is located 300 yards east of Grosse Pointe Farms, MI.

(ii) *Expected date:* One evening during the first week in July. The exact dates and times for this event will be determined annually.

(37) Caseville Fireworks, Caseville, MI:

(i) *Location:* All waters of Saginaw Bay, within a 300-yard radius of the fireworks launch site located at position 43°56.9′ N, 083°17.2′ W. (NAD 83). This position is located off the Caseville break wall.

(ii) *Expected date:* One evening during the first week in July. The exact dates and times for this event will be determined annually.

(38) Algonac Pickerel Tournament Fireworks, Algonac, MI:

(i) *Location:* All waters of the St. Clair River, within a 300-yard radius of the fireworks barge located at position 41°37′ N, 082°32′ W. (NAD 83). This position is located between Algonac and Russel Island, St. Clair River-North Channel.

(ii) *Expected date:* One evening during the first week in July. The exact dates and times for this event will be determined annually.

(39) Port Sanilac Fireworks, Port Sanilac, MI:

(i) *Location:* All waters of Lake Huron within a 300-yard radius of the fireworks launch site located at position 43°25′ N, 082°31′ W. (NAD 83). This position is located at the South Harbor Break wall in Port Sanilac.

(ii) *Expected date:* One evening during the first week in July. The exact dates and times for this event will be determined annually.

(40) St. Clair Shores Fireworks, St. Clair Shores, MI:

(i) *Location:* All waters of Lake St. Clair within a 300-yard radius of the fireworks barge located at position 42°32′ N, 082°51′ W. (NAD 83). This position is located 1000 yards east of Veteran's Memorial Park, St. Clair Shores.

(ii) *Expected date:* One evening during the first week in July. The exact dates and times for this event will be determined annually.

(41) Port Huron 4th of July Fireworks, Port Huron, MI:

(i) *Location:* All waters of the Black River within a 300-yard radius of the fireworks barge located at position 42°58′ N, 082°25′ W. (NAD 83). This position is located 300 yards east of 223 Huron Ave., Black River.

(ii) *Expected date:* One evening during the first week in July. The exact dates and times for this event will be determined annually.

(42) Grosse Point Yacht Club 4th of July Fireworks, Grosse Point Shores, MI:

(i) *Location:* All waters of Lake St. Clair within a 300-yard radius of the fireworks barge located at position 42°25′ N, 082°52′ W. (NAD 83). This position is located 400 yards east of the Grosse Point Yacht Club seawall, Lake St. Clair.

(ii) *Expected date:* One evening during the first week in July. The exact dates and times for this event will be determined annually.

(43) Lexington Independence Festival Fireworks, Lexington, MI:

(i) *Location:* All waters of Lake Huron within a 300-yard radius of the fireworks barge located at position 43°13′ N, 082°30′ W. (NAD 83). This position is located 300 yards east of the Lexington break wall, Lake Huron.

(ii) *Expected date:* One evening during the first week in July. The exact dates and times for this event will be determined annually.

(44) City of Ecorse Water Festival Fireworks, Ecorse, MI:

(i) *Location:* All waters of the Detroit River within a 300-yard radius of the fireworks barge located at position 41°14′ N, 083°09′ W. (NAD 83). This position is located in the Ecorse Channel at the northern end of Mud Island.

(ii) *Expected date:* One evening during the first week in July. The exact dates and times for this event will be determined annually.

(45) Grosse Isle Yacht Club Fireworks, Grosse Isle, MI:

(i) *Location:* All waters of the Detroit River within a 300-yard radius of the fireworks launch site located at position 42°05′ N, 083°09′ W. (NAD 83). This position is located in front of the Grosse Isle Yacht Club.

(ii) *Expected date:* One evening during the first week in July. The exact dates and times for this event will be determined annually.

(46) Trenton Fireworks, Trenton, MI:

(i) *Location:* All waters of the Detroit River within a 300-yard radius of the fireworks barge located at position 42°09′ N, 083°10′ W. (NAD 83). This position is located 200 yards east of Trenton in the Trenton Channel near Trenton, MI.

(ii) *Expected date:* One evening during the first week in July. The exact dates and times for this event will be determined annually.

(47) Belle Maer Harbor 4th of July Fireworks, Harrison Township, MI:

(i) *Location:* All waters of Lake St. Clair within a 300-yard radius of the fireworks barge located at position 42°36′ N, 082°47′ W. (NAD 83). This position is located 400 yards east of Belle Maer Harbor, Lake St. Clair.

(ii) *Expected date:* One evening during the first week in July. The exact dates and times for this event will be determined annually.

(48) Tawas City 4th of July Fireworks, Tawas, MI:

(i) *Location:* All waters of Lake Huron within a 300-yard radius of the fireworks launch site located at position 44°13′ N, 083°30′ W. (NAD 83). This position is located off the Tawas City Pier.

(ii) *Expected date:* One evening during the first week in July. The exact dates and times for this event will be determined annually.

(49) Venetian Festival Boat Parade and Fireworks, St. Clair Shores, MI:

(i) *Location:* All waters of Lake St. Clair within a 300-yard radius of the fireworks barge located at position 42°28′ N, 082°52′ W. (NAD 83). This position is located 600 yards off Jefferson Beach Marina, Lake St, Clair.

(ii) *Expected date:* One evening during the second week in August. The exact dates and times for this event will be determined annually.

(b) *Definitions.* The following definitions apply to this section:

(1) Designated Representative means any Coast Guard commissioned, warrant, or petty officer designated by the Captain of the Port Detroit to monitor a safety zone, permit entry into the zone, give legally enforceable orders to persons or vessels within the zones, and take other actions authorized by the Captain of the Port.

(2) Public vessel means vessels owned, chartered, or operated by the

United States, or by a State or political subdivision thereof.

(c) *Regulations*. (1) In accordance with the general regulations in § 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Detroit, or his designated representative.

(2)(i) These safety zones are closed to all vessel traffic, except as may be permitted by the Captain of the Port Detroit or his designated representative.

(ii) All persons and vessels must comply with the instructions of the Coast Guard Captain of the Port or his designated representative.

(iii) Upon being hailed by the U.S. Coast Guard by siren, radio, flashing light or other means, the operator of a vessel shall proceed as directed.

(3)(i) All vessels must obtain permission from the Captain of the Port or his designated representative to enter, move within, or exit the safety zone established in this section when this safety zone is enforced.

(ii) Vessels and persons granted permission to enter the safety zone must obey all lawful orders or directions of the Captain of the Port or a designated representative.

(iii) While within a safety zone, all vessels must operate at the minimum speed necessary to maintain a safe course.

(d) *Exemption*. Public vessels, as defined in paragraph (b) of this section, are exempt from the requirements in this section.

(e) *Waiver*. For any vessel, the Captain of the Port Detroit or his designated representative may waive any of the requirements of this section, upon finding that operational conditions or other circumstances are such that application of this section is unnecessary or impractical for the purposes of public or environmental safety.

(f) *Notification*. The Captain of the Port Detroit will notify the public that the safety zones in this section are or will be enforced by all appropriate means to the affected segments of the public including publication in the **Federal Register** as practicable, in accordance with 33 CFR 165.7(a). Such means of notification may also include, but are not limited to Broadcast Notice to Mariners or Local Notice to Mariners. The Captain of the Port will issue a Broadcast Notice to Mariners notifying the public when enforcement of the safety zone established by this section is cancelled.

Dated: July 11, 2008.

F.M. Midgette,

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

[FR Doc. E8–18095 Filed 8–7–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2008–0801]

Security Zone, Mackinac Bridge and Straits of Mackinac, Mackinaw City, MI

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the Mackinac Bridge Walk security zone on the Straits of Mackinac from 6 a.m. through 11:59 p.m. on September 1, 2008. This action is necessary to protect pedestrians during the event from an accidental or intentional vessel-to-bridge collision. During the enforcement period, navigational and operational restrictions will be placed on all vessels transiting through the Straits area, under and around the Mackinac Bridge, located between Mackinaw City, MI, and St. Ignace, MI. All vessels must obtain permission from the Captain of Port Sault Ste. Marie (COTP) or a Designated Representative to enter or move within the security zone.

DATES: The regulations in 33 CFR 165.928 will be enforced from 6 a.m. through 11:59 p.m. on September 1, 2008.

FOR FURTHER INFORMATION CONTACT: LCDR Christopher R. Friese, Prevention Dept. Chief, Sector Sault Ste. Marie, 337 Water St., Sault Ste. Marie, MI 49783; (906) 635–3220.

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the security zone for the annual Labor Day Mackinac Bridge Walk in 33 CFR 165.928 on September 1, 2008, from 6 a.m. to 11:59 p.m.

Under provisions of 33 CFR 165.928, a vessel may not enter or move with the regulated area, unless it receives permission from the COTP or a Designated Representative as defined in 33 CFR 165.928(a)(1). The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in enforcing this regulation.

This notice is issued under the authority of 33 CFR 165.928 and 5 U.S.C. 552(a). In addition to this notice in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of this enforcement period via a Local Broadcast Notice to Mariners.

Dated: July 31, 2008.

M.J. Huebschman,

Captain, U.S. Coast Guard, Captain of Port Sault Ste. Marie.

[FR Doc. E8–18349 Filed 8–7–08; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2008–0189; FRL–8702–1]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Section 110(a)(1) 8-Hour Ozone Maintenance Plan and 2002 Base-Year Inventory for the Schuylkill County Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. The Pennsylvania Department of Environmental Protection (PADEP) submitted a SIP revision consisting of a maintenance plan that provides for continued attainment of the 8-hour ozone national ambient air quality standard (NAAQS) for at least 10 years after the April 30, 2004, designations, as well as a 2002 base-year inventory for the Schuylkill County Area. EPA is approving the maintenance plan and the 2002 base-year inventory for the Schuylkill County Area as revisions to the Pennsylvania SIP in accordance with the requirements of the Clean Air Act (CAA).

DATES: *Effective Date:* This final rule is effective on September 8, 2008.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2008–0189. All documents in the docket are listed in the *www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy for public inspection during normal

business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Pennsylvania Department of Environment Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Melissa Linden, (215) 814–2096, or by e-mail at *linden.melissa@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On June 5, 2008 (73 FR 31947), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Pennsylvania. The NPR proposed approval of Pennsylvania's SIP revision that establishes a maintenance plan for the Schuylkill County Area that provides for continued attainment of the 8-hour ozone NAAQS for at least 10 years after designation, and a 2002 base-year emissions inventory. The formal SIP revisions were submitted by PADEP on December 17, 2007. Other specific requirements of Pennsylvania's SIP revision and the rationales for EPA's proposed actions are explained in the NPR and will not be restated here. No public comments were received on the NPR.

II. Final Action

EPA is approving the maintenance plan and the 2002 base-year inventory for the Schuylkill County Area, submitted on December 17, 2007, as revisions to the Pennsylvania SIP. EPA is approving the maintenance plan and 2002 base-year inventory for the Schuylkill County Area because it meets the requirements of section 110(a)(1) of the CAA.

III. Statutory and Executive Order Reviews

A. General Requirements

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

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

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

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

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 October 7, 2008. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action approving the maintenance plan and the 2002 base-year inventory for the Schuylkill County Area 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, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: July 25, 2008.

Donald S. Welsh,

Regional Administrator, Region III.

■ 40 CFR part 52 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 NN—Pennsylvania

■ 2. In § 52.2020, the table in paragraph (e)(1) is amended by adding an entry for the 8-Hour Ozone Maintenance Plan and 2002 Base-Year Inventory for Schuylkill County at the end of the table to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(e) * * *

(1) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
* *	*	*	*	* *
8-Hour Ozone Maintenance Plan and 2002 Base-Year Inventory.	Schuylkill County	12/17/07	*08/08/08* [Insert page number where the document begins].	

* * * * *

[FR Doc. E8–18188 Filed 8–7–08; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

48 CFR Part 522

[GSAR Amendment 2008–01; GSAR Case 2006–G505; (Change 22); Docket 2008–0007, Sequence 1]

RIN 3090–AI70

General Services Administration Acquisition Regulation; Rewrite of GSAR Part 522, Application of Labor Laws to Government Acquisitions

AGENCIES: General Services Administration (GSA), Office of the Chief Acquisition Officer.

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) is amending the General Services Administration Acquisition Regulation (GSAR) to revise language pertaining to application of labor laws to Government acquisitions. This rule is a product of the General Services Administration Acquisition Manual (GSAM) Rewrite Initiative, undertaken by GSA to revise the regulation to maintain consistency with the FAR and implement streamlined and innovative acquisition procedures for contractors, offerors, and GSA contracting personnel. The GSAM incorporates the GSAR as well as internal agency acquisition policy.

DATES: *Effective Date:* August 8, 2008.

FOR FURTHER INFORMATION CONTACT The Regulatory Secretariat (VPR), Room 4041, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Ernest Woodson, Procurement Analyst, at (202) 501–3775. Please cite Amendment 2008–01, GSAR case 2006–G505, (Change 22).

SUPPLEMENTARY INFORMATION:

A. Background

The GSAR Rewrite Project

GSA published an Advance Notice of Proposed Rulemaking (ANPR) in the **Federal Register** at 71 FR 7910, February 15, 2006 with request for comments because the agency was beginning the review and update of the General Services Administration Acquisition Regulation (GSAR).

This GSAR rewrite has—

- Changed ''you'' to ''contracting officer.''
- Maintained consistency with the FAR but eliminated duplication.
- Revised GSAR sections that are out of date or imposed inappropriate burdens on the Government or contractors, especially small businesses.
- Streamlined and simplified procedures, guidance, and policies wherever possible.

In addition, GSA has recently reorganized into two (2) operating services rather than three (3). Therefore, the reorganization of the Federal Supply Service (FSS) and the Federal Technology Service (FTS) into the Federal Acquisition Service (FAS) was considered in the Rewrite Initiative.

The Rewrite of Part 522

This final rule contains the revisions made to Part 522, Application of Labor Laws to Government Acquisitions. There are no substantive changes to the policies. Information previously contained in GSAR 522.101–1 regarding the necessary impartiality of GSA personnel in disputes between labor and contractor management is deleted as unnecessary because it repeats Federal Acquisition Regulation (FAR) language. GSAR 522.101–1(b) adds language to require contracting officers to notify the Office of General Counsel and the agency labor advisor when they are contacted by external organizations. GSAR 522.103–5 is revised to clarify that FAR clause 52.222–1, Notice to the Government of Labor Disputes, must be inserted in solicitations and contracts for DX-rated orders under the Defense Priorities and Allocations System (DPAS). GSAR Subpart 522.4, Labor Standards for Contracts, is deleted in its entirety because of its potential for conflict with FAR Subpart 22.4.

GSAR 522.804–1(b) is revised to indicate that contractors, subcontractors, and financial institutions must develop a written affirmative action compliance program for each of its establishments regardless of the contract or holding value, in accordance with 41 CFR 60–1.40. Paragraph 522.805(b) is revised to add websites that list the various Office of Federal Contract Compliance Programs (OFCCP) Regional Offices.

Discussion of Comments

As a result of the ANPR, GSA did not receive any comments pertaining to GSAR Part 522.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The General Services Administration 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 no new requirements are being placed on the vendor community. No comments on this issue were received from small business concerns or other interested parties.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the GSAR do not impose recordkeeping or information collection requirements, or otherwise collect information from offerors, contractors, or members of the public that require approval of the Office of Management and Budget under 44 U.S.C.3501, *et seq.*

List of Subjects in 48 CFR Part 522

Government procurement.

Dated: July 29, 2008.

David A. Drabkin,

Senior Procurement Executive, Office of the Chief Acquisition Officer, General Services Administration.

■ Therefore, GSA amends 48 CFR part 522 as set forth below:

PART 522—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

■ 1. The authority citation for 48 CFR part 522 is revised to read as follows:

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

■ 2. Revise section 522.001 to read as follows:

522.001 Definition.

Agency labor advisor, as used in this part, means the Director of the Contract Policy Division (VPC) within the Office of the Chief Acquisition Officer (OCAO).

■ 3. Revise section 522.101–1 to read as follows:

522.101–1 General.

The Office of General Counsel (OGC) and the agency labor advisor shall—

(a) Serve as the GSA points of contact on all contractor labor relations matters;

(b) Initiate contact on contractor labor relations matters with national offices of labor organizations, Government departments, agencies or other governmental organizations. Contracting offices shall notify OGC and the agency labor advisor when they are contacted by such external organizations;

(c) Serve as a clearinghouse for information on labor laws applicable to Government acquisitions; and

(d) Respond to questions involving FAR Part 22, Application of Labor Laws to Government Acquisitions, or other contractor labor relations matters concerning GSA acquisition programs. OGC determines the agency's legal position.

■ 4. Revise section 522.103–5 to read as follows:

522.103–5 Contract clauses.

Insert FAR 52.222–1, Notice to the Government of Labor Disputes, in solicitations and contracts for DX rated orders under the Defense Priorities and Allocations System (DPAS). Information on the DPAS can be found at FAR Subpart 11.6, Priorities and Allocations.

■ 5. Revise section 522.406–6 to read as follows:

522.406–6 Payrolls and statements.

Weekly payrolls and statements of compliance with respect to payment of wages are not required from a prime contractor or a subcontractor that personally performs work.

522.803 [Amended]

■ 6. Amend section 522.803 by removing ''Submit'' and adding ''Contracting officers should submit'' in its place.

■ 7. Amend section 522.804–1 as follows—

■

■ a. Remove from paragraph (a) the word ''who'' and add ''that'' in its place;

■ b. Remove from the end of paragraph (a)(1) the period and add ''; or'' in its place; and

■ c. Revise paragraph (b) to read as follows:

522.804–1 Nonconstruction.

* * * * *

(b) The contractors, subcontractors, and financial institutions described in 522.804–1(a) must develop a written affirmative action compliance program for each of its establishments regardless of the contract or holding value, in accordance with 41 CFR 60–1.40.

■ 8. Add section 522.804–2 to read as follows:

522.804–2 Construction.

Goals for the employment of minorities and women in the construction industry are established by the Director, Office of Federal Contract Compliance Programs (OFCCP), Department of Labor. The current goal for the utilization of women is 6.9%, regardless of the location of the Federal contract. This goal was extended indefinitely by the Department of Labor in 1980. The current goals for minority participation vary by location and are listed in Appendix E of DOL's ''Technical Assistance Guide for Federal Construction Contractors.'' This guide can be accessed at *http://www.dol.gov/esa/ofccp/TAguides/ctaguide.htm*.

■ 9. Amend section 522.805 as follows—

■

■ a. Removing from paragraph (a) the word ''include'' and adding ''contracting officers shall include'' in its place; and

■ b. Revising paragraphs (b) and (c) to read as follows:

522.805 Procedures.

* * * * *

(b) Contracting officers shall submit preaward clearance requests directly to the appropriate OFCCP regional office. A list of these offices can be found at *http://www.dol.gov/esa/contacts/ofccp/ofcpkeyp.htm*.

(c) The EEO poster required by FAR 22.805(b) can be found at: *http://www.dol.gov/esa/regs/compliance/posters/pdf/eeopost.pdf*. In addition to providing this poster to each non-exempt contractor, the contracting officer shall advise contractors to complete the Employer Information Report (EEO–1) at *http://www.eeoc.gov/eeo1survey/index.html*.

[FR Doc. E8–18290 Filed 8–7–08; 8:45 am]

BILLING CODE 6820–61–S

Proposed Rules

Federal Register
Vol. 73, No. 154
Friday, August 8, 2008

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

NUCLEAR REGULATORY COMMISSION

10 CFR Part 51

[Docket No. PRM–51–10, NRC–2006–0022 and Docket No. PRM–51–12, NRC–2007–0019]

The Attorney General of Commonwealth of Massachusetts, The Attorney General of California; Denial of Petitions for Rulemaking

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Petition for rulemaking; denial.

SUMMARY: The NRC is denying two petitions for rulemaking (PRM), one filed by the Attorney General of the Commonwealth of Massachusetts (Massachusetts AG) and the other filed by the Attorney General for the State of California (California AG), presenting nearly identical issues and requests for rulemaking concerning the environmental impacts of the high-density storage of spent nuclear fuel in large water pools, known as spent fuel pools (SFPs). The Petitioners asserted that ''new and significant information'' shows that the NRC incorrectly characterized the environmental impacts of high-density spent fuel storage as ''insignificant'' in its National Environmental Policy Act (NEPA) generic environmental impact statement (EIS) for the renewal of nuclear power plant licenses. Specifically, the Petitioners asserted that spent fuel stored in high-density SFPs is more vulnerable to a zirconium fire than the NRC concluded in its NEPA analysis.

ADDRESSES: You can access publicly available documents related to these petitions for rulemaking using the following methods:

Federal e-Rulemaking Portal: Go to *http://www.regulations.gov* and search for documents filed under Docket ID [NRC–2006–0022] (PRM–51–10), and [NRC–2007–0019] (PRM–51–12).

NRC's Public Document Room (PDR): The public may examine and have copied for a fee publicly available documents at the NRC's PDR, Public File Area O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

NRC's Agencywide Documents Access and Management System (ADAMS): Publicly available documents created or received at the NRC are available electronically at the NRC's electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR reference staff at 1–899–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: L. Mark Padovan, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–1423, e-mail *Mark.Padovan@nrc.gov.*

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VII. Denial of Petitions

I. Background

The NRC received two PRMs requesting that Title 10 of the Code of Federal Regulations (10 CFR), Part 51, be amended. The Massachusetts AG filed its petition on August 25, 2006 (docketed by the NRC as PRM–51–10). The NRC published a notice of receipt and request for public comment in the **Federal Register** on November 1, 2006 (71 FR 64169). The California AG filed its petition on March 16, 2007 (docketed by the NRC as PRM–51–12). PRM–51–12 incorporates by reference the facts and legal arguments set forth in PRM–51–10. The NRC published a notice of receipt and request for public comment on PRM–51–12 in the **Federal Register** on May 14, 2007 (72 FR 27068). The California AG filed an amended petition (treated by the NRC as a supplement to PRM 51–12) on September 19, 2007, to clarify its rulemaking request. The NRC published a notice of receipt for the supplemental petition in the **Federal Register** on November 14, 2007 (72 FR 64003). Because of the similarities of PRM–51–10 and PRM–51–12, the NRC evaluated the two petitions together.

The Petitioners asserted the following in their petitions:

1. ''New and significant information'' shows that the NRC incorrectly characterized the environmental impacts of high-density spent fuel storage as ''insignificant'' in the NRC's NUREG–1437, *Generic Environmental Impact Statement for License Renewal of Nuclear Plants,* May 1996. Specifically, the Petitioners asserted that an accident or a malicious act, such as a terrorist attack, could result in an SFP being drained, either partially or completely, of its cooling water. The Petitioners further asserted that this drainage would then cause the stored spent fuel assemblies to heat up and then ignite, with the resulting zirconium fire releasing a substantial amount of radioactive material into the environment.

2. The bases of the ''new and significant information'' are the following:

a. NUREG–1738, *Technical Study of the Spent Fuel Pool Accident Risk at Decommissioning Nuclear Power Plants,* January 2001

b. National Academy of Sciences Committee on the Safety and Security of Commercial Spent Nuclear Fuel Storage, *Safety and Security of Commercial*

Spent Nuclear Fuel Storage (National Academies Press: 2006) (NAS Report)

c. Gordon R. Thompson, ''Risks and Risk-Reducing Options Associated with Pool Storage of Spent Nuclear Fuel at the Pilgrim and Vermont Yankee Nuclear Power Plants,'' May 25, 2006 (Thompson Report)

3. Specifically, the Petitioners asserted that the ''new and significant'' information shows the following:

a. The fuel will burn if the water level in an SFP drops to the point where the tops of the fuel assemblies are uncovered (complete or partial water loss resulting from SFP drainage being caused by either an accident or terrorist attack).

b. The fuel will burn regardless of its age.

c. The zirconium fire will propagate to other assemblies in the pool.

d. The zirconium fire may be catastrophic.

e. A severe accident caused by an intentional attack on a nuclear power plant SFP is ''reasonably foreseeable.''

The Petitioners also asserted that new and significant information shows that the radiological risk of a zirconium fire in a high-density SFP at an operating nuclear power plant can be comparable to, or greater than, the risk of a core-degradation event of non-malicious origin (i.e., a ''severe accident'') at the plant's reactor. Consequently, the Petitioners asserted that SFP fires must be considered within the body of severe accident mitigation alternatives (SAMAs).

II. Petitioners' Requests

PRM–51–10 requested that the NRC take the following actions:

1. Consider new and significant information showing that the NRC's characterization of the environmental impacts of spent fuel storage as insignificant in NUREG–1437 is incorrect.

2. Revoke the regulations which codify that incorrect conclusion and excuse consideration of spent fuel storage impacts in NEPA decision-making documents, namely, 10 CFR 51.53(c)(2), 51.95(c) and Table B–1, ''Summary of Findings on NEPA Issues for License Renewal of Nuclear Power Plants,'' of appendix B to subpart A of 10 CFR Part 51. Further, revoke 10 CFR 51.23(a) and (b), 51.30(b), 51.53, 51.61, and 51.80(b) to the extent that these regulations find, imply, or assume that environmental impacts of high-density pool storage are insignificant, and therefore need not be considered in any plant-specific NEPA analysis.

3. Issue a generic determination that the environmental impacts of high-density pool storage of spent fuel are significant.

4. Require that any NRC licensing decision that approves high-density pool storage of spent fuel at a nuclear power plant, or any other facility, must be accompanied by a plant-specific EIS that addresses the environmental impacts of high-density pool storage of spent fuel at that nuclear plant and a reasonable array of alternatives for avoiding or mitigating those impacts.

5. Amend its regulations to require that SAMAs that must be discussed in utility company environmental reports (ERs) and NRC supplemental EISs for individual plants under 10 CFR 51.53(c)(3)(ii)(L) and Table B–1 of appendix B to subpart A of 10 CFR part 51 (''Postulated Accidents: Severe Accidents'') must include alternatives to avoid, or mitigate, the impacts of high-density pool zirconium fires.

PRM–51–12 incorporates by reference PRM–51–10. PRM–51–12 requested that the NRC take the following actions:

1. Rescind all NRC regulations found in 10 CFR part 51 that imply, find, or determine that the potential environmental effects of high-density pool storage of spent nuclear fuel are not significant for purposes of NEPA and NEPA analysis.

2. Adopt, and issue, a generic determination that approval of such storage at a nuclear power plant, or any other facility, does constitute a major federal action that may have a significant effect on the human environment.

3. Require that no NRC licensing decision that approves high-density pool storage of spent nuclear fuel at a nuclear power plant, or other storage facility, may issue without the prior adoption and certification of an EIS that complies with NEPA in all respects, including full identification, analysis, and disclosure of the potential environmental effects of such storage, including the potential for accidental or deliberately caused release of radioactive products to the environment, whether by accident or through acts of terrorism, as well as full and adequate discussion of potential mitigation for such effects, and full discussion of an adequate array of alternatives to the proposed storage project.

III. Public Comments

The NRC's notice of receipt and request for public comment invited interested persons to submit comments. The comment period for PRM 51–10 originally closed on January 16, 2007, but was extended through March 19, 2007. The public comment period for PRM 51–12 closed on July 30, 2007. Accordingly, the NRC considered comments received on both petitions through the end of July 2007. The NRC received 1,676 public comments, with 1,602 of these being nearly identical form e-mail comments supporting the petitions. Sixty-nine other comments also support the petitions. These comments were submitted by States, private organizations, and members of the U.S. Congress. Two letters from the Nuclear Energy Institute (NEI) oppose the petitions, and three nuclear industry comments endorse NEI's comments.

In general, the comments supporting the petitions focused on the following main elements of the petitions:

- NRC should evaluate the environmental impacts (large radioactive releases and contamination of vast areas) of severe accidents and intentional attacks on high-density SFP storage in its licensing decisions (NEPA analysis).
- The 2006 decision of the United States Court of Appeals for the Ninth Circuit, *San Luis Obispo Mothers for Peace* v. *NRC,* 449 F.3d 1016 (9th Cir. 2006), *cert. denied* 127 S. Ct. 1124 (2007), concluded that the NRC must evaluate the environmental impacts of a terrorist attack on SFP storage in its licensing decisions.
- NRC's claim that the likelihood of a SFP zirconium fire is remote is incorrect. Partial loss of water in an SFP could lead to a zirconium fire and release radioactivity to the environment.
- NRC's characterization of the environmental impacts of high-density SFP storage as ''insignificant'' in NUREG–1437 is incorrect, and the NRC should revoke the regulations which codify this.
- Any licensing decision approving high-density spent fuel storage should have an EIS.

Comments opposing the petitions centered on the following:

- Petitioners failed to show that regulatory relief is needed to address ''new and significant'' information concerning the potential for spent fuel zirconium fires in connection with high-density SFP storage. None of the documents that the Petitioners cited or referenced satisfy the NRC's standard for new and significant information.
- Petitioners failed to show that the Commission should rescind its Waste Confidence decision codified at 10 CFR 51.23, or change its determination that the environmental impacts of high-density spent fuel storage are insignificant.
- The Commission has recently affirmed its longstanding view that NEPA demands no terrorism inquiry,

and that the NRC therefore need not consider the environmental consequences of hypothetical terrorist attacks on NRC-licensed facilities.

• The Commission's rejection of the Ninth Circuit Court's view is consistent with the U.S. Supreme Court's position that NEPA should not be read to force agencies to consider environmental impacts for which they cannot reasonably be held responsible. Moreover, the NRC has, in fact, examined terrorism under NEPA and found the impacts similar to the impacts of already-analyzed, severe reactor accidents.

The NRC reviewed and considered the comments in its decision to deny both petitions, as discussed in the following sections:

IV. NEPA and NUREG–1437

The NRC's environmental protection regulations in 10 CFR Part 51 identify renewal of a nuclear power plant operating license as a major federal action significantly affecting the quality of the human environment. As such, an EIS is required for a plant license renewal review in accordance with the NEPA. The Petitioners challenge NUREG–1437, which generically assesses the significance of various environmental impacts associated with the renewal of nuclear power plant licenses. NUREG–1437 summarizes the findings of a systematic inquiry into the potential environmental consequences of operating individual nuclear power plants for an additional 20 years. The findings of NUREG–1437 are codified in Table B–1 of appendix B to subpart A of 10 CFR part 51.

The NUREG–1437 analysis identifies the attributes of the nuclear power plants, such as major features and plant systems, and the ways in which the plants can affect the environment. The analysis also identifies the possible refurbishment activities and modifications to maintenance and operating procedures that might be undertaken given the requirements of the safety review as provided for in the NRC's nuclear power plant license renewal regulations at 10 CFR part 54.

NUREG–1437 assigns one of three impact levels (small, moderate, or large) to a given environmental resource (e.g., air, water, or soil). A small impact means that the environmental effects are not detectable, or are so minor that they will neither destabilize, nor noticeably alter, any important attribute of the resource. A moderate impact means that the environmental effects are sufficient to alter noticeably, but not to destabilize, important attributes of the resource. A large impact means that the environmental effects are clearly noticeable, and are sufficient to destabilize important attributes of the resource.

In addition to determining the significance of environmental impacts associated with license renewal, the NRC determined whether the analysis in NUREG–1437 for a given resource can be applied to all plants. Under the NUREG–1437 analysis, impacts will be considered Category 1 or Category 2. A Category 1 determination means that the environmental impacts associated with that resource are generic (i.e., the same) for all plants. A Category 2 determination means that the environmental impacts associated with that resource cannot be generically assessed, and must be assessed on a plant-specific basis.

The NRC regulations at 10 CFR part 51, subpart A, appendix B, Table B–1 and NUREG–1437 set forth three criteria for an issue to be classified as Category 1. The first criterion is that the environmental impacts associated with that resource have been determined to apply to all plants. The second criterion is that a single significance level (i.e., small, moderate, or large) has been assigned to the impacts.[1] The third criterion is that the mitigation of any adverse impacts associated with the resource has been considered in NUREG–1437 and further, it has been determined that additional plant-specific mitigation measures are not likely to be sufficiently beneficial to warrant implementation. For Category 1 issues, the generic analysis may be adopted in each plant-specific license renewal review.

A Category 2 classification means that the NUREG–1437 analysis does not meet the criteria of Category 1. Thus, on that particular environmental issue, additional plant-specific review is required and must be analyzed by the license renewal applicant in its ER.

For each license renewal application, the NRC will prepare a draft supplemental EIS (SEIS) to analyze those plant-specific (Category 2) issues. Neither the SEIS nor the ER is required to cover Category 1 issues. However, both are required to consider any new and significant information for Category 1 or unidentified issues. The draft SEIS is made available for public comment. After considering public comments, the NRC will prepare and issue the final SEIS in accordance with 10 CFR 51.91 and 51.93. The final SEIS and NUREG–1437, together, serve as the requisite NEPA analysis for any given license renewal application.

The NUREG–1437 analysis, as shown in Table B–1 of appendix B to subpart A of 10 CFR part 51, found that the environmental impact of the storage of spent nuclear fuel, including high-density storage, in SFPs, during any plant refurbishment or plant operation through the license renewal term, are of a small significance level and meet all Category 1 criteria. It is this finding that the Petitioners challenge. After reviewing the petitions and the public comments received, the NRC has determined that its findings in NUREG–1437 and in Table B–1 remain valid, both for SFP accidents and for potential terrorist attacks that could result in an SFP zirconium fire.

V. Reasons for Denial—General

A. Spent Fuel Pools

Spent nuclear fuel offloaded from a reactor is stored in a SFP. The SFPs at all nuclear plants in the United States are massive, extremely-robust structures designed to safely contain the spent fuel discharged from a nuclear reactor under a variety of normal, off-normal, and hypothetical accident conditions (e.g., loss of electrical power, floods, earthquakes, or tornadoes). SFPs are made of thick, reinforced, concrete walls and floors lined with welded, stainless-steel plates to form a leak-tight barrier. Racks fitted in the SFPs store the fuel assemblies in a controlled configuration (i.e., so that the fuel is both sub-critical and in a coolable geometry). Redundant monitoring, cooling, and makeup-water systems are provided. The spent fuel assemblies are positioned in racks at the bottom of the pool, and are typically covered by at least 25 feet of water. SFPs are essentially passive systems.

The water in the SFPs provides radiation shielding and spent fuel assembly cooling. It also captures radionuclides in case of fuel rod leaks. The water in the pool is circulated through heat exchangers for cooling. Filters capture any radionuclides and other contaminants that get into the water. Makeup water can also be added to the pool to replace water loss.

SFPs are located at reactor sites, typically within the fuel-handling (pressurized-water reactor) or reactor building (boiling-water reactor). From a structural point of view, nuclear power plants are designed to protect against external events such as tornadoes, hurricanes, fires, and floods. These structural features, complemented by the deployment of effective and visible

[1] A note to Table B–1 states that significance levels have not been assigned ''for collective off site radiological impacts from the fuel cycle and from high level waste and spent fuel disposal.'' 10 CFR part 51, subpart A, app. B, Table B–1, n. 2.

physical security protection measures, are also deterrents to terrorist activities. Additionally, the emergency procedures and SAMA guidelines developed for reactor accidents provide a means for mitigating the potential consequences of terrorist attacks.

B. Physical Security

The Petitioners raise the possibility of a successful terrorist attack as increasing the probability of an SFP zirconium fire. As the NAS Report found, the probability of terrorist attacks on SFPs cannot be reliably assessed, quantitatively or comparatively. The NRC has determined, however, that security and mitigation measures the NRC has imposed upon its licensees since September 11, 2001, and national anti-terrorist measures to prevent, for example, aircraft hijackings, coupled with the robust nature of SFPs, make the probability of a successful terrorist attack, though numerically indeterminable, very low.

The NRC's regulations and security orders require licensees to develop security and training plans for NRC review and approval, implement procedures for these plans, and to periodically demonstrate proficiency through tests and exercises.[2] In addition, reactor physical security systems use a defense-in-depth concept, involving the following:

- Vehicle (external) barriers.
- Fences.
- Intrusion detection, alarm, and assessment systems.
- Internal barriers.
- Armed responders.
- Redundant alarm stations with command, control, and communications systems.
- Local law enforcement authority's response to a site and augmentation of the on-site armed response force.
- Security and emergency-preparedness procedure development and planning efforts with local officials.
- Security personnel training and qualification.

The NRC's regulatory approach for maintaining the safety and security of power reactors, and thus SFPs, is based upon robust designs that are coupled with a strategic triad of preventive/protective systems, mitigative systems, and emergency-preparedness and response. Furthermore, each licensee's security functions are integrated and coordinated with reactor operations and emergency response functions. Licensees develop protective strategies in order to meet the NRC design-basis threat (DBT).[3] In addition, other Federal agencies such as the Federal Aviation Administration, the Federal Bureau of Investigation, and the Department of Homeland Security have taken aggressive steps to prevent terrorist attacks in the United States. Taken as a whole, these systems, personnel, and procedures provide reasonable assurance that public health and safety, the environment, and the common defense and security will be adequately protected.

C. Very Low Risk

Risk is defined as the probability of the occurrence of a given event multiplied by the consequences of that event.[4] Studies conducted over the last three decades have consistently shown that the probability of an accident causing a zirconium fire in an SFP to be lower than that for severe reactor accidents. The risk of beyond design-basis accidents (DBAs) in SFPs was first examined as part of the landmark *Reactor Safety Study: An Assessment of Accident Risks in U.S. Commercial Nuclear Power Plants* (WASH–1400, NUREG–75/014, 1975), and was found to be several orders of magnitude below those involving the reactor core. The risk of an SFP accident was re-examined in the 1980's as Generic Issue 82, *Beyond Design Basis Accidents in Spent Fuel Pools*, in light of increased use of high-density storage racks and laboratory studies that indicated the possibility of zirconium fire propagation between assemblies in an air-cooled environment. The risk assessment and cost-benefit analyses developed through this effort, NUREG–1353, *Regulatory Analysis for the Resolution of Generic Issue 82, Beyond Design Basis Accidents in Spent Fuel Pools*, Section 6.2, April 1989, concluded that the risk of a severe accident in the SFP was low and ''appear[s] to meet'' the objectives of the Commission's ''Safety Goals for the Operations of Nuclear Power Plants; Policy Statement,'' (August 4, 1986; 51 FR 28044), as amended (August 21, 1986; 51 FR 30028), and that no new regulatory requirements were warranted.[5]

SFP accident risk was re-assessed in the late 1990s to support a risk-informed rulemaking for permanently shutdown, or decommissioned, nuclear power plants. The study, NUREG–1738, *Technical Study of Spent Fuel Pool Accident Risk at Decommissioning Nuclear Power Plants*, January 2001, conservatively assumed that if the water level in the SFP dropped below the top of the spent fuel, an SFP zirconium fire involving all of the spent fuel would occur, and thereby bounded those conditions associated with air cooling of the fuel (including partial-draindown scenarios) and fire propagation. Even when all events leading to the spent fuel assemblies becoming partially or completely uncovered were assumed to result in an SFP zirconium fire, the study found the risk of an SFP fire to be low and well within the Commission's Safety Goals.

Furthermore, significant additional analyses have been performed since September 11, 2001, that support the view that the risk of a successful terrorist attack (i.e., one that results in an SFP zirconium fire) is very low. These analyses were conducted by the Sandia National Laboratories and are collectively referred to herein as the ''Sandia studies.''[6] The Sandia studies

[2] For additional related information, please see the NRC fact sheet ''NRC Review of Paper on Reducing Hazards From Stored Spent Nuclear Fuel,'' which is available on the NRC's public Web site at: *http://www.nrc.gov/reading-rm/doc-collections/fact-sheets/reducing-hazards-spent-fuel.html.*

[3] The DBT represents the largest threat against which a private sector facility can be reasonably expected to defend with high assurance. The NRC's DBT rule was published in the **Federal Register** on March 19, 2007 (72 FR 12705).

[4] The American Society of Mechanical Engineers (ASME) ''Standard for Probabilistic Risk Assessment for Nuclear Power Plant Applications,'' ASME RA–S–2002, defines risk as the probability and consequences of an event, as expressed by the risk ''triplet'' that is the answer to the following three questions: (1) What can go wrong? (2) How likely is it? and (3) What are the consequences if it occurs?

[5] The Commission's Safety Goals identified two quantitative objectives concerning mortality risks: (1) The risk to an average individual in the vicinity of a nuclear power plant of prompt fatalities that might result from reactor accidents should not exceed one-tenth of one percent (0.1 percent) of the sum of prompt fatality risks resulting from other accidents in which members of the U.S. population are generally exposed; and (2) The risk to the population in the area near a nuclear power plant of cancer fatalities that might result from nuclear power plant operation should not exceed one-tenth of one percent (0.1 percent) of the sum of cancer fatality risks resulting from all other causes.

[6] Sandia National Laboratories, ''Mitigation of Spent Fuel Pool Loss-of-Coolant Inventory Accidents and Extension of Reference Plant Analyses to Other Spent Fuel Pools,'' Sandia Letter Report, Revision 2 (November 2006) incorporates and summarizes the Sandia Studies. This document is designated ''Official Use Only—Security Related Information.'' A version of the Sandia Studies, with substantial redactions, was made public as a response to a Freedom of Information Act request. It is available on the NRC's Agencywide Document Access and Management System (ADAMS). The redacted version can be found under ADAMS Accession No. ML062290362. For access to ADAMS, contact the NRC Public Document Room Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov*. For additional related information, please see the NRC fact sheet ''NRC Review of Paper on Reducing Hazards From Stored Spent Nuclear Fuel,'' which is available on the NRC's public Web site at: *http://www.nrc.gov/reading-rm/doc-collections/fact-sheets/reducing-hazards-spent-fuel.html.*

are sensitive security related information and are not available to the public. The Sandia studies considered spent fuel loading patterns and other aspects of a pressurized-water reactor SFP and a boiling-water reactor SFP, including the role that the circulation of air plays in the cooling of spent fuel. The Sandia studies indicated that there may be a significant amount of time between the initiating event (i.e., the event that causes the SFP water level to drop) and the spent fuel assemblies becoming partially or completely uncovered. In addition, the Sandia studies indicated that for those hypothetical conditions where air cooling may not be effective in preventing a zirconium fire (i.e., the partial drain down scenario cited by the Petitioners), there is a significant amount of time between the spent fuel becoming uncovered and the possible onset of such a zirconium fire, thereby providing a substantial opportunity for both operator and system event mitigation.

The Sandia studies, which more fully account for relevant heat transfer and fluid flow mechanisms, also indicated that air-cooling of spent fuel would be sufficient to prevent SFP zirconium fires at a point much earlier following fuel offload from the reactor than previously considered (e.g., in NUREG–1738). Thus, the fuel is more easily cooled, and the likelihood of an SFP fire is therefore reduced.

Additional mitigation strategies implemented subsequent to September 11, 2001, enhance spent fuel coolability and the potential to recover SFP water level and cooling prior to a potential SFP zirconium fire. The Sandia studies also confirmed the effectiveness of additional mitigation strategies to maintain spent fuel cooling in the event the pool is drained and its initial water inventory is reduced or lost entirely. Based on this more recent information, and the implementation of additional strategies following September 11, 2001, the probability, and accordingly, the risk, of a SFP zirconium fire initiation is expected to be less than reported in NUREG–1738 and previous studies.

Given the physical robustness of SFPs, the physical security measures, and SFP mitigation measures, and based upon NRC site evaluations of every SFP in the United States, the NRC has determined that the risk of an SFP zirconium fire, whether caused by an accident or a terrorist attack, is very low. As such, the NRC's generic findings in NUREG–1437, as further reflected in Table B–1 of appendix B to subpart A of 10 CFR part 51, remain valid.

VI. Reasons for Denial—NRC Responses to Petitioners' Assertions

A. New and Significant Information

The Petitioners asserted that new and significant information shows that the NRC incorrectly characterized the environmental impacts of spent fuel storage as ''insignificant.'' The information relied upon by the Petitioners, however, is neither ''new'' nor ''significant,'' within the NRC's definition of those terms. The NRC defines these terms in its Supplement 1 to NRC Regulatory Guide 4.2, *Preparation of Supplemental Environmental Reports for Applications to Renew Nuclear Power Plant Operating Licenses*, Chapter 5 (September 2000) (RG 4.2S1). ''New and significant'' information, which would require supplementing NUREG–1437, is defined as follows:

(1) Information that identifies a significant environmental issue that was not considered in NUREG–1437 and, consequently, not codified in Appendix B to Subpart A of 10 CFR Part 51, or

(2) Information that was not considered in the analyses summarized in NUREG–1437 and that leads to an impact finding different from that codified in 10 CFR Part 51.

The Petitioners' ''new and significant'' information does not meet the RG 4.2S1 criteria. NUREG–1437 (Sections 6.4.6.1. to 6.4.6.3.), and the analyses cited therein, including the NRC's ''Waste Confidence Rule'' (September 18, 1990; 55 FR 38474, 38480–81), extensively considered the risk of SFP accidents. Moreover, to the extent any information submitted by the Petitioners was not considered in NUREG–1437, none of the information is ''significant,'' because, as explained further in this document, it would not lead to ''an impact finding different from that codified in 10 CFR Part 51,'' or as set forth in NUREG–1437.

B. Spent Fuel Assemblies Will Burn If Uncovered

The Petitioners asserted that new and significant information, consisting primarily of the Thompson Report, NUREG–1738, and a government-sponsored study, the NAS Report, show that spent fuel will burn if the water level in an SFP drops to the point where the tops of the fuel assemblies are uncovered. Specifically, the Petitioners asserted that the NRC fails to recognize the danger of a partial loss of water in an SFP, which in the Petitioners' view, is more likely to cause an SFP zirconium fire than a complete loss of water, because the remaining water will block the circulating air that would otherwise act to cool the spent fuel assemblies.

The NRC does not agree with the Petitioners' assertions. The NRC has determined that a zirconium cladding fire does not occur when only the tops of the fuel assemblies are uncovered. In reality, a zirconium fire cannot occur unless fuel uncovering is more substantial. Even then, the occurrence of a zirconium fire requires a number of conditions which are extremely unlikely to occur together. The Sandia studies provide a more realistic assessment of the coolability of spent fuel under a range of conditions and a better understanding of the actual safety margins than was indicated in NUREG–1738. The Sandia studies have consistently and conclusively shown that the safety margins are much larger than indicated by previous studies such as NUREG–1738.

1. Heat Transfer Mechanisms

Past NRC studies of spent fuel heatup and zirconium fire initiation conservatively did not consider certain natural heat-transfer mechanisms which would serve to limit heatup of the spent fuel assemblies and prevent a zirconium fire. In particular, these studies, including NUREG–1738, did not consider heat transfer from higher-decay-power assemblies to older, lower-decay-power fuel assemblies in the SFP. This heat transfer would substantially increase the effectiveness of air cooling in the event the SFP is drained, far beyond the effectiveness of air cooling cited in past studies. Both the Sandia studies and the NAS Report confirm the NRC conclusion that such heat transfer mechanisms allow rapid heat transfer away from the higher-powered assemblies. The NAS Report also noted that such heat transfer could air-cool the assemblies to prevent a zirconium fire within a relatively short time after the discharge of assemblies from the reactor to the SFP.[7] Thus, air cooling is an effective, passive mechanism for cooling spent fuel assemblies in the pool.

2. Partial Drain-Down

Air cooling is less effective under the special, limited condition where the water level in the SFP drops to a point where water and steam cooling is not sufficient to prevent the fuel from overheating and initiating a zirconium fire, but the water level is high enough to block the full natural circulation of air flow through the assemblies. This condition has been commonly referred to as a partial draindown, and is cited in the Thompson Report. Under those

[7] NAS Report at 53.

conditions, however, it is important to realistically model the heat transfer between high- and low-powered fuel assemblies. The heat transfer from hot fuel assemblies to cooler assemblies will delay the heat-up of assemblies, and allow plant operators time to take additional measures to restore effective cooling to the assemblies. Further, for very low-powered assemblies, the downward flow of air into the assemblies can also serve to cool the assembly even though the full-circulation flow path is blocked. Also, as discussed further in this document, all nuclear plant SFPs have been assessed to identify additional, existing cooling capability and to provide new supplemental cooling capability which could be used during such rare events. This supplemental cooling capability specifically addresses the cooling needs during partial draindown events, and would reduce the probability of a zirconium fire even during those extreme events.

3. License Amendments

In January 2006, the nuclear industry proposed a combination of internal and external strategies to enhance the spent fuel heat removal capability systems at every operating nuclear power plant. The internal strategy implements a diverse SFP makeup system that can supply the required amount of makeup water and SFP spray to remove decay heat. The external strategy involves using an independently-powered, portable, SFP coolant makeup and spray capability system that enhances spray and rapid coolant makeup to mitigate a wide range of possible scenarios that could reduce SFP water levels. In addition, in cases where SFP water levels can not be maintained, leakage control strategies would be considered along with guidance to maximize spray flows to the SFP. Time lines have been developed that include both dispersed and non-dispersed spent fuel storage. The NRC has approved license amendments and issued safety evaluations to incorporate these strategies into the plant licensing bases of all operating nuclear power plants in the United States.

C. Fuel Will Burn Regardless of Its Age

The NRC disagrees with the Petitioners' assertion that fuel will burn regardless of age. Older fuel (fuel which has been discharged from the reactor for a longer time) is more easily cooled and is less likely to ignite because of its lower decay power. A study relied upon by the Petitioners, NUREG–1738, did conservatively assume that spent fuel stored in an SFP, regardless of age, may be potentially vulnerable to a partial drain down event, and that the possibility of a zirconium fire could not be ruled out on a generic basis. This conclusion, however, was in no sense a statement of certainty and was made in order to reach a conclusion on a generic basis, without relying on any plant-specific analyses.

Furthermore, the SFP zirconium fire frequency in NUREG–1738 was predicated on a bounding, conservative assumption that an SFP fire involving all of the spent fuel would occur if the water level in the SFP dropped below the top of the spent fuel. The NUREG–1738 analysis did not attempt to specifically address a number of issues and actions that would substantially reduce the likelihood of a zirconium fire, potentially rendering the frequency estimate to be remote and speculative. For example, NUREG–1738 did not account for the additional time available following the spent fuel being partially or completely uncovered, but prior to the onset of a zirconium fire, that would allow for plant operator actions, makeup of SFP water levels, and other mitigation measures. In addition, NUREG–1738 did not consider the impact of plant and procedure changes implemented as a result of the events of the September 11, 2001, terrorist attacks. NUREG–1738 did clarify that the likelihood of a zirconium fire under such conditions could be reduced by accident management measures, but it was not the purpose of NUREG–1738 to evaluate such accident management measures.

D. SFP Zirconium Fire Will Propagate

Although it is possible that once a spent fuel assembly ignites, the zirconium fire can propagate to other assemblies in the SFP, the NRC has determined (as explained previously) that the risk of an SFP zirconium fire initiation is very low.

E. SFP Zirconium Fire May Be Catastrophic

1. Not New and Significant Information; Very Low Probability

The Massachusetts AG states that ''while such a catastrophic accident is unlikely, its probability falls within the range that NRC considers reasonably foreseeable.'' Thus, the Petitioners asserted that an SFP zirconium fire qualifies as a DBA and, that the impacts of an SFP fire must be discussed in the ER submitted by the licensee and the NRC's EIS, as well as designed against under NRC safety regulations.

The facts that a SFP contains a potentially large inventory of radionuclides and that a release of that material could have adverse effects are not new. These facts are well known, and were considered in the risk evaluation of spent fuel storage contained in NUREG–1738. Even with the numerous conservatisms in the NUREG–1738 study, as described previously, the NRC was able to conclude that the risk from spent fuel storage is low, and is substantially lower than reactor risk.

A study relied upon by the Petitioners, the Thompson Report, claimed that the probability (frequency) of an SFP zirconium fire would be 2E–5 per year [8] for events excluding acts of malice (e.g., terrorism) and 1E–4 per year [9] for acts of malice. With respect to random events (i.e., excluding acts of malice), the NRC concludes that the Thompson Report estimate is overly conservative. A more complete and mechanistic assessment of the event, as described in section VI.E.2. of this Notice, and associated mitigation measures, leads to considerably lower values. With respect to events initiated by a terrorist attack, the NRC concludes that such probability (frequency) estimates are entirely speculative. The NRC also concludes that the additional mitigation measures for SFP events implemented since September 11, 2001, together with the more realistic assessment of spent fuel cooling, indicates that the likelihood of a zirconium fire, though numerically indeterminable, is very low.

The 2E–5 per year estimate for events excluding acts of malice is based on an unsubstantiated assumption that 50 percent of all severe reactor accidents that result in an early release of substantial amounts of radioactive material will also lead to a consequential SFP zirconium fire. The Thompson Report does not identify the necessary sequence of events by which such scenarios might lead to SFP zirconium fires, or discuss the probability of their occurrence. The NRC analysis in the Shearon Harris ASLBP proceeding (described in section VI.E.2. of this Notice) showed that a more complete and mechanistic assessment of the event and associated mitigation measures leads to considerably lower values. This assessment includes the following:

- Frequency and characteristics of the releases from the containment for each release location;
- Transport of gases and fission products within the reactor building;

[8] Two occurrences in 100,000 reactor years.

[9] One occurrence in 10,000 reactor years.

• Resulting thermal and radiation environments in the reactor building, with emphasis on areas in which SFP cooling and makeup equipment is located, and areas in which operator access may be needed to implement response actions;

• Availability/survivability of SFP cooling and makeup equipment in the sequences of concern; and

• Ability and likelihood of successful operator actions to maintain or restore pool cooling or makeup (including consideration of security enhancements and other mitigation measures implemented in response to the terrorist attacks of September 11, 2001).

2. Shearon Harris Atomic Safety and Licensing Board Panel (ASLBP) Proceeding

In the proceeding regarding the expansion of the SFP at the Shearon Harris nuclear power plant, located near Raleigh, North Carolina, the Shearon Harris intervenor described a scenario similar to that raised by the Petitioners, namely, that a severe accident at the adjacent reactor would result in a SFP zirconium fire.[10] The Shearon Harris proceeding considered the probability of a sequence of the following seven events:

a. A degraded core accident.

b. Containment failure or bypass.

c. Loss of SFP cooling.

d. Extreme radiation levels precluding personnel access.

e. Inability to restart cooling or makeup systems due to extreme radiation doses.

f. Loss of most or all pool water through evaporation.

g. Initiation of a zirconium fire in the SFP.

Based on a detailed probabilistic risk assessment, the licensee calculated the probability of a severe reactor accident that causes an SFP zirconium fire to be 2.78E–8 per year. The NRC staff calculated the probability to be 2.0E–7 per year. The intervenor calculated the probability to be 1.6E–5 per year. The ASLBP concluded that the probability of the postulated sequence of events resulting in an SFP zirconium fire was ''conservatively in the range described by the Staff: 2.0E–7 per year (two occurrences in 10 million reactor years) or less.'' [11] Accordingly, the ASLBP found that the occurrence of a severe reactor accident causing an SFP zirconium fire ''falls within the category of remote and speculative matters.'' [12] The Commission affirmed the ASLBP's decision, and the United States Court of Appeals, District of Columbia Circuit, upheld the Commission decision.[13]

In the Shearon Harris proceeding, the intervenor assumed that, given an early containment failure or bypass, a spent fuel zirconium fire would occur (i.e., a conditional probability of 1.0). In order for a reactor accident to lead to a SFP zirconium fire a number of additional conditions must occur. The reactor accident and containment failure must somehow lead to a loss of SFP cooling and must lead to a condition where extreme radiation levels preclude personnel access to take corrective action. There must be then an inability to restart cooling or makeup systems. There must be a loss of significant pool water inventory through evaporation (which can take substantial time). Finally, the event must also lead to a zirconium fire. In contrast to the intervenor's estimate, the licensee and the NRC staff estimated a conditional probability of about one percent that a severe reactor accident with containment failure would lead to a SFP accident. The NRC staff expects that the conditional probability of a SFP zirconium fire, given a severe reactor accident, would be similar to that established in the Shearon Harris proceeding. As such, the probability of a SFP zirconium fire due to a severe reactor accident and subsequent containment failure would be well below the Petitioners' 2E–5 per year estimate.

The 1E–4 per year estimate in the Thompson Report for events involving acts of malice assumes that there would be one attack on the population of U.S. nuclear power plants per century, and that this attack will be 100 percent successful in producing a SFP zirconium fire (thus, fire frequency = 0.01 attack/year × 1.0 fire/attack × 1/104 total reactors = 1E–4/year). The security-related measures and other mitigation measures implemented since September 11, 2001, however, have significantly reduced the likelihood of a successful terrorist attack on a nuclear power plant and its associated SFP. Such measures include actions that would improve the likelihood of the following:

a. Identifying/thwarting the attack before it is initiated.

b. Mitigating the attack before it results in damage to the plant.

c. Mitigating the impact of the plant damage such that an SFP zirconium fire is avoided.

Given the implementation of additional security enhancements and mitigation strategies, as well as further consideration of the factors identified above, the NRC staff concludes that the frequency of SFP zirconium fires due to acts of malice is substantially lower than assumed by the Petitioners.

3. SFP Zirconium Fire Does Not Qualify As a DBA

Regarding the Petitioners' assertion that a SFP zirconium fire qualifies as a design-basis accident (DBA), the NRC staff has concluded that a realistic probability estimate would be very low, such that these events need not be considered as DBAs or discussed in ERs and EISs. Moreover, the set of accidents that must be addressed as part of the design basis has historically evolved from deterministic rather than probabilistic considerations. These considerations, which include defense-in-depth, redundancy, and diversity, are characterized by the use of the single-failure criterion.[14] The single-failure criterion, as a key design and analysis tool, has the direct objective of promoting reliability through the enforced provision of redundancy in those systems which must perform a safety-related function. The single failure criterion is codified in Appendix A and Appendix K to 10 CFR Part 50 and other portions of the regulations. The SFP and related systems have been designed and approved in accordance with this deterministic approach.

F. Intentional Attack on a SFP is ''Reasonably Foreseeable.''

The Petitioners asserted that an intentional attack targeting a plant's SFP is ''reasonably foreseeable.'' Specifically, the Petitioners raised both the NAS study and the decision by the United States Court of Appeals for the Ninth Circuit, *San Luis Obispo Mothers for Peace* v. *NRC*, 449 F.3d 1016 (9th Cir. 2006), *cert. denied* 127 S. Ct. 1124 (2007), to support the assertion that the NRC's NEPA analysis of a license renewal action for a given facility must include analysis of the environmental impacts associated with a terrorist attack on that facility. The NRC has

[10] *Carolina Power Light Co.*, LBP–01–9, 53 NRC 239, 244–245 (2001).

[11] *Id.*, 53 NRC at 267.

[12] *Id.*, 53 NRC at 268.

[13] *Carolina Power Light Co.*, Commission Law Issuance (CLI)–01–11, 53 NRC 370 (2001), *pet. for review denied, sub nom, Orange County, NC* v. *NRC*, 47 Fed. Appx. 1, 2002 WL 31098379 (D.C. Cir. 2002).

[14] ''A single failure means an occurrence which results in the loss of capability of a component to perform its intended safety functions * * * Fluid and electric systems are considered to be designed against an assumed single failure if neither (1) a single failure of any active component * * * nor (2) a single failure of a passive component * * * results in a loss of the capability of the system to perform its safety functions.'' 10 CFR Part 50, App. A.

considered both the NAS Report and the Ninth Circuit decision, and remains of the view that an analysis of the environmental impacts of a hypothetical terrorist attack on an NRC-licensed facility is not required under NEPA.[15] But, if an analysis of a hypothetical terrorist attack were required under NEPA, the NRC has determined that the environmental impacts of such a terrorist attack would not be significant, because the probability of a successful terrorist attack (i.e., one that causes an SFP zirconium fire, which results in the release of a large amount of radioactive material into the environment) is very low and therefore, within the category of remote and speculative matters.

1. NAS Report

The Petitioners rely, in part, upon the NAS Report, the public version of which was published in 2006 and is available from NAS.[16] In response to a direction in the Conference Committee's Report accompanying the NRC's FY 2004 appropriation,[17] the NRC contracted with NAS for a study on the safety and security of commercial spent nuclear fuel. The NAS made a number of findings and recommendations, including:

- SFPs are necessary at all operating nuclear power plants to store recently discharged fuel;
- Successful terrorist attacks on SFPs, though difficult, are possible;
- The probability of terrorist attacks on spent fuel storage cannot be assessed quantitatively or comparatively;
- If a successful terrorist attack leads to a propagating zirconium cladding fire, it could result in the release of large amounts of radioactive material; and
- Dry cask storage has inherent security advantages over spent fuel storage, but it can only be used to store older spent fuel.

The NAS Report found, and the NRC agrees, that pool storage is required at all operating commercial nuclear power plants to cool newly discharged spent fuel. Freshly discharged spent fuel generates too much decay heat to be placed in a dry storage cask.

The NRC agrees with the NAS finding that the probability of terrorist attacks on spent fuel storage cannot be assessed quantitatively or comparatively. However, the NRC concludes that the additional mitigation measures for SFP events implemented since September 11, 2001, together with a more realistic assessment of spent fuel cooling, as shown by the Sandia studies, indicates that the likelihood of a zirconium fire, though numerically indeterminate, is very low.

Furthermore, the NAS Report states that ''[i]t is important to recognize, however, that an attack that damages a power plant or its spent fuel storage facilities would not necessarily result in the release of *any* radioactivity to the environment. There are potential steps that can be taken to lower the potential consequences of such attacks.'' [18] The NAS Report observed that a number of security improvements at nuclear power plants have been instituted since September 11, 2001, although the NAS did not evaluate the effectiveness and adequacy of these improvements and has called for an independent review of such measures. Nevertheless, the NAS Report states that ''the facilities used to store spent fuel at nuclear power plants are very robust. Thus, only attacks that involve the application of large energy impulses or that allow terrorists to gain interior access have any chance of releasing substantial quantities of radioactive material.'' [19]

As discussed previously, following the terrorist attacks of September 11, 2001, the NRC has required that nuclear power plant licensees implement additional security measures and enhancements the Commission believes have made the likelihood of a successful terrorist attack on an SFP remote.

2. Ninth Circuit Decision

The Petitioners asserted that the NRC should follow the decision of the United States Court of Appeals for the Ninth Circuit, *San Luis Obispo Mothers for Peace* v. *NRC*, 449 F.3d 1016 (9th Cir. 2006), *cert. denied* 127 S. Ct. 1124 (2007), by considering the environmental impacts of intentional attacks on nuclear power plant fuel storage pools in all licensing decisions. The Ninth Circuit held that the NRC could not, under NEPA, categorically refuse to consider the consequences of a terrorist attack against a spent fuel storage facility on the Diablo Canyon reactor site.

The NRC's longstanding view is that NEPA does not require the NRC to consider the environmental consequences of hypothetical terrorist attacks on NRC-licensed facilities. NEPA requires that there be a ''reasonably close causal relationship'' between the federal agency action and the environmental consequences.[20] The NRC renewal of a nuclear power plant license would not cause a terrorist attack; a terrorist attack would be caused by the terrorists themselves. Thus, the renewal of a nuclear power plant license would not be the ''proximate cause'' of a terrorist attack on the facility.

If NEPA required the NRC to consider the impacts of a terrorist attack, however, the NRC findings would remain unchanged. As previously described, the NRC has required, and nuclear power plant licensees have implemented, various security and mitigation measures that, along with the robust nature of SFPs, make the probability of a successful terrorist attack (*i.e.*, one that causes an SFP zirconium fire, which results in the release of a large amount of radioactive material into the environment) very low. As such, a successful terrorist attack is within the category of remote and speculative matters for NEPA considerations; it is not ''reasonably foreseeable.'' Thus, on this basis, the NRC finds that the environmental impacts of renewing a nuclear power plant license, in regard to a terrorist attack on an SFP, are not significant.

The NRC has determined that its findings related to the storage of spent nuclear fuel in pools, as set forth in NUREG–1437 and in Table B–1 of Appendix B to Subpart A of 10 CFR Part 51, remain valid. Thus, the NRC has met and continues to meet its obligations under NEPA.

G. SFP Zirconium Fire Should Be Considered Within the Analysis of SAMAs

The Petitioners asserted that SFP fires should be considered within the analysis of severe accident mitigation alternatives (SAMAs). While a large radiological release is still possible, and

[15] In the wake of the Ninth Circuit's *Mothers for Peace* decision, the Commission decided against applying that holding to all licensing proceedings nationwide. *See, e.g., Amergen Energy Co. LLC* (Oyster Creek Nuclear Generating Station), CLI–07–8, 65 NRC 124, 128–29 (2007), *pet. for judicial review pending*, No. 07–2271 (3d Cir.). The Commission will, of course, adhere to the Ninth Circuit decision when considering licensing actions for facilities subject to the jurisdiction of that Circuit. *See id.* Thus, on remand in the Mothers for Peace case itself, the Commission is currently adjudicating intervenors' claim that the NRC Staff has not adequately assessed the environmental consequences of a terrorist attack on the Diablo Canyon Power Plant's proposed facility for storing spent nuclear fuel in dry casks. *See, Pacific Gas & Elec. Co.*, CLI–07–11, 65 NRC 148 (2007). The Commission's ultimate decision in that case will rest on the record developed in the adjudication.

[16] The NRC response to the NAS Report is available at ADAMS Accession No. ML0502804280.

[17] Conference Committee's Report (H. Rept. 108–357) accompanying the *Energy and Water Development Act, 2004* (Pub. L. 108–137, December 3, 2003).

[18] NAS Report at 6 (emphasis in the original).

[19] NAS Report at 30.

[20] *Department of Transportation* v. *Public Citizen*, 541 U.S. 752, 767 (2004) *citing Metropolitan Edison* v. *People Against Nuclear Energy*, 460 U.S. 766, 774 (1983).

was assessed as part of Generic Issue 82, *Beyond Design Basis Accidents in Spent Fuel Pools*, and later, in NUREG–1738, the NRC considers the likelihood of such an event to be lower than that estimated in Generic Issue 82 and NUREG–1738. Based on the Sandia studies, and on the implementation of additional strategies implemented following September 11, 2001, the probability of a SFP zirconium fire is expected to be less than that reported in NUREG–1738 and previous studies. Thus, the very low probability of an SFP zirconium fire would result in an SFP risk level less than that for a reactor accident.

For example, in NUREG–1738, the SFP fire frequencies were conservatively estimated to be in the range of 5.8E–7 per year to 2.4E–6 per year. NUREG–1738 conservatively assumed that if the water level in the SFP dropped below the top of the spent fuel, an SFP zirconium fire involving all of the spent fuel would occur, and thereby bounded those conditions associated with air cooling of the fuel (including partial-drain down scenarios) and zirconium fire propagation. It did not mechanistically analyze the time between the spent fuel assemblies becoming partially or completely uncovered and the onset of a SFP zirconium fire, and the potential to recover SFP cooling and to restore the SFP water level within this time. NUREG–1738 also did not consider the possibility that air-cooling of the spent fuel alone could be sufficient to prevent SFP zirconium fires.

Furthermore, the Sandia studies indicated that air cooling would be much more effective in cooling the spent fuel assemblies. In those cases where air cooling is not effective, the time before fuel heatup and radiological release would be substantially delayed, thus providing a substantial opportunity for successful event mitigation. The Sandia studies, which more fully account for relevant heat transfer and fluid flow mechanisms, also indicated that air-cooling of spent fuel would be sufficient to prevent SFP zirconium fires much earlier following fuel offload than previously considered (e.g., in NUREG–1738), thereby further reducing the likelihood of an SFP zirconium fire. Additional mitigation strategies implemented subsequent to September 11, 2001, will serve to further enhance spent fuel coolability, and the potential to recover SFP cooling or to restore the SFP water level prior to the initiation of an SFP zirconium fire.

Given that the SFP risk level is less than that for a reactor accident, a SAMA that addresses SFP accidents would not be expected to have a significant impact on total risk for the site. Despite the low level of risk from fuel stored in SFPs, additional SFP mitigative measures have been implemented by licensees since September 11, 2001. These mitigative measures further reduce the risk from SFP zirconium fires, and make it even more unlikely that additional SFP safety enhancements could substantially reduce risk or be cost-beneficial.

VII. Denial of Petitions

Based upon its review of the petitions, the NRC has determined that the studies upon which the Petitioners rely do not constitute new and significant information. The NRC has further determined that its findings related to the storage of spent nuclear fuel in pools, as set forth in NUREG–1437 and in Table B–1, of Appendix B to Subpart A of 10 CFR Part 51, remain valid. Thus, the NRC has met and continues to meet its obligations under NEPA. For the reasons discussed previously, the Commission denies PRM–51–10 and PRM–51–12.

Commissioner Gregory B. Jaczko's Dissenting View on the Commission's Decision To Deny Two Petitions for Rulemaking Concerning the Environmental Impacts of High-Density Storage of Spent Nuclear Fuel in Spent Fuel Pools

I disagree with the decision to deny the petition for rulemaking as included in this **Federal Register** notice. In general, I approve of the decision not to initiate a new rulemaking to resolve the petitioners' concerns, but because information in support of the petition will be considered when the staff undertakes the rulemaking to update the Generic Environmental Impact Statement for license renewal, I believe that the decision should have been to partially grant the petition rather than deny it.

The petitioners requested the agency review additional studies regarding spent fuel pool storage they believe would change the agency's current generic determination that the impacts of high-density pool storage are ''small''. I believe that the agency could commit to reviewing the information provided by the petitioners, along with any other new information, when the agency updates the Generic Environmental Impact Statement (GEIS) for License Renewal in the near future. Regardless of whether or not the information will change the GEIS' conclusions, at a minimum, the agency should be committing to ensure that this information is part of the analysis performed by the staff upon the next update of the GEIS. While we can not predict the outcome of the significance level that will ultimately be assigned to the spent fuel category in the GEIS, it seems an obvious commitment to ensure that the ultimate designation will be appropriately based upon all information available to the staff at the time. Thus, I believe this decision should be explained as a partial granting of the petition. It may not provide the petitioners with everything they want, but it would more clearly state the obvious—that this information, and any other new information, will be reviewed by the agency and appropriately considered when the staff begins its update of the license renewal GEIS.

This specific issue illustrates a larger concern about how the agency handles petitions for rulemaking in general. I find it unfortunate that the agency appears to limit its responses to petitions based upon the vocabulary that has been established surrounding this program. Currently, when the agency discusses these petitions, we discuss them in the context of ''granting'' or ''denying'' the rulemaking petitions. We then appear to be less inclined to ''grant'' unless we are committing to the precise actions requested in the petition. But these petitions are, by their very definition, requests for rulemakings; which means, even if we do ''grant'' a petition for rulemaking, we can not guarantee a particular outcome for the final rule. The final rulemaking is the result of staff's technical work regarding the rule, public comments on the rule, and resolution of those comments. Rulemaking petitions are opportunities for our stakeholders to provide us with new ideas and approaches for how we regulate. By limiting our responses, we limit our review of the request, and thus, we risk missing many potential opportunities to improve the way we regulate.

Additional Views of the Commission

The Commission does not share Commissioner Jaczko's dissenting view. We appreciate his statement of concern about the petition for rulemaking (PRM) process, but believe these matters are extraneous to the Commission's analyses of the petitioners' technical bases for this particular rulemaking request and, consequently, they had no bearing on the majority view. Specifically, the Commission does not agree that the petitions should be granted in part on the basis of the agency's plan to update the Generic Environmental Impact Statement (GEIS) for License Renewal and make attendant

rule changes in the future. The Commission's detailed statement of reasons for denial of the petitions is the product of a careful review of the petitioners' assertions and other associated public comments, and is supported by the facts before us. In these circumstances, the Commission does not believe the petitioners' request can fairly, or reasonably, be ''granted'' in part based on a future undertaking which itself had no genesis in the petitioners' requests.

The Commission's timely and decisive action in response to the two petitions serves the interests of the Commission and other participants in an effective, disciplined, and efficient rulemaking petition process. In this instance, a decision now has particular value since it directly addresses the petitioners' statements of significant concern about certain, generic aspects of ongoing and future license renewal reviews. While the analyses performed to respond to these petitions will also undoubtedly inform NRC staff proposals regarding the next update of the GEIS, the Commission does not yet have such proposals before it. Any final Commission decisions on an updated GEIS would be preceded by proposed changes, solicitation of public comment, and evaluation of all pertinent information and public comments. Furthermore, a partial ''granting'' of the petition could imply that the Commission endorses the petitioners' requests and will give them greater weight than other points of view during the GEIS rulemaking.

As to the other matter raised in Commissioner Jaczko's dissent—that of agency review and disposition of petitions for rulemaking more generally—while petitions for rulemaking are indeed opportunities for stakeholders to suggest new considerations and approaches for regulation, Commissioner Jaczko's general concerns about the agency's process for handling rulemaking petitions go beyond the subject of the Commission's action on these petitions. However, this subject matter is being considered, as the Commission has instructed NRC staff [SRM dated August 6, 2007] to conduct a review of the agency's PRM process. At such time as staff may recommend, as an outgrowth of this review, specific proposals for Commission action which would strengthen the agency PRM process, the Commission will assess such recommendations and act on them, as appropriate.

Dated at Rockville, Maryland, this 1st day of August 2008.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. E8–18291 Filed 8–7–08; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 901

[SATS No. AL–074–FOR; Docket No. OSM–2008–0015]

Alabama Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are announcing receipt of a proposed amendment to the Alabama regulatory program (Alabama program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Alabama proposes revisions to its regulations regarding permit fees and civil penalties. Alabama intends to revise its program to improve operational efficiency.

This document gives the times and locations that the Alabama program and proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: Comments on the proposed rule must be received on or before 4 p.m., c.t., September 8, 2008, to ensure our consideration. If requested, we will hold a public hearing on the amendment on September 2, 2008. We will accept requests to speak at a hearing until 4 p.m., c.t. on August 25, 2008.

ADDRESSES: You may submit comments by either of the following two methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* The proposed rule is listed under the agency name ''OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT'' and has been assigned Docket ID: OSM–2008–0015. If you would like to submit comments through the Federal eRulemaking Portal, go to *www.regulations.gov* and do the following. Click on the ''Advanced Docket Search'' button on the right side of the screen. Type in the Docket ID OSM–2008–0015 and click the submit button at the bottom of the page. The next screen will display the Docket Search Results for the rulemaking. If you click on OSM–2008–0015, you can view the proposed rule and submit a comment. You can also view supporting material and any comments submitted by others.
- *Mail/Hand Delivery/Courier:* Sherry Wilson, Director, Birmingham Field Office, Office of Surface Mining Reclamation and Enforcement, 135 Gemini Circle, Suite 215, Homewood, Alabama 35209. Please include the Docket ID (OSM–2008–0015) with your comments.

We cannot ensure that comments received after the close of the comment period (see **DATES**) or sent to an address other than the two listed above will be included in the docket for this rulemaking and considered.

For additional information on the rulemaking process and the public availability of comments, see ''III. Public Comment Procedures'' in the **SUPPLEMENTARY INFORMATION** section of this document.

You may receive one free copy of the amendment by contacting OSM's Birmingham Field Office. See below **FOR FURTHER INFORMATION CONTACT**.

You may review a copy of the amendment during regular business hours at the following locations:

Sherry Wilson, Director, Birmingham Field Office, Office of Surface Mining Reclamation and Enforcement, 135 Gemini Circle, Suite 215, Homewood, Alabama 35209, Telephone: (205) 290–7282, *swilson@osmre.gov*.

Randall C. Johnson, Director, Alabama Surface Mining Commission, 1811 Second Avenue, P.O. Box 2390, Jasper, Alabama 35502–2390, Telephone: (205) 221–4130.

FOR FURTHER INFORMATION CONTACT: Sherry Wilson, Director, Birmingham Field Office. Telephone: (205) 290–7282. E-mail: *swilson@osmre.gov*.

SUPPLEMENTARY INFORMATION:

I. Background on the Alabama Program
II. Description of the Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the Alabama Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, ''* * * a State law which provides for the regulation of surface coal mining and reclamation operations in accordance

with the requirements of this Act. * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior (Secretary) conditionally approved the Alabama program on May 20, 1982. You can find background information on the Alabama program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the May 20, 1982, **Federal Register** (47 FR 22030). You can also find later actions concerning the Alabama program and program amendments at 30 CFR 901.10, 901.15, and 901.16.

II. Description of the Proposed Amendment

By letter dated July 18, 2008 (Administrative Record No. AL–0658), Alabama sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*) at its own initiative. Below is a summary of the changes proposed by Alabama. The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES**.

Alabama proposes to revise its regulations at Alabama Rule 880–X–8B–.07 regarding permit fees by:

(1) Increasing the acreage fee,

(2) Requiring an acreage fee on all bonded acreage covered in a permit renewal, and

(3) Increasing the basic fees for the following types of applications: permit; coal exploration; permit renewal; permit transfer; permit revision involving only an incidental boundary revision; permit revision involving an insignificant alteration to the mining and reclamation plan; and permit revision involving a significant alteration to the mining and reclamation plan.

Alabama also proposes to revise its regulations at Alabama Rule 880–X–11D–.06 regarding civil penalty amounts by increasing the dollar amounts of the penalties.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the State program.

Written Comments

Send your comments to us by one of the two methods specified above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We cannot ensure that comments received after the close of the comment period (see **DATES**) or sent to an address other than the two listed above (see **ADDRESSES**) will be included in the docket for this rulemaking and considered.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., c.t. on August 25, 2008. If you are disabled and need reasonable accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing. If there is only limited interest in participating at a public hearing, a public meeting or teleconference rather than a hearing may be held. If we hold a public meeting or teleconference, a notice of the event will be posted to the docket for this rulemaking at *www.regulations.gov*, and a summary of the event will be included in the docket for this rulemaking.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

IV. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and

Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. This determination is based on the fact that the Alabama program does not regulate coal exploration and surface coal mining and reclamation operations on Indian lands. Therefore, the Alabama program has no effect on Federally-recognized Indian tribes.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 901

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 23, 2008.

Len Meier,

Acting Regional Director, Mid-Continent Region.

[FR Doc. E8–18297 Filed 8–7–08; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

RIN 1024–AD71

Special Regulation: Areas of the National Park System, National Capital Region

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: The National Park Service (NPS) is proposing to amend regulations governing viewing of the Inaugural parade by the public, demonstrators, and the Presidential Inaugural Committee. The proposed rule would extend the duration and extent of demonstrations and special events in Washington, DC, including the Inaugural, the Lighting of the National Christmas Tree and Christmas Pathway of Peace, the Cherry Blossom Festival, the Fourth of July Celebration, and the Festival of American Folklife.

DATES: Comments must be received by September 22, 2008.

ADDRESSES: You may submit your comments, identified by Regulatory Information Number 1024–AD71, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail or hand delivery:* National Park Service, Regional Director, Division of Park Programs, 1100 Ohio Drive, SW., Room 128, Washington, DC 20242.

FOR FURTHER INFORMATION CONTACT: National Park Service, National Capital Region, Division of Park Programs, 1100 Ohio Drive, SW., Room 128, Washington, DC 20242. Telephone: (202) 619–7275. Fax: (202) 401–2430.

SUPPLEMENTARY INFORMATION:

Background

On March 20, 2008, the District Court in *ANSWER Coalition* v. *Kempthorne,* 537 F.Supp.2d 183 (D.D.C. March 20, 2008) found that the National Park Service's practice and procedure of submitting an application on behalf of the Presidential Inaugural Committee (PIC) violated its regulations with respect to the duration of special events and the related timing of the submission of the application. The Court stated, however, that ''[i]f the government thinks it appropriate to lengthen the amount of time for which permits may be granted under the regulations—perhaps even only for the Inauguration period and no other—the government may explicitly amend the regulations that apply to all permit applicants.'' 537 F.Supp.2d at 203–204.

Pennsylvania Avenue is among the world's most famous streets and is located in the heart of the Nation's Capital. America's history has marched, paraded, promenaded, and protested its way up and down Pennsylvania Avenue. Areas must be available to the public as well as demonstrators to view the Inaugural parade. ''The Inauguration is *not a private event.*'' *ANSWER Coalition* v. *Kempthorne,* 2008 U.S. Dist. Lexis 21443* 15 (emphasis in original) (referencing *Mahoney* v. *Babbitt,* 105 F.3d at 1458 D.C. Cir. 1997). And the

First Amendment provides protection to demonstrators who desire to '' 'interject' their own convictions and beliefs [into the event while viewing the Inaugural parade]. * * * If the free speech clause of the First Amendment does not protect the right of citizens to 'interject' their own convictions and beliefs into a public event on a public forum then it is difficult to understand why the Framers bothered including it at all.'' *Mahoney* v. *Babbitt,* 105 F.3d at 1458–59.

The proposed rule would lengthen the duration of any permit associated with Inauguration Day activities from 21 days to the period of time between October 24 through April 1. It would also open the majority of Pennsylvania Avenue National Historic Park to the public and demonstrators for the Inaugural parade, regardless of viewpoint or message. In addition, the proposed rule would extend the duration of time that any permit may be issued for demonstrations or special events on the Ellipse and other designated park areas from three weeks to four months.

With respect to the Inaugural parade, the proposed rule would create a regulatory priority use for limited, designated park areas for the PIC, the Armed Forces Inaugural Committee, and the Architect of the Capitol or the Joint Congressional Committee on Inaugural Ceremonies, entities whose role in the Inauguration has traditionally necessitated such access. These limited park areas along the Inaugural route on Pennsylvania Avenue from 3rd to 15th Streets are designated in the attached maps. The designated areas would be relatively small, and leave the majority of park areas along the parade route available to the public and demonstrators regardless of viewpoint or message. This allocation of space would result in a fair and equitable distribution of park areas, consistent with the First Amendment and the Presidential Inaugural Ceremonies Act.

The D.C. Circuit's opinion in *A Quaker Action Group* v. *Morton,* 516 F.2d 717 (D.C. Cir. 1975), provided the original basis for NPS's priority use regulations. There, the Court of Appeals said that '' * * * if the Park Service wishes to enforce the regulations regarding a permit for public gatherings in the regulated areas, it must require a permit for every public gathering in those areas. * * * or, if the Park Service wishes, it could retain a system of NPS events, reserve time in, say, Lafayette Park, and even publish advance schedules.'' 516 F.2d at 729 (emphasis in original).

Below is additional information with regard to how the proposed rule would address the Inauguration and other National Celebration Events.

Inauguration

The proposed rule would amend the authorities section to include the Presidential Inaugural Ceremonies Act, 36 U.S.C. 501–511, as well as other non-Inaugural authorities now recodified as D.C. Code 10–137 (2001) and D.C. Code 50–2201.07 (2001). As noted above, the proposed rule would designate limited park areas for priority use by the PIC, the Armed Forces Inaugural Committee, and the Architect of the Capitol or the Joint Congressional Committee on Inaugural Ceremonies. It would also provide a fixed, reasonable time period deemed necessary for the extensive set-up and take-down of Inaugural-related construction by the PIC. And the proposed rule would leave most of Pennsylvania Avenue National Historic Park open to the public and demonstrators regardless of viewpoint or message.

The proposed rule would retain the existing regulatory preference for the PIC for the White House sidewalk and all but the northeast quadrant of Lafayette Park. The proposed rule would allocate to the public and demonstrators, however, most of Pennsylvania Avenue National Historic Park. Specifically, 7,024 linear feet or 70 percent of Pennsylvania Avenue National Historic Park that abuts the street, which also comprises 625,882 square feet or 84 percent of Pennsylvania Avenue National Historic Park, would be open to the public and demonstrators. The proposed rule would thus reduce areas designated for PIC's bleachers on the parade route to 1,284 linear feet or 13 percent of Pennsylvania Avenue National Historic Park that abuts the street, which also comprises 63,936 square feet or 9 percent of Pennsylvania Avenue National Historic Park. These allocations would both comport with the Presidential Inaugural Ceremonies Act, 36 U.S.C. 503(a), and respond to the question on this subject posed by the District Court in *A.N.S.W.E.R. Coalition* v. *Kempthorne,* 537 F.Supp.2d at 205–206.

The proposed rule would amend existing regulations to allow structures within 50 feet of any Inaugural ceremony activity structures. The proposed rule would leave in place existing regulations that permit other demonstrations or special events in park areas during the National Celebration Events to the extent that they do not significantly interfere with these Events.

In addition, the proposed rule would allow PIC to place portable public bathrooms at designated areas along the parade route. It would also designate the traditional areas necessary for the television and radio media, so that they can broadcast and report on the parade and related activities. The proposed rule would also designate the traditional areas necessary for the Armed Forces Inaugural Committee for parade support structures used to help monitor and manage the parade itself. And the proposed rule would designate an area in front of the John A. Wilson Building for the District of Columbia's reviewing stand, and also designate areas for individuals with disabilities to view the parade.

The spatial allocations under the proposed rule would include 23,764 square feet or 3 percent of the Pennsylvania Avenue National Historic Park for the Armed Forces Inaugural Committee parade control area, 1,346 square feet or less than 1 percent, of the park for the District of Columbia's Viewing Stand, 7,907 square feet or 1 percent of the park for the media area, and 456 square feet or less than 1 percent of the park for the parade announcer stands.

The proposed rule would designate areas in Pennsylvania Avenue National Historic Park and Sherman Park for the PIC's use that could accommodate 24 bleachers and 8,790 ticket holders based on the PIC's 2005 set-up. To ensure that all seats are used, the proposed rule would allow any member of the public to use a ticketed PIC bleacher seat, if it has not been claimed by the ticket holder ten minutes before the Inaugural Parade is scheduled to pass the bleacher's block. The proposed rule would not allocate to the PIC certain park areas that have been allocated to the PIC in past Inaugurals; in 2005, these areas contained 25 bleachers that could accommodate 11,344 ticket holders.

The proposed rule would also create limited priority areas on the National Mall for members of the public and ticketed guests, for the placement of media stands, and for the assembly and staging of parade units, traditionally necessary aspects of the Inauguration. With regard to this last activity, the rule would allow the Armed Forces Inaugural Committee on Inauguration Day to assemble, stage, secure and weather-protect the pre-Inaugural parade components and floats on the National Mall between 14th and 1st Streets. The proposed rule would also allow the Architect of the Capitol or the Joint Congressional Committee on Inaugural Ceremonies to site jumbotrons and sound towers so that the Joint Congressional Committee's ticketed,

standing room ticket holders can observe the Inaugural ceremony between 4th and 1st Streets, and members of the general public between 14th and 4th Streets. The proposed rule would allow a 150-by-200 foot area on the National Mall, just east of 7th Street, for the exclusive use of the PIC on Inauguration Day for television and radio media broadcasts on Inauguration Day.

Inaugural-related construction is complex and extensive, and requires a series of permits. The proposed rule would set specific set-up and take-down dates determined reasonably necessary for the erection and removal of the stands, bleachers, media and parade support structures in the various designated park areas. Set-up and take-down occurs from November 1 through March 1 for the White House sidewalk and Lafayette Park, December 7 through February 10 for Pennsylvania Avenue National Historic Park and Sherman Park, and January 6 through January 30 for the National Mall between 14th and 1st Streets. Traditionally, set-ups and take-downs are done in stages, and an entire designated area may not be needed throughout the designated period. Accordingly, consistent with public safety, the portions of designated areas that are not immediately needed for set-up and take-down will remain open to the public and for demonstration activity.

Lighting of the National Christmas Tree and Christmas Pathway of Peace

The proposed rule would change the name of the ''Christmas Pageant of Peace,'' one of the existing National Celebration Events, to the ''Lighting of the National Christmas Tree and Christmas Pathway of Peace.'' This event would take place in the northern half of the oval portion of the Ellipse during the last four weeks in December. The designated time period for set-up and take-down would be October 1 through February 1. This event provides the park visitor an opportunity to view the lighting of the National Christmas tree, attend musical presentations, and visit various seasonal displays.

Cherry Blossom Festival

The proposed rule would more clearly define the park areas for the Cherry Blossom Festival, another existing National Celebration Event, and would extend the duration from six days to two weeks and designate an additional two-week period for set-up and take-down. The Cherry Blossom Festival would take place in the park areas adjacent to the Tidal Basin as well as the sidewalk areas on the Ellipse and the Washington Monument Grounds adjacent to Constitution Avenue between 15th and 17th Streets, NW.

Fourth of July Celebration

The proposed rule would designate the Lincoln Memorial Reflecting Pool area for the staging and firing of this event's fireworks and establish a three week period for set-up and take-down.

Festival of American Folklife

The proposed rule would designate an eight week period for the set-up and take-down of this event.

Permit Applications

The proposed rule would make explicit the long-standing NPS policy of not accepting permit applications for demonstrations and special events earlier than one year in advance of the proposed event. Event application dates (that include set-up and take-down time) must fall within this one-year time period. For example, NPS would accept on January 1, 2009 an application for the first week of January 2010, but would not accept on January 1, 2009 an application for the first week of January for the next three years, or for the first week of January and February 2010.

On one occasion, the NPS received ten applications for the use of parkland at each Presidential Inauguration for the next forty years. In rejecting these applications, the NPS explained that it has an enormous task of maintaining Federal parkland for the millions of visitors and thousands of demonstrations and special events. Many applications propose activities that require extensive planning and coordination with the applicants and other affected agencies. By only accepting applications for proposed events that occur within one year, persons and groups are better able to determine the proposed event's true size and scope and the NPS is better able to determine whether it can reasonably be accommodated within the requested park area. This proposed rule reflecting longstanding policy would allow all persons and groups a timely, fair and equal opportunity to use parkland for demonstrations and special events and prevents its monopolization.

Forty-Five Day Comment Period

Pursuant to 318 DM 5.4 A (1998), we are providing a 45-day comment period because this proposed rule requires timely action so that a final rule may become effective in time to govern the activities associated with the upcoming 2009 Inauguration. In addition, this schedule is necessary to allow for any judicial challenge to occur in a timely manner. We welcome all public comment, and will immediately provide a copy of this proposed rule to known interested parties, including the plaintiffs in *ANSWER Coalition* v. *Kempthorne,* No. 05–0071 (D.D.C.) as well as any applicant who has sought a demonstration permit along the Inaugural parade route for the last three Inaugurations.

Compliance With Other Laws

Regulatory Planning and Review (Executive Order 12866)

This document is a significant rule and is subject to review by the Office of Management and Budget (OMB) under Executive Order 12866.

(1) This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

(3) This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

(4) OMB has determined that this rule raises novel legal or policy issues.

Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million or more.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or

unique effect on State, local, or tribal governments or the private sector.

Takings (Executive Order 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications.

Federalism (Executive Order 13132)

In accordance with Executive Order 13132, the rule does not require the preparation of a federalism assessment.

Civil Justice Reform (Executive Order 12988)

This regulation meets the applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988 Civil Justice Reform.

Paperwork Reduction Act

This regulation requires information collection from 10 or more parties, which must be submitted for OMB approval under the Paperwork Reduction Act. However, these are not new collection requirements and, therefore, no additional request to OMB has been prepared. The information collection activities are necessary for the public to obtain benefits in the form of special park uses permits.

National Environmental Policy Act

We have analyzed this rule in accordance with the criteria of the National Environmental Policy Act (NEPA) according to Departmental guidelines in 516 DM 6 (49 FR 21438), to assess the impact of any Federal action significantly affecting the quality of the human environment, health, and safety. We have determined that the proposed rule is categorically excluded under 516 DM 6, Appendix 7.4(10), insofar as it is a modification of existing NPS regulations that does not increase public use to the extent of compromising the nature and character of the area or causing physical damage to it, or introduce incompatible uses which might compromise the nature and characteristics of the area or cause physical damage to it, or cause conflict with adjacent ownerships or land uses, or cause a nuisance to adjacent owners or occupants.

Government-to-Government Relationship With Tribes

In accordance with Executive Order 13175 ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249), the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22961), and 512 DM 2, the Department will consult with federally recognized tribal governments throughout the development of the regulation to jointly evaluate and address the potential effects, if any, of the proposed regulatory action.

Clarity of This Regulation

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Public Participation

You may submit comments online at: *http://www.regulations.gov.* Follow the instructions for submitting comments. You may also mail or hand deliver comments to: National Park Service, Regional Director, National Capital Region, Division of Park Programs, 1100 Ohio Drive, SW., Room 128, Washington, DC 20242.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

List of Subjects in 36 CFR Part 7

National parks, Special events.

In consideration of the foregoing, the National Park Service proposes to amend 36 CFR part 7 as set forth below:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

1. The authority citation for part 7 is amended to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 460(q), 462(k); Sec. 7.96 also issued under 36 U.S.C. 501–511, D.C. Code 10–137 (2001) and D.C. Code 50–2201.07 (2001).

2. Revise § 7.96(g)(4) to read as follows:

§ 7.96 National Capital Region.

* * * * *

(g) * * *

(4) *Permit processing.* (i) NPS processes permit applications for demonstrations and special events in order of receipt. NPS will not accept applications more than one year in advance of a proposed continuous event (including set-up time, if any). Use of a particular area is allocated in order of receipt of fully executed applications, subject to the limitations in this section.

(ii) Specific national celebration events have priority use of particular park areas as shown in the following table:

The following event . . .	Has priority use of the following area . . .	At the following time . . .
(A) Lighting of the National Christmas Tree and Christmas Pathway of Peace.	northern half of the oval portion of the Ellipse	the last four weeks in December as well as necessary set-up and take-down between October 1 through February 1.
(B) Cherry Blossom Festival	park areas adjacent to the Tidal Basin and the sidewalk areas adjacent to Constitution Avenue between 15th & 17th Streets, NW.	two weeks usually in late March or early April as well as the necessary set-up and take-down totaling two weeks.
(C) Fourth of July Celebration	Washington Monument Grounds and the Lincoln Memorial Reflecting Pool area.	time required for necessary staging and fireworks set-up and take-down, totaling three weeks in late June and early July.

The following event . . .	Has priority use of the following area . . .	At the following time . . .
(D) Festival of American Folklife	the area bounded on the south by Jefferson Drive, NW; on the north by Madison Drive, NW; on the east by 7th Street, NW; on the west by 14th Street, NW.	for a two-week period in approximately late June and early July as well as the necessary set-up and take-down totaling eight weeks.
(E) Columbus Day Commemorative Wreath-Laying.	at the Columbus statue on the Union Plaza	on Columbus Day.
(F) Presidential Inaugural Ceremonies	see paragraph (g)(4)(iii) of this section	see paragraph (g)(4)(iii) of this section.

(iii) In connection with Presidential Inaugural Ceremonies the following areas are reserved for priority use as set forth in this paragraph.

(A) The White House sidewalk and Lafayette Park, exclusive of the northeast quadrant for the exclusive use of the Inaugural Committee on Inauguration Day.

(B) Portions of Pennsylvania Avenue National Historic Park and Sherman Park, as designated in the maps included in paragraph (g)(4)(iii)(E) of this section, for the exclusive use of the Inaugural Committee on Inauguration Day for:

(*1*) Ticketed bleachers viewing and access areas, except that members of the public may use a ticketed bleacher seat that has not been claimed by the ticket holder 10 minutes before the Inaugural Parade is scheduled to pass the bleacher's block;

(*2*) Portable toilets, except that they will be available to the public;

(*3*) Television and radio media and Armed Forces Inaugural Committee parade support structures;

(*4*) The area in front of the John A. Wilson Building for the District of Columbia reviewing stand;

(*5*) Viewing areas designated for individuals with disabilities, except that they will be available to any disabled persons.

(C) The area of the National Mall between 14th and 1st Streets, for the exclusive use of the Armed Forces Inaugural Committee on Inauguration Day for the assembly, staging, security and weather protection of the pre-Inaugural parade components and floats on Inauguration Day, except for:

(*1*) The placement of jumbotrons and sound towers by the Architect of the Capitol or the Joint Congressional Committee on Inaugural Ceremonies so that the Inaugural ceremony may be observed by the Joint Congressional Committee's ticketed standing room ticket holders between 4th and 1st Streets and the general public from 7th and 4th Streets; and

(*2*) A 150-foot-by-200-foot area on the National Mall just east of 14th Street, for the exclusive use of the Inaugural Committee for television and radio media broadcasts on Inauguration Day.

(D) The Inaugural Committee may also use portions of its designated areas reasonably necessary for setting up and taking down stands, bleachers, media and parade support structures as shown in the following table:

The Inaugural Committee may use the following area . . .	During the following period . . .
(1) The White House sidewalk and Lafayette Park	November 1 through March 1.
(2) Pennsylvania Avenue National Historic Park and Sherman Park	December 7 through February 10.
(3) The National Mall between 14th and 1st Streets	January 6 through January 30.

(E) Maps of designated portions of Pennsylvania Avenue National Historic Park and Sherman Park referred to in paragraph (g)(4)(iii)(B) of this section are as follows:

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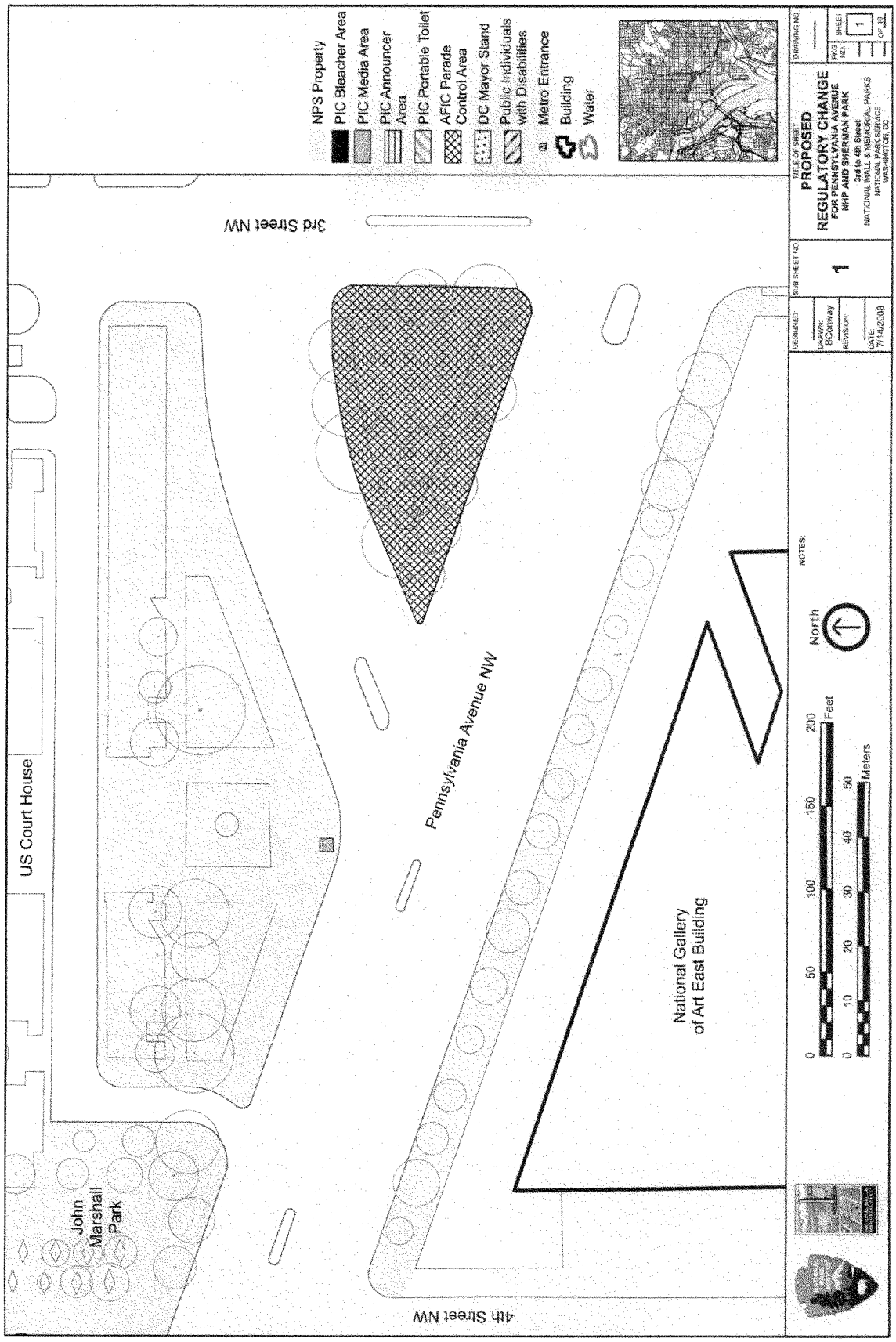
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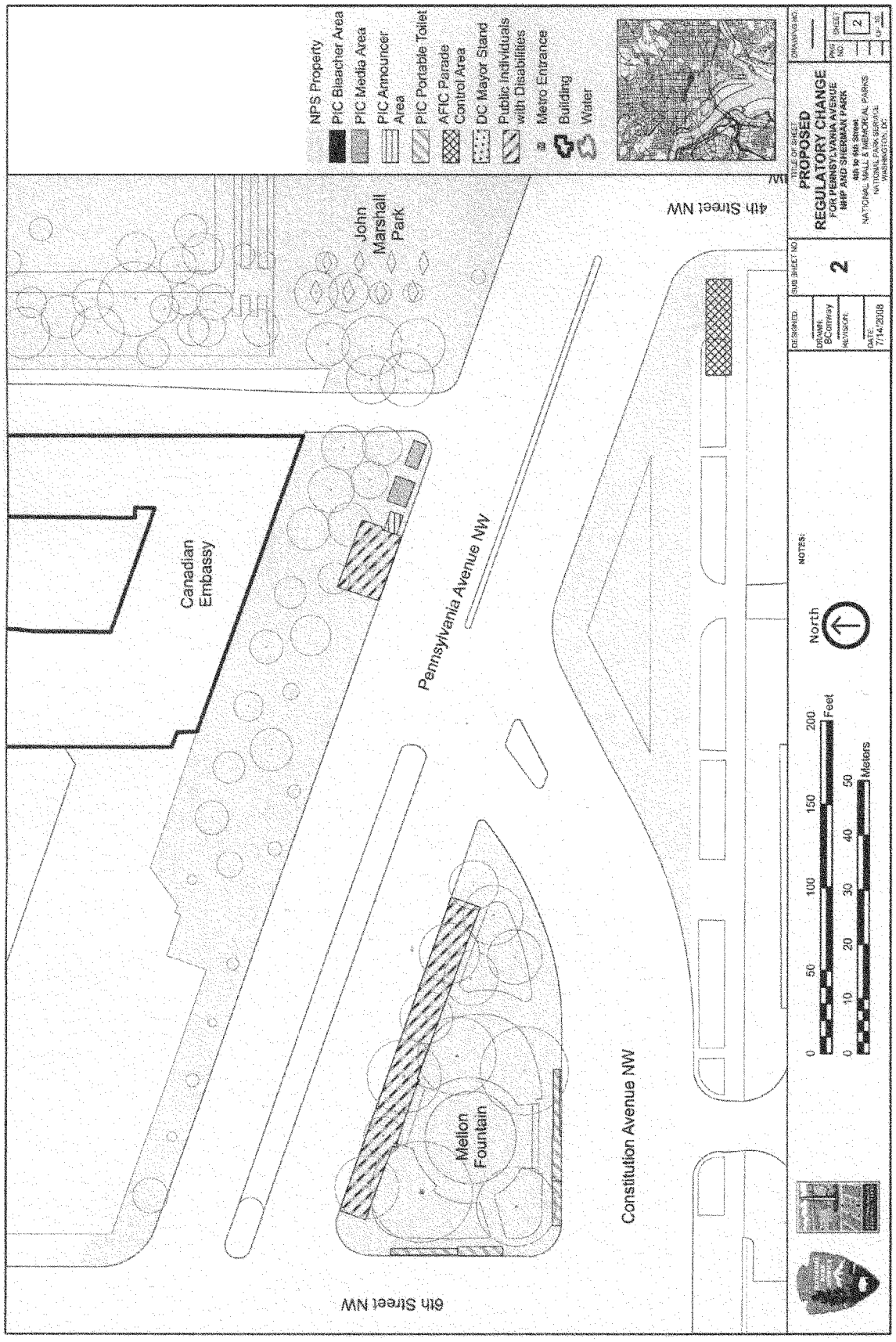
PIC Announcer Area
PIC Portable Toilet
AFIC Parade Control Area
DC Mayor Stand
Public Individuals with Disabilities
Metro Entrance
Building
Water
3rd Street NW
US Court House
John Marshall Park
Pennsylvania Avenue NW
National Gallery of Art East Building
4th Street NW
North
0 50 100 150 200 Feet
0 10 20 30 40 50 Meters
NOTES:
DRAWN: BCorriway
DATE: 7/14/2008
SUB SHEET NO. 1
TITLE OF SHEET
PROPOSED
REGULATORY CHANGE
FOR PENNSYLVANIA AVENUE
NHP AND SHERMAN PARK
3rd to 4th Street
NATIONAL MALL & MEMORIAL PARKS
NATIONAL PARK SERVICE
WASHINGTON, DC
DRAWING NO.
SHEET 1 OF 10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AFIC Parade Control Area
DC Mayor Stand
Public Individuals with Disabilities
Metro Entrance
Building
Water
John Marshall Park
4th Street NW
Canadian Embassy
Pennsylvania Avenue NW
Mellon Fountain
Constitution Avenue NW
6th Street NW
North
0 50 100 150 200 Feet
0 10 20 30 40 50 Meters
NOTES:
TITLE OF SHEET
PROPOSED
REGULATORY CHANGE
FOR PENNSYLVANIA AVENUE
NHP AND SHERMAN PARK
4th to 6th Street
NATIONAL MALL & MEMORIAL PARKS
NATIONAL PARK SERVICE
WASHINGTON, DC
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REVISION:
DATE: 7/14/2008
SUB SHEET NO.
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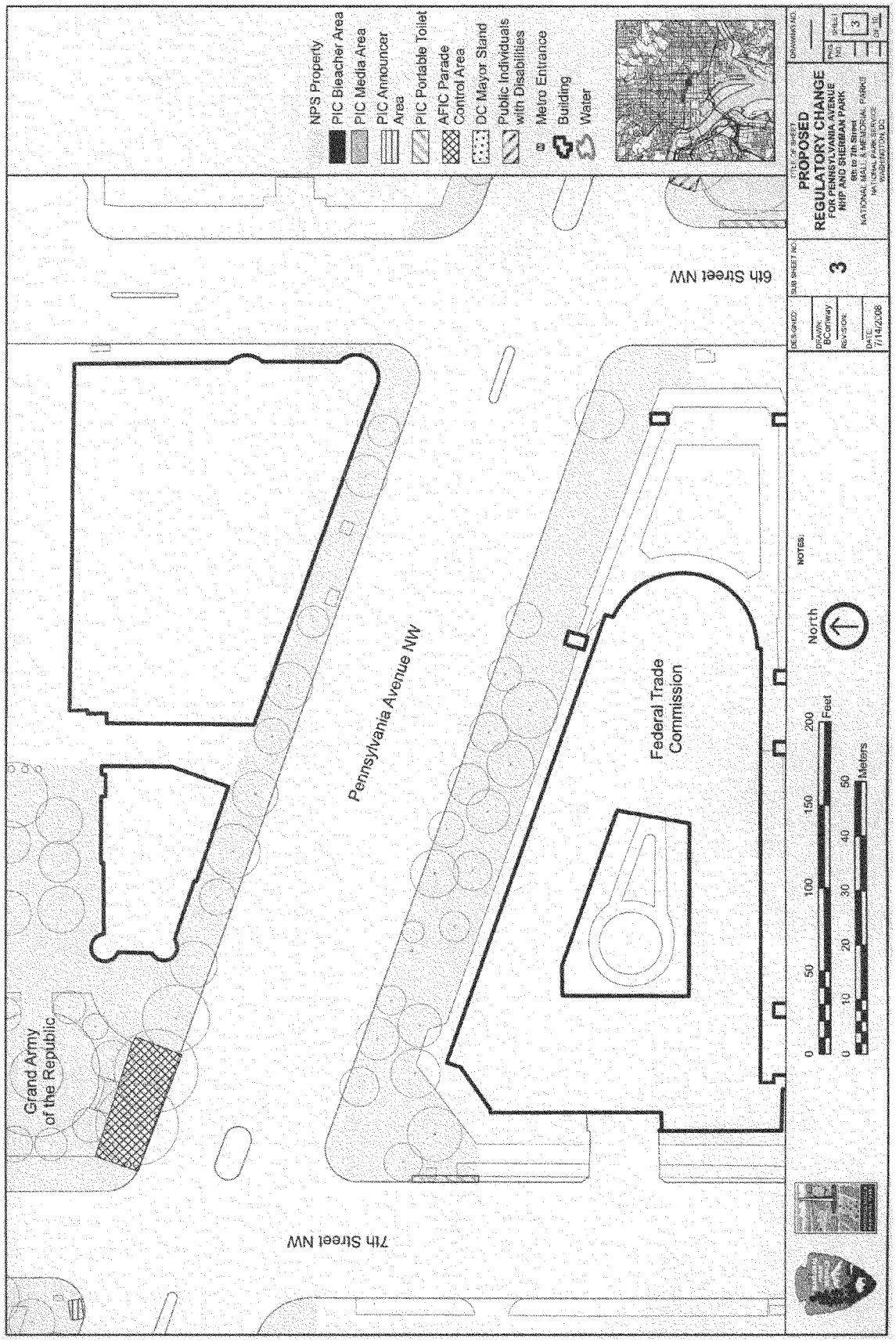
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PIC Announcer Area
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AFIC Parade Control Area
DC Mayor Stand
Public Individuals with Disabilities
Metro Entrance
Building
Water
6th Street NW
Pennsylvania Avenue NW
Federal Trade Commission
Grand Army of the Republic
7th Street NW
North
0 50 100 150 200 Feet
0 10 20 30 40 50 Meters
NOTES:
DRAWING NO.
PROPOSED
REGULATORY CHANGE
FOR PENNSYLVANIA AVENUE
NHP AND SHERMAN PARK
6th to 7th Street
NATIONAL MALL & MEMORIAL PARKS
NATIONAL PARK SERVICE
WASHINGTON, D.C.
SHEET 3 OF 10
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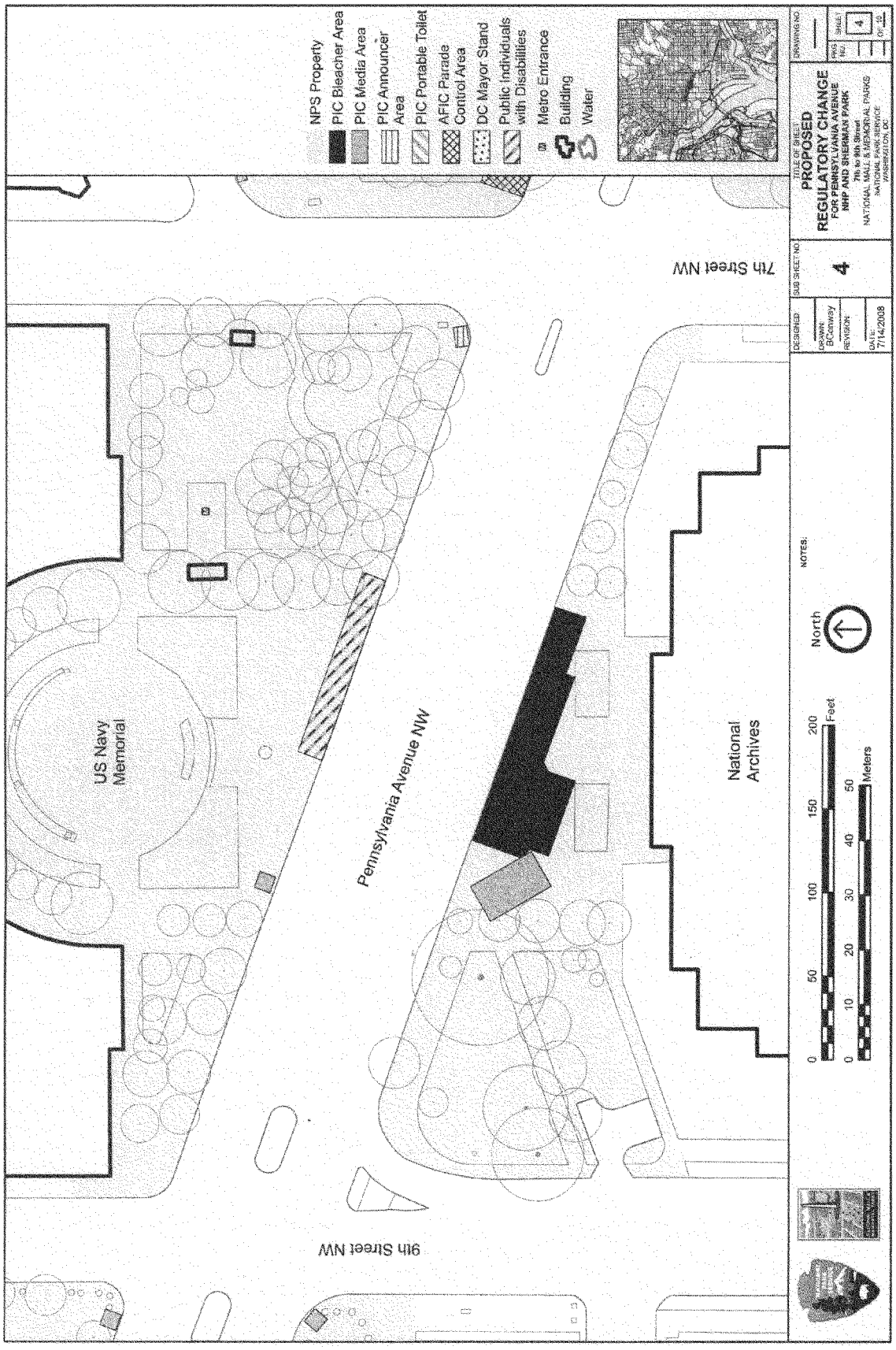
REVISION:
DATE: 7/14/2008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DC Mayor Stand
Public Individuals with Disabilities
Metro Entrance
Building
Water
7th Street NW
9th Street NW
US Navy Memorial
Pennsylvania Avenue NW
National Archives
North
0 50 100 150 200 Feet
0 10 20 30 40 50 Meters
NOTES:
TITLE OF SHEET
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REGULATORY CHANGE
FOR PENNSYLVANIA AVENUE
NHP AND SHERMAN PARK
7th to 9th Street
NATIONAL MALL & MEMORIAL PARKS
NATIONAL PARK SERVICE
WASHINGTON, DC
DRAWING NO
SHEET
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SUB SHEET NO
4
DESIGNED
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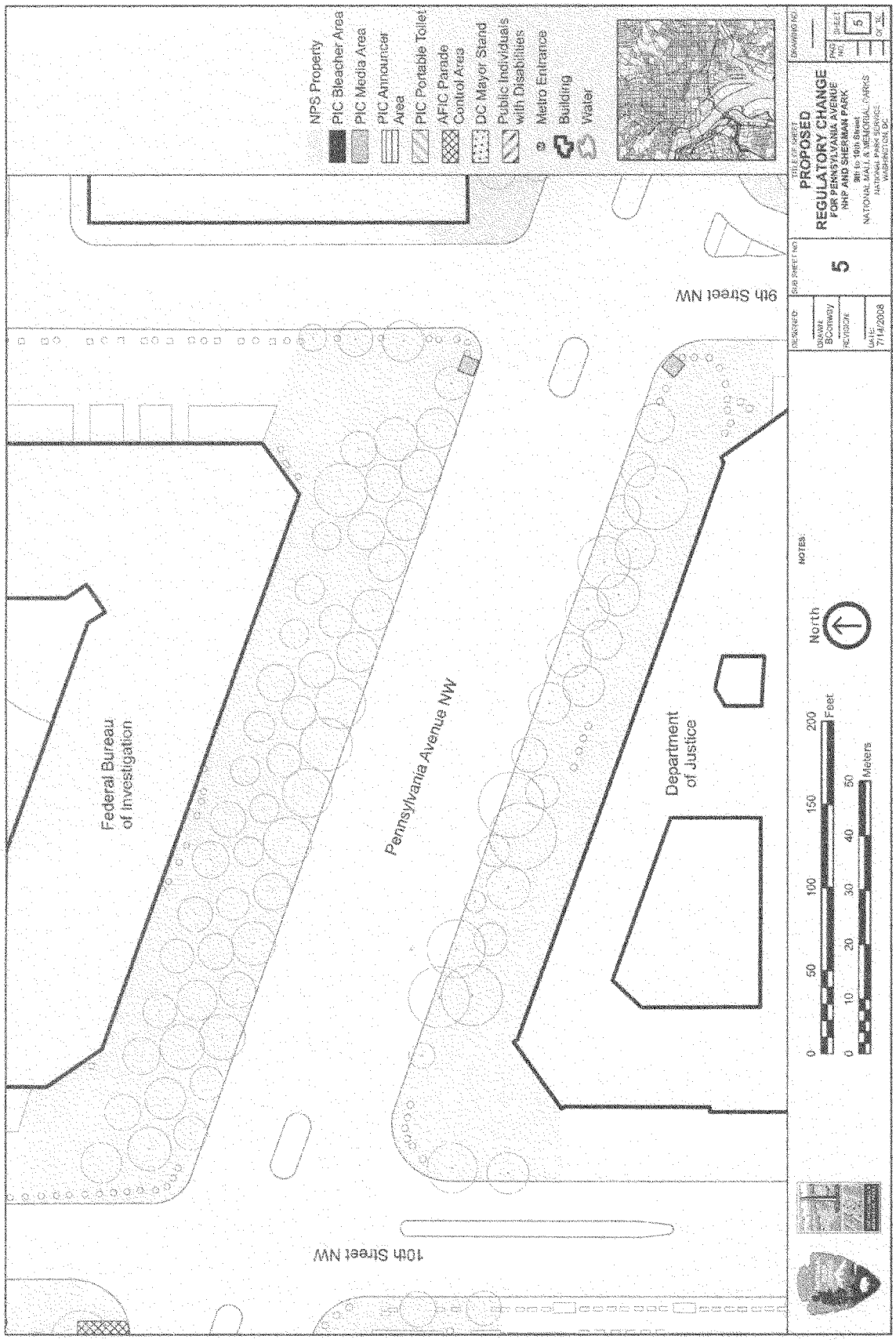
DATE:
7/14/2008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Public Individuals with Disabilities
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Building
Water
TITLE OF SHEET
PROPOSED
REGULATORY CHANGE
FOR PENNSYLVANIA AVENUE
NHP AND SHERMAN PARK
9th to 10th Street
NATIONAL MALL & MEMORIAL PARKS
NATIONAL PARK SERVICE
WASHINGTON, D.C.
DRAWING NO.
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SHEET
5
OF 36
DESIGNED
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DATE
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SUB SHEET NO.
5
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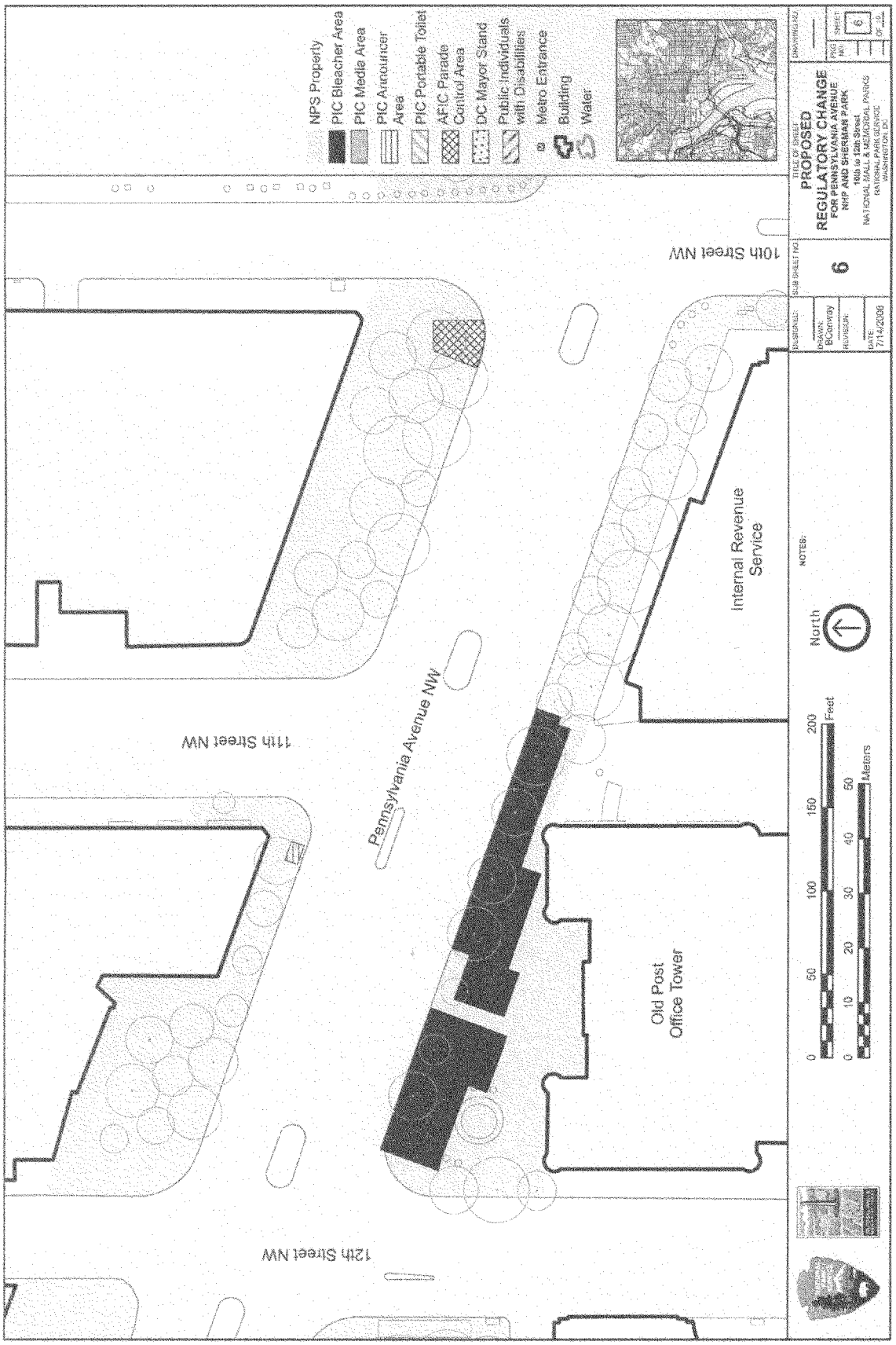
9th Street NW
10th Street NW
Pennsylvania Avenue NW
Federal Bureau of Investigation
Department of Justice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DC Mayor Stand
Public Individuals with Disabilities
Metro Entrance
Building
Water
TITLE OF SHEET
PROPOSED
REGULATORY CHANGE
FOR PENNSYLVANIA AVENUE
NHP AND SHERMAN PARK
10th to 12th Street
NATIONAL MALL & MEMORIAL PARKS
NATIONAL PARK SERVICE
WASHINGTON, DC
UNAPPROVED
SHEET NO. 6
OF
DESIGNED:
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REVISION:
DATE: 7/14/2008
SUB SHEET NO. 6
NOTES:
North
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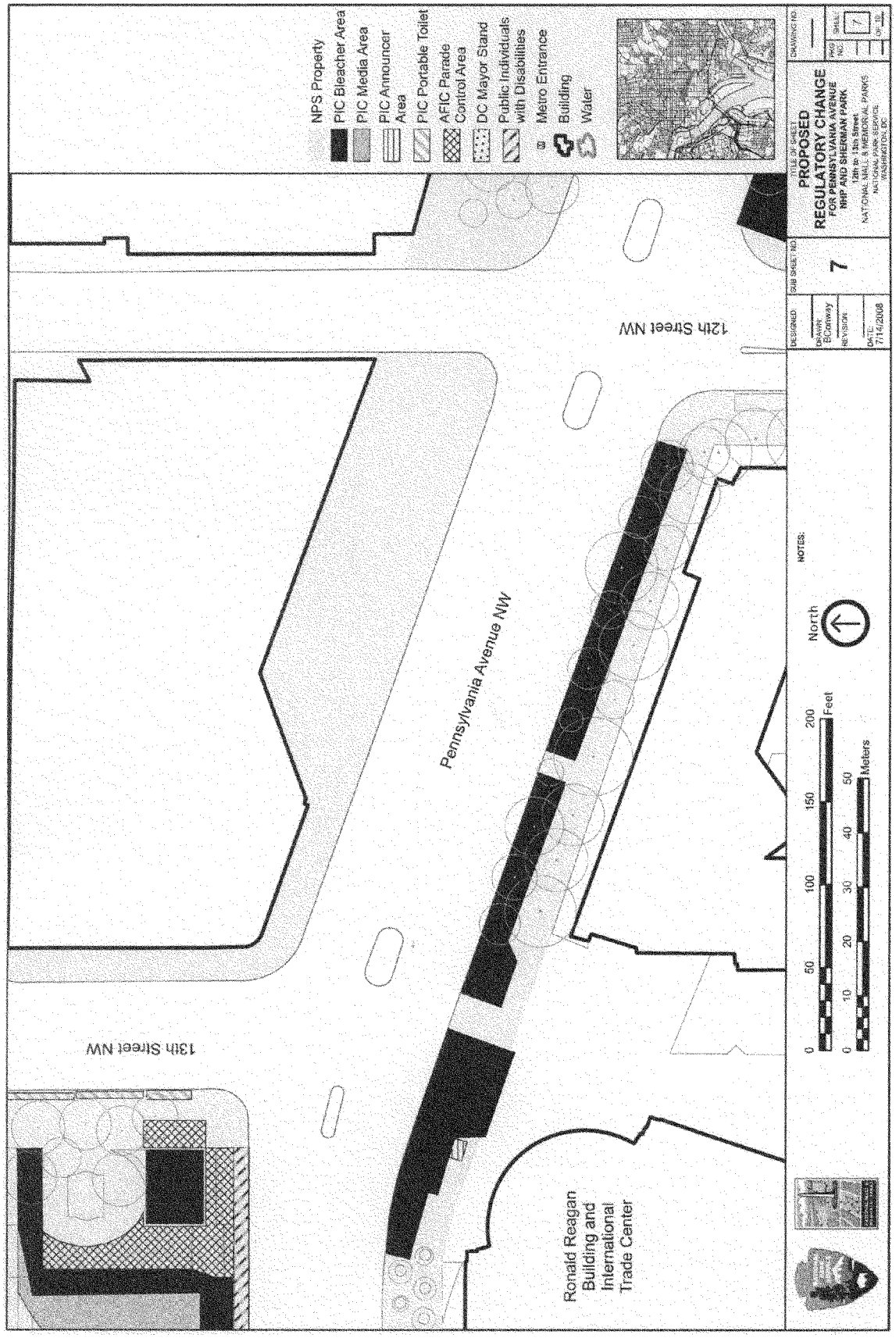
10th Street NW
11th Street NW
12th Street NW
Pennsylvania Avenue NW
Internal Revenue Service
Old Post Office Tower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DC Mayor Stand
Public Individuals with Disabilities
Metro Entrance
Building
Water
12th Street NW
Pennsylvania Avenue NW
13th Street NW
Ronald Reagan Building and International Trade Center
NOTES:
North
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0 10 20 30 40 50 Meters
DESIGNED
DRAWN
REVISION
DATE
7/14/2008
SHEET NO
7
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PROPOSED
REGULATORY CHANGE
FOR PENNSYLVANIA AVENUE
NHP AND SHERMAN PARK
12th to 13th Street
NATIONAL MALL & MEMORIAL PARKS
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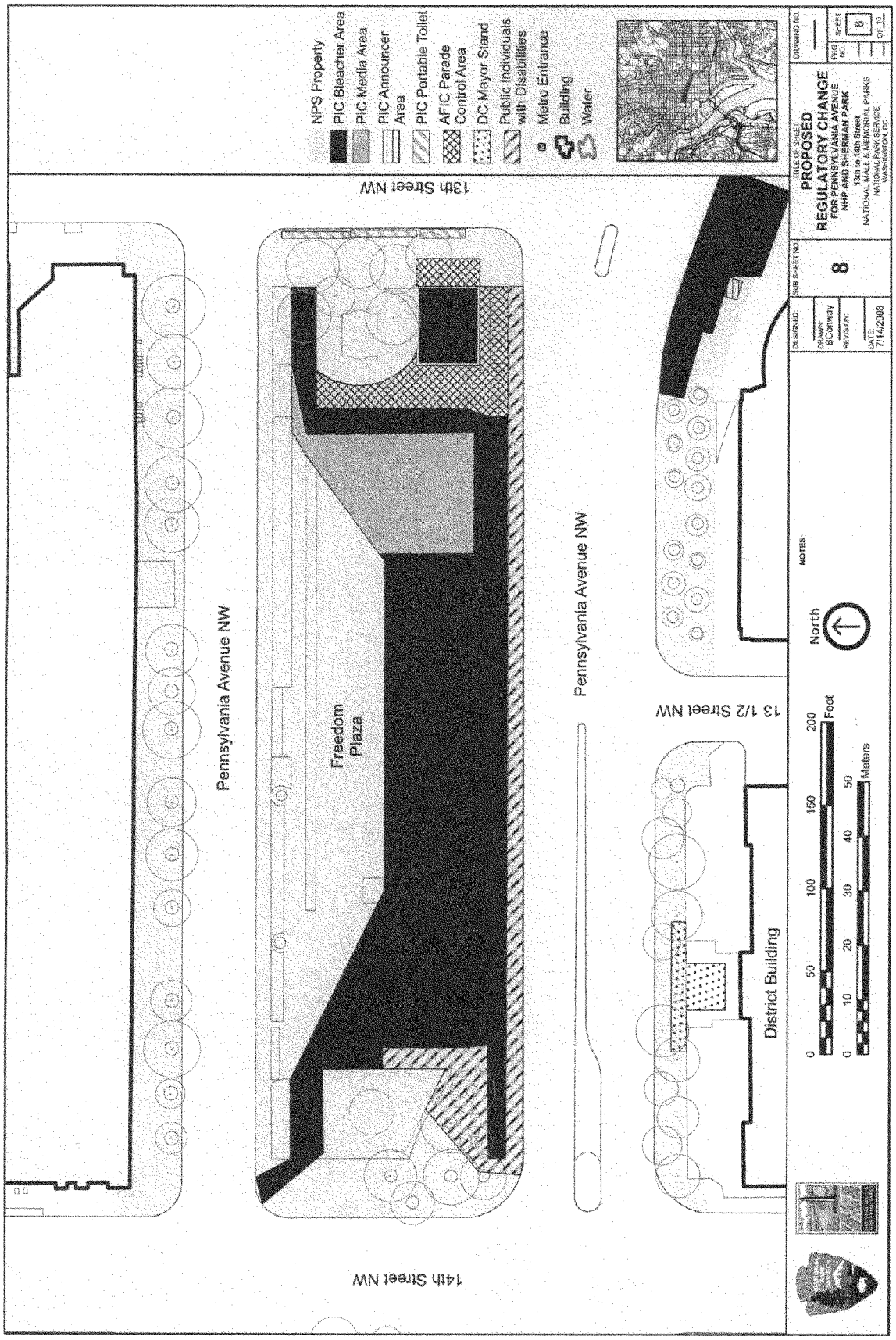
OF 10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DC Mayor Stand
Public Individuals with Disabilities
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Building
Water
13th Street NW
Pennsylvania Avenue NW
Freedom Plaza
Pennsylvania Avenue NW
13 1/2 Street NW
District Building
14th Street NW
TITLE OF SHEET
PROPOSED
REGULATORY CHANGE
FOR PENNSYLVANIA AVENUE
NHP AND SHERMAN PARK
13th to 14th Street
NATIONAL MALL & MEMORIAL PARKS
NATIONAL PARK SERVICE
WASHINGTON, DC
DRAWING NO.
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8
OF 10
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DATE: 7/14/2008
SUB SHEET NO.
8
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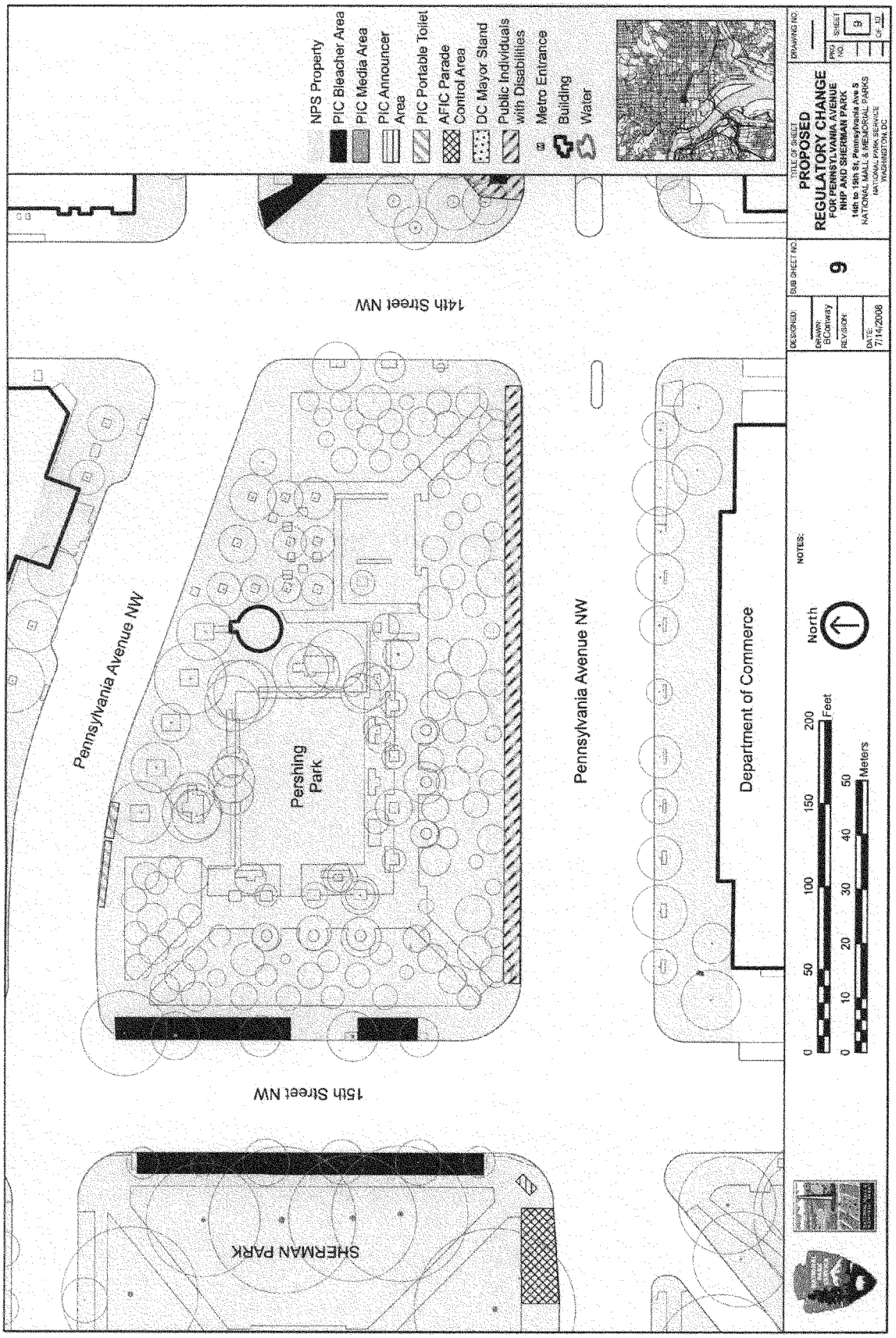
0 10 20 30 40 50 Meters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PIC Media Area
PIC Announcer Area
PIC Portable Toilet
AFIC Parade Control Area
DC Mayor Stand
Public Individuals with Disabilities
Metro Entrance
Building
Water
14th Street NW
Pennsylvania Avenue NW
Pershing Park
Pennsylvania Avenue NW
Department of Commerce
15th Street NW
SHERMAN PARK
NOTES:
North
0 50 100 150 200 Feet
0 10 20 30 40 50 Meters
DESIGNED:
DRAWN: BCorraway
REVISION:
DATE: 7/14/2008
SUB SHEET NO. 9
TITLE OF SHEET
PROPOSED
REGULATORY CHANGE
FOR PENNSYLVANIA AVENUE
NHP AND SHERMAN PARK
14th to 15th St, Pennsylvania Ave S
NATIONAL MALL & MEMORIAL PARKS
NATIONAL PARK SERVICE
WASHINGTON, DC
DRAWING NO.
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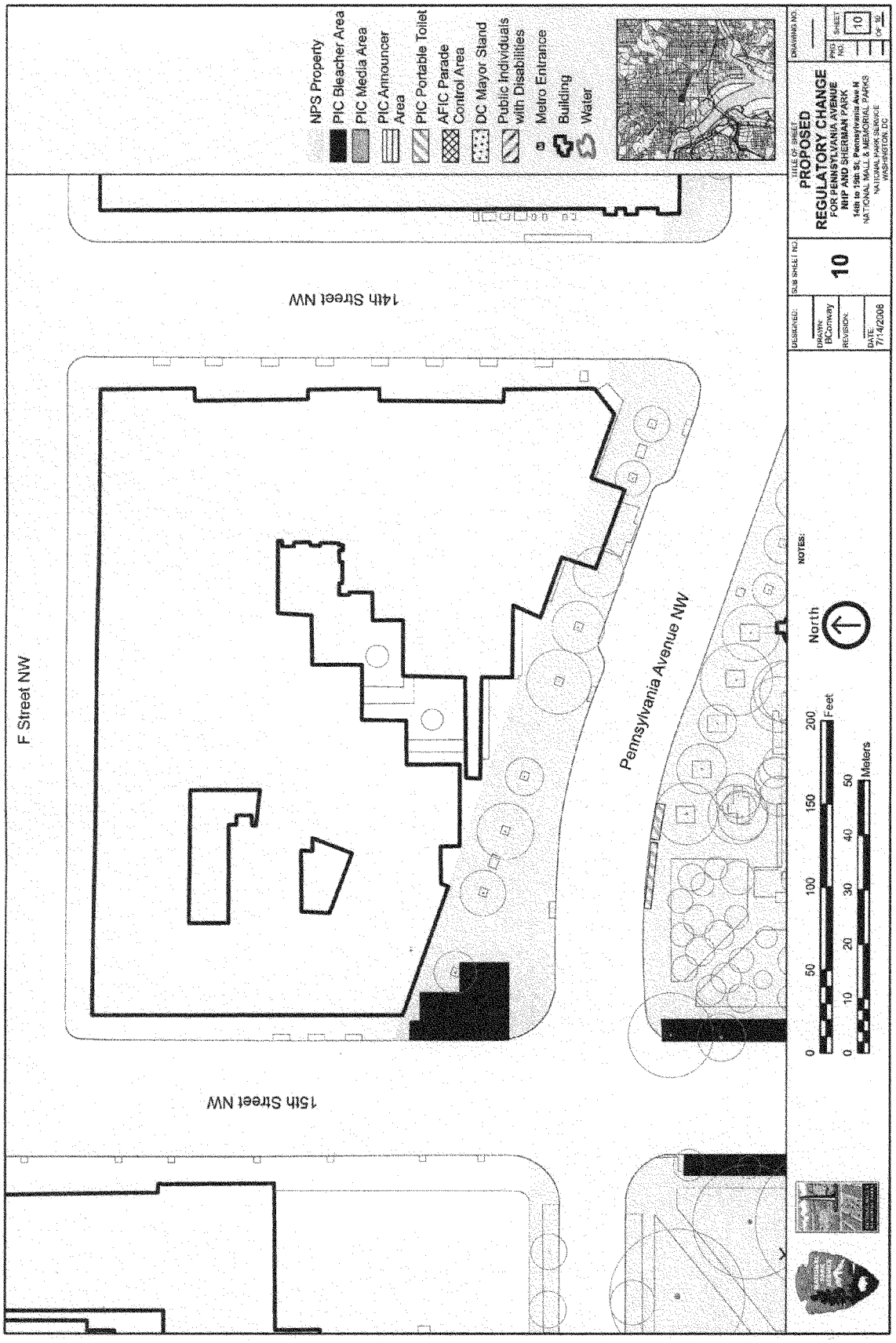
SHEET 9 OF 10



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(iv) Other demonstrations or special events are permitted in park areas under permit for the National Celebration Events listed in paragraph (g)(4)(ii) of this section to the extent that they do not significantly interfere with the National Celebration Events. Except for Inaugural ceremony activities, no activity containing structures is permitted closer than 50 feet to another activity containing structures without the mutual consent of the sponsors of those activities.

(v) NPS will issue a permit for a demonstration on the White House sidewalk and in Lafayette Park at the same time only if the requirements of this paragraph are met. The organization, group, or other sponsor of the demonstration must undertake in good faith all reasonable action, including the provision of sufficient marshals, to ensure that the sponsor:

(A) Maintains good order and self-discipline in conducting the demonstration and any necessary movement of persons; and

(B) Observes the numerical limitations and waiver provisions described in paragraphs (g)(5)(i) and (ii) of this section.

(vi) NPS will issue permits authorizing demonstrations or special events for the periods shown in the following table. NPS may extend these periods for demonstrations only, unless another application requests use of the particular area and that application precludes double occupancy.

Park area	Permit validity period	Permit validity period for Inaugural activities
(A) White House area, except the Ellipse.	7 days	Between October 24 through April 1 for reasonable and necessary set-up and take-down activities for the White House Sidewalk and Lafayette Park.
(B) The Ellipse and all other park areas.	4 months	Between December 7 through February 10 for reasonable and necessary set-up and take-down activities for Pennsylvania Avenue National Historic Park and Sherman Park.

* * * * *

Dated: July 21, 2008.

Lyle Laverty,

Assistant Secretary of the Interior for Fish and Wildlife and Parks.

[FR Doc. E8–18412 Filed 8–7–08; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 261

RIN 0970–AC38

Temporary Assistance for Needy Families (TANF) Program, Elimination of Enhanced Caseload Reduction Credit for Excess Maintenance-of-Effort Expenditures

AGENCY: Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

ACTION: Notice of proposed rulemaking.

SUMMARY: The Administration for Children and Families proposes to revise the TANF regulations to eliminate the provision that allows a State to receive additional caseload reduction credit for maintenance-of-effort (MOE) expenditures in excess of its required MOE spending. This provision is no longer necessary and not consistent with Congressional direction in the Deficit Reduction Act of 2005.

DATES: We will consider all comments received on or before October 7, 2008.

ADDRESSES: You may submit your comments in writing to the Office of Family Assistance (OFA), Administration for Children and Families, 5th Floor East, 370 L'Enfant Promenade, SW., Washington, DC 20447, or hand deliver to OFA/ACF, 5th Floor East, 901 D Street, SW., Washington, DC 20447. You may download an electronic copy of the proposed rule at the Federal Rulemaking Portal: *http://www.regulations.gov* and may download a copy and transmit electronic comments at the agency Web site: *http://www.regulations.acf.hhs.gov.*

FOR FURTHER INFORMATION CONTACT: Robert Shelbourne, Director, Division of State TANF Policy, Office of Family Assistance, ACF, at (202) 401–5150.

SUPPLEMENTARY INFORMATION:

I. Public Inspection of Comments

All comments received, including any personal information provided, will be available for public inspection Monday through Friday 8:30 a.m. to 5 p.m. at 901 D St., SW., 5th Floor, Washington, DC.

II. Statutory Authority

We are issuing this proposed regulation under the authority granted to the Secretary of HHS by Section 1102(a) of the Social Security Act, 42 U.S.C. 1302(a). Section 1102(a) authorizes the Secretary to make and publish such rules as may be necessary for the efficient administration of functions with which he is charged under the Social Security Act.

The statute at 42 U.S.C. 617 limits the authority of the Federal government to regulate State conduct or enforce the TANF provisions of the Social Security Act, except as expressly provided. We have interpreted this provision to allow us to regulate where Congress has charged HHS with enforcing certain TANF provisions by assessing penalties. Because the caseload reduction credit directly relates to the work participation requirements to which States and the Territories are subject and the failure to meet those requirements can result in a financial penalty pursuant to 42 U.S.C. 609(a)(3), we have the authority to regulate in this instance.

III. Background

Under the TANF program, States must engage certain percentages of their caseloads in work activities or face financial penalties for failing to meet the work participation requirements. These required participation rates are 50 percent overall and 90 percent for two-parent families; however, the rates a State must actually meet for a fiscal year (FY) are reduced by the amount of a State's caseload reduction credit. Generally, the caseload reduction credit equals the number of percentage points that a State reduces its overall caseload in the prior fiscal year (the comparison year) compared to its overall caseload in the base year. For caseload reduction credits that apply to the two-parent work participation rate, States have the option of using the overall calculation or using a calculation based on the reduction in the two-parent caseload. Because of sharp State caseload declines since FY 1995, the caseload reduction credit had virtually eliminated participation requirements for most States. The Deficit Reduction Act of 2005 (DRA) updated the base year from FY 1995 to FY 2005, effectively raising the target work participation rates and

encouraging States to help families become independent.

The original TANF rule published in 1999 (64 FR 17720, April 12, 1999) included a provision at § 261.43(a)(2) (now § 261.43(b)) that allowed a State to exclude from the caseload reduction credit calculation cases on which the State had spent what has been termed ''*excess MOE.*'' Excess MOE refers to State maintenance-of-effort (MOE) or cost-sharing expenditures in excess of the amount the State needs to meet its required MOE expenditure requirement. If a State chose to use this provision, we factored out cases funded with excess MOE from the comparison-year caseload in calculating the State's credit.

Title IV–A of the Social Security Act did not expressly provide for the concept of an allowance in the caseload reduction credit for excess MOE. Rather, we included it in the rule in response to a comment on the proposed TANF rule published in 1997. Our intent was to encourage States to spend MOE in their TANF programs above the required level. At the time, we thought it was necessary to give States an incentive to spend MOE dollars because the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) had shifted the culture of welfare and States faced new, more challenging work participation rates. In addition, there was some concern that welfare reform would reduce the prior level of State funding. Since then, States have been successful in moving large numbers of families off of the welfare rolls, and we believe States have adequate resources to devote to their TANF programs.

In an effort to continue the drive to move individuals into the workforce and to help ensure that TANF clients with barriers to employment receive the services they need, the DRA placed a renewed emphasis on work participation rates, requiring States to meet effectively higher work participation rates by recalibrating the caseload reduction credit and imposing new requirements to ensure consistent and accurate reporting of work participation data. Because the excess MOE provision allows States to reduce their target work participation rates artificially without actually moving recipients off of the rolls and into jobs, this regulatory provision is not consistent with the DRA.

IV. Discussion of Regulatory Provisions

This proposed rule would delete § 261.43(b), which allows a State to receive additional caseload reduction credit for MOE expenditures in excess of its required MOE spending.

We now propose deleting this provision for several reasons. First, we no longer think the incentive the excess MOE provision attempted to offer is necessary. While the TANF block grant amount has remained constant, State TANF caseloads have plummeted. Consequently, the amount of Federal TANF and minimum required State MOE funding available per case has grown considerably since that time and State TANF programs are operating successfully without spending large sums in excess of their required MOE levels.

Second, the DRA expanded the range of expenditures that a State may claim as MOE. As a result, a State could feasibly claim as ''excess MOE'' existing State and third-party spending that is not claimed as MOE but that would qualify if a State chose to report such expenditures. This would allow a State to increase the amount of excess MOE without truly investing new resources in programs to serve needy families.

Finally, we look again to the intent of the DRA to support eliminating the excess MOE credit in the caseload reduction credit calculation. Congress included the new calculation of work participation rates and program integrity provisions of the DRA in large part to restore State accountability for the TANF program and to ensure real progress in moving families from welfare to self-sufficiency. It did this through recalibration of the caseload reduction credit, expansion of the universe of families counted in calculating participation rates, and improved verification and oversight of work participation activities. Meaningful work participation rates help ensure effective programs and keep States accountable for the funds they expend and the programs they operate. Higher caseload reduction credits that do not reflect families actually leaving the caseload for work only hurt those goals.

V. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (Pub. L. 104–13) (PRA), no persons are required to respond to a collection of information unless it displays a valid OMB control number. As required by this Act, we have submitted the proposed data collection requirements to OMB for review and approval. We are concurrently using this NPRM as a vehicle for seeking comment from the public on this information collection.

This NPRM proposes to delete a provision in the regulation concerning the TANF caseload reduction credit that permits a State not to report caseloads funded with ''excess MOE.'' Excess MOE refers to State maintenance-of-effort (MOE) expenditures in excess of the amount the State needs to meet its required MOE expenditures. The reporting burden on States would decrease as a result of this proposed change because they would no longer have the option to compute how many cases they funded with excess MOE in submitting the Caseload Reduction Report, Form ACF–202. We have recomputed the burden of completing the ACF–202, factoring out the computation of excess MOE.

We estimate that the 50 States, the District of Columbia, Guam, Puerto Rico, and the United States Virgin Islands will be respondents. Currently, American Samoa has not applied to implement the TANF program.

The estimated burden associated with preparing the Caseload Reduction Credit Report, Form ACFF–202 is:

Instrument or requirement	Number of respondents	Yearly submittals	Average burden hours per response	Average reduction in burden hours per response	Total burden hours	Reduction in total burden hours
Caseload Reduction Documentation Process, ACF–202—§§ 261.41–261.44	54	1	115	5	6,210	270

We are submitting this information collection to OMB for approval. These requirements will not become effective until approved by OMB. Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, *Attn:* ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *rsargis@acf.hhs.gov.* Written comments to OMB concerning the proposed

information collection should be sent directly to: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, *Attention:* Desk Officer for the Administration for Children and Families. OMB is required to make a decision concerning the collection of information contained in this regulation between 30 and 60 days after its publication in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the proposed regulation.

VI. Regulatory Flexibility Analysis

The Secretary certifies, under 5 U.S.C. 605(b), as enacted by the Regulatory Flexibility Act (Pub. L. 96–354), that this rule will not result in a significant impact on a substantial number of small entities. The primary impact is on State governments. State governments are not considered small entities under the Regulatory Flexibility Act.

VII. Regulatory Impact Analysis

Executive Order 12866 requires that regulations be reviewed to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this rule is consistent with these priorities and principles.

VIII. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires that a covered agency prepare a budgetary impact statement before promulgating a rule that includes any Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

The Department has determined that this rule would not impose a mandate that will result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year.

The proposed rule has no direct budgetary implications. The TANF program has been unaffected in budgetary terms by the existing excess MOE provision.

IX. Congressional Review

This regulation is not a major rule as defined in 5 U.S.C. Chapter 8.

X. Assessment of Federal Regulation and Policies on Families

Section 654 of The Treasury and General Government Appropriations Act of 1999 requires Federal agencies to determine whether a proposed policy or regulation may affect family well-being. If the agency's determination is affirmative, then the agency must prepare an impact assessment addressing seven criteria specified in the law. This regulation will not have an impact on family well-being as defined in the legislation.

XI. Executive Order 13132

Executive Order 13132 ''Federalism'' requires that Federal agencies consult with State and local government officials in the development of regulatory policies with Federalism implications. We solicit and welcome comments from State and local government officials on this proposed rule, consistent with Executive Order 13132.

List of Subjects in 45 CFR Part 261

Grant programs—Federal aid programs, Penalties, Public assistance programs—Welfare programs.

Dated: October 24, 2007.

Daniel C. Schneider,

Acting Assistant Secretary for Children and Families.

Approved: May 6, 2008.

Michael O. Leavitt,

Secretary of Health and Human Services.

Editorial Note: This document was received at the Office of the Federal Register on August 4, 2008.

For the reasons set forth in the preamble, the Administration for Children and Families proposes to amend 45 CFR chapter II by amending part 261 as set forth below:

PART 261—ENSURING THAT RECIPIENTS WORK

1. The authority citation for 45 CFR part 261 continues to read as follows:

Authority: 42 U.S.C. 601, 602, 607, and 609; Public Law 109–171.

2. Revise § 261.43 to read as follows:

§ 261.43 What is the definition of a ''case receiving assistance'' in calculating the caseload reduction credit?

The caseload reduction credit is based on decreases in caseloads receiving TANF- or SSP-MOE-funded assistance (other than those excluded pursuant to § 261.42).

[FR Doc. E8–18208 Filed 8–7–08; 8:45 am]

BILLING CODE 4184–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 08–1735; MB Docket No. 08–153; RM–11477]

Television Broadcasting Services; Bangor, ME

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a channel substitution proposed by Community Broadcasting Service (''Community Broadcasting''), the licensee of WABI–DT, DTV channel 19, Bangor, Maine. Community Broadcasting requests the substitution of DTV channel 12 for channel 19 at Bangor.

DATES: Comments must be filed on or before September 8, 2008, and reply comments on or before September 22, 2008.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 445 12th Street, SW., TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for petitioner as follows: Michelle A. McClure, Esq., Fletcher, Heald & Hildreth, PLC, 1300 North 17th Street, 11th Floor, Arlington, Virginia 22209.

FOR FURTHER INFORMATION CONTACT: Joyce Bernstein, *joyce.bernstein@fcc.gov*, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 08–153, adopted July 24, 2008, and released July 28, 2008. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC, 20554. This document will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–478–3160 or via e-mail *http://www.BCPIWEB.com*. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and

Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television, Television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.622 [Amended]

2. Section 73.622(i), the DTV Table of Allotments under Maine, is amended by adding channel 12 and removing channel 19 at Bangor.

Federal Communications Commission.

Clay C. Pendarvis,

Associate Chief, Video Division, Media Bureau.

[FR Doc. E8–18359 Filed 8–7–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 08–1734; MB Docket No. 08–155; RM–11479]

Television Broadcasting Services; Honolulu, HI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a channel substitution proposed by HITV License Subsidiary, Inc. (''HITV''), the licensee of KGMB–DT, pre-transition DTV channel 22, Honolulu, Hawaii. HITV is allotted post-transition DTV channel 9 and requests the substitution of post-transition DTV channel 22 for channel 9 at Honolulu.

DATES: Comments must be filed on or before September 8, 2008, and reply comments on or before September 22, 2008.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 445 12th Street, SW., TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for petitioner as follows: Patrick S. Scott, Esq., Dow Lohnes, PLLC, 1200 New Hampshire Avenue, NW., Suite 800, Washington, DC 20036–6802.

FOR FURTHER INFORMATION CONTACT: Joyce Bernstein, *joyce.bernstein@fcc.gov*, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 08–155, adopted July 24, 2008, and released July 28, 2008. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC, 20554. This document will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–478–3160 or via e-mail *http://www.BCPIWEB.com*. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television, Television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.622 [Amended]

2. Section 73.622(i), the DTV Table of Allotments under Hawaii, is amended by adding channel 22 and removing channel 9 at Honolulu.

Federal Communications Commission.

Clay C. Pendarvis,

Associate Chief, Video Division, Media Bureau.

[FR Doc. E8–18357 Filed 8–7–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 08–1736; MB Docket No. 08–156; RM–11480]

Television Broadcasting Services; La Crosse, WI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a channel substitution proposed by WXOW–WQOW (''WXOW–WQOW''), the permittee of WXOW–DT, DTV channel 14, La Crosse, Wisconsin. WXOW–WQOW requests the substitution of DTV channel 48 for channel 14 at La Crosse.

DATES: Comments must be filed on or before September 8, 2008, and reply comments on or before September 22, 2008.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 445 12th Street, SW., TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for petitioner as follows: Timothy J. Cooney, Esq., Wilkinson Barker Knauer LLP, 2300 N Street, NW., Suite 700, Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: Joyce Bernstein, *joyce.bernstein@fcc.gov*, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 08–156, adopted July 24, 2008, and released July 28, 2008. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC 20554. This document will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–478–3160 or via e-mail *http://www.BCPIWEB.com*. To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television, Television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.622 [Amended]

2. Section 73.622(i), the DTV Table of Allotments under Wisconsin, is amended by adding channel 48 and removing channel 14 at La Crosse.

Federal Communications Commission.

Clay C. Pendarvis,

Associate Chief, Video Division, Media Bureau.

[FR Doc. E8–18358 Filed 8–7–08; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 73, No. 154
Friday, August 8, 2008

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Federal Register Notice; Notice of Meeting

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice of Meeting.

SUMMARY: Notice is hereby given that the Advisory Council on Historic Preservation (ACHP) will meet on Friday, August 15, 2008. The meeting will be held in the New York/Illinois Room at the Hyatt Regency Hotel at One St. Louis Union Station, St. Louis, MO at 9 a.m.

The ACHP was established by the National Historic Preservation Act of 1966 (16 U.S.C. 470 *et seq.*) to advise the President and Congress on national historic preservation policy and to comment upon Federal, federally assisted, and federally licensed undertakings having an effect upon properties listed in or eligible for inclusion in the National Register of Historic Places. The ACHP's members are the Architect of the Capitol; the Secretaries of the Interior, Agriculture, Defense, Housing and Urban Development, Commerce, Education, Veterans Affairs, and Transportation; the Administrator of the General Services Administration; the Chairman of the National Trust for Historic Preservation; the President of the National Conference of State Historic Preservation Officers; a Governor; a Mayor; a Native American; and eight non-Federal members appointed by the President.

The agenda for the meeting includes the following:

Call To Order—9 a.m.
I. Chairman's Welcome
II. Chairman's Award Presentation
III. Native American Activities
  A. Native American Advisory Group
  B. Native American Program Report
IV. Archaeology Task Force
  A. Proposed Policy Statement on Archaeology and Heritage Tourism
V. Preserve America Program Implementation
  A. Preserve America Stewards Initiative
  B. Preserve America Communities and Grants
  C. Preserve America Summit Implementation
  D. Preserve America/Save America's Treasures Authorizing Legislation
VI. Preservation Initiatives Committee
  A. Legislative Update
  B. Heritage Tourism Activities
VII. Federal Agency Programs Committee
  A. National Park Service Programmatic Agreement
  B. Bureau of Land Management Nationwide Programmatic Agreement
  C. Standard Treatments Update
  D. Response to Midwest Floods
  E. Section 106 Cases
VIII. Communications, Education, and Outreach Committee
  A. ACHP Web Site Update
IX. Chairman's Report
  A. ACHP Alumni Foundation
  B. ACHP FY 2009 Budget Request
  C. Results of Transition Planning Session
X. Executive Director's Report
XI. New Business
XII. Adjourn

Note: The meetings of the ACHP are open to the public. If you need special accommodations due to a disability, please contact the Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue, NW., Room 803, Washington, DC, 202–606–8503, at least seven (7) days prior to the meeting. For further information: Additional information concerning the meeting is available from the Executive Director, Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue, NW., #803, Washington, DC 20004.

Dated: August 1, 2008.

John Fowler,

Executive Director.

[FR Doc. E8–18103 Filed 8–7–08; 8:45 am]

BILLING CODE 4310–K6–M

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

August 5, 2008.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Forest Service

Title: Understanding Value Trade-Offs Regarding Fire Hazard Reduction.

OMB Control Number: 0596–0189.

Summary of Collection: The Health Forests Restoration Act (Pub. L. 108–148), improves the ability of the

Secretary of Agriculture and the Secretary of the Interior to plan and conduct hazardous fuels reduction projects on National Forest System and Bureau of Land Management Lands. The Forest Service, Bureau of Land Management, Bureau of Indian Affairs, National Park Service, Fish and Wildlife Service, and many State agencies with fire protection responsibilities have undertaken a very ambitious and expensive forest fuels reduction program. The Forest Service (FS) and university researchers will contact recipients of a phone/mail questionnaire to help forest and fire managers understand value trade-offs regarding fire hazard reduction programs in the wildland-urban interface.

Need and Use of the Information: Through the questionnaire, researchers will evaluate the responses of Florida residents to different scenarios related to fire hazard reduction programs, how residents think the programs presented to them are effective, and calculate how much residents would be willing to pay to implement the alternatives. The collected information will help researchers provide better information to natural resources, forest, and fire managers when they are contemplating the kind and type of fire hazard reduction program to implement to achieve forest land management planning objectives. Without the information the agencies with fire protection responsibilities will lack the capability to evaluate the general public understanding of proposed fuels reduction projects and programs or their willingness to pay for implementing such programs.

Description of Respondents: Individuals or households.

Number of Respondents: 500.

Frequency of Responses: Reporting: Other (One time only).

Total Burden Hours: 317.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. E8–18308 Filed 8–7–08; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Office of the Under Secretary, Research, Education, and Economics; Notice of the Advisory Committee on Biotechnology and 21st Century Agriculture Meeting

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. App. 2, 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 August 26, 2008, 8 a.m. to 5 p.m., and August 27, 2008, 8 a.m. to 4 p.m.

ADDRESSES: Waugh Auditorium, USDA Economic Research Service, Third Floor, South Tower, 1800 M Street NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Michael Schechtman, Telephone (202) 720–3817.

SUPPLEMENTARY INFORMATION: The twentieth meeting of the AC21 has been scheduled for August 26–27, 2008. The AC21 consists of members representing the biotechnology industry, farmers, commodity processors and shippers, livestock handlers, 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 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 will continue its consideration of governance issues in the oversight of genetically engineered animals, with an emphasis on food animals intended for food or non-food uses. 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*.

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 August 26, 2008, 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. Dianne Fowler at (202) 720–4074, by fax at (202) 720–3191 or by e-mail at *Dianne.fowler@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: July 30, 2008.

Jeremy Stump,

Senior Advisor to the Secretary for International and Homeland Security Affairs and Biotechnology.

[FR Doc. E8–18276 Filed 8–7–08; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Forest Service

Shasta-Trinity National Forest, California; Supplemental Environmental Impact Statement for the Pilgrim Vegetation Management Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to supplement an Environmental Impact Statement.

SUMMARY: The Shasta-Trinity National Forest will prepare a Supplemental Environmental Impact Statement (SETS) for the Pilgrim Vegetation Management Project to present additional information consistent with the court ruling *Conservation Congress* v. *Forest Service,* Case No. 07–0264 (E.D. Cal., May 13, 2008). This action will require modification of the current Project Level Management Indicator Assemblage Report for the Pilgrim Vegetation Management Project dated February 15, 2007.

DATES: The draft SETS is expected to be issued in September 2008 and the final SETS expected in November 2008.

ADDRESSES: Shasta-McCloud Management Unit, 204 W. Alma St., Mt. Shasta, California 96067.

FOR FURTHER INFORMATION CONTACT: Deimis Poehlmann, Planning Officer, Shasta-McCloud Management Unit, McCloud Ranger Station, P.O. Box 1620, McCloud, California 96057, telephone (530) 926–9656 or via e-mail at *dpoehlmann@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The Forest Service is proposing to prepare a supplement to the final environmental impact statement for the Pilgrim Vegetation Management Project in

accordance with FSH 1909.15—Chapter 10—Section 18.1 and Section 18.2.

The Record of Decision (ROD), Pilgrim Vegetation Management Project Final Environmental Impact Statement (FEIS) and other relevant documentation can be found on the Shasta McCloud Management Unit website at: *http://www.fs.fed.us/r5/shastatrinity/projects/smmu-projects.shtml.*

The original Notice of Intent for this project was published in the **Federal Register** February 14, 2005. The Notice of Availability of the Pilgrim Vegetation Management Project Draft Environmental Impact Statement was published in the **Federal Register** on June 23, 2006. In June 1, 2007, a ROD was issued. This decision was appealed on August 5, 2007 and August 6, 2007. The Appeal Deciding Officer upheld the decision on September 18, 2007. A motion for summary judgment was filed by Conservation Congress and Klamath Forest Alliance in the United States District Court for the Eastern District of California on March 17, 2008.

In the recent court ruling concerning the ROD for the Pilgrim Vegetation Management Project, *Conservation Congress* v. *Forest Service,* Case No. 07–0264 (E.D. Cal., May 13, 2008), the court ruled the Forest Service did not fully comply with its monitoring obligations for certain species as outlined in the forest plan, and remanded the matter to the agency for further action consistent with the order. This SEIS will address and respond to the specific issues identified in the court ruling.

Purpose and Need for Action

The draft SEIS will not change the purpose and need for the Pilgrim Vegetation Management Project as described in Chapter 1, pages 1 through 15, of the FEIS. The draft SEIS will provide additional analysis and supplemental information specific to the issues identifed in the court ruling, *Conservation Congress* v. *Forest Service,* Case No. 07–0264 (E.D. Cal., May 13, 2008), and document the analysis and changes made within the Project Level Management Indicator Assemblage Report (Appendix L) and within the FEIS as necessary.

Proposed Action

The proposed action and alternatives will remain the same as described in Chapter 2, pages 17 through 33, of the FEIS. In summary, the FEIS considers four alternatives in detail. Alternative 4 is the no action alternative. Alternative 1, the Preferred Alternative, would restore forest health and ecosystem functions by commercial thinning and sanitation harvest on approximately 3100 acres of overstocked coniferous stands, sanitation and salvage harvest on approximately 10 acres of knobcone pine, and regeneration of approximately 415 acres of diseased and insect infested stands—15% green tree retention will not be met on approximately 255 of these acres because there are not enough disease-free trees to meet this standard. All regeneration units will be replanted with healthy conifer seedlings. Alternative 1 would also release approximately 20 acres of aspen by removing competing conifers, restore approximately 275 acres of dry meadows by removal of encroaching conifer trees, underburn approximately 200 acres of natural and activity fuels, mechanically pile and burn approximately 700 acres of activity fuels, close approximately 10 miles of roads to reduce maintenance costs, decommission approximately 2 miles of roads not needed for future management, reconstruct one road-stream crossing, and construct approximately 0.3 miles of new road needed for present and future management. Alternative 2 is the same as Alternative 1 except that on approximately 535 acres of proposed thinning/sanitation, canopy closure would be maintained at 60% on average. Alternative 3 is the same as Alternative 1 except that on approximately 415 acres of regeneration harvest, 15% of the area would be retained in trees that are generally the largest and/or oldest trees in the stands even though they are diseased.

Lead and Cooperating Agencies

Lead Agency: USDA, Forest Service.

Responsible Official

J. Sharon Heywood, Forest Supervisor, Shasta-Trinity National Forest, 3644 Avtech Parkway, Redding, CA 96002.

Nature of Decision To Be Made

The Responsible Official will review the supplemental information and determine if any modifications should be made to the June 1, 2007 ROD.

Scoping Process

Scoping is not required for supplements to environmental impact statements (40 CFR 1502.9(c)4).

Early Notice of Importance of Public Participation in Subsequent Environmental Review

A draft SETS will be prepared for comment. A legal notice will be published in the newspaper of record and a Notice of Availability will be published in the **Federal Register** to inform the public that supplemental information is available for review and comment. The draft SETS will be distributed to all parties that received the 2007 FETS and ROD and to those parties that filed an appeal of the 2007 decision. The comment period on the draft SEIS will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft SETS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. (*Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978)). Also, environmental objections that could be raised at the draft SETS stage but are not raised until after completion of the final SETS may be dismissed by the courts (*City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980)). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period. Timely submittal of comments and objections to the Forest Service ensures they can be meaningfully considered and responded to in the final SETS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft SETS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft supplement. Comments may also address the adequacy of the draft SEIS or the merits of the alternatives fonnulated and discussed in the statement. In addressing these points, reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: July 29, 2008.

J. Sharon Heywood,

Forest Supervisor, Shasta-Trinity National Forest.

[FR Doc. E8–17994 Filed 8–7–08; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Shasta-Trinity National Forest, California; Shasta-Trinity National Forest Motorized Travel Management EIS

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The Shasta-Trinity National Forest (Forest) will prepare an Environmental Impact Statement to disclose the impacts associated with the following proposed actions:

1. Prohibition of cross-country motorized vehicle travel (with the exception of snowmobiles) off designated National Forest System (NFS) roads, NFS trails and areas by the public except as allowed by permit or other authorization (Travel Management Rule, 36 CFR Part 212, Subpart B).

2. Amend the Forest Land and Resource Management Plan (Plan) to conform with the Travel Management Rule, Subpart B, by removing reference to OHV cross-country travel in the Forest Plan and include as a forest-wide standard ''Prohibit wheeled vehicle travel off designated roads and trails except for administrative use or uses under permitted activities or within designated areas.''

3. Add approximately 32 miles of existing unauthorized routes to the National Forest Transportation System (NFTS) as roads open to the public for wheeled motorized vehicle use by vehicle class and season of use.

4. Add approximately 11 miles of existing unauthorized routes to the NFTS as motorized trails open to the public for wheeled motorized vehicle use by vehicle class and season of use.

5. Restrict use below the high-water mark at Shasta Lake and Trinity Lake, (within the Shasta-Trinity National Recreation Area) to only highway legal vehicles and provide a maximum speed limit of 15 miles per hour (mph).

DATES: The comment period on the proposed action will extend 30 days from the date the Notice of Intent is published in the **Federal Register**.

Completion of the Draft Environmental Impact Statement (DEIS) is expected in January 2009 and the Final Environmental Impact Statement (FEIS) is expected in July 2009.

ADDRESSES: Send written comments to: Travel Management Team, Shasta-Trinity National Forest, 3644 Avtech Parkway, Redding, CA 96002. Electronic comments may be submitted to *comments-pacificsouthwest-shasta-trinity@fs.fed.us* with Subject: Motorized Travel.

FOR FURTHER INFORMATION CONTACT: Robert Remillard, Shasta-Trinity National Forest, 3644 Avtech Parkway, Redding, CA 96002, *Phone:* (530) 226–2421, *Fax:* (530) 226–2470, *e-mail: rremillard@fs.fed.us.*

SUPPLEMENTARY INFORMATION:

Background

Over the past few decades, the availability and capability of motorized vehicles, particularly off-highway vehicles (OHVs) and sport utility vehicles (SUVs) has increased tremendously. Nationally, the number of OHV users has climbed sevenfold in the past 30 years, from approximately 5 million in 1972 to 36 million in 2000. The ten states with the largest population also have the most OHV users. California has 4.35 million OHV users accounting for almost 11% of the U.S. total (Off-Highway Vehicle Recreation in the United States, Regions and States: A National Report from the National Survey on Recreation and the Environment (NSRE) Cordell, Betz, Green and Owens June 2005). There were 786,914 ATVs and OHV motorcycles registered in 2004, up 330% since 1980. Annual sales of ATVs and OHV motorcycles in California were the highest in the U.S. for the last 5 years. Four-wheel drive vehicle sales in California also increased by 1500% to 3,046,866 from 1989 to 2002.

Unmanaged OHV use has resulted in unplanned roads and trails, erosion, watershed and habitat degradation, and impacts to cultural resource sites. Compaction and erosion are the primary effects of OHV use on soils. Riparian areas and aquatic dependent species are particularly vulnerable to OHV use. Unmanaged recreation, including impacts from OHVs, is one of ''Four Key Threats Facing the Nation's Forests and Grasslands.'' (USDA Forest Service, June 2004).

On August 11, 2003, the Pacific Southwest Region of the Forest Service entered into a Memorandum of Intent (MOT) with the California Off-Highway Motor Vehicle Recreation Commission, and the Off-Highway Motor Vehicle Recreation Division of the California Department of Parks and Recreation. That MOI set in motion a region-wide effort to ''Designate OHV roads, trails, and any specifically defined open areas for motorized wheeled vehicles on maps of the 19 National Forests in California by 2007.''

On November 9, 2005, the Forest Service published final travel management regulations in the **Federal Register** (FR Vol. 70, No. 216–Nov. 9, 2005, pp 68264–6829 1). Subpart B of the final Travel Management Rule requires designation of those roads, trails, and areas that are open to motor vehicle use on National Forests. Route designations will be made by class of vehicle and, if appropriate, by time of year. The final rule allows for motor vehicle use only on designated system routes and in designated areas.

On some NFS lands, long managed as open to cross-country motor vehicle travel, repeated use has resulted in unplanned, unauthorized, roads and trails. These routes generally were developed without environmental analysis or public involvement, and do not have the same status as NFS roads and NFS trails included in the forest transportation system. Nevertheless, some unauthorized routes are well-sited, provide excellent opportunities for outdoor recreation by motorized and non-motorized users, and would enhance the National Forest system of designated roads, trails and areas. Other unauthorized routes are poorly located and cause unacceptable impacts. Only NFS roads and NFS trails can be designated for wheeled motorized vehicle use. For an unauthorized route to be designated, it must first be added to the national forest transportation system (NFTS).

In accordance with the Memorandum of Intent, the Forest recently completed an inventory of unauthorized routes on NFS lands and identified approximately 5,085 unauthorized routes totaling 1,198 miles. The Forest then used an interdisciplinary process to conduct travel analysis to determine whether any of the unauthorized routes should be proposed for addition to the NFTS in this proposed action. A number of routes were identified which could be considered in this or future decisions on the NFTS as a part of travel management on the Forest. The Responsible Official has made decisions on what, if any, changes to the existing NFTS would be a part of this proposed action.

Roads, trails and areas that are currently part of the Forest transportation system and are open to wheeled motorized vehicle travel will remain designated for such unless changed by this proposal. This proposal focuses only on the prohibition of wheeled motorized vehicle travel off

designated routes and needed changes to the Forest transportation system, including the addition of some unauthorized routes to the Forest transportation system and minor changes to existing motor vehicle restrictions. The proposed action is being carried forward in accordance with the Travel Management Rule (36 CFR Part 212, Subpart B).

In accordance with the Travel Management Rule, following a decision on this proposal, the Forest will publish a Motor Vehicle Use Map (MVTJM) identifying all Forest roads, trails and areas that are designated for motor vehicle use. The MVUM shall specify the classes of vehicles and, if appropriate, the times of year for which use is designated. Unauthorized routes not included in this proposal are not precluded from future consideration for addition to the NFTS and inclusion in a MVUM. Future decisions associated with changes to the MVIJM may trigger the need for documentation in an environmental analysis.

Purpose and Need for Action

The following needs have been identified for this proposal:

1. There is a need for regulation of unmanaged motorized vehicle travel by the public. In their enjoyment of the National Forest, motorized vehicle users have created numerous unauthorized routes. The number of such routes continues to grow each year with many routes having environmental impacts and safety concerns that have not been addressed. The Travel Management Rule, 36 CFR Part 212, Subpart B, provides policy for ending this trend of unauthorized route proliferation through designation of motorized NFS roads, trails and areas, and the prohibition of cross-country travel.

2. There is a need for the Forest Plan to conform to the new Travel Management Rule, CFR Part 212, Subpart B. A review of the Forest Plan has found that it is not fully consistent with the new Travel Management Rule. Motorized vehicle travel by the public is authorized off designated routes in some areas of the Forest. For example, the Record of Decision (page 7), for the Forest Plan permits Off-Highway-Vehicle (OHV) use as follows: 586,609 acres closed; 1,259,688 acres restricted; and 275,250 acres open to OHV use. In addition the Forest Plan states on page 3–16 ''The Forest's OHV Plan designates 239,175 acres to cross-county travel.'' This direction is in conflict with the Travel Management Rule at 36 CFR 212.50(a) (Motor vehicle use off designated roads and trails and outside designated areas is prohibited by 36 CFR 261.13).

3. There is a need for changes and additions to the NFTS system to:

3.1. Provide wheeled motorized access to dispersed recreation opportunities (camping, hunting, fishing, hiking, horseback riding, etc.) There is a need to maintain motor vehicle access to dispersed recreation activities that historically have been accessed by motor vehicles. A portion of known dispersed recreation activities are not located directly adjacent to an existing NFTS road or NFTS motorized trail. Some dispersed recreation activities depend on foot or horseback access, and some depend on motor vehicle access. Those activities accessed by motor vehicles consist of short spurs that have been created and maintained primarily by the passage of motorized vehicles. Many such ''user-created'' routes are not currently part of the NFTS. Without adding them to the NFTS, the regulatory changes noted above would make continued use of such routes illegal through the prohibition of cross country travel and would preclude access to many dispersed recreation activities.

3.2. Provide a diversity of wheeled motorized recreation opportunities (4 x 4 Vehicles, motorcycles, ATVs, passenger vehicles, etc.). It is Forest Service policy to provide a diversity of road and trail opportunities for experiencing a variety of environments and modes of travel consistent with the National Forest recreation role and land capability (FSM 23 53.03(2)). Implementation of Subpart B of the Travel Management Rule will severely reduce motorized recreation opportunities relative to current levels. As a result, there is a need to consider limited changes and additions to the type of use permitted on existing NFTS roads as well as potential additions to the NFTS.

In meeting these needs the proposed action must also achieve the following purposes:

A. Avoid impacts to cultural resources.

B. Provide for public safety.

C. Provide for a diversity of recreational opportunities.

D. Assure adequate access to public and private lands.

E. Provide for adequate maintenance and administration of designations based on availability of resources and funding to do so. Currently the Forest has a maintenance backlog for roads of approximately $137,000,000. Future road and trail budgets are expected to decrease from current levels.

F. Minimize damage to soil, vegetation and other forest resources.

G. Avoid harassment of wildlife and significant disruption of wildlife habitat.

H. Minimize conflicts between wheeled motor vehicles and existing or proposed recreational uses of NFS lands.

I. Minimize conflicts among different classes of wheeled motor vehicle uses of NFS lands or neighboring federal lands.

J. Assure compatibility of wheeled motor vehicle use with existing conditions in populated areas, taking into account sound, emissions, etc.

K. Have valid existing rights of use and access (rights-of-way).

L. Constrain the proposal to that which is within the capability of the Forest to analyze given: The Shasta-Trinity National Forest MVUM publication deadline is December 2009, available funding (road and trail management budgets), and available resources (resource data and staff time).

Proposed Action

1. Prohibit cross-country motorized vehicle travel (with the exception of snowmobiles) off the designated NFTS roads, NFTS trails and areas by the public except as allowed by permit or other authorization.

2. Amend the Forest Plan to be consistent with the Travel Management Rule (36 CFR Part 212, Subpart B) prohibiting cross-county motorized vehicle travel off designated NFS roads and NFTS trails outside of designated areas by removing reference to OHV cross country travel in the Forest Plan and including as a forest-wide standard ''Prohibit wheeled vehicle travel off designated roads and trails except for administrative use or uses under permitted activities or within designated areas.''

3. Add approximately 32 miles of existing unauthorized routes as National Forest Transportation System (NFTS) roads classified as open to all vehicle classes, both highway legal and non-highway legal, as shown in Table 1. With these additions, roads open to all vehicle classes will be approximately 3,818 miles. Forest roads maintained for low clearance passenger cars are subject to State traffic laws (36 CFR 212.5(a)(1)). As a result, such roads are open to highway legal vehicles only. These additions would bring the total of all NFTS roads to approximately 5,177 miles. The NFTS road additions are listed below along with the permitted vehicle class and, if applicable, season of use.

TABLE 1—PROPOSED NFS MOTORIZED ROAD ADDITIONS

Route ID	Miles (length)	Permitted vehicle class	Season of use
JG3O	0.18	All	July 10 to January 31.
JG31	0.21	All	July 10 to January 31.
JM244	0.96	All	July 10 to January 31.
JM25	0.19	All	Yearlong.
JM72	0.06	All	August 2 to December 31.
NRA1	0.60	All	July 10 to January 31.
NRA2	0.30	All	Yearlong.
NRA3	0.22	All	Yearlong.
PM2004	0.32	All	July 10 to January 31.
PM304	0.03	All	July 10 to January 31.
SE194	0.04	All	Yearlong.
SE314	0.07	All	Yearlong.
SE416	2.04	All	Yearlong.
SE476	0.16	All	Yearlong.
SE477	0.15	All	Yearlong.
SE508	0.12	All	Yearlong.
SFMU12	0.10	All	Yearlong.
SFMU13	0.26	All	Yearlong.
SFMU17	0.04	All	Yearlong.
SFMU18	0.03	All	August 16 to January 31.
SFMU4	0.02	All	July 10 to January 31.
SFMU5	0.06	All	Yearlong.
SFMU6	0.02	All	July 10 to January 31.
SFMU7	0.01	All	Yearlong.
SW234	0.14	All	July 10 to January 31.
TC1004	0.12	All	July 10 to January 31.
TC1238	0.04	All	July 10 to January 31.
TC349	0.12	All	Yearlong.
1C828	0.08	All	July 10 to January 31.
TC838	0.14	All	July 10 to January 31.
TC899	0.06	All	July 10 to January 31.
TRMU2	0.54	All	Yearlong.
TRMU3	0.15	All	Yearlong.
TRMU5	0.22	All	Yearlong.
TRMU6	0.05	All	Yearlong.
U1B005A	0.09	All	Yearlong.
UIS39B	0.23	All	July 10 to January 31.
U27N02G	0.09	All	Yearlong.
U30N27S	0.05	All	Yearlong.
U30N29E	0.74	All	July 10 to January 31.
U34N26DA	0.26	All	Yearlong.
U34N26DAA	0.09	All	Yearlong.
U35N05A	1.74	All	July 10 to January 31.
U35N85A	0.19	All	July 10 to January 31.
U36N35AA	0.71	All	Yearlong.
U36N35AB	0.10	All	Yearlong.
U4ON13D	0.71	All	July 10 to January 31.
U40N35A	0.65	All	Yearlong.
U4ON84AA	1.59	All	Yearlong.
U4ON88XCB	0.49	All	Yearlong.
U4ON88XE	0.25	All	Yearlong.
U4ON91YA	0.63	All	Yearlong.
U414A	0.59	All	Yearlong.
U414C	0.19	All	Yearlong.
U414CA	0.12	All	Yearlong.
U414D	0.15	All	Yearlong.
U414F	0.18	All	Yearlong.
U414FA	0.04	All	Yearlong.
U41N18A	2.52	All	Yearlong.
U41N18AA	2.08	All	Yearlong.
U41N18AAD	0.82	All	Yearlong.
U41N55D	1.21	All	Yearlong.
U41N55E	1.60	All	Yearlong.
U42N18A	3.89	All	Yearlong.
U42N18AA	2.43	All	Yearlong.
U4N12L	0.06	All	July 10 to January 31.
U4N12LA	0.06	All	July 10 to January 31.
Total miles	32.42		

4. Add approximately 11 miles of existing unauthorized routes as NFTS motorized trails, as shown in Table 2. This would bring the total NFTS motorized trails to 163 miles. Approximately 2 miles of motorized trails would be classified as open for ''All Trail Class Vehicles''. The remaining 9 miles of motorized trails would be classified as open for ''Motorcycle only'' or ''Vehicles 50 inches or less in width''. The additional NFTS motorized trails are listed below along with the permitted vehicle class and, if applicable, season of use.

TABLE 2—PROPOSED NFS MOTORIZED TRAIL ADDITIONS

Route ID	Miles (length)	Permitted vehicle class	Season of use
PM702	0.04	All Trail Class Vehicles	July 10 to January 31.
RM026	1.55	Vehicles 50″ or less in width	July 10 to January 31.
RMO9O	0.07	All Trail Class Vehicles	July 10 to January 31.
RM1036	2.16	All Trail Class Vehicles	Yearlong.
RM1226	0.10	All Trail Class Vehicles	Yearlong.
RM706	0.07	All Trail Class Vehicles	Yearlong.
TC1098	0.05	Vehicles 50″ or less in width	Yearlong.
TC1249	0.04	All Trail Class Vehicles	July 10 to January 31.
TC1829	0.14	All Trail Class Vehicles	July 10 to January 31.
TC319	0.12	All Trail Class Vehicles	Yearlong.
U29N28C	0.51	Motorcycle only	July 10 to January 31.
U31NO2Q	0.28	Vehicles 50″ or less in width	July 10 to January 31.
U4N12D	3.38	Vehicles 50″ or less in width	July 10 to January 31.
UOHVO1X	0.36	Motorcycle only	Yearlong.
UOHVO2J	0.53	Vehicles 50″ or less in width	Yearlong.
UOHV18	0.15	Vehicles 50″ or less in width	Yearlong.
UOHV5OA	0.43	Motorcycle only	Yearlong.
UOHV5OC	0.14	Motorcycle only	Yearlong.
UT29N3OHA	0.80	Vehicles 50″ or less in width	July 10 to January 31.
UT29N3OHAB	0.25	Vehicles 50″ or less in width	Yearlong.
Total miles	11.16		

5. Restrict use below the high-water mark at Shasta Lake and Trinity Lake, (within the Shasta-Trinity National Recreation Area) to only highway legal vehicles and provide a maximum speed limit of 15 mph (refer to Table 3).

TABLE 3—VEHICLE CLASS ADDITIONS/PROHIBITIONS

Area	Acreage	Current permitted vehicle class	Proposed permitted vehicle class
Below the high-water mark at Shasta Lake and Trinity Lake (within the Shasta-Trinity National Recreation Area).	Varies based on water level	All	Highway legal vehicles. Speed limit not to exceed 15 mph.

Maps and tables describing in detail both the Forest transportation system and the proposed action can be found at *http://www.fs.fed.us/r5/shastatrinity/news/ohv/index.shtml*.

In addition, maps will be available for viewing at: Supervisor's Office Shasta-Trinity National Forest, 3644 Avtech Parkway, Redding, CA, Shasta Lake Ranger Station, 14225 Holiday Road, Redding, CA 96003, Weaverville Ranger Station, P.O. Box 1190, 360 Main Street, Weaverville, CA 96093, Hayfork Ranger Station, P.O. Box 159, (111 Trinity Street), Hayfork, CA 96041, Mount Shasta Ranger Station, 204 West Alma, Mt. Shasta, CA 96067

Responsible Official

J. Sharon Heywood, Forest Supervisor, Shasta-Trinity National Forest, 3644 Avtech Parkway, Redding, CA 96002.

Nature of Decision To Be Made

The responsible official will decide whether to adopt and implement the proposed action, an alternative to the proposed action, or take no action to make changes to existing prohibitions and allowances for public wheeled motorized vehicle travel within the existing NFTS and prohibit cross country wheeled motorized vehicle travel by the public off the designated system. Once the decision is made, the Forest will publish a MVUM identifying the roads, trails and areas that are designated for motor vehicle use. The MVUM shall specify the classes of vehicles and, if appropriate, the times of year for which use is designated. Future decisions associated with changes to the MVUM may trigger the need for documentation of environmental analysis.

Scoping Process

Public participation will be especially important at several points during the analysis. The Forest Service will be seeking information, comments, and assistance from the federal, state, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action.

The Notice of Intent is expected to be published in the **Federal Register** on August 7, 2008.

The comment period on the proposed action will extend 30 days from the date the Notice of Intent is published in the **Federal Register**.

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by January 2009. EPA will publish a notice of availability of the draft EIS in the **Federal Register**. The comment period on the draft EIS will extend 45 days from the date the EPA notice appears in the **Federal Register**. At that time, copies of the draft EIS will be distributed to interested and affected agencies, organizations, and members of the public for their review and comment. It is very important that those interested in the management of the Shasta-Trinity National Forest participate at that time.

The final EIS is scheduled to be completed in July 2009. In the final EIS, the Forest Service will respond to comments received during the comment period that are: within the scope of the proposed action; specific to the proposed action; have a direct relationship to the proposed action; and include supporting reasons for the responsible official to consider. Submission of comments in response to the draft EIS is a prerequisite for eligibility to appeal under the 36 CFR part 215 regulations.

Comment Requested

This notice of intent initiates the scoping process which guides the development of the EIS.

Early Notice of Importance of Public Participation in Subsequent Environmental Review: A draft EIS will be prepared for comment. The comment period on the draft environmental impact statement will be 45-days from the date the EPA publishes the notice of availability in the **Federal Register**.

At this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process.

First, reviewers of draft Environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft EIS. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points. Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: July 28, 2008.

J. Sharon Heywood,

Forest Supervisor.

[FR Doc. E8–17995 Filed 8–7–08; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

RIN 0596–AC54

Sensitive Species and Endangered Species Act Section 7 Consultation Policy for National Forest System Land Management Planning Under the 2008 Planning Rule

AGENCY: Forest Service, USDA.

ACTION: Notice of issuance of interim directive; request for comment.

SUMMARY: The Forest Service has issued an interim directive (ID) 2670–2008–1 to the Forest Service Manual 2670, sections 45 and 46, to clarify sensitive species and Endangered Species Act policy responsibilities of Forest Supervisors and District Rangers when developing, amending, or revising Land Management Plans (LMPs) under the 2008 Planning Rule, or carrying out projects and activities consistent with those LMPs (36 CFR part 219).

DATES: This Interim Directive is effective August 8, 2008. Comments must be received in writing by September 8, 2008.

ADDRESSES: Send written comments to: Forest Service, USDA, Attn: Director Wildlife, Fish, Watershed, Air and Rare Plants, Mail Stop 1121, Washington, DC 20250–1125. Comments may also be e-mailed to: *2670_comments@fs.fed.us*.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. Persons wishing to inspect the comments are encouraged to call ahead, contacting Wayne Owen, 202–205–1262.

FOR FURTHER INFORMATION CONTACT: Marc Bosch, Wildlife, Fish, Watershed, Air and Rare Plants Staff, (202) 205–1220. The ID 2670–2008–01 is available electronically from the Forest Service via the World Wide Web/Internet at *http://www.fs.fed.us/im/directives* and in this notice. Single paper copies of the amendment are also available by contacting Marc Bosch, Threatened, Endangered, and Sensitive Species National Program Leader, Wildlife, Fish, Watershed, Air and Rare Plants Staff, (Mail Stop 1121), Forest Service, 1400 Independence Avenue, SW., Washington, DC 20250–1121.

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: This interim directive (ID) clarifies the responsibilities of Forest Supervisors when developing, amending, or revising Land Management Plans (LMPs) under the 2008 Planning Rule. This ID also clarifies responsibilities of Forest Supervisors and District Rangers when approving projects and activities consistent with those (36 CFR part 219).

The intended effect of issuing this interim directive is to provide guidance to those Forest Service line officers and other agency employees who are developing and revising LMP's under the 2008 Planning Rule regarding sensitive species and Endangered Species Act policy responsibilities. Because of pending LMP revisions, and to align agency policy with statutory and regulatory responsibilities, there is an immediate need to supersede the existing Forest Service Manual regarding policies that apply to such revisions. Public comments on this interim direction will be considered in the development of final direction. A comprehensive review of the entire FMS 2670 chapter is being done, and further changes may result from that separate effort.

The ID clarifies proper consideration of Forest Service manual direction for

sensitive species to reflect and align with the direction for forest plans to be completed under the 2008 Planning Rule. The species diversity component of the framework for ecological sustainability under the 2008 Planning Rule uses species of concern (SOC) and species of interest (SOI) to address the diversity requirements in the National Forest Management Act. Species conservation using SOC and SOI is an integral part of the forest planning process for Ecosystem Diversity and Species Diversity and replaces the need for sensitive species.

FSM 2670 chapter concerning sensitive species remains unchanged for LMPs not developed, amended, or revised under the 2008 Planning Rule and for approving projects and activities consistent with those LMPs.

The ID also describes changes needed because the framework for ecological sustainability established under the 2008 Planning Rule makes a biological evaluation for an LMP developed, amended or revised under the 2008 Planning Rule contingent on whether the LMP will have effects on listed species or designated critical habitat under the Endangered Species Act (ESA).

Responsibilities remain unchanged for conducting ESA section 7(a)(2) consultation for projects and activities that are consistent with the relevant LMP.

Regulatory Certifications

Environmental Impact

This proposed interim directive to Forest Service Manual 2670 clarifies sensitive species and Endangered Species Act policy responsibilities of Forest Supervisors and District Rangers when developing, amending or revising Land Management Plans under the 2008 Planning Rule, or for carrying out projects and activities consistent with those LMPs (36 CFR part 219). Section 31.1b of FSH 1909.15 (57 FR 43180, September 18, 1992) excludes from documentation in an environmental assessment or impact statement ''rules, regulations, or policies to establish servicewide administrative procedures, program processes, or instructions.'' The agency's preliminary assessment is that this interim action falls within this category of actions, and that no extraordinary circumstances exist as currently defined which would require preparation of an environmental impact statement or environmental assessment. A final determination will be made upon adoption of the final directive.

Regulatory Planning and Review

This proposed interim directive has been reviewed under USDA procedures and Executive Order 12866, amended by Executive Order 13422, Regulatory Planning and Review. It has been determined that this is not a significant policy. This policy to clarify agency direction will not have an annual effect of $100 million or more on the economy nor adversely affect productivity, competition, jobs, the environment, public health or safety, nor State or local governments. This policy would not interfere with an action taken or planned by another agency nor raise new legal or policy issues. Finally, this action would not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients of such programs. Accordingly, this policy is not subject to Office of Management and Budget review under Executive Order 12866.

Moreover, this proposed policy has been considered in light of Executive Order 13272 regarding proper consideration of small entities and the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), which amended the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). An initial small entities flexibility assessment has been made and it has been determined that this action will not have a significant economic impact on a substantial number of small entities as defined by SBREFA.

Unfunded Mandates

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), which the President signed into law on March 22, 1995, the agency has assessed the effects of this action on State, local, and tribal governments and the private sector. This action would not compel the expenditure of $100 million or more by any State, local, or tribal government or anyone in the private sector. Therefore, a statement under section 202 of the act is not required.

Controlling Paperwork Burdens on the Public

This interim directive does not contain any additional record-keeping or reporting requirements associated with the special uses program or other information collection requirements as defined in 5 CFR part 1320 that are not already required by law or not already approved for use. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR part 1320 do not apply.

Dated: July 3, 2008.

Gloria Manning,

Associate Deputy Chief for National Forest Systems.

Specific changes to the manual text include adding new paragraphs 7 and 8 to section 2670.45 and adding new paragraph 6 to section 2670.46.

2670.45—Forest Supervisors

7. When developing, amending or revising Land Management Plans (LMP) under the 2008 Planning Rule (36 CFR part 219; see also FSM 1921.73, and FSH 1909.12) and approving a project of activity consistent with those LMPs, do not apply guidance contained in this chapter (FSM 2670) that pertains to sensitive species.

8. Approval of an LMP, amendment, or revision developed under the 2008 Planning Rule is an action that typically will have no effect on listed species or designated critical habitat under the Endangered Species Act (ESA). However, an LMP, amendment or revision is itself not an action within the meaning of the ESA. Do not apply guidance contained in this chapter (FSM 2670) that pertains to conducting a biological assessment unless the LMP, amendment, or revision may have an effect on threatened or endangered species or is likely to jeopardize the continued existence of a proposed species, or will result in the destruction or adverse modification of designated or proposed critical habitat (FSM 2670.31). Collaboration with the Fish and Wildlife Service and NOAA Fisheries under section 7(a)(1) on the LMP for the conservation of endangered and threatened species is appropriate. Continue coordination of projects and activities with state and federal agencies, groups, and individuals interested in species diversity. When developing and approving projects or activities, ensure they are consistent with LMP components for ecosystem and species diversity, species-of-concern and/or species-of-interest.

2670.46—District Rangers

6. When developing and approving projects or activities consistent with an LMP developed, amended or revised under the 2008 Planning Rule (36 CFR part 219; see also FSM 1921.73 and FSH 1909.12), do not apply guidance contained in this chapter (FSM 2670) that pertains to sensitive species. Continue coordination of projects and activities with state and federal agencies, groups, and individuals interested in species diversity. When

developing and approving projects or activities, ensure they are consistent with LMP components for ecosystem and species diversity, species-of-concern and/or species-of-interest.

[FR Doc. E8–18283 Filed 8–7–08; 8:45 am]

BILLING CODE 3410–11–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Effective Date:* September 7, 2008.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Kimberly M. Zeich, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@jwod.gov.*

SUPPLEMENTARY INFORMATION: The Committee for Purchase From People Who Are Blind or Severely Disabled published notice on May 9 (73 FR 26362), June 6 (73 FR 32286), June 16 (73 FR 33972) and June 20, 2008 (73 FR 35118) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and services and impact of the additions on the current or most recent contractors, the Committee has determined that the products and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. The action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the Procurement List.

End of Certification

Accordingly, the following products and services are added to the Procurement List:

Products

Aircraft Assembly Parts

NSN: 1560–00–870–1656—Cover Access,
NSN: 1560–00–875–6001—Support, Structural,
NSN: 1560–01–114–0870—Bracket Assembly,
NSN: 1560–01–153–9682—Weather Strip,
NSN: 5365–00–159–3781—Shim,
NSN: 5365–00–159–3792—Shim.
NPA: The Lighthouse for the Blind, Inc. (Seattle Lighthouse), Seattle, WA.
Coverage: C-List for the requirement of the Defense Supply Center Richmond, Richmond, VA.
Contracting Activity: Defense Supply Center Richmond, Richmond, VA.

Dispenser, Tape

NSN: 7520–00–NIB–1882—Package Sealing.
NPA: Cincinnati Association for the Blind, Cincinnati, OH.
Coverage: A-List for the total Government requirements as specified by the General Services Administration.

SKILCRAFT Bath & Shower Scrubber & Refill

NSN: M.R. 1101—SKILCRAFT Bath & Shower Scrubber,
NSN: M.R. 1102—SKILCRAFT Bath & Shower Scrubber (Refill).
NPA: Industries for the Blind, Inc., West Allis, WI.
Contracting Activity: Defense Commissary Agency (DeCA), Fort Lee, VA.

Sponge, Cellulose Heavy Duty Scrubber

NSN: 7920–00–NIB–0466.
NPA: Mississippi Industries for the Blind, Jackson, MS.
Coverage: B-List for the broad Government requirements as specified by the General Services Administration.
Contracting Activity: General Services Administration, Southwest Supply Center, Fort Worth, TX.

Portfolio, Clear Front Report Cover w/Prongs

NSN: 7510–00–NIB–0811—Black with prongs,
NSN: 7510–00–NIB–0812—Light Blue with prongs,
NSN: 7510–00–NIB–0813—Red with prongs,
NSN: 7510–00–NIB–0814—Dark Green with prongs.
NPA: Susquehanna Association for the Blind and Visually Impaired, Lancaster, PA.
Coverage: A-List for the total Government requirements as specified by the General Services Administration.

Services

Service Type/Location: Administrative Support Services, Caribbean National Forest, El Portal Rain Forest Center, Rio Grande, PR.
NPA: The Corporate Source, Inc., New York, NY.
Contracting Activity: U.S. Department of Agriculture, Forest Service Cherokee, National Forests—Tennessee, Cleveland, TN.

Service Type/Location: Base Supply Center, Naval Surface Warfare Center, Crane Division, Crane, IN.
NPA: L.C. Industries For The Blind, Inc., Durham, NC.
Contracting Activity: Fleet and Industrial Supply Center (FISC), Norfolk, VA.

Service Type/Location: Custodial Services, Senate Employee Child Care Center, 321 Massachusetts Avenue, NE., Washington, DC.
NPA: Melwood Horticultural Training Center, Upper Marlboro, MD.
Contracting Activity: The Architect of the Capitol, AOC Procurement Division, Washington, DC.

Service Type/Location: Document Destruction, U.S. Army Corps of Engineers (USACE), Albuquerque District, 4101 Jefferson Plaza, NE., Albuquerque, NM.
NPA: Adelante Development Center, Inc., Albuquerque, NM.
Contracting Activity: U.S. Army Corps of Engineers, Albuquerque, NM.

Service Type/Location: Document Destruction, U.S. Army Corps of Engineers (USACE), Albuquerque District, 4101 Jefferson Plaza, NE., Albuquerque, NM.
NPA: Adelante Development Center, Inc., Albuquerque, NM.
Contracting Activity: U.S. Army Corps of Engineers, Albuquerque, NM.

Service Type/Location: Hospital Housekeeping Services, Baltimore VA Medical Center, 10 North Green Street, Baltimore, MD.
NPA: Lakeview Center, Inc., Pensacola, FL.
Contracting Activity: Veterans Affairs Maryland Health Care System, Baltimore, MD.

Service Type/Location(s):
Laundry Services, Clement J. Zablocki Veterans Affairs Medical Center, 5000 West National Avenue, Milwaukee, WI.
Laundry Services, North Chicago Veterans Affairs Medical Center, 3001 Green Bay Road, North Chicago, IL.
NPA: Goodwill Industries of Southeastern Wisconsin, Inc., Milwaukee, WI.
Contracting Activity: Department of Veterans Affairs, Great Lakes Network—Contract Service Center, Milwaukee, WI.

Service Type/Location: MailRoom Operations, Fort Knox, Fort Knox, KY.
NPA: Employment Source, Inc., Fayetteville, NC.

Contracting Activity: U.S. Army Armor Center & Fort Knox, Fort Knox, KY.

Service Type/Location: MailRoom Operations, Internal Revenue Service, 880 Front Street, San Diego, CA.

NPA: ServiceSource, Inc., Alexandria, VA (PRIME Contractor).

NPA: Goodwill Industries of Southern California, Los Angeles, CA (Sub-Contractor).

Contracting Activity: U.S. Department of the Treasury, Internal Revenue Service Headquarters, Oxon Hill, MD.

Service Type/Location: MailRoom Operations, United States Coast Guard, Integrated Support Command (ISC), Alameda Mail Center, Alameda, CA.

NPA: Pacific Coast Community Services, Richmond, CA.

Contracting Activity: U.S. Coast Guard—Alameda, Alameda, CA.

Service Type/Location: Recycling Service (6 Locations)

Public Works Department (PWD) Washington, Washington, DC.

PWD Patuxent River, Patuxent River, MD.

PWD North Potomac, Bethesda, MD.

PWD Annapolis, Annapolis, MD.

PWD South Potomac, Indian Head, MD, and Dahlgren, VA.

PWD Quantico, Quantico, VA.

NPA: Melwood Horticultural Training Center, Upper Marlboro, MD.

Contracting Activity: Naval Facilities Acquisition Command (NAVFAC)—Washington, Washington, DC.

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Patrick Rowe,

Deputy Executive Director.

[FR Doc. E8–18363 Filed 8–7–08; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List product(s) and/or service(s) to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete product(s) and/or service(s) previously furnished by such agencies.

Comments Must Be Received On or Before: September 7, 2008.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT: Kimberly M. Zeich, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice for each product or service will be required to procure the product and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the product and services to the Government.

2. If approved, the action will result in authorizing small entities to furnish the product and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the product and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following product and services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Product

Coffee, Roasted, 39-oz Resealable Pouch

NSN: 8955–01–E60–8859—S & D,

NSN: 8955–01–E61–3689—Sara Lee,

NSN: 8955–01–E61–3688—Maxwell House.

NPA: CW Resources, Inc., New Britain, CT.

Contracting Activity: Defense Logistic Agency, Defense Supply Center Philadelphia, Philadelphia, PA.

Coverage: C-List for the Government requirement of the Defense Supply Center Philadelphia, Philadelphia, PA.

Services

Service Type/Location:

Combined Facilities Maintenance

Armed Forces Reserve Center, 251 Rudy Chase Drive, Glenville, NY.

Naval & Marine Corps Reserve Center, 439 Paul Road, Rochester, NY.

Naval & Marine Corps Reserve Center, 3 Porter Avenue, Buffalo, NY.

Naval Reserve Center Syracuse, 5803 East Molloy Road, Mattydale, NY.

NPA: Human Technologies Corporation, Utica, NY.

Contracting Activity: Department of the Navy, U.S. Fleet Forces Command, Norfolk, VA.

Service Type/Location:

Janitorial Services

Marine Corps Base Hawaii, Basewide, Kaneohe Bay, HI.

NAVMAG Lualualei, Basewide, Waianae, HI.

NCTAMS, Naval Computer and Telecommunications Area Master, Wahiawa, HI.

Kalaeloa Air Station, Basewide, Kalaeloa, HI.

Iroquois Point Housing, Basewide, Iroquois Point, HI.

NAVMAG West LOCH, Basewide, Waianae, HI.

Camp Catlin, Basewide, Kailua, HI.

Moanalua Terrace, US Navy Moanalua Terrace, Moana Terrace, HI.

Ford Island, Naval Air Station, Ford Island Pearl Harbor, Honolulu, HI.

NPA: Opportunities for the Retarded, Inc., Wahiawa, HI.

Contracting Activity: Department of the Navy, NAVFAC Engineering Command, Pearl Harbor, HI.

Patrick Rowe,

Deputy Executive Director.

[FR Doc. E8–18364 Filed 8–7–08; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Notice and Opportunity for Public Comment.

Pursuant to Section 251 of the Trade Act of 1974 (19 U.S.C. 2341 *et seq.*), the Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. EDA has initiated separate investigations to determine

whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to the total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION OF ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE

[7/1/2008 through 7/31/2008]

Firm	Address	Date accepted for filing	Products
Springs Window Fashions, LLC	8601 State Route 405, Montgomery, PA 17752.	7/15/2008	Horizontal mini blinds.
Eyelet Crafters Inc	2712 South Main Street, Waterbury, CT 06723.	7/15/2008	Bottle closures, caps, jar covers, valve domes, collars, caps, barrels and refill tubes.
Specialty Screw Corporation	2801 Huffman Blvd., Rockford, IL 61103–3906.	7/11/2008	Metal cold headed products, such as screws, bolts, and fasteners.
Octagon Systems Corporation	7403 Church Ranch Blvd, Westminister, CO 80021.	7/8/2008	Printed circuit boards and computers specially designed for use in harsh environments.
H&H Meat Products, Inc	P.O. Box 358, Mercedes, TX 78570.	7/9/2008	Processes beef for the retail beef industry.
Mohawk Finishing Products	22 South Center Street, Hickory, NC 28602.	7/24/2008	Touch-up and repair products that are used in the furniture and cabinet industries.
J.F. Dubberly	214 Vernonburg Avenue, Savannah, GA 31419.	7/1/2008	Grades shrimp, processes, packs and ships to wholesale and retail markets.
B. Walter & Company, Inc	655 Factory St., Wabash, IN 46992–3213.	7/16/2008	Wood parts and metal hardware for the furniture industry.
Inola Casting Works, Inc	P.O.B. 969, Inola, OK 74036	7/10/2008	Lapel jewelry and assorted base metal novelties.
Necedah Screw Machine Products, Inc.	1301 Precision Parkway, Necedah, WI 54646.	7/18/2008	Designs, manufactures, finishes and assembles precision turned metal screws, parts and assemblies out of brass, steel and aluminum.
Vantage Technology, Inc	1000 West 8th Street, Vancouver, WA 98660.	7/1/2008	MSM, (methylsulfonylmethane), trademarked Opti MSM, tablets and powder for human nutrition, cosmetic formulas, equine nutrition and industrial applications.
Safety Speed Cut Mfg. Co. Inc	13943 Lincoln Street NE., Ham Lake, MN 55304–4611.	7/16/2008	Woodworking equipment such as vertical panel saws and other machines.
Keeters Meat Company, LLC	P.O. Box 41, Tulia, TX 79088	7/21/2008	Sausage of beef and pork.
Manufactured Assemblies Corporation.	7484 Webster St, Dayton, OH 45414.	7/23/2008	Custom cable assemblies, wire harnesses, and electrical/mechanical assemblies.
Empirical Systems Aerospace, LLC	P.O. Box 595, Pismo Beach, CA 93448.	7/11/2008	Design, analysis, manufacturing and testing for new concept products.

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Office of Performance Evaluation, Room 7009, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice. Please follow the procedures set forth in Section 315.9 of EDA's final rule (71 FR 56704) for procedures for requesting a public hearing. The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: August 4, 2008.

William P. Kittredge,

Program Officer for TAA.

[FR Doc. E8–18295 Filed 8–7–08; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 42–2008]

Foreign-Trade Zone 272—Lehigh and Northampton Counties, PA; Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Lehigh Valley Economic Development Corporation, grantee of Foreign-Trade Zone 272, requesting authority to expand its zone to include an additional site in Northampton County, Pennsylvania. The application was submitted pursuant to the provisions of the FTZ Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on August 1, 2008.

FTZ 272 was approved by the Board on April 5, 2007 (Board Order 1502, 72 FR 18960, 4/16/07). The general-purpose zone currently consists of the following sites: Site 1 (727 acres)—Lehigh Valley Industrial Park VII, 1805 East 4th Street, Bethlehem; Site 2 (96 acres)—Arcadia East Industrial Park, intersection of Route 512 and Silver Crest Road, East Allen Township; Site 3 (83 acres)—Arcadia West Industrial Park, intersection of I–78 and Route 863, Weisenberg Township; Site 4 (226 acres)—West Hills Business Center, intersection of I–78 and Route 863, Weisenberg Township; Site 5 (399 acres)—Boulder Business Center, intersection of Boulder Drive and Industrial Blvd., Breinigsville (Upper Macungie Township); Site 6 (183 acres)—Lehigh Valley West Corporate Center, intersection of Nestle Way and Schantz Road, Breinigsville (Upper Macungie Township); and Site 7 (213 acres)—within the LogistiCenter, 4950 Hanoverville Road, Bethlehem (Lower Nazareth Township).

The applicant is now requesting to expand the zone to include an additional site in Northampton County: *Proposed Site 8* (163 acres)—at the Prologis 33 warehouse facility, located at 3819 and 3850 ProLogis Parkway,

Northampton County. The site is owned by ProLogis. The site will provide warehousing and distribution services to area businesses. No specific manufacturing authority is being requested at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, Kathleen Boyce of the FTZ Staff is designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address listed below. The closing period for their receipt is October 7, 2008. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to October 22, 2008).

A copy of the application and accompanying exhibits will be available for public inspection at at the Lehigh Valley Economic Development Corporation, 2158 Avenue C, Suite 200, Bethlehem, Pennsylvania 18017; and Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230.

For further information, contact Kathleen Boyce at *Kathleen_Boyce@ita.doc.gov* or (202) 482–1346.

Dated: August 4, 2008.

Andrew McGilvray,

Executive Secretary .

[FR Doc. E8–18343 Filed 8–7–08; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Judges Panel of the Malcolm Baldrige National Quality Award

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the Judges Panel of the Malcolm Baldrige National Quality Award will meet Thursday, September 11, 2008. The Judges Panel is composed of twelve members prominent in the fields of quality, innovation, and performance excellence and appointed by the Secretary of Commerce. The purpose of this meeting is to review applicant consensus scores and select applicants for site visit review. The applications under review by Judges contain trade secrets and proprietary commercial information submitted to the Government in confidence.

DATES: The meeting will convene September 11, 2008 at 8 a.m. and adjourn at 5 p.m. on September 11, 2008. The entire meeting will be closed.

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology, Administration Building, Lecture Room A, Gaithersburg, Maryland 20899.

FOR FURTHER INFORMATION CONTACT: Dr. Harry Hertz, Director, National Quality Program, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975–2361.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on March 4, 2008, that the meeting of the Judges Panel will be closed pursuant to Section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. app. 2, as amended by Section 5(c) of the Government in the Sunshine Act, Public Law 94–409. The meeting, which involves examination of Award applicant data from U.S. companies and other organizations and a discussion of this data as compared to the Award criteria in order to recommend site visits for potential Award recipients, may be closed to the public in accordance with Section 552b(c)(4) of Title 5, United States Code, because the meetings are likely to disclose trade secrets and commercial or financial information obtained from a person which is privileged or confidential.

Dated: July 31, 2008.

James M. Turner,

Deputy Director.

[FR Doc. E8–18340 Filed 8–7–08; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No.: 080626787–8961–02]

RIN 0648–ZB96

Availability of Grants Funds for Fiscal Year 2009

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice.

SUMMARY: NOAA publishes this notice to change the full proposal submission deadline for the solicitation ''Bay Watershed Education and Training (B–WET) Hawaii Program,'' to August 29, 2008 to give the public more time to respond. The solicitation, which was originally announced in the **Federal Register** on July 11, 2008, gave a proposal due date of August 15, 2008.

DATES: Proposals must be submitted no later than 5:59 p.m., Hawaii Time, August 29, 2008.

ADDRESSES: Full proposal application packages should be submitted through *Grants.gov* APPLY. The standard NOAA funding application package is available at *www.grants.gov*.

If an applicant does not have Internet access, hard copies with original signatures may be sent to: NOAA Pacific Services Center, 737 Bishop Street, Suite 1550, Honolulu, Hawaii 96813, *ATTN*: Stephanie Bennett. Applicants submitting hard copy applications must submit one (1) hard copy of the entire application package, a CD copy of the package, including all forms with original signatures. Any proposal packages received after the August 29, 2009, submission deadline will not be accepted.

FOR FURTHER INFORMATION CONTACT: For administrative or technical issues, contact Stephanie Bennett at 808–522–7481 (phone) or by e-mail at *Stephanie.Bennett@noaa.gov*.

SUPPLEMENTARY INFORMATION: NOAA publishes this notice to change the full proposal submission deadline for the solicitation ''Bay Watershed Education and Training (B–WET) Hawaii Program'' announced in the **Federal Register** on July 11, 2008 (73 FR 40052). The deadline for full submissions is changed from August 15, 2008 to August 29, 2008 to give the public more time to respond. All other requirements for this solicitation remain the same.

Limitation of Liability

In no event will NOAA or the Department of Commerce be responsible for proposal preparation costs if this program is cancelled because of other agency priorities. Publication of this announcement does not oblige NOAA to award any specific project or to obligate any available funds. Applicants are hereby given notice that funding for the Fiscal Year 2009 program is contingent upon the availability of Fiscal Year 2009 appropriations.

Universal Identifier

Applicants should be aware they are required to provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number during the application process. See the October 30, 2002, **Federal Register** (67, FR 66177) for Additional information. Organizations can receive a DLJNS number at no cost by calling the dedicated toll-free DLTNS Number request line at 1–866–705–5711 or via the Internet at *http://www.dunandbradstreet.com*.

National Environmental Policy Act (NEPA)

NOAA must analyze the potential environmental impacts, as required by the National Environmental Policy Act (NEPA), for applicant projects or proposals which are seeking NOAA federal funding opportunities. Detailed information on NOAA compliance with NEPA can be found at the following NOAA NEPA Web site: *http://www.nepa.noaa.gov/*, including our NOAA Administrative Order 216–6 for NEPA, *http://www.nepa.noaa.gov/NAO216_6_TOC.pdf*, and the Council on Environmental Quality implementation regulations,*http://ceq.eh.doe.gov/nepa/regs/ceq/toc_ceq.htm*. Consequently, as part of an applicant's package, and under their description of their program activities, applicants are required to provide detailed information on the activities to be conducted, locations, sites, species and habitat to be affected, possible construction activities, and any environmental concerns that may exist (*e.g.*, the use and disposal of hazardous or toxic chemicals, introduction of non-indigenous species, impacts to endangered and threatened species, aquaculture projects, and impacts to coral reef systems). In addition to providing specific information that will serve as the basis for any required impact analyses, applicants may also be requested to assist NOAA in drafting of an environmental assessment, if NOAA determines an assessment is required. Applicants will also be required to cooperate with NOAA in identifying feasible measures to reduce or avoid any identified adverse environmental impacts of their proposal. The failure to do so shall be grounds for not selecting an application. In some cases if additional information is required after an application is selected, funds can be withheld by the Grants Officer under a special award condition requiring the recipient to submit additional environmental compliance information sufficient to enable NOAA to make an assessment on any impacts that a project may have on the environment. The Department of Commerce Pre-award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of October 1, 2001 (66 FR 49917), as amended by the **Federal Register** notice published on: October 30, 2002 (67 FR 66109); December 30, 2004 (69 FR 78389); and February 11, 2008 (73 FR 7696) are applicable to this solicitation.

Paperwork Reduction Act

This document contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The use of Standard Forms 424, 424A, 424B, SF–LLL, and CD 346 has been approved by the Office of Management and Budget (OMB) under the respective control numbers 0348–0043, 0348–0044, 0348–0040, 0348–0046, and 0605–0001. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

Executive Order 12866

This notice has been determined to be not significant for purposes of Executive Order 12866.

Executive Order 13132 (Federalism)

It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

Administrative Procedure Act/ Regulatory Flexibility Act

Prior notice and an opportunity for public comment are not required by the Administrative Procedure Act or any other law for rules concerning public property, loans, grants, benefits, and contracts (5 U.S.C. 553(a)(2)). Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis has not been prepared.

Dated: July 31, 2008.

William Corso,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. E8–18000 Filed 8–7–08; 8:45 am]

BILLING CODE 3510–JE–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Department of Defense Wage Committee

AGENCY: Department of Defense.

ACTION: Notice of closed meetings.

SUMMARY: Pursuant to the provisions of section 10 of Public Law 92–463, the Federal Advisory Committee Act, notice is hereby given that closed meetings of the Department of Defense Wage Committee will be held on Tuesday, August 12, 2008; Tuesday, August 26, 2008; Tuesday, September 9, 2008; Tuesday, October 7, 2008; Tuesday, October 21, 1008; Tuesday, November 4, 2008; Tuesday, November 18, 2008; Tuesday, December 2, 2008; Tuesday, December 16, 2008; and Tuesday, December 30, 2008, at 10 a.m. in Room A101, 1400 Key Boulevard, Rosslyn, Virginia.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the meetings may be obtained by writing to the Chairman, Department of Defense Wage Committee, 4000 Defense Pentagon, Washington, DC 20301–4000.

SUPPLEMENTARY INFORMATION: Under the provisions of section 10(d) of Public Law 92–463, the Department of Defense has determined that the meetings meet the criteria to close meetings to the public because the matters to be considered are related to internal rules and practices of the Department of Defense and the detailed wage data to be considered were obtained from officials of private establishments with a guarantee that the data will be held in confidence.

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Dated: August 1, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E8–18241 Filed 8–7–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Veterans' Advisory Board on Dose Reconstruction

AGENCY: Department of Defense, Defense Threat Reduction Agency.

ACTION: Notice of Advisory Board Meeting.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended) and the Sunshine in the Government Act of 1976 (5 U.S.C. 552b, as amended) the Defense Threat Reduction Agency (DTRA) and the Department of Veterans Affairs (VA) announce the following advisory board meeting of the Veterans' Advisory Board on Dose Reconstruction (VBDR).

DATES: Wednesday, September 10, 2008, from 8:30 a.m.–11:30 a.m. and 1:30–5 p.m. with a public comment session from 11:30 a.m.–12:30 p.m.; and Thursday, September 11, 2008, from 8:30 a.m.–9:05 and 10:05 a.m.–12:15 p.m., with a public comment session from 9:05 a.m.–10:05 a.m.

ADDRESSES: Westin Baltimore Washington Airport, Crossland BallRoom, 1110 Old Elkridge Landing Road, Linthicum Heights, MD 21090.

FOR FURTHER INFORMATION CONTACT: The Veterans' Advisory Board on Dose Reconstruction toll free at 1–866–657–VBDR (8237). Additional information may be found at *http://vbdr.org*.

SUPPLEMENTARY INFORMATION:

Purpose of Meeting: To obtain, review and evaluate information related to the Board mission to provide guidance and oversight of the dose reconstruction and claims compensation programs for veterans of U.S.-sponsored atmospheric nuclear weapons tests from 1945–1962; veterans of the 1945–1946 occupation of Hiroshima and Nagasaki, Japan; and veterans who were prisoners of war in those regions at the conclusion of World War II. In addition, the advisory board will assist the VA and DTRA in communicating with the veterans.

Meeting Agenda: On Wednesday, the meeting will open with an introduction of the Board. The following briefings will be presented: ''Update on Nuclear Test Personnel Review (NTPR) Dose Reconstruction Program'' by Dr. Paul Blake; and ''VA Radiation Claims Compensation Program for Veterans'' by Mr. Thomas Pamperin. In addition, the four subcommittees established during the inaugural VBDR session will report on their activities since April 2008. The subcommittees are the ''Subcommittee on DTRA Dose Reconstruction Procedures'', the ''Subcommittee on VA Claims Adjudication Procedures'', the ''Subcommittee on Quality Management and VA Process Integration with DTRA Nuclear Test Personnel Review Program'', and the ''Subcommittee on Communication and Outreach.''

On Thursday, the Board will discuss future business and meeting dates.

Meeting Accessibility: Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165, and the availability of space this meeting is open to the public. Seating is limited by the size of the meeting Room. All persons must sign in legibly at the registration desk.

Written Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140(c), interested persons may submit a written statement for consideration by the Veterans' Advisory Board on Dose Reconstruction. Written statements should be no longer than two type-written pages and must address: The issue, discussion, and recommended course of action. Supporting documentation may also be included as needed to establish the appropriate historical context and to provide any necessary background information.

Individuals submitting a written statement must submit their statement to the Board at 7910 Woodmont Ave., Suite 400, Bethesda, MD 20814–3095, at any point; however, if a written statement is not received at least 10 calendar days prior to the meeting, which is the subject of this notice, then it may not be provided to or considered by the Veterans' Advisory Board on Dose Reconstruction until its next open meeting.

The Chairperson will review all timely submissions with the Designated Federal Officer, and ensure they are provided to members of the Veterans' Advisory Board on Dose Reconstruction members before the meeting that is the subject of this notice. After reviewing the written comments, the Chairperson and the Designated Federal Officer may choose to invite the submitter of the comments to orally present their issue during an open portion of this meeting or at a future meeting.

The Chairperson, in consulting with the Designated Federal Officer, may, if desired, allot a specific amount of time for members of the public to present their issues for review and discussion by the Veterans' Advisory Board on Dose Reconstruction.

Public Comments: The September 10–11, 2008 meeting is open to the public, approximately one hour each day will be reserved for public comments on issues related to the task of the Veterans' Advisory Board on Dose Reconstruction, and speaking time will be assigned on a first-come, first-served basis. The amount of time per speaker will be determined by the number of requests received, but is nominally five minutes each. All persons who wish to speak at the meeting must sign in legibly at the registration desk. Questions from the public will not be considered during this period. Speakers who wish to expand on their oral statements are invited to submit a written statement to the Veterans' Advisory Board on Dose Reconstruction at 7910 Woodmont Ave., Suite 400, Bethesda, MD 20814–3095.

Dated: August 1, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E8–18240 Filed 8–7–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Public Hearing for the Draft Supplemental Environmental Impact Statement for Developing Homeport Facilities for Three Nimitz-Class Aircraft Carriers in Support of the U.S. Pacific Fleet

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, as implemented by the Council on Environmental Quality Regulations (40 Code of Federal Regulations Parts 1500–1508 the U.S. Department of the Navy (Navy) has prepared and filed with the U.S. Environmental Protection Agency (EPA) a Draft Supplemental Environmental Impact Statement (SEIS) for Developing Homeport Facilities for Three Nimitz-Class (CVN) Aircraft Carriers in Support of the U.S. Pacific Fleet on August 8, 2008. The Draft SEIS has been prepared to update the analyses contained in the 1999 Final Environmental Impact Statement (the 1999 FEIS) for Developing Homeport Facilities for Three Nimitz-Class Aircraft Carriers in Support of the U.S. Pacific Fleet.

The SEIS analyzes information that was not available at the time the 1999 FEIS was completed, and focuses on potentially significant new circumstances or information relevant to environmental conditions that have emerged since the 2000 Record of Decision (2000 ROD) for the 1999 FEIS. Information or circumstances that have not changed significantly since the 2000 ROD are not re-examined in the SEIS.

A public hearing will be held to provide information and receive oral and written comments on the Draft SEIS. Federal, state, and local agencies and interested individuals are invited to be present or represented at the hearing.

DATES AND ADDRESSES: The public hearing will be held on September 3, 2008. The hearing will consist of an open house information session from 3 p.m. to 6 p.m. and a formal public

hearing from 6 p.m. to 9 p.m. Navy representatives will be available at the open house information session to answer questions about the proposal and the Draft SEIS analyses. The open house and public hearing will be held at: Coronado Community Center, Nautilus Room, 1845 Strand Way, Coronado, CA 92118.

FOR FURTHER INFORMATION CONTACT: SEIS Project Manager, Naval Facilities Engineering Command Southwest, 2730 McKean Street, Building 291, San Diego, CA 92136, telephone: 619–556–8509.

SUPPLEMENTARY INFORMATION: The Navy has filed the Draft SEIS for Developing Homeport Facilities for Three Nimitz-Class Aircraft Carriers in Support of the U.S. Pacific Fleet with the EPA in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. Sections 4321–4345) and its implementing regulations (40 CFR Parts 1500–1508). The Navy is the lead agency for the Proposed Action.

A Notice of Intent for the SEIS was published in the **Federal Register** on October 18, 2007 (Volume 72, Number 201, Pages 59084–59085), which specified that scoping comments must submitted on or before November 19, 2007. In response to local wildfires in the San Diego area, the Navy extended the normal 30-day scoping period. A second notice was published in the **Federal Register** Volume 72, 6 Number 218, Page 63891 on November 13, 2007, indicating that the public comment period had been extended through December 3, 2007 for a total of 47 days.

The Proposed Action from the 1999 FEIS has been implemented except for some minor infrastructure upgrades, some of which were not required at the time of the FEIS. Therefore, the Navy proposes to implement those minor infrastructure upgrades in order to meet current Navy requirements.

The Navy's analysis of the existing CVN homeport facilities and infrastructure at Naval Air Station North Island (NASNI) in Coronado, California, included a summary of specific construction projects needed to satisfy the requirements set out in the Naval Sea Systems Command and Naval Facilities Engineering Command guidance documents and Anti-Terrorism/Force Protection (AT/FP) guidance documents. These proposed minor infrastructure upgrades to Berth LIMA are analyzed in the SEIS and include: A fendering system, mooring bollards, a CVN security building and AT/FP improvements, as well as the installation of information systems, electrical and mechanical utility upgrades, paving, drainage, and site improvements.

There are no practical alternatives to these requirements, as current guidelines require these features for a homeport berth. Consequently, no alternatives to the minor infrastructure upgrades are discussed.

The primary focus of the SEIS is vehicular traffic and traffic-related issues in the vicinity of NASNI including evaluating the effectiveness of traffic mitigation measures implemented pursuant to the 2000 ROD. The SEIS also addresses potential environmental impacts to air quality, noise levels, biological resources, and marine water resources associated with the minor CVN berth infrastructure improvements at NASNI, and public scoping comments related to shoreline erosion along First Street in the City of Coronado.

The Draft SEIS has been distributed to various Federal, State, and local agencies, as well as other interested individuals and organizations. In addition, copies of the Draft SEIS have been made available for public review at the following repositories:

1. Chula Vista Library, Civic Center Branch, 365 F Street, Chula Vista CA 91910;
2. Coronado Public Library, 640 Orange Avenue, Coronado, CA 92118;
3. National City Public Library, 1401 National City Blvd., National City, CA 91950;
4. San Diego County Library, Imperial Beach Branch, 810 Imperial Beach Blvd., Imperial Beach, CA 91932;
5. San Diego Public Library, 820 E Street, San Diego, CA 92101;
6. San Diego Public Library, Point Loma/Hervey Branch Library, 3701 Voltaire St., San Diego, CA 92107–1606.

The Draft SEIS is also available electronically on the project Web site *http://www.nimitzcarriersseis.com*. Copies of the Draft SEIS or Executive Summary may be requested, and comments on the Draft SEIS may be submitted, via the Web site. Federal state, and local agencies, and other interested parties, are invited and encouraged to be present or represented at the public hearing. To ensure the accuracy of the record, all statements presented orally at the public hearing should be submitted in writing. All comments will become part of the public record and substantive comments will be responded to in the Final SEIS.

Equal weight will be given to oral and written statements. Persons wishing to speak will be required to sign in. In the interest of available time, and to ensure all who wish to give an oral statement at the public hearings have the opportunity to do so, each speaker's comments will be limited to three minutes. If a longer statement is to be presented, it should be summarized at the public hearing and the full text submitted in writing either at the hearing or mailed to: Naval Facilities Engineering Command Southwest, Attn: SEIS Project Manager Code: ROPME.RM, 2730 McKean Street, Building 291, San Diego, CA 92136.

Comments can be made in the following ways: (1) Oral statements/written comments at the public hearing; (2) written comments mailed to Naval Facilities Engineering Command Southwest, Attn: SEIS Project Manager Code: ROPME.RM, 2730 McKean Street, Building 291, San Diego, CA 92136; (3) written comment by e-mail to *robert.montana@navy.mil*; or (4) comments submitted via the project Web site at *http://www.nimitzcarriersseis.com*. Written comments postmarked by September 22, 2008 will become part of the official public record.

Dated: August 4, 2008.

T. M. Cruz,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. E8–18385 Filed 8–7–08; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before October 7, 2008.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information

Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: August 4, 2008.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Federal Student Aid

Type of Review: Revision.

Title: Leveraging Educational Assistance Program (LEAP)/Special Leveraging Educational Assistance Program (SLEAP) Performance Report.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs (primary).

Reporting and Recordkeeping Hour Burden:

Responses: 56.

Burden Hours: 448.

Abstract: FSA seeks approval for the LEAP/SLEAP Performance Report, which is set to expire on October 31, 2008. The performance report is used once annually in the fall of each calendar year and is needed to ensure program compliance by states. This is the same form that has been previously approved which has been reformatted utilizing Adobe LiveCycle Forms software. The new formatted form is an electronic interactive form, which allows our respondents to navigate, complete and submit more easily, while improving data accuracy.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 3713. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E8–18286 Filed 8–7–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Board for Education Sciences; Notice of Meeting

AGENCY: Department of Education, Institute of Education Sciences.

ACTION: Notice of an Open Meeting With a Partially Closed Session.

SUMMARY: This notice sets forth the schedule and proposed agenda of an upcoming partially closed meeting of the National Board for Education Sciences. The notice also describes the functions of the committee. Notice of this meeting is required by Section 10(a)(2) of the Federal Advisory Committee Act and is intended to notify the public of their opportunity to attend the open portions of the meeting.

DATES: September 9 and 10, 2008.

Time: September 9, 10 a.m. to 4:15 p.m., open; September 10, 8:30 a.m. to 12:30 p.m., open; 12:30 p.m. to 1 p.m., closed.

ADDRESSES: Institute of Education Sciences Board Room, 80 F St., NW., Washington, DC 20208.

FOR FURTHER INFORMATION CONTACT: Norma Garza, Executive Director, National Board for Education Sciences, 555 New Jersey Ave., NW., Room 627 H, Washington, DC 20208; phone: (202) 219–2195; fax: (202) 219–1466; e-mail: *Norma.Garza@ed.gov.*

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FRS) at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The National Board for Education Sciences is authorized by Section 116 of the Education Sciences Reform Act of 2002. The Board advises the Director of the Institute of Education Sciences (IES) on the establishment of activities to be supported by the Institute, on the funding for applications for grants, contracts, and cooperative agreements for research after the completion of peer review, and reviews and evaluates the work of the Institute.

On September 9, from 10 a.m. to 12:15 p.m., the Board will receive reports from the Director of IES and the Commissioners of the IES centers on projects underway since May 2008. From 1:30 p.m. to 2:30 p.m., the Board will hear presentations on the Reading First program and on the Impact Evaluation of Academic Instruction for After-School Programs. At 3 p.m. the IES Deputy Director for Science will discuss trends in IES research. The session will conclude at 4:15 p.m. after a report from the IES evaluation committee and summary views of the NBES chair. On September 10, the meeting will convene at 8:30 a.m. After a review of the agenda, the members will hear a report on the Mid-Stream Evaluation of the National Center on Education Evaluation until approximately 10:15 a.m. From 10:30 a.m. to 12 noon the Board will review and discuss its final 5-year report with recommendations regarding actions to enhance the ability of IES to carry out its priorities and mission. The members will then consider next steps and summary views.

At 12:30 the Board will conduct an election of officers. In accordance with the provisions of Section 10 (d) of the Federal Advisory Committee Act and consistent with exemptions (2) and (6) of Section 552b (c) of Title 5 U.S. C., this portion of the meeting will be closed to the public because it relates to internal personnel rules and practices of the Board and disclosure of these deliberations could result in an unwarranted invasion of privacy. The meeting will adjourn at 1 p.m.

A final agenda will be available from Norma Garza (see contact information above) on August 22. Individuals who will need accommodations for a disability in order to attend the meeting (*e.g.*, interpreting devices, assistance listening devices, or materials in alternative format) should notify Norma Garza no later than August 22. We will attempt to meet requests for accommodations after this date but cannot guarantee their availability. The meeting site is accessible to individuals with disabilities.

Records are kept of all committee proceedings and are available for public inspection at 555 New Jersey Ave., NW., Room 627 H, Washington, DC 20208,

from the hours of 9 a.m. to 5 p.m. Monday through Friday.

Electronic Access to This Document: You may view this document as well as all other documents of this Department published in the **Federal Register** in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/news/fed-register/index.html.* To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO) toll-free at 1–888–293–6498, or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *www.gpoaccess.gov/nara/index.html.*

Grover J. Whitehurst,

Director, Institute of Education Sciences.

[FR Doc. E8–18337 Filed 8–7–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of the Deputy Secretary; Amended Notice of Opportunity To Participate in a National Math Panel Forum

AGENCY: U.S. Department of Education, Office of the Deputy Secretary.

ACTION: Amended notice of opportunity to participate in a National Math Panel Forum to help improve the teaching and learning of mathematics based on the findings and recommendations of the National Mathematics Advisory Panel's final report.

SUMMARY: On July 18, 2008, the Deputy Secretary published in the **Federal Register** (FR Doc E8–16423, Volume 73, Number 139) soliciting participation in the National Math Panel Forum. This notice amends the July 18 notice by extending the registration period from Friday, August 8, to Friday, August 29, and republishes the entire notice to read as follows:

For students to compete in the 21st-century global economy, knowledge of and proficiency in mathematics are critical. Today's high school graduates need to have solid mathematics skills—whether they are headed to college or to the workforce. To help ensure our nation's future competitiveness and economic viability, President George W. Bush created the National Mathematics Advisory Panel (National Math Panel) in April 2006. The Panel was charged with reviewing the best available scientific evidence and making recommendations on improving mathematics education with a focus on readiness for and success in algebra and mathematics education in grades K–8.

The National Math Panel's final report, *Foundations for Success: Report of the National Mathematics Advisory Panel,* was issued on March 13, 2008. The report contains 45 findings and recommendations on numerous topics, including curricular content, learning processes, instructional practices and materials, teachers, assessments, and future research priorities.

In response to a National Math Panel recommendation, the U.S. Department of Education, in partnership with the Conference Board of Mathematical Sciences, is hosting a National Math Panel Forum (Forum) to bring together various organizations and other interested parties to discuss ways to engage their members or constituents in discussions about the National Math Panel's findings and recommendations and how the organizations and parties can collaborate and coordinate efforts to use the findings to improve mathematics education in the United States.

DATES: Registration to participate in and attend the Forum will open on July 16, 2008, and close on Friday, August 29, 2008.

Forum Dates:

Monday, October 6, 2008—Evening Reception—(Times to be determined).

Tuesday, October 7, 2008—Forum —(Times to be determined).

Location: Washington, DC, area. (The National Math Panel Web site, *http://www.ed.gov/MathPanel,* will be updated when the exact location and times have been set for the Forum. Those who expressed interest in participating will be notified of the update).

Registration Process: Interested organizations and parties should complete an online registration form. The registration form is located at: *http://www.ed.gov/MathPanel* and will be available at the start of registration on July 16, 2008. Correspondence should be sent via e-mail or fax to:

National Math Panel Forum, c/o Ida Eblinger Kelley, Office of Communications and Outreach, U.S. Department of Education, E-mail: *NationalMathPanel@ed.gov,* FAX: 202–205–9133; or

c/o William McCallum, Chair, Conference Board of Mathematics Sciences, E-mail: *wmc@math.arizona.edu.*

SUPPLEMENTARY INFORMATION:

Background

On March 13, 2008, the National Math Panel presented its final report to the President and the Secretary of Education. During the course of two years, expert panelists, including a number of leading mathematicians, cognitive psychologists, and educators, reviewed more than 16,000 research publications and policy reports and received public testimony from 110 individuals. In addition, the Panel reviewed commentary from 160 organizations and individuals, and analyzed survey results from 743 active teachers of algebra before preparing the final report with policy advice on how to improve mathematics achievement for all students in the United States.

The National Math Panel's final report calls on the nation to improve the ''delivery system in mathematics education—the system that translates mathematical knowledge into value and ability for the next generation.'' Furthermore, the report states:

> ''Positive results can be achieved in a reasonable time at accessible cost, but a consistent, wise, community-wide effort will be required. Education in the United States has many participants in many locales—teachers, students, and parents; state school officers, school board members, superintendents, and principals; curriculum developers, textbook writers, and textbook editors; those who develop assessment tools; those who prepare teachers and help them to continue their development; those who carry out relevant research; association leaders and government officials at the federal, state, and local levels. All carry responsibilities. All can be important to success.
>
> ''The network of these many participants is linked through interacting national associations. A coordinated national approach toward improved mathematics education will require an annual forum of their leaders for at least a decade. The Panel recommends that the U.S. Secretary of Education take the lead in convening the forum initially, charge it to organize in a way that will sustain an effective effort, and request a brief annual report on the mutual agenda adopted for the year ahead.''

To read the National Math Panel's final report and Reports of the Task Groups and Subcommittees please visit: *http://www.ed.gov/MathPanel.*

Goals of the Forum

To answer the National Math Panel's call to build a sustained effort to improve mathematics education, the U.S. Department of Education and the Conference Board of Mathematical Sciences are requesting educational, scholarly, business, and community organizations and other interested parties to participate in a Forum with the goal of creating a network or

networks committed to taking steps for the years to come to improve mathematics education, using the findings and recommendations of the National Mathematics Advisory Panel as a platform for action.

The long-term goal of this effort is to improve the teaching and learning of mathematics in order to prepare our students to succeed in algebra and higher-level mathematics by addressing the National Math Panel's evidence-based findings and recommendations. The ultimate goal is to ensure that U.S. children have the skills to pursue careers in mathematics and sciences, as well as to compete in this increasingly competitive global economy as informed citizens.

Forum Focus

The Forum in October will be the first in a series of forums. Understanding that the panel's findings are extensive and cover many areas, this initial Forum will focus on four of the seven National Math Panel recommendation topics. These topics include the following:

—Teachers and Teacher Education
—Learning Processes
—Instructional Materials
—Research Policies and Mechanisms

Other topics, including Curricular Content, Instructional Practices, and Assessment, may also be discussed during the Forum and will be addressed in future forums.

Individuals who will need accommodations for a disability in order to attend the forum (e.g., interpreting services, assistance listening devices, or materials in alternative format) should notify Ida Kelley at (202) 401–6143 or *Ida.Kelley@ed.gov* no later than Friday, September 12, 2008. We will attempt to meet requests for accommodations after this date but cannot guarantee their availability. The forum site is accessible to individuals with disabilities.

Participation

All interested organizations and parties committed to improving the teaching and learning of mathematics in this country are encouraged to participate in the Forum. Participants will be asked to complete online registration materials that address the following:

—A description of the specific steps or actions the organization or party is planning, or will plan, to take, building on the platform of the National Math Panel's findings and recommendations related to the four topics listed above;
—A brief statement of why the organization or party is interested in participating, along with a description of the organization's or party's resources to carry out the plan, including existing programs or efforts that could support the goals of the Forum; and
—A commitment to send a team of 2–4 individuals to the Forum.

Organizations that seek to participate in the Forum should submit their registration, by August 29, 2008, at *http://www.ed.gov/MathPanel.*

FOR FURTHER INFORMATION CONTACT:

National Math Panel Forum, c/o Ida Eblinger Kelley, Office of Communications and Outreach, U.S. Department of Education, E-mail: *NationalMathPanel@ed.gov,* Phone: 202–401–6143, FAX: 202–205–9133; or

c/o William McCallum, Conference Board of Mathematical Sciences, E-mail: *wmc@math.arizona.edu.*

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister/index.html.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Raymond Simon,

Deputy Secretary, U.S. Department of Education.

[FR Doc. E8–18345 Filed 8–7–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Privacy Act of 1974; Computer Matching Program

AGENCY: Department of Education.

ACTION: Notice—computer matching between the U.S. Department of Education and the Social Security Administration.

SUMMARY: Pursuant to the Computer Matching and Privacy Protection Act of 1988, Public Law 100–503, and the Office of Management and Budget (OMB) guidelines on the conduct of computer matching programs, notice is hereby given of the renewal of the computer matching program between the U.S. Department of Education (ED) (recipient agency), and the Social Security Administration (SSA) (source agency). This renewal of the computer matching program between SSA and ED will become effective as explained in this notice.

In accordance with the Privacy Act of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503) (Privacy Act), Office of Management and Budget (OMB) Guidelines on the Conduct of Matching Programs (54 FR 25818, June 19, 1989), and OMB Circular No. A–130, Transmittal Memorandum #4, Management of Federal Information Resources (11/28/2000) we provide the following information:

1. Names of Participating Agencies

The U.S. Department of Education and the Social Security Administration.

2. Purpose of the Match

The purpose of this matching program between ED and SSA is to assist the Secretary of Education in her obligation to verify immigration status and Social Security numbers (SSNs) under 20 U.S.C. 1091(g) and (p). The SSA will verify the issuance of an SSN to, and the citizenship status of, those students and parents who provide their SSNs in the course of applying for aid under a student financial assistance program authorized under Title IV of the Higher Education Act of 1965, as amended (HEA). Verification of this information by SSA will help ED satisfy its obligation to ensure that individuals applying for financial assistance meet eligibility requirements imposed by the HEA.

Verification by this computer matching program effectuates the purpose of the HEA because it provides an efficient and comprehensive method of verifying the accuracy of each individual's SSN and claim to a citizenship status that permits that individual to qualify for Title IV, HEA assistance.

3. Authority for Conducting the Matching Program

ED is authorized to participate in the matching program under sections 484(p) (20 U.S.C. 1091(p)); 484(g) (20 U.S.C. 1091(g)); 483(a)(7) (20 U.S.C. 1090(a)(7)); and 428B(f)(2) (20 U.S.C. 1078–2(f)(2)) of the HEA.

The SSA is authorized to participate in the matching program under section 1106(a) of the Social Security Act (42

U.S.C. 1306(a)) and the regulations promulgated pursuant to that section (20 CFR part 401).

4. Categories of Records and Individuals Covered by the Match

The Federal Student Aid Application File (18–11–01), which contains the information to determine an applicant's eligibility for Federal student financial assistance, and the ED PIN Registration System of Records (18–11–12), which contains the applicant's information to receive an ED PIN, will be matched against SSA's Master Files of Social Security Number Holders and SSN Applications System, SSA/OS, 60–0058, which maintains records about each individual who has applied for and obtained an SSN.

5. Privacy Impact Assessment

Section 208 of the E-Government Act of 2002 (44 U.S.C. 3501 note) requires ED to conduct the following privacy impact assessment of this information collection:

The information collected by ED under the computer matching agreement is the verification of SSNs by SSA and citizenship status as recorded in SSA records, for the purpose of assisting ED to satisfy its obligation to ensure that an individual applying for financial assistance meets the requirements imposed under the HEA. This verification is mandated by the HEA. The information obtained from SSA by ED will only be used as provided for under Section X of the computer matching agreement. Notice that ED verifies an individual's SSN through a computer matching agreement with agencies such as SSA is provided to individuals in the Privacy and Security section of the Free Application for Federal Student Aid (FAFSA), and in Federal student loan program forms; submission of a FAFSA and participation in the Federal student loan programs are voluntary. The information obtained from SSA under the computer matching agreement will be secured pursuant to the procedures described in Section IX of the computer matching agreement. No new system of records is being created for this collection because, as noted in the computer matching agreement, routine uses permitting the disclosure of records to allow for the verification of SSNs are already included in the Systems of Records Notices for Federal student aid programs. Thus, this collection comports with applicable Privacy Act standards and section 208.

6. Effective Dates of the Matching Program

This matching program must be approved by the Data Integrity Board of each agency. The computer matching agreement will become effective on: (1) October 10, 2008; (2) 40 days after the approved agreement and report on the matching program are sent to Congress and OMB (or later if OMB objects to some or all of the agreement) unless OMB waives 10 days of this 40-day period for compelling reasons shown, in which case 30 days after transmission of the report to Congress and OMB; or (3) 30 days after publication of this notice in the **Federal Register**, *whichever date is latest.*

The matching program will continue for 18 months after the effective date and may be extended for an additional 12 months thereafter, if the conditions specified in 5 U.S.C. 552a(o)(2)(D) have been met.

7. Address for Receipt of Public Comments or Inquiries

Individuals wishing to comment on this matching program, or to obtain additional information about the program, including a copy of the computer matching agreement between ED and SSA, should contact Marya Dennis, Management and Program Analyst, U.S. Department of Education, Union Center Plaza, 830 First Street, NE., Washington, DC 20202–5454. Telephone: (202) 377–3385. If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Electronic Access to This Document

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Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *www.gpoaccess.gov/nara/index.html.*

Dated: August 5, 2008.

James F. Manning,

Deputy Chief Operating Officer, Federal Student Aid.

[FR Doc. E8–18352 Filed 8–7–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Biomass Research and Development Technical Advisory Committee

AGENCY: Department of Energy, Office of Energy Efficiency and Renewable Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces an open meeting of the Biomass Research and Development Technical Advisory Committee under the Biomass Research and Development Act of 2000. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that agencies publish these notices in the **Federal Register** to allow for public participation. This notice announces the meeting of the Biomass Research and Development Technical Advisory Committee.

DATES AND TIMES: September 9, 2008, at 12:30 p.m. to 5:30 p.m.; September 10, 2008, at 8 a.m. to 3:15 p.m.

ADDRESSES: API, 1220 L Street, NW., Washington, DC 20005–4070.

FOR FURTHER INFORMATION CONTACT: Valri Lightner, Designated Federal Official for the Committee, Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; (202) 586–0937 or Carolyn Clark at (202) 586–8077; E-mail: *cclark@bcs-hq.com.*

SUPPLEMENTARY INFORMATION:

Purpose of Meeting: To provide advice and guidance that promotes research and development leading to the production of biobased fuels and biobased products.

Tentative Agenda: Agenda will include the following:

- Update on USDA Biofuels Activities and Budget
- Update on the 2008 Joint Solicitation and Biomass R&D Board Activities
- Presentation on the Brazilian Pipeline Experience
- Presentation on the Department of Energy Intermediate Blends Test Plan
- Approval of FY 2008 Annual Recommendations
- Panel Discussion on Investment in Biorefineries

Public Participation: In keeping with procedures, members of the public are welcome to observe the business of the Biomass Research and Development Technical Advisory Committee. To attend the meeting and/or to make oral statements regarding any of the items on the agenda, you should contact Valri Lightner at 202–586–0937; E-mail: *valri.lightner@ee.doe.gov* or Carolyn Clark at (202) 586–8077; E-mail: *cclark@bcs-hq.com*. You must make your request for an oral statement at least 5 business days before the meeting. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chair of the Committee will make every effort to hear the views of all interested parties. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. The Chair will conduct the meeting to facilitate the orderly conduct of business.

Minutes: The minutes of the meeting will be available for public review at *http://biomass.govtools.us*.

Issued at Washington, DC, on August 5, 2008.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E8–18309 Filed 8–7–08; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Hanford

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Hanford. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Thursday, September 4, 2008, 9 a.m.–5 p.m.; Friday, September 5, 2008, 8:30 a.m.–4 p.m.

ADDRESSES: Double Tree Guest Suites, 16500 South Center Parkway, Seattle, Washington 98199, Phone: (206) 575–8220, Fax: (206) 575–4743.

FOR FURTHER INFORMATION CONTACT: Erik Olds, Federal Coordinator, Department of Energy Richland Operations Office, 2440 Stevens Drive, P.O. Box 450, H6–60, Richland, WA, 99352; Phone: (509) 372–8656; or E-mail: *Theodore_E_Erik_Olds@orp.doe.gov*.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

- Annual Agency Updates (Department of Energy Office of River Protection and Richland Operations Office; Washington State Department of Ecology; and the U.S. Environmental Protection Agency)
- Discussion on Board Work Priorities from Hanford Advisory Board (HAB) Leadership Retreat and Adoption of Work Priorities
- Update on Tri-Party Agreement Negotiations
- Discussion of letter to Assistant Secretary Rispoli regarding the HAB's acceptance of the new ''Memorandum of Understanding among the U.S. Department of Energy, the Environmental Protection Agency, and the Washington State Department of Ecology Regarding the HAB'' and ''Operating Ground Rules for the HAB''
- Announcement of Committee Leadership (including nominations for Board Chair)
- Introduction of the new contracts and/or contractors
- Committee Updates, including: Tank Waste Committee; River and Plateau Committee; Health, Safety and Environmental Protection Committee; Public Involvement Committee; and Budgets and Contracts Committee

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Erik Olds' office at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Erik Olds' office at the address or phone number listed above. Minutes will also be available at the following Web site: *http://www.hanford.gov/?page=413&parent=397*.

Issued at Washington, DC, on August 5, 2008.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E8–18301 Filed 8–7–08; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Portsmouth

AGENCY: Department of Energy (DOE).

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Portsmouth. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Thursday, September 4, 2008, 6 p.m.

ADDRESSES: Ohio State University, Endeavor Center, 1862 Shyville Road, Piketon, Ohio 45661.

FOR FURTHER INFORMATION CONTACT: David Kozlowski, Deputy Designated Federal Officer, Department of Energy Portsmouth/Paducah Project Office, Post Office Box 700, Piketon, Ohio 45661, (740) 897–2759, *David.Kozlowski@lex.doe.gov*.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management and related activities.

Tentative Agenda

- Call to Order, Introductions, Review of Agenda
- Deputy Designated Federal Officer's Comments
- Federal Coordinator's Comments
- Liaisons' Comments—Suggestions for Possible Liaisons
- Presentations
- Public Comments
- Administrative Issues—Actions:
  - Operating Procedures
  - EM SSAB Chairs Meeting—Development of Top Three Issues and One Accomplishment
  - Possible Board Retreat
- Final Comments
- Adjourn

Breaks Taken As Appropriate

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should

contact David Kozlowski at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling David Kozlowski at the address and phone number listed above.

Issued at Washington, DC, on August 5, 2008.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E8–18302 Filed 8–7–08; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah

AGENCY: Department of Energy (DOE).

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Thursday, September 18, 2008 6 p.m.

ADDRESSES: Barkley Centre, 111 Memorial Drive, Paducah, Kentucky 42001.

FOR FURTHER INFORMATION CONTACT: Reinhard Knerr, Deputy Designated Federal Officer, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001, (270) 441–6825.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management and related activities.

Tentative Agenda

- Call to Order, Introductions, Review of Agenda
- Deputy Designated Federal Officer's Comments
- Federal Coordinator's Comments
- Liaisons' Comments
- Presentations
- Public Comments
- Administrative Issues
  - Motions
  - Review Next Agenda
- Final Comments
- Adjourn

Breaks Taken As Appropriate

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Reinhard Knerr at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Reinhard Knerr at the address and phone number listed above. Minutes will also be available at the following Web site: *http://www.pgdpcab.org/minutes.htm*.

Issued at Washington, DC, on August 5, 2008.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E8–18307 Filed 8–7–08; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Number: 459–231]

Ameren/UE; Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

August 1, 2008.

a. *Type of Application:* Non-project use of project lands and waters.

b. *Project Number:* 459–231.

c. *Date Filed:* July 21, 2008.

d. *Applicant:* Ameren/UE.

e. *Name of Project:* Osage Hydroelectric Project.

f. *Location:* The project is located on the Osage River, on the Gravois Arm of the Lake of the Ozarks, in Morgan County, Missouri, near mile marker 6.0 + 10.2.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a) 825(r) and 799 and 801.

h. *Applicant Contact:* Mr. Jeff Green, Shoreline Supervisor, Ameren/UE, P.O. Box 993, Lake Ozark, MO 65049, (573) 365–9214.

i. *FERC Contact:* Any questions on this notice should be addressed to Jade Alvey, Telephone (202) 502–6849, and e-mail: *Jade.Alvey@ferc.gov*.

j. *Deadline for filing comments, motions to intervene, and protest:* September 2, 2008.

k. *Description of Request:* Ameren/UE requests approval to permit Ronald W. Black to construct 4 multi-slip boat docks, with a total of 112 boat slips. The proposed docks would each consist of a single walkway 64 feet long, be a total of 268 feet long and 54 feet wide, and contain 28 slips each 12 feet by 24 feet. The dock would serve a single-family residential development consisting of 3- to 8-acre tracks on a total of 240 acres of private property adjacent to the project boundary. The adjacent southeast shoreline is currently developed with residential housing, docks, and retaining walls. Shoreline to the northwest is currently undeveloped. No dredging, fuel dispensing, or sewage pumping facilities are proposed.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's 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 (p-459) 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 1–866–208–3372 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 (p-459–224). All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. 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.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–18267 Filed 8–7–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER08–1297–000]

Ashtabula Wind, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

August 1, 2008.

This is a supplemental notice in the above-referenced proceeding of Ashtabula Wind, LLC's application for market-based rate authority, with an accompanying rate schedule, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is August 21, 2008.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–18262 Filed 8–7–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER08–1293–000]

Crystal Lake Wind, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

August 1, 2008.

This is a supplemental notice in the above-referenced proceeding of Crystal Lake Wind LLC's application for market-based rate authority, with an accompanying rate schedule, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is August 21, 2008.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any

FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–18260 Filed 8–7–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER08–1299–000]

Merck & Co., Inc.; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

August 1, 2008.

This is a supplemental notice in the above-referenced proceeding of Merck & Co., Inc.'s application for market-based rate authority, with an accompanying rate schedule, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is August 21, 2008.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–18263 Filed 8–7–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER08–1296–000]

Osceola Wind Power II, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

August 1, 2008.

This is a supplemental notice in the above-referenced proceeding of Osceola Wind Power II, LLC's application for market-based rate authority, with an accompanying rate schedule, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is August 21, 2008.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–18261 Filed 8–7–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER08–1300–000]

Story Wind, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

August 1, 2008.

This is a supplemental notice in the above-referenced proceeding of Story Wind, LLC's application for market-based rate authority, with an accompanying rate schedule, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket

authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is August 21, 2008.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the

Commission's eLibrary system by clicking on the appropriate link in the above list.

They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–18264 Filed 8–7–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER08–1314–000]

Wheelabrator Frackville Energy Company Inc.; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

August 1, 2008.

This is a supplemental notice in the above-referenced proceeding of Wheelabrator Frackville Energy Company Inc.'s application for market-based rate authority, with an accompanying rate schedule, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability, is August 21, 2008.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–18265 Filed 8–7–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

August 4, 2008.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP06–298–007.
Applicants: Public Service Commission of New York
Description: National Fuel Gas Supply Corporation submits its Semi-Annual Report of Operational Sales of Gas pursuant to Section 40.3 etc.
Filed Date: 07/30/2008.
Accession Number: 20080731–0138.
Comment Date: 5 p.m. Eastern Time on Monday, August 11, 2008.

Docket Numbers: RP96–320–094.
Applicants: Gulf South Pipeline Company, LP.
Description: Gulf South Pipeline Co, LP submits a capacity release agreement containing negotiated rate provisions executed.
Filed Date: 07/30/2008.
Accession Number: 20080731–0139.
Comment Date: 5 p.m. Eastern Time on Monday, August 11, 2008.

Docket Numbers: RP08–457–000.
Applicants: Transcontinental Gas Pipe Line Corp.
Description: LSS/GSS Dominion flow thru refund 4/1/07—3/31/08.
Filed Date: 07/29/2008.
Accession Number: 20080729–5017.
Comment Date: 5 p.m. Eastern Time on Monday, August 11, 2008.

Docket Numbers: RP08–460–000.
Applicants: Transcontinental Gas Pipe Line Corp.
Description: Transcontinental Gas Pipe Line Corp submits Forty-First Revised Sheet 20 to FERC Gas Tariff, Third Revised Volume 1, to be effective 8/1/08.
Filed Date: 07/29/2008.
Accession Number: 20080730–0041.
Comment Date: 5 p.m. Eastern Time on Monday, August 11, 2008.

Docket Numbers: RP08–461–000.
Applicants: Garden Banks Gas Pipeline, LLC.
Description: Request for Extension of Time of Garden Banks Gas Pipeline, LLC.
Filed Date: 07/29/2008.
Accession Number: 20080729–5074.
Comment Date: 5 p.m. Eastern Time on Monday, August 11, 2008.

Docket Numbers: RP08–462–000.
Applicants: Enbridge Pipelines (Midla) L.L.C.
Description: Request of Enbridge Pipelines (Midla) L.L.C. for Extension of

Time to Implement an Electronic Short-Term Capacity Release Bidding System.

Filed Date: 07/29/2008.

Accession Number: 20080729–5075.

Comment Date: 5 p.m. Eastern Time on Monday, August 11, 2008.

Docket Numbers: RP08–463–000.

Applicants: Enbridge Offshore Pipelines (UTOS) LLC.

Description: Request for Extension of Time of Enbridge Offshore Pipelines (UTOS) LLC.

Filed Date: 07/29/2008.

Accession Number: 20080729–5076.

Comment Date: 5 p.m. Eastern Time on Monday, August 11, 2008.

Docket Numbers: RP08–465–000.

Applicants: Nautilus Pipeline Company, L.L.C.

Description: Request of Nautilus Pipeline Company, L.L.C. for Extension of Time to Implement an Electronic Short-Term Release Bidding System.

Filed Date: 07/29/2008.

Accession Number: 20080729–5077.

Comment Date: 5 p.m. Eastern Time on Monday, August 11, 2008.

Docket Numbers: RP08–470–000.

Applicants: Dominion South Pipeline Company, LP.

Description: Dominion South Pipeline Company, LP's Report of Penalty Revenue its FERC Gas Tariff, Original Volume 1 for the period commencing 5/1/07–4/30/08.

Filed Date: 07/31/2008.

Accession Number: 20080731–5022.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 12, 2008.

Docket Numbers: RP08–471–000.

Applicants: Questar Overthrust Pipeline Company.

Description: Questar Overthrust Pipeline Company submits its annual fuel gas reimbursement report for the period ended 5/31/08.

Filed Date: 07/31/2008.

Accession Number: 20080731–0218.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 12, 2008.

Docket Numbers: RP08–472–000.

Applicants: National Fuel Gas Supply Corporation.

Description: National Fuel Gas Supply submits 117th Revised Sheet 9 to its FERC Gas Tariff, Fourth Revised Volume 1.

Filed Date: 07/31/2008.

Accession Number: 20080731–0217.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 12, 2008.

Docket Numbers: RP08–473–000.

Applicants: Columbia Gas Transmission Corporation.

Description: Columbia Gas Transmission Corporation submits Eighty-Seventh Revised 25 to FERC Gas Tariff, Second Revised Volume 1, to be effective 8/1/08.

Filed Date: 07/31/2008.

Accession Number: 20080801–0133.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 12, 2008.

Docket Numbers: RP08–474–000.

Applicants: Algonquin Gas Transmission, LLC.

Description: Algonquin Gas Transmission, LLC submits Second Revised Sheet 616 to FERC Gas Tariff, Fifth Revised Volume 1, to be effective 9/1/08.

Filed Date: 07/31/2008.

Accession Number: 20080804–0047.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 12, 2008.

Docket Numbers: RP08–475–000.

Applicants: East Tennessee Natural Gas, LLC.

Description: East Tennessee Natural Gas, LLC submits Third Revised Sheet 401 to FERC Gas Tariff, Third Revised Volume 1, to be effective 9/1/08.

Filed Date: 07/31/2008.

Accession Number: 20080804–0046.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 12, 2008.

Docket Numbers: RP08–476–000.

Applicants: Texas Eastern Transmission, LP.

Description: Texas Eastern Transmission, LP submits Fifth Revised Sheet 645 to FERC Gas Tariff, Seventh Revised Volume 1, to be effective 9/1/08.

Filed Date: 07/31/2008.

Accession Number: 20080804–0045.

Comment Date: 5 p.m. Eastern Time on Tuesday, August 12, 2008.

Docket Numbers: RP08–477–000.

Applicants: Transcontinental Gas Pipeline Corporation.

Description: Transcontinental Gas Pipeline Corp submits Fourth Revised Sheet 33A *et al.* to FERC Gas Tariff, Third Revised Volume 1, to be effective 9/1/08.

Filed Date: 08/01/2008.

Accession Number: 20080804–0043.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 13, 2008.

Docket Numbers: RP08–478–000.

Applicants: CenterPoint Energy Gas Transmission Co.

Description: CenterPoint Energy Gas Transmission Co submits Fifteenth Revised Sheet 32 *et al.* to FERC Gas Tariff, Sixth Revised Volume 1, to be effective 9/1/08.

Filed Date: 08/01/2008.

Accession Number: 20080804–0044.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 13, 2008.

Docket Numbers: RP08–480–000.

Applicants: Colorado Interstate Gas Company.

Description: Colorado Interstate Gas Company requests that the Commission allow for an out-of-time adjustment to their transportation fuel gas and storage fuel gas reimbursement percentages etc., effective 9/1/08.

Filed Date: 08/01/2008.

Accession Number: 20080804–0124.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 13, 2008.

Docket Numbers: CP08–18–001.

Applicants: Northern Natural Gas Company.

Description: Northern Natural Gas Company submits 78 Revised Sheet No. 53 *et al.* to FERC Gas Tariff, Fifth Revised Volume 1, to be effective 09/01/08.

Filed Date: 07/31/2008.

Accession Number: 20080804–0042.

Comment Date: 5 p.m. Eastern Time on Wednesday, August 13, 2008.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern Time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They

are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed 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.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E8–18257 Filed 8–7–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

July 31, 2008.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP08–456–000.

Applicants: CenterPoint Energy Gas Transmission Co.

Description: CenterPoint Energy Gas Transmission Company submits Seventeenth Revised Sheet 17 *et al.* to FERC Gas Tariff, Sixth Revised Volume 1, effective 8/27/08.

Filed Date: 07/28/2008.

Accession Number: 20080730–0003.

Comment Date: 5 p.m. Eastern Time on Monday, August 11, 2008.

Docket Numbers: RP08–458–000.

Applicants: Ozark Gas Transmission, L.L.C.

Description: Ozark Gas Transmission, L.L.C. submits First Revised Sheet 13B *et al.* to FERC Gas Tariff, Orginal Volume 1 to become effective 9/1/08.

Filed Date: 07/28/2008.

Accession Number: 20080730–0004.

Comment Date: 5 p.m. Eastern Time on Monday, August 11, 2008.

Docket Numbers: RP08–459–000.

Applicants: CenterPoint Energy Gas Transmission Co.

Description: CenterPoint Energy Gas Transmission Company submits Fifth Revised Sheet 315 *et al.* to FERC Gas Tariff, Sixth Revised Volume 1, effective 8/28/08.

Filed Date: 07/29/2008.

Accession Number: 20080730–0029.

Comment Date: 5 p.m. Eastern Time on Monday, August 11, 2008.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern Time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E8–18258 Filed 8–7–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2232–543]

Duke Energy Carolinas, LLC; Notice of Availability of Environmental Assessment

August 1, 2008.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47879) the Office of Energy Projects has prepared an environmental assessment (EA) for an application filed by Duke Energy Carolinas, LLC (licensee) on August 29, 2007, requesting Commission approval of a non-project use of project lands. The licensee has requested Commission authorization to lease to Long Island Marina, Inc. (Long Island) 3.239 acres of project lands for a commercial marina at the existing, previously approved Long Island Marina on Lake Norman in Catawba County, North Carolina. Long Island proposes to re-configure and upgrade the marina. Dredging of 1700 cubic yards of lake-bed would be required for this reconfiguration. The marina would serve the general public and the residents of Long Island Resorts.

The EA evaluates the environmental impacts that would result from approving the licensee's proposal to grant Long Island permission to expand and reconfigure its marina facilities. The EA finds that approval of the application would not constitute a major federal action significantly affecting the quality of the human environment.

A copy of the EA is on file with the Commission and is available for public inspection. The EA may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number (P–2232) 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 1–866–208–3372, or for TTY, (202) 502–8659.

Any comments should be filed by September 2, 2008, and should be addressed to the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1–A, Washington, DC 20426. Please reference the project name and project number (P–2232) on all comments. Comments may be filed electronically via 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 under the ''eFiling'' link. For further information, contact Christopher Yeakel at (202) 502–8132.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–18266 Filed 8–7–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP05–130–000, etc.]

Dominion Cove Point LNG, LP, et al., Notice of Rescheduling of Technical Conference

August 1, 2008.

	Docket Nos.
Dominion Cove Point LNG, LP.	CP05–130–000, CP05–130–001, CP05–130–002, CP05–130–003, CP05–132–000, CP05–132–001, CP05–132–002, CP05–395–000, CP05–395–001.
Dominion Transmission, Inc.	CP05–131–000, CP05–131–001, CP05–131–002. (Not consolidated)

Notice of Rescheduling of Technical Conference

On July 28, 2008, the Commission issued a Notice of Technical Conference in Dominion Cove Point LNG, LP, *et al.*, Docket No. CP05–130–000, *et al.*, scheduling a Technical Conference in these proceedings on Wednesday, August 6, 2008.[1] The Technical Conference is rescheduled to be held at the Commission's offices in Washington, DC, on Thursday, August 14, 2008, commencing at 10 a.m.

As stated in the July 28 Notice, on July 18, 2008, the United States Court of Appeals for the District of Columbia issued an order[2] vacating the orders in the underlying proceeding[3] to the extent that they approve the Cove Point Expansion Project, and remanded the case to the Commission to more fully address whether, consistent with the public interest, the Cove Point Expansion Project can go forward without causing unsafe leakage. While upholding the Commission's analysis that defects in Washington Gas Light Company's (WGL) system caused the gas leaks on WGL's system in Prince George's County, Maryland, the Court found that the Commission's determination that WGL will be able to fix its facilities before the November 2008 in-service was not supported by substantial evidence. The Commission staff has determined that discussing with the parties the issues raised by the Court would assist staff in evaluating these matters.

The July 28, 2008 Notice also stated that the Commission is convening this Technical Conference in order that the parties and the Commission Staff can discuss whether and when the Cove Point Expansion Project can go forward without causing unsafe leakage consistent with the public interest. Specifically, the participants should be prepared to discuss the nature and progress of remedial measures taken to date, as well as the need and benefit of any other remedial measures that might be taken by WGL and Dominion Cove Point LNG, LP so that WGL's system can safely accommodate the increased amounts of regasified LNG from Cove Point's LNG import terminal.

FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free (866) 208–3372 (voice) or (202) 208–1659 (TTY), or send a FAX to (202) 208–2106 with the required accommodations.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–18268 Filed 8–7–08; 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

August 1, 2008.

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.

Exempt

[1] The July 28, 2008 Notice inadvertently failed to include Dominion Cove Point LNG, LP, Docket Nos. CP05–395–000 and CP05–395–001.

[2] *Washington Gas Light Company* v. *Federal Energy Regulatory Commission*, Case No. 07–1015 (D.C. Cir. 2008).

[3] *Dominion Cove Point, LNG, LP*, 115 FERC ¶ 61,337 (2006), *order on reh'g*, 118 FERC ¶ 61,007 (2007); 115 FERC ¶ 61,336 (2006), *order on reh'g*, 118 FERC ¶ 61,006 (2007).

Docket Number	Date received	Presenter or requester
1. CP04–36–000	6–25–08	Hon. M. Teresa Paiva-Weed Hon. Bruce J. Long
2. CP06–365–000, *et al.*	6–27–08	Hon. Brian Baird
3. CP06–365–000, *et al.*	6–25–08	Hon. David Wu Hon. Pete DeFazio Hon. Darlene Hooley
4. CP06–365–000, *et al.*	6–25–08	Hon. David Wu
5. CP06–365–000, *et al.*	7–21–08	Hon. Theodore R. Kulongoski
6. CP08–31–000	6–26–08	Hon. Jim Gerlach
7. EL08–39–000	7–14–08	Hon. Andrew M. Cuomo
8. P–2101–000	7–3–08	William Mahl
9. P–2157–000	7–9–08	Russell Holder
10. P–4306–000	6–27–08	Hon. John Kline

Kimberly D. Bose,

Secretary.

[FR Doc. E8–18259 Filed 8–7–08; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8702–2]

Notice of Availability of ''Award of Special Appropriations Act Project Grants Authorized by the Agency's FY 2008 Appropriations Act''

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of document availability.

SUMMARY: EPA is announcing the availability of a memorandum entitled ''Award of Special Appropriations Act Project Grants Authorized by the Agency's FY 2008 Appropriations Act.'' This memorandum provides information and guidelines on how EPA will award and administer grants for the special projects identified in the State and Tribal Assistance Grants (STAG) account of the Agency's FY 2008 Appropriations Act (Pub. L. 110–161). The STAG account provides budget authority for funding identified water, wastewater and groundwater infrastructure projects. Each grant recipient will receive a copy of this document from EPA.

ADDRESSES: The subject memorandum may be viewed and downloaded from EPA's homepage, *http://www.epa.gov/owm/cwfinance/cwsrf/law.htm*.

FOR FURTHER INFORMATION CONTACT: George Ames, (202) 564–0661 or *ames.george@epa.gov*.

Dated: June 17, 2008.

James A. Hanlon,

Director, Office of Wastewater Management.

[FR Doc. E8–18332 Filed 8–7–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2008–0598; FRL–8377–2]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from June 23, 2008 through July 18, 2008, consists of the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

DATES: Comments identified by the specific PMN number or TME number, must be received on or before September 8, 2008.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2008–0598, 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–2008–0598. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA–HQ–OPPT–2008–0598. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form

of encryption, and be free of any defects or viruses. 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 docket index available in regulations.gov. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov*, or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

FOR FURTHER INFORMATION CONTACT:

Colby Lintner, Regulatory Coordinator, Environmental Assistance Division, Office of Pollution Prevention and Toxics (7408M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

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

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

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

iv. Describe any assumptions and provide any technical information and/or data that you used.

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

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

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

viii. Make sure to submit your comments by the comment period deadline identified.

II. Why is EPA Taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from June 23, 2008 through July 18, 2008, consists of the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. Receipt and Status Report for PMNs

This status report identifies the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available.

In Table I of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

I. 71 PREMANUFACTURE NOTICES RECEIVED FROM: 06/23/08 TO 07/18/08

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–08–0486	06/20/08	09/17/08	CBI	(G) Lamination adhesive	(G) Polymer with .alpha.-hydro-.omega.-hydroxypoly[oxy(methyl-1,2-ethanediyl)], 3-hydroxy-2-(hydroxymethyl)-2-methylpropanoic acid and alkyldiisocyanate, ammonium salt
P–08–0487	06/23/08	09/20/08	CBI	(G) Dispersion additive for printing ink	(G) Triazine derivative
P–08–0488	06/23/08	09/20/08	CBI	(G) Dispersion additive for printing ink	(G) Triazine derivative
P–08–0489	06/23/08	09/20/08	CBI	(G) Open, nondispersive use; polymer precursor	(G) Azo substituted benzoic acid
P–08–0490	06/24/08	09/21/08	Wacker Polymers LP	(S) Binder for building materials, sealants, paints, adhesives, plasters;	(S) Tert-decanoic acid, ethenyl ester, polymer with ethene, ethenyl acetate and methyl 2-methyl-2-propenoate
P–08–0491	06/25/08	09/22/08	Huntsman International, LLC	(S) Exhaust dyeing of cotton	(G) Reaction product of substituted naphthalenesulfonic acid triazin amino compound and substituted naphthalenesulfonic acid substitued triazin phenyl alkyl sulfonyl compound
P–08–0492	06/23/08	09/20/08	CBI	(G) for printing ink	(G) Aluminum diazo naphthalene derivative
P–08–0493	06/23/08	09/20/08	CBI	(G) for printing ink	(G) Aluminum diazo naphthalene derivative
P–08–0494	06/23/08	09/20/08	CBI	(G) Dispersion additive for printing ink	(G) Benzene sulfonic acid alkyl amine
P–08–0495	06/23/08	09/20/08	CBI	(G) Dispersion additive for printing ink	(G) Benzene sulfonic acid alkyl amine
P–08–0496	06/24/08	09/21/08	CBI	(G) Coatings for various materials	(G) Alkene-carboxylic acid copolymer alkanolamine salt
P–08–0497	06/24/08	09/21/08	CBI	(G) Coatings for various materials	(G) Alkene-carboxylic acid copolymer salt
P–08–0498	06/25/08	09/22/08	CBI	(G) Enhanced oil recovery applications	(G) Sodium sulfonate surfactant
P–08–0499	06/25/08	09/22/08	Genencor, a danisco division	(S) In-situ peroxyacetic acid generation for bleaching textile products	(S) Arylesterase - the CAS Registy number (9032–73–9) was determined by using the enzyme classification number for this enzyme.arylesterase (ec# 3.1.1.2) is referenced in the Brenda Comprehensive Enzyme Information System and in the expasy enzyme database. synonyms are paraoxonase and alpha-esterase. The systematic name is aryl-ester hydrolase. Arylesterases act on many phenolic esters. It is likely that the three forms of human paraoxonase are lactonases rather than aromatic esterases [7,8]. The natural substrates of the paraoxonases are lactones, with ()-5-hydroxy-6*E*,8*Z*,11*Z*,4*Z*-eicostetraenoic-acid 1,5-lactone being the best substrate.
P–08–0500	06/25/08	09/22/08	The Dow Chemical Company	(G) Consumer goods and adhesives	(S) Benzene, ethenyl-, polymer with 1,3-butadiene and 2-methyl-1,3-butadiene
P–08–0501	06/27/08	09/24/08	CBI	(G) Contained use in energy production	(G) Polyacrylate salt
P–08–0502	06/27/08	09/24/08	CBI	(G) Component of an industrial coating	(G) Cyclic guanidine
P–08–0503	06/30/08	09/27/08	CBI	(G) Adhesive component composite resin component	(G) Epoxy resin
P–08–0504	06/30/08	09/27/08	CBI	(G) Laminate resin	(G) Formaldehyde, polymer with amine and A phenol
P–08–0505	06/30/08	09/27/08	CBI	(G) Oil-field chemical	(G) Copolymer of substituted propanesulfonic acid, maleate of ethylene oxide-propylene oxide
P–08–0506	06/30/08	09/27/08	CBI	(G) Intermediate	(G) Maleate of ethylene oxide-propylene oxide copolymer

I. 71 PREMANUFACTURE NOTICES RECEIVED FROM: 06/23/08 TO 07/18/08—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–08–0507	06/30/08	09/27/08	CBI	(S) Laminating adhesive	(G) Aromatic polyester polyether polyurethane
P–08–0508	06/30/08	09/27/08	Dupont Company	(G) Intermediate for polymerization aid	(G) Perfluorinated aliphatic carboxylic acid
P–08–0509	06/30/08	09/27/08	Dupont Company	(G) Polymerization aid	(G) Perfluorinated aliphatic carboxylic acid, ammonium salt
P–08–0510	07/02/08	09/29/08	CBI	(G) Co-stabilizer for plastics	(G) Organosulfide
P–08–0511	07/02/08	09/29/08	Zeon Chemicals L.P.	(S) Automotive seals and gaskets	(G) Modified acrylonitrile, butadiene polymer, hydrogenated
P–08–0512	07/02/08	09/29/08	CBI	(G) Chemical intermediate	(G) Alcohol propoxylate
P–08–0513	07/02/08	09/29/08	CBI	(G) Enhanced oil recovery applications	(G) Alcohol propoxylate sulfate salt
P–08–0514	07/02/08	09/29/08	Cytec Industries Inc.	(G) Sited limited intermediate	(G) Poly(oxyalkylenediyl), maleate half-ester
P–08–0515	07/02/08	09/29/08	Cytec Industries Inc.	(G) Sited limited intermediate	(G) Poly(oxyalkylenediyl), maleate half-ester
P–08–0516	07/02/08	09/29/08	Cytec Industries Inc.	(G) Sited limited intermediate	(G) Poly(oxyalkylenediyl), maleate half-ester
P–08–0517	07/02/08	09/29/08	Cytec Industries Inc.	(G) Emulsifier	(G) Poly(oxyalkylenediyl), substituted maleate half-ester, metal salts
P–08–0518	07/02/08	09/29/08	Cytec Industries Inc.	(G) Emulsifier	(G) Poly(oxyalkylenediyl), substituted maleate half-ester, metal salts
P–08–0519	07/02/08	09/29/08	Cytec Industries Inc.	(G) Emulsifier	(G) Poly(oxyalkylenediyl), substituted maleate half-ester, metal salts
P–08–0520	07/02/08	09/29/08	CBI	(G) Urethane component	(G) Aromatic isocyanate
P–08–0522	07/03/08	09/30/08	CBI	(G) Raw material for the manufacturing of realese coatings	(G) 1-propanone, 2-hydroxy-2-methyl-, 1-(4-alkylaryl) derivates
P–08–0523	07/07/08	10/04/08	CBI	(G) Mechanical devices	(G) TDI polyester polypropylene ethylene copolymer
P–08–0524	07/07/08	10/04/08	CBI	(S) Unsaturated polyester used in ultra violet curable inks and coatings.	(G) Unsaturated polyester
P–08–0525	07/08/08	10/05/08	CBI	(G) Asphalt additive production of energy	(G) Fatty acid maleated
P–08–0526	07/08/08	10/05/08	CBI	(G) Open non-dispersive (resin)	(G) Aliphatic urethane resin
P–08–0527	07/08/08	10/05/08	CBI	(G) Vinyl acrylic pressure sensitive adhesive	(G) Vinyl acetate - acrylic copolymer
P–08–0528	07/08/08	10/05/08	CBI	(G) Additive for consumer use products; dispersive use	(S) Butanoic acid, 2-methyl-, 5-hexen-1-yl-ester
P–08–0529	07/08/08	10/05/08	Nippon Kayaku America, Inc.	(S) Additives for industrial inkjet printer.	(G) 1,2,3 - propanetriol, homopolymer, ether with aliphatic alcohol
P–08–0530	07/09/08	10/06/08	CBI	(G) Fragrance - dispersive use.	(G) Silicic acid ester polymer
P–08–0531	07/09/08	10/06/08	CBI	(G) Fragrance - dispersive use.	(G) Silicic acid ester polymer
P–08–0532	07/09/08	10/06/08	CBI	(G) Fragrance - dispersive use.	(G) Silicic acid ester polymer
P–08–0533	07/09/08	10/06/08	CBI	(G) Fragrance - dispersive use.	(G) Silicic acid ester polymer
P–08–0534	07/09/08	10/06/08	CBI	(G) Fragrance - dispersive use.	(G) Silicic acid ester polymer
P–08–0535	07/09/08	10/06/08	CBI	(G) Fragrance - dispersive use.	(G) Silicic acid ester polymer
P–08–0536	07/08/08	10/05/08	Eastman Chemical Company	(S) Plasticizer	(S) Hexanoic acid, 2-ethyl-, 2,2-dimethyl-1-(1-methylethyl)-1,3-propanediyl ester
P–08–0537	07/08/08	10/05/08	CBI	(G) Acid inhibitor	(G) Comple keto-amine
P–08–0538	07/11/08	10/08/08	CBI	(G) Pigment dispersant	(G) Polyetheramine derivative
P–08–0539	07/09/08	10/06/08	Futurefuel Chemical Company	(S) Biodiesel fuel	(S) Fatty acids, lesquerella, me ethers
P–08–0540	07/09/08	10/06/08	Futurefuel Chemical Company	(S) Biodiesel fuel	(S) Fatty acids, camelina, me ethers
P–08–0541	07/09/08	10/06/08	Futurefuel Chemical Company	(S) Biodiesel fuel	(S) Fatty acids, peanut-oil, me esters
P–08–0542	07/09/08	10/06/08	Futurefuel Chemical Company	(S) Biodiesel fuel	(S) Fatty acids, palm-oil, me esters
P–08–0543	07/14/08	10/11/08	CBI	(S) Chemical intermediate	(G) Methyl ester of hydroxy alkyl acid
P–08–0544	07/15/08	10/12/08	Strategic Marketing SMF Management Associates	(G) Aromatic additive	(G) Methylpropylpyranol
P–08–0545	07/16/08	10/13/08	CBI	(G) Open, non-dispersive use.	(G) Surface-active, blocked isocyanate polymer

I. 71 PREMANUFACTURE NOTICES RECEIVED FROM: 06/23/08 TO 07/18/08—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–08–0546	07/17/08	10/14/08	Oxea Corporation	(G) Industrial antifreeze; chemical intermediate	(S) 1,3-butanediol, manufacture of, by-products from distributing residues

In Table II of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the TMEs received:

II. 7 TEST MARKETING EXEMPTION NOTICES RECEIVED FROM: 06/23/08 TO 07/18/08

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
T–08–0010	07/02/08	08/15/08	Cytec Industries Inc.	(G) Sited limited intermediate	(G) Poly(oxyalkylenediyl), maleate half-ester
T–08–0011	07/02/08	08/15/08	Cytec Industries Inc.	(G) Sited limited intermediate	(G) Poly(oxyalkylenediyl), maleate half-ester
T–08–0012	07/02/08	08/15/08	Cytec Industries Inc.	(G) Sited limited intermediate	(G) Poly(oxyalkylenediyl), maleate half-ester
T–08–0013	07/02/08	08/15/08	Cytec Industries Inc.	(G) Emulsifier	(G) Poly(oxyalkylenediyl), substituted maleate half-ester, metal salts
T–08–0014	07/02/08	08/15/08	Cytec Industries Inc.	(G) Emulsifier	(G) Poly(oxyalkylenediyl), substituted maleate half-ester, metal salts
T–08–0015	07/02/08	08/15/08	Cytec Industries Inc.	(G) Emulsifier	(G) Poly(oxyalkylenediyl), substituted maleate half-ester, metal salts
T–08–0016	07/07/08	08/20/08	SC Johnson and Son, Inc.	(G) non-dispersive use	(G) Hydrolyzed cellulosic ether

In Table III of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

III. 27 NOTICES OF COMMENCEMENT FROM: 06/23/08 TO 07/18/08

Case No.	Received Date	Commencement Notice End Date	Chemical
P–03–0257	07/02/08	06/06/03	(G) Polyester polymer
P–05–0727	06/23/08	05/30/08	(S) Carbamic acid, [(dimethoxymethylsilyl)methyl]-, methyl ester
P–06–0645	07/14/08	07/09/08	(S) 3-decen-5-one, 4-methyl-, (3e)-
P–06–0755	06/23/08	06/09/08	(G) Titanium phosphate, glycolate complex
P–07–0046	06/24/08	06/12/08	(S) 4*H*-indeno[4,5-d]-1,3-dioxole, 3a,5,6,7,8,8b-hexahydro- 2,2,6,6,7,8,8-heptamethyl-
P–07–0064	06/23/08	06/08/08	(G) Modified rosin, hydrocarbon resin
P–07–0068	07/08/08	06/26/08	(G) Polyester resin
P–07–0079	07/09/08	06/27/08	(G) Substituted piperidinol, carbonate
P–07–0333	07/11/08	07/03/08	(G) Aromatic isocyanate prepolymer
P–07–0454	07/14/08	06/26/08	(G) Alkyl amine
P–07–0455	07/14/08	06/26/08	(G) Alkyl amidoamine
P–07–0456	07/14/08	06/26/08	(G) Alkylamine
P–07–0707	07/07/08	06/20/08	(G) Blocked aromatic polyisocyanate
P–08–0081	06/30/08	06/18/08	(S) Soybean oil, maleated, ester with polyethylene glycol mono-C_{12-16}-alkyl ethers
P–08–0157	06/23/08	06/15/08	(G) Quaternary ammonium compounds, dialkyl dimethyl, halides, reaction products with silica
P–08–0164	06/23/08	06/16/08	(S) 1,2,4,5-benzenetetra carboxylic acid; 1,4-bis(2-((2-methyl-1-oxo-2-propenyl)oxy)ethyl)ester
P–08–0186	06/23/08	05/28/08	(S) *D*-glucopyranose, oligomeric, decyl octyl glycosides, 3-(dodecyldimethylammonio)-2-hydroxypropyl ethers, chlorides
P–08–0205	07/14/08	06/16/08	(G) Acrylic acid polymer with alkyl acrylate, alkenyl benzene and acryl amide, ammonium salt
P–08–0208	06/20/08	06/12/08	(G) Acrylic styrene polymer
P–08–0218	06/26/08	06/02/08	(G) Isocyanate terminated polymer with polyoxyalkylene polyols and isocyanate
P–08–0232	07/09/08	06/15/08	(S) 2*H*-pyran, 5,6-dihydro-4-methyl-2-[(2,2,3-trimethyl-3-cyclopenten-1-yl)methyl]-
P–08–0235	07/07/08	07/01/08	(G) Heteropolyclic lactone

III. 27 NOTICES OF COMMENCEMENT FROM: 06/23/08 TO 07/18/08—Continued

Case No.	Received Date	Commencement Notice End Date	Chemical
P–08–0242	07/07/08	06/09/08	(S) 1,2,3,4-butanetetrol meso-erythritol
P–08–0243	07/02/08	06/12/08	(G) Organomodified silanic hydrogen fluid
P–08–0244	07/02/08	06/13/08	(G) Modified silicone polyether copolymer
P–08–0250	07/14/08	06/19/08	(S) Poly(oxy-1,4-butanediyl), .alpha.-hydro-.omega.-hydroxy-, polymer with ammonia
P–08–0267	07/10/08	06/22/08	(G) Modified polyolefin, aminoalkanoic acid and polyether copolymer
P–08–0326	07/11/08	06/26/08	(G) Isocyanate terminated urethane polymer

List of Subjects

Environmental protection, Chemicals, Premanufacturer notices.

Dated: July 31, 2008.

Chandler Sirmons,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. E8–18321 Filed 8–7–08; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–8584–5]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at 202–564–7146.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 6, 2008 (73 FR 19833).

Draft EISs

EIS No. 20060490, ERP No. D–OSM–K65321–00, Black Mesa Project, Revisions to the Life-of-Mine Operation and Reclamation for the Kayenta and Black Mesa Surface-Coal Mining Operations, Right-of-Way Grant, Mohave, Navajo, Coconino and Yavapai Counties, AZ and Clark County, NV.

Summary: EPA expressed environmental concerns because the Draft EIS does not identify a specific product delivery/customer use scenario for the new preferred alternative, discuss how the environmental impacts of future coal delivery/customer use scenarios will be analyzed, or describe greenhouse gas emissions from the proposed project. Rating EC2.

EIS No. 20080154, ERP No. D–FHW–D40342–MD, U.S. 50 Crossing Study, Transportation Improvement from MD 611 to MD 378; and 3rd Street to Somerset Street, Funding, U.S. Coast Guard, U.S. Army COE Section 10 and 404 Permits, Worcester County, MD.

Summary: EPA expressed environmental concerns about dredging and impacts to bird habitat. Rating EC1.

EIS No. 20080162, ERP No. D–FRC–D03016–MD, Sparrows Point Liquefied Natural Gas (LNG) Import Terminal Expansion and Natural Gas Pipeline Facilities, Construction and Operation, Application Authorization, U.S. COE section 10 and 404 Permits, Baltimore County, MD.

Summary: EPA expressed environmental concerns about the potential impacts associated with the proposed terminal. In particular, EPA expressed concerns about the potential water quality impacts associated with the proposed dredging for the terminal and noted that the Draft EIS did not contain sufficient information to fully assess the project's impacts. Rating EC2.

EIS No. 20080165, ERP No. D–FHW–L59003–00, Interstate 5 Columbia River Crossing Project, Bridge, Transit, and Highway Improvements, from State Route 500 in Vancouver, WA to Columbia Boulevard in Portland, OR, Funding, U.S. COE section 10 & 404 Permits, NPDES Permit.

Summary: EPA expressed environmental concerns about the potential impacts to the Troutdale Sole Source Aquifer, environmental justice, and aquatic resources impacts, and requested additional analysis for project related air quality impacts be included in the FEIS. Rating EC2.

EIS No. 20080203, ERP No. D–UCG–A99225–00, Dry Cargo Residue (DCR) Discharges in the Great Lakes, To Regulate Nonhazardous and Nontoxic DRC Sweeping from Vessels in the Great Lakes that Fall under the Jurisdiction of the United States.

Summary: EPA does not object to the proposed action. Rating LO.

EIS No. 20080222, ERP No. D–COE–E39074–FL, South Florida Water Management District (SFWMD) Project, Propose to Construct and Operate Stormwater Treatment Areas (STAs) on Compartment B and C of the Everglades Agriculture Area, U.S. Army COE section 404 Permit, Palm Beach and Hendry Counties, FL.

Summary: EPA is fully supportive of the construction of the proposed Stormwater Treatment Areas (STA). However, EPA expressed environmental concerns about the wetland impacts of the total STA footprints, the discharge of STA waters, and some of the assumptions and technical analyses, and requested that the Final EIS provide additional information and analyses. Rating EC2.

EIS No. 20080228, ERP No. D–AFS–L65555–WA, Republic Ranger Station Excess Residence Sale Project, Proposes to Sell a 0.72 Acre Parcel of Land with a Residential Building, Republic Ranger District, Colville National Forest, Ferry County, WA.

Summary: EPA does not object to the proposed action. Rating LO.

EIS No. 20080169, ERP No. DR–COE–K39099–CA, Berth 97–109 (China Shipping) Container Terminal Project, Construction and Operation, Issuance of Section 404 (CWA) and Section 10 Rivers and Harbor Act Permits, Port of Los Angeles, Los Angeles County, CA.

Summary: EPA expressed environmental concerns about impacts to air quality, environmental justice communities, and aquatic and biological resources. EPA recommended commitments to meet and exceed San Pedro Bay Ports Clean Air Action Plan air emission requirements, coordination with the environmental justice community to identify additional measures to offset health impacts, avoidance of fill, and development of a port-wide marine mammal vessel strike reduction program. Rating EC2.

EIS No. 20080210, ERP No. DS–FHW–F40415–IN, U.S. 31 Improvement Project (I–465 to IN 38), between I–465 North Leg and IN–38, Updated Information, NPDES Permit and U.S. Army section 10 and 404 Permits, Hamilton County, IN.

Summary: EPA expressed environmental concerns about impacts to water quality, public drinking water supplies, and streams. Rating EC2.

Final EISs

EIS No. 20080213, ERP No. F–COE–E67005–NC, PCS Phosphate Mine Continuation, New Information on Additional Alternative ''L'' and ''M'', Proposes to Expand its Existing Open Pit Phosphate Mining Operation into a 3,412 Acre Tract, Pamlico River and South Creek, near Aurora, Beaufort County, NC.

Summary: EPA continues to have environmental objections to the applicant's proposed action (''Alternative L'') due to significant impacts to waters of the U.S. EPA believes that ''Alternative S33AP'' is both environmentally preferable and economically practicable; EPA also proposed modifications to Alternative L that would reduce the potential environmental impacts.

EIS No. 20080269, ERP No. FS–FHW–G40129–AR, U.S. 67 Construction, U.S. 67/167 to I–40 West/I–430 Interchange around the North Little Rock Metropolitan Area, Funding, Pulaski County, AR.

Summary: EPA does not object to the proposed project.

Dated: August 5, 2008.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. E8–18314 Filed 8–7–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–8584–4]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements

Filed 07/28/2008 through 08/01/2008

Pursuant to 40 CFR 1506.9.

EIS No. 20080295, Final EIS, FHW, NY, NYS Route 17 at Exit 122 Interchange Project, To Improve the Safety and Operation, Right-of-Way Acquisition, Town of Wallkill, Orange County, NY, *Wait Period Ends:* 09/08/2008, *Contact:* Jeffery W. Kolb 518–431–4127.

EIS No. 20080296, Final EIS, FHW, TX, Grand Parkway (State Highway 99) Selected the Preferred Alternative Alignment, Segment F–2 from SH 249 to IH 45, Right-of-Way Permit and U.S. Army COE Section 404 Permit, Harris County, TX, *Wait Period Ends:* 09/17/2008, *Contact:* Justin Ham 512–536–5963.

EIS No. 20080297, Draft EIS, IBR, CA, Lake Casitas Resource Management Plan (RMP), Implementation, Cities of Los Angeles and Ventura, Western Ventura County, CA, *Comment Period Ends:* 09/22/2008, *Contact:* Sharon McHale 916–989–7172.

EIS No. 20080298, Final EIS, BLM, ID, Cottonwood Resource Management Plan, Implementation, Latah, Clearwater, Nez Perce, Lewis, Idaho and Adams Counties, ID, *Wait Period Ends:* 09/08/2008, *Contact:* Dean Huibregtse 208–962–3784.

EIS No. 20080299, Final EIS, IBR, CA, American Basin Fish Screen and Habitat Improvement Project, Construction and Operation of one or two Positive-Barrier Fish Screen Diversion Facilities, Funding and U.S. Army COE Section 10 and 404 Permits, Natomas Mutual, Sacramento and Sutter Counties, CA, *Wait Period Ends:* 09/08/2008, *Contact:* Bradley Hubbard 916–978–5204.

EIS No. 20080300, Final EIS, BLM, AZ, Agua Fria National Monument and Bradshaw-Harquahala, Proposed Resource Management Plan, Implementation, Yavapai County, AZ, *Wait Period Ends:* 09/08/2008, *Contact:* Connie Stone 623–580–5500.

EIS No. 20080301, Final EIS, BLM, UT, Richfield Field Office Resource Management Plan, Implementation, Future Management of the Public Lands and Resource, Glen Canyon National Recreation Area, Capitol Reef and Canyonlands National Parks, Sanpete, Sevier, Piute, Wayne and Garfield Counties, UT , *Wait Period Ends:* 09/08/2008, *Contact:* John Russell 435–896–1500.

EIS No. 20080302, Third Draft Supplement, UAF, FL, Eglin Air Force Base (AFB) and Hurlburt Field, Proposes To Implement the Military Housing Privatization Initiative (MHPI), FL, *Comment Period Ends:* 09/22/2008, *Contact:* Shari Kilbourne 973–656–2926.

EIS No. 20080303, Draft Supplement, USN, 00, Developing Home Port Facilities for Three NIMITZ-Class Aircraft Carriers in Support of the U.S. Pacific Fleet, New Circumstances and Information to Supplements (the 1999 FEIS) Coronado, CA, *Comment Period Ends:* 09/22/2008, *Contact:* Robert Montana 619–556–8509.

EIS No. 20080304, Draft EIS, NOA, 00, Reef Fish Amendment 30B: Gag-End Overfishing and Set Management Thresholds and Targets; Red Grouper—Set Optimum Yield, Total Allowable Catch (TAC), and Management Measures: Area Closures: and Federal Regulatory Compliance, Implementation, Gulf of Mexico, *Comment Period Ends:* 09/22/2008, *Contact:* Roy E. Crabtree 727–824–5701.

EIS No. 20080305, Final EIS, CGD, AL, Bienville Offshore Energy Terminal (BOET) Deepwater Port License Application (Docket # USCG–2006–24644), Proposes To Construct and Operate a Liquefied Natural Gas Receiving and Regasification Facility, Outer Continental Shelf of the Gulf of Mexico, South of Fort Morgan, AL, *Wait Period Ends:* 09/08/2008, *Contact:* Lt. Hannah Kim 202–372–1438.

Amended Notices

EIS No. 20080281, Draft EIS, NRC, 00, GENERIC—In-Situ Leach Uranium Milling Facilities (NUREG–1910), Construction, Operation, Aquifer Restoration and Decommissioning, Potentially Location in Portions of WY, NE, SD and NM, *Comment Period Ends:* 10/07/2008, *Contact:* James Park 301–415–6935. *Revision to FR Notice Published:* Extending Comment Period from 09/26/2008 to 10/07/2008.

Dated: August 5, 2008.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. E8–18318 Filed 8–7–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8702–3]

Farm, Ranch, and Rural Communities Committee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Under the Federal Advisory Committee Act, Pub. L. 92–463, EPA gives notice of a meeting of the Farm, Ranch, and Rural Communities Committee (FRRCC). The purpose of the FRRCC is to provide advice to the Administrator of EPA on environmental issues and programs that impact, or are of concern to, farms, ranches, and rural communities. The FRRCC is a part of EPA's efforts to expand cooperative working relationships with the agriculture industry and others who are interested in agricultural issues and to

achieve greater progress in environmental protection.

The purpose of the meeting is to initiate: discussion of the impacts of Agency agriculture-related programs, policies, and regulations regarding climate change and renewable energy; identification and development of a comprehensive environmental strategy for livestock operations; and development of a constructive approach or framework to address areas of common interest between sustainable agriculture and protection of the environment. The meeting will also include a public comment session. A copy of the meeting agenda will be posted at *http://www.epa.gov/ocem/frrcc.*

DATES: The Farm, Ranch, and Rural Communities Committee will hold an open meeting on Monday, September 8, from 8:30 a.m. (registration at 8 a.m.) until 5:45 p.m., and Wednesday, September 10, from 8:30 a.m. until 1 p.m.

ADDRESSES: The meeting will be held at the InterContinental Kansas City at the Plaza Hotel, 401 Ward Parkway, Kansas City, MO 64112, telephone: 816–756–1500. The meeting is open to the public, with limited seating on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Alicia Kaiser, Designated Federal Officer, *kaiser.alicia@epa.gov*, 202–564–7273, U.S. EPA, Office of the Administrator (1101A), 1200 Pennsylvania Avenue, NW., Washington, DC 20460, or Christopher Ashcraft, Junior Designated Federal Officer, *ashcraft.christopher@epa.gov*, 202–564–2432, U.S. EPA, Office of the Administrator (1601M), 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: Requests to make brief oral comments or provide written statements to the FRRCC should be sent to Alicia Kaiser, Designated Federal Officer, at the contact information above. All requests must be submitted no later than September 1, 2008.

Meeting Access: For information on access or services for individuals with disabilities, please contact Alicia Kaiser at 202–564–7273 or *kaiser.alicia@epa.gov.* To request accommodation of a disability, please contact Alicia Kaiser, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: July 31, 2008.

Alicia Kaiser,

Designated Federal Officer.

[FR Doc. E8–18330 Filed 8–7–08; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget

August 4, 2008.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501—3520. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before October 7, 2008. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, (202) 395–5887, or via fax at 202–395–5167 or via Internet at *Nicholas_A._Fraser@omb.eop.gov* and to *Judith-B.Herman@fcc.gov*, Federal Communications Commission, or an e-mail to *PRA@fcc.gov*. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://www.reginfo.gov/public/do/PRAMain*, (2) look for the section of the Web page called ''Currently Under Review'', (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, and (6) when the list of FCC ICRs currently under review appears, look for the title of this ICR (or its OMB Control Number, if there is one) and then click on the ICR Reference Number to view detailed information about this ICR.

FOR FURTHER INFORMATION CONTACT: For additional information, contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1070.

Title: Allocations and Service Rules for the 71–76 GHz, 81–86 GHz, and 92–95 GHz Bands.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions and state, local or tribal government.

Number of Respondents: 1,003 respondents; 1,003 responses.

Estimated Time Per Response: .50 hours–3.5 hours.

Frequency of Response: On occasion reporting requirement, recordkeeping requirement, and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits.

Total Annual Burden: 12,000 hours.

Total Annual Cost: $1,830,000.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: There is no need for confidentiality.

Needs and Uses: The Commission will submit this information collection to the Office of Management and Budget (OMB) as an extension after this 60 day comment period to obtain the full three year clearance from them. There is no change to the reporting, recordkeeping and/or third party disclosure requirements. Additionally, there is no change in the hourly burden and/or cost estimates.

Section 101.1523 requires that the licensee or applicant shall:

(1) Complete coordination with Federal Government links according to the coordination standards and procedures adopted in Report and Order, FCC 03–248, and as further detailed in subsequent implementation public notices issued consistent with that order;

(2) Provide an electronic copy of any interference analysis to the third-party database manager which demonstrates that the potential for harmful interference to or from all previously registered non-government links has been analyzed according to the standards of section 101.105 and generally accepted good engineering practice, and that the proposed non-government link will neither cause harmful interference to, nor receive harmful interference from, any previously registered non-government link; and

(3) Provide upon request any information related to the interference analysis and the corresponding link. The third-party database managers shall receive and retain the interference analyses electronically and make them available to the public. Protection of individual links against harmful interference from other links shall be granted to first-in-time registered links. Successful completion of coordination via the NTIA automated mechanism shall constitute successful non-Federal Government to Federal Government coordination for that individual link.

The license term is ten years, beginning on the date of the initial authorization (nationwide license) grant. Registering links will not change the overall renewal period of the license. The recordkeeping, reporting, and third party disclosure requirements will be used by the Commission to verify licensee compliance with Commission rules and regulations, and to ensure that licensees continue to fulfill their statutory responsibilities in accordance with the Communications Act of 1934. Such information has been used in the past and will continue to be used to minimize interference, and verify that applicants are legally and technically qualified to hold licenses.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8–18360 Filed 8–7–08; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement Filed

The Commission hereby gives notice of the filing of the following agreement under the Shipping Act of 1984. Interested parties may submit comments on agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of agreements are available through the Commission's Web site (*http://www.fmc.gov*) or contacting the Office of Agreements (202) 523–5793 or *tradeanalysis@fmc.gov*).

Agreement No.: 201170–001.

Title: The Los Angeles and Long Beach Port Infrastructure and Environmental Programs Cooperative Working Agreement.

Parties: Port of Los Angeles and Port of Long Beach.

Filing Party: C. Jonathan Benner, Esq.; Troutman Sanders, LLP; 401 9th Street, Suite 1000; Washington, DC 20004–2134.

Synopsis: The agreement would lay out in additional detail the areas in which the Ports have agreed to discuss and cooperate to improve environmental, safety and security objectives, particularly their respective Clean Truck Programs. The parties request expedited review.

By Order of the Federal Maritime Commission.

Dated: August 5, 2008.

Karen V. Gregory,

Assistant Secretary.

[FR Doc. E8–18381 Filed 8–7–08; 8:45 am]

BILLING CODE 6730–01–P

GENERAL SERVICES ADMINISTRATION

Maximum Per Diem Rates for the Continental United States (CONUS)

AGENCY: Office of Governmentwide Policy, General Services Administration (GSA).

ACTION: Notice of Per Diem Bulletin 09–01, Fiscal Year (FY) 2009 continental United States (CONUS) per diem rates.

SUMMARY: The General Services Administration's (GSA's) annual per diem review has resulted in lodging and meal allowance changes for locations within the continental United States (CONUS) to provide for the reimbursement of Federal employees' expenses covered by per diem. Per Diem Bulletin 09–01 updates the maximum per diem amounts in existing per diem localities. The CONUS per diem rates prescribed in Bulletin 09–01 may be found at *http://www.gsa.gov/perdiem*. GSA based the lodging per diem rates on the average daily rate that the lodging industry reports. The use of such data in the per diem rate setting process enhances the Government's ability to obtain policy compliant lodging where it is needed. In conjunction with the annual lodging study, GSA identified two new non-standard areas; Fayetteville, North Carolina (Cumberland) and Fredericksburg, Virginia (City of Fredericksburg), which prompted an out of cycle meal survey for these areas.

For a complete listing of pertinent information that must be submitted through a Federal executive agency for GSA to restudy a location, or if a CONUS or standard CONUS per diem rate is insufficient to meet necessary expenses, please review numbers 4 and 5 of our per diem Frequently Asked Questions at *http://www.gsa.gov/perdiemfaqs*.

DATES: This notice is effective October 1, 2008, and applies for travel performed on or after October 1, 2008 through September 30, 2009.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Cy Greenidge, Office of Governmentwide Policy, Office of Travel, Transportation, and Asset Management, at (202) 219–2349, or by e-mail at *http://www.gsa.gov/perdiemquestions*. Please cite Notice of Per Diem Bulletin 09–01.

SUPPLEMENTARY INFORMATION:

A. Background

After an analysis of current data, GSA has determined that current lodging rates for certain localities do not adequately reflect the lodging economics in those areas. GSA used the same methodology for establishing the FY 2009 per diem rates as they did when establishing the FY 2008 rates.

B. Change in Standard Procedure

GSA issues/publishes the CONUS per diem rates, formerly published in Appendix A to 41 CFR Chapter 301, solely on the Internet at *http://www.gsa.gov/perdiem*. This process, implemented in 2003, ensures more timely changes in per diem rates established by GSA for Federal employees on official travel within CONUS. Notices published periodically in the **Federal Register**, such as this one, now constitute the only notification of revisions in CONUS per diem rates to agencies.

Becky Rhodes,

Deputy Associate Administrator.

[FR Doc. E8–18413 Filed 8–7–08; 8:45 am]

BILLING CODE 6820–14–P

GENERAL SERVICES ADMINISTRATION

[Bulletin FMR 2008–B5]

Real Property Asset Management Guiding Principles

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: This bulletin cancels GSA Bulletin FMR Bulletin 2006–B5, Real Property Asset Management Principles, published in the **Federal Register** on June 16, 2006, that introduced new Guiding Principles case studies to help Federal agencies manage and improve real property performance effectively in support of Executive Order 13327, ''Federal Real Property Asset Management.'' This bulletin updates the case studies to provide current asset management examples and best practices.

EFFECTIVE DATE: August 8, 2008.

FOR FURTHER INFORMATION CONTACT: For further clarification of content, contact Stanley C. Langfeld, Director, Regulations Management Division (MPR), General Services Administration, Washington, DC 20405; or *stanley.langfeld@gsa.gov*.

Dated: July 28, 2008.

Kevin Messner,

Acting Associate Administrator, Office of Governmentwide Policy.

BILLING CODE 6820–RH–P

General Services Administration
Washington, DC 20405

GSA BULLETIN FMR 2008-B5
Real Property Asset Management Guiding Principles

TO: Heads of Federal Agencies

SUBJECT: Real Property Asset Management Guiding Principles

1. Purpose. This Bulletin introduces new Guiding Principles case studies to help Federal agencies manage and improve real property performance effectively in support of Executive Order (EO) 13327, "Federal Real Property Asset Management." This Bulletin rescinds and supersedes GSA Bulletin FMR 2006-B5, Real Property Asset Management Guiding Principles, dated June 16, 2006. The Guiding Principles are strategic objectives and goals designed for Federal agencies to adopt into their asset management programs. Agencies are encouraged to implement these principles to enhance real property performance. The case studies to support these principles are updated on a regular basis to provide current asset management examples and best practices. The Guiding Principles are as follows:

1. Support agency missions and strategic goals;
2. Use public and commercial benchmarks and best practices;
3. Employ life-cycle cost-benefit analyses;
4. Promote full and appropriate utilization;
5. Dispose of unneeded assets;
6. Provide appropriate levels of investment;
7. Accurately inventory and describe all assets;
8. Employ balanced performance measures;
9. Advance customer satisfaction; and
10. Provide for safe, secure and healthy workplaces.

2. Effective Date. This Bulletin is effective upon publication in the Federal Register.

3. Expiration Date. This Bulletin will remain in effect indefinitely until specifically cancelled.

4. Background.

a. Over the past decade, the Federal Government increasingly has become aware of the significant challenges it faces in managing its real property portfolio. These challenges include deteriorating facilities, an increasing number of excess and underperforming assets, limited capital investment funds, a reliance on costly leasing, and

unreliable governmentwide data for strategic asset management. Since 2000, Congress and each Administration have attempted to improve Federal real property asset management through legislative reform, including:

- H.R. 3285 - "Federal Property Asset Management Improvement Act of 1999," 106th Congress
- S. 2805 - "Federal Property Asset Management Reform Act of 2000," 106th Congress
- H.R. 2710 - "Federal Asset Management Improvement Act of 2001," 107th Congress
- H.R. 3947 - " Federal Property Asset Management Reform Act of 2002," 107th Congress
- S. 1612 - "Managerial Flexibility Act of 2001," 107th Congress
- H.R. 2548 - "Federal Property Asset Management Reform Act of 2003," 108th Congress
- H.R. 2573 - "Public - Private Partnership Act of 2003," 108th Congress
- H.R. 3134 - "Federal Real Property Disposal Pilot Program and Management Improvement Act of 2005," 109th Congress
- H.R 3049 - "Federal Real Property Disposal Pilot Program," 110th Congress
- S. 1667 - "Federal Real Property Disposal Pilot Program," 110th Congress
- H.R. 5787 - "Federal Real Property Disposal Enhancement Act of 2008," 110th Congress

The proposed legislation would have amended title 40, United States Code, to authorize landholding agencies to use enhanced real property asset management tools, including the ability to enter into public/private partnerships, to manage their real property more effectively. To date, none of these legislative initiatives have been enacted.

b. **In January 2003,** the Government Accountability Office (GAO) issued two reports discussing Federal real property asset management.

- The first, "High Risk Series: Federal Real Property" (GAO-03-122), identified Federal real property as a high-risk area. The report stated that "... long-standing problems in the Federal real property area include excess and underutilized property, deteriorating facilities, unreliable real property data, and costly space."

- The second, "Strategic Human Capital Management" (GAO-03-120), identified the challenges of a declining Federal workforce and the need to provide cost-effective and flexible work environments. The report discussed the connection between cost-effective, high-performance workplaces and a dynamic, results-oriented workforce.

c. **In October 2003,** GAO issued "Federal Real Property: Actions Needed to Address Long-standing and Complex Problems" (GAO-04-119T), which concluded that Federal real property was in an alarming state of deterioration, with a significant repair, restoration, and maintenance backlog. Among their findings, GAO identified that key decision makers lack the data required for strategic real property asset management.

d. **On February 4, 2004**, the President signed EO 13327, "Federal Real Property Asset Management," and subsequently added Federal real property to the President's Management Agenda. Designed to promote the efficient and economical use of the Federal Government's real property assets and rightsize the inventory of Federal real property, EO 13327 established the role of Senior Real Property Officer in every executive branch agency (cited in sections 901(b)(1) and (b)(2) of title 31, United States Code, and the Department of

Homeland Security) to manage and oversee asset management activities. The EO also established a Federal Real Property Council (FRPC), chaired by the Office of Management and Budget (OMB), to develop guidance, collect best practices, and help Senior Real Property Officers improve the management of real property assets.

e. **In December 2004,** FRPC issued "Guidance for Improved Asset Management," which established ten governmentwide standards - or **Guiding Principles -** for improving agency asset management. This information may be accessed at: http:/www.whitehouse.gov/omb/financial/fia_asset.html.

5. Action. Federal agencies should use the Guiding Principles and the supporting case studies to manage and optimize their real property portfolios. When implemented effectively, the Guiding Principles are designed to promote:

- Sound real property asset management decisions;
- Healthy and productive workplaces;
- Reduced costs associated with real property asset management;
- Disposal of unneeded Federal real property;
- Repair and maintenance for deteriorating facilities;
- Incentives to improve real property asset management;
- Assemblage and maintenance of reliable real property data;
- Increased efficiency and maximized performance of Federal real property assets; and
- Strategic use of limited budgetary resources to maximize asset management.

Federal real property asset managers should apply these principles throughout the life-cycle of a real property asset.

6. Further Information. For further information, contact Stanley C. Langfeld, Director, Regulations Management Division, Office of Real Property Management (MP), at (202) 501-1737, or *stanley.langfeld@gsa.gov*.

REAL PROPERTY ASSET MANAGEMENT GUIDING PRINCIPLES

EXECUTIVE SUMMARY

Asset management defines the relationship between a property holding agency (i.e., the "owner") and its property assets. This relationship includes, but is not limited to: financial asset management, day-to-day property management, and occupant satisfaction. The asset management relationship lasts for the entire property life-cycle – from acquisition and utilization to disposal.

Real property asset management presents a variety of challenges that are global in nature and affect both the public and private sectors. Asset management succeeds when organizations implement and use an effective strategic planning framework to make real property decisions. The Guiding Principles that comprise this framework are summarized below. The principles are later defined and illustrated with case study examples.

1. **Support Agency Missions and Strategic Goals** by aligning real property decisions with the agency's strategic mission.

   Case Study: The Capital Asset Realignment for Enhanced Services (CARES) Program at the Department of Veterans Affairs Analyzes its Healthcare Infrastructure.

2. **Use Public and Commercial Benchmarks and Best Practices** to assess Federal agency asset management performance.

   Case Study: General Services Administration's Public Buildings Service Benchmarks Lease Costs to Private Sector.

3. **Employ Life-Cycle Cost-Benefit Analyses** to justify asset management and acquisition decisions.

   Case Study: Office of the Architect of the Capitol Integrates Facility Condition Assessments, Master Plans, and Capital Improvements Programming.

4. **Promote Full and Appropriate Utilization** by operating the property asset to its maximum capacity during its useful economic life (determined by using the Federal Government's financial accounting standards[1]) while satisfying the occupying agency's mission requirements.

   Case Study: Department of the Army Creatively—and Effectively—Utilizes a Mission-Critical Asset.

5. **Dispose of Unneeded Assets** by redeploying, demolishing, or replacing the asset when it fails to support the agency's mission.

   Case Study: Real Property Asset Listing Portal Transforming the Way Federal Agencies Dispose of Surplus Federal Assets.

6. **Provide Appropriate Levels of Investment** by making and prioritizing capital investment decisions, such as whether to construct, alter, repair, or acquire space, or any combination thereof, to meet changing agency needs.

   Case Study: Lawrence Berkeley National Laboratory Prioritizes Capital Investment Decisions

[1] For additional information, contact the agency's Chief Financial Officer (CFO) staff.

through Integrated Facilities Assessment System.

7. **Accurately Inventory and Describe All Assets** by submitting real property data at the constructed asset level (e.g., each building or structure within a complex) as defined by the Federal Real Property Council.

   Case Study: U.S. Department of Agriculture's Corporate Property Automated Information System (CPAIS) Program Improves Inventory Accuracy.

8. **Employ Balanced Performance Measures** to track progress toward achieving real property management objectives and enable benchmarking against public and private sector organizations.

   Case Study: General Services Administration's Public Buildings Service's Linking Budget to Performance (LB2P) Program Uses Scorecard Measures to Reward Good Performance.

9. **Advance Customer Satisfaction** by promoting productive work spaces and focusing on the tenant's needs, primarily changing space requirements.

   Case Study: General Services Administration's Lease Administration and Management Program Leads to Improved Customer Satisfaction Scores.

10. **Provide for Safe, Secure and Healthy Workplaces** by implementing standard policies and procedures, documenting asset conditions, and developing action plans and strategies to support a productive workforce.

    Case Study: Sustainable Features an Integral Component of U.S. Environmental Protection Agency Potomac Yard Facility.

PRINCIPLE #1

SUPPORT AGENCY MISSIONS AND STRATEGIC GOALS

Real property is the physical foundation that enables Federal agencies to accomplish their missions. Effective asset management — including property acquisition, operation, maintenance, and disposition — requires alignment with the agency's core mission and key decisions. This integration involves having a clear understanding of the agency's core mission, its strategic plan, and how real property supports that plan.

Real property managers should collaborate with their customers to develop workplaces — including real property products and services — that adequately support the occupants' short- and long-term goals.

Case Study: The Capital Asset Realignment for Enhanced Services (CARES) Program at the Department of Veterans Affairs Analyzes its Health Care Infrastructure

A majority of the Department of Veterans Affairs (VA) facilities were designed and constructed when medical care was synonymous with hospital care – a very different environment than today's medical world of outpatient care and prescription drug capabilities. Upon entering the 21st century with an outdated infrastructure, the VA realized that its facilities were out of step with changes in the practice of medicine, the needs of the veterans the VA serves, and the changes in the VA health care benefits package.

As a result, in 2002, the VA initiated the 20-year comprehensive Capital Asset Realignment for Enhanced Services (CARES) program – the most comprehensive analysis of VA's health care infrastructure ever conducted. Through the program, the VA evaluates the health care services it provides, identifies the best ways to meet veterans' future health care needs, and realigns its medical facilities and services to meet those needs more efficiently and effectively. CARES prepares the VA for meeting the current and future health care needs of veterans in modern health care facilities.

Through CARES, the VA is able to identify the appropriate function, size, and location for VA facilities — which total more than 4,900 buildings on more than 15,000 acres of land — as well as for more than 100 major construction projects in 37 states, the District of Columbia, and Puerto Rico. CARES encourages the VA to manage the reuse of vacant and underutilized VA properties effectively by considering the:

- Appropriate clinical role of small facilities;
- Amount of vacant space;
- Potential for enhanced use leases; and
- Consolidation of services and campuses.

To maximize its return on investment, the VA will seek real property flexibilities by exploring the following possibilities:

- Implement enhanced use leases;
- Leverage the investment value of unneeded assets;
- Institute a more flexible disposal authority;
- Develop strategies for managing historic properties; and
- Consider all options for disposal of underused property.

VA is projecting that CARES will ultimately decrease vacant space in the Veterans Health Administration from 8.57 million square feet to 4.93 million square feet – a reduction of 42.5 percent. In addition, VA predicts that from 2006 to 2022, CARES will help reduce the cost of maintaining vacant space from an estimated $3.4 billion to $750 million, allowing VA to redirect those funds to patient care. Annual updates with new forecasts of future facility demands have also been incorporated into the VA strategic planning process.

CARES is an important vehicle for fulfilling the agency mission, first uttered by President Lincoln in 1864, "to care for him who shall have borne the battle and for his widow, and his orphan." While Lincoln's pledge still remains VA's steadfast mission to this day, medical care is constantly changing and evolving – and by evaluating and upgrading its facilities, VA is recognizing its past, maximizing its present, and planning for its future.

Source: VA CARES website, www.va.gov/cares/.

PRINCIPLE #2

USE PUBLIC AND COMMERCIAL BENCHMARKS AND BEST PRACTICES

Federal agencies should leverage leading public and private sector benchmarks to evaluate asset performance and help plan for future investments. Given the diversity of the Federal Government's real property portfolio, Federal agencies may find it useful to benchmark against other agencies. Benchmarking property performance and sharing best practices have proven to be effective tools for optimizing asset management.

To be defined as a best practice, the initiative must:

- Produce superior results;
- Lead to exceptional performance;
- Be recognized by an industry expert;
- Be deemed a best practice by an agency's customers; and
- Be a new or innovative use of human capital, resources, or technology.

Benchmarking is the process of continuously comparing and measuring an organization's performance — against that of other comparable organizations — to gain information on philosophies, practices, and data for measures. This comparison encourages organizations to take appropriate action(s) to improve their performance.

Best practices are specific business methods, processes, or initiatives that work for one agency. Sharing best practices promotes innovation and provides ideas, options, and insights for other agencies.

By routinely benchmarking performance and sharing best practices, Federal agencies can better manage their portfolios, thereby developing high performance workplaces, improving citizen services, and protecting the environment.

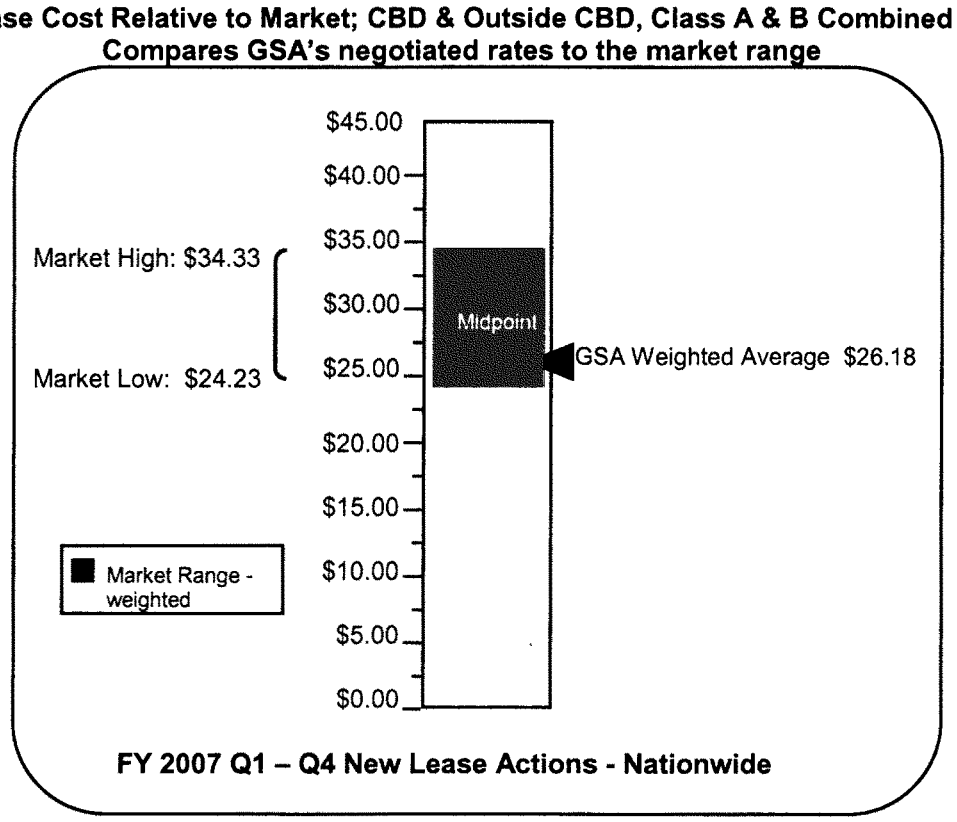
Case Study: General Services Administration's Public Buildings Service Benchmarks Lease Costs to Private Sector

The General Services Administration (GSA) Public Buildings Service (PBS) manages more than 8,500 private sector leases at an annual cost of over $4 billion. Due to their extensive leasing volume, PBS continually verifies that its rental obligations they pay are competitive with those paid by the private sector. PBS partners with the Logistics Management Institute to measure and analyze PBS leasing performance relative to industry. PBS has established a long-term national goal of 9.5% below the industry mid-point, to be reached by Fiscal Year (FY) 2010.

The key benchmark used in the private sector to gauge leasing costs is the measure of lease rates per rentable square foot by building location and condition (to account for building age and quality). PBS focuses exclusively on full-service rents for office space and uses an interactive website tool to assess leasing performance. The tool compares and analyzes PBS lease actions to market-specific benchmarks as reported by the Society of Industrial and Office Realtors (SIOR), a primary source of accurate, up-to-date data about private sector lease rates. SIOR obtains data from brokers, lenders, and other specialists in the local markets. SIOR's report contains lease rates per rentable square foot by location and by building classification, defined by SIOR as follows: Within Central Business District (CBD), Outside CBD, Class A, and Class B.

To calculate the measure for each building class and location breakout, PBS compares the average costs of PBS leased space to the midpoint of the high and low of published industry rates, weighing each lease by square footage. Based on these results, a cost above or below industry is determined. This analysis allows PBS to understand the impact of each transaction in terms of square footage and its dollar value.

FY 2007 Statistics



Reflects 364 assessed leases representing 5,767,958 RSF

PBS's benchmark data is used by real estate employees within PBS to achieve the best value for its customers. External stakeholders, including Congress and the Office of Management and Budget (OMB), also use this information to confirm that PBS rates stay competitive with the market. By regularly benchmarking its asset performance to the private sector, PBS develops a high performance workplace that continually strives to improve the management of its portfolio.

Source: PBS Office of Real Estate Acquisition.

PRINCIPLE #3

EMPLOY LIFE-CYCLE COST-BENEFIT ANALYSES

OMB Circular No. A-94 requires Federal agencies to justify asset management and acquisition decisions using life-cycle cost-benefit analyses. Life-cycle cost analysis (LCCA) is a method of assessing the overall costs of project alternatives. It is used to select the design that will provide the lowest overall cost of a facility's ownership consistent with its quality and function.

LCCA accounts for initial (capital) and recurring costs (maintenance, refurbishment, and operations) and residual asset value upon decommissioning or disposal. LCCA is well suited for evaluating design alternatives that satisfy a required level of building performance, but may have different initial investment, operation, maintenance, or repair costs, or all of the foregoing, and possibly different useful lives.

LCCA is especially useful when project alternatives that fulfill the same performance requirements — but differ with respect to initial and operating costs — have to be compared to select the one that maximizes net savings. For example, LCCA will help determine whether the incorporation of a high-performance heating, ventilating and air conditioning or glazing system, which may increase the initial cost but result in reduced operating and maintenance costs, is cost-effective or not. These analyses help agencies make improved real property investment decisions.

LCCA should be applied within a life-cycle assessment framework that accounts for both the costs over the asset life and the environmental consequences of investment decisions on upstream (e.g., extraction, production, transportation, and construction), ongoing (e.g., health impacts on tenants and the community), and downstream (e.g., decommissioning and disposal) costs.

Case Study: Office of the Architect of the Capitol Integrates Facility Condition Assessments, Master Plans, and Capital Improvements Programming

The Office of the Architect of the Capitol (AOC) is responsible for maintaining nearly 15 million square feet of space on 400 acres of land. Until 2003, data on AOC facilities was classified by inconsistent definitions and inadequate cataloguing, and did not reflect current AOC facility condition information. The AOC's last comprehensive master plan for the Capitol Complex had been completed in 1981; therefore, the plan was outdated and could not be used as a reliable source when making contemporary facility or budgeting decisions. As a result of AOC's inadequate and outdated facility data, Congress did not have a clear vision of the AOC's long-range capital requirements and priorities.

In 2003, AOC initiated a transformation of the Capitol Complex facilities management approach from an anecdotal to an updated data-driven system. The updated system, aimed to link the budgeting process to the Capitol Complex Master Plan (CCMP), includes an updated Master Plan, a modern Capital Improvements Program, and extensive Facilities Condition Assessments (FCAs).

As the foundation of the CCMP, FCAs establish an ongoing process for monitoring facility conditions and enable AOC to develop a comprehensive plan for facility maintenance and building renewal. Under the CCMP, AOC will assess annually its facilities, resulting in the establishment of a complete asset inventory. AOC also will create and track facility condition benchmarks for internal jurisdictional comparisons and external comparisons with similar institutions.

The integration of data-driven sources into an updated system has led to AOC's increased confidence in its capital project information as it moves through the Congressional appropriations process. AOC's use of its updated system has produced objective, defensible budget requests that help facilitate continuity, anticipate life-cycle facilities requirements, and provide adequate lead time for financial planning. During the development of its Fiscal Year 2008 budget, AOC relied on data taken from FCAs to prioritize and rank its capital program request.

Source: 2007 GSA Achievement Award for Real Property Innovation Entry "Integration of Facility Condition Assessments, Master Plans, and Capital Improvements Programming".

PRINCIPLE #4

PROMOTE FULL AND APPROPRIATE UTILIZATION

The Federal Government is responsible for fully and effectively using its real property assets to their maximum capacity during their useful economic life (determined by using the Federal Government's financial accounting standards).[2] Moreover, Federal agencies should use space for the purpose for which it was intended (e.g., office space should not be used for storage/warehouse purposes).

When planning and continually evaluating space needs, agencies should explore alternatives that meet the goals of Executive Order (EO) 13327 and other Federal laws and EOs concerning agency location.[3] Such alternatives include adapting, supplementing, or consolidating into existing historic facilities that can be upgraded and operated cost-effectively, including underutilized properties available from other Federal Government agencies. Converting and upgrading existing assets are viable alternatives to constructing new buildings, especially given the limited availability of new construction funding.

OMB Circular No. A-11 requires agencies to determine the usefulness of an asset and identify assets suitable for disposal. Real property holding agencies must analyze their space needs continuously. If a property is no longer needed, the agency should take steps toward removing that asset from the agency's inventory, rather than retaining the asset for an undetermined future need.[4]

Case Study: Department of the Army Creatively — and Effectively — Utilizes a Mission-Critical Asset

Founded in 1952 as the Army's Desert/Hot Weather climatic test site, the Yuma Proving Grounds (YPG) in Arizona has evolved into the Department of Defense (DOD) Reliance Lead for the hot weather testing of vehicles. The YPG area has the longest, hottest summer test season in the U.S., with more than 100 days in temperatures in excess of 100 degrees farenheit.

YPG has become even more mission-critical in recent years, as increased over-the-road speeds have become a key defense in current and potential military operation environments worldwide. However, YPG as an asset has not been able to fulfill evolving, more sophisticated testing needs – its only paved test course is a single straightaway constructed in the 1950s, appropriate only for low-speed testing.

Seeking to upgrade the asset and subsequently meet mission-critical needs, the Army decided to apply its Enhanced Use Leasing (EUL) authority in the effort to utilize the asset to its fullest. The EUL program provides an opportunity for the Army to capitalize on non-excess real property assets by leasing these assets to private entities. As a result, the Army avoids infrastructure costs, accepts a variety of facilities and services as in-kind considerations, and collects cash rent to fund other Army real property requirements.

The Army released a competitive Notice of Opportunity to Lease to collaborate with a private sector organization for the creation of a world-class hot weather test complex at YPG. The General Motors Corporation (GM) was selected, and signed an EUL for a 50-year lease term with two renewable options of 25 years each. Prior to signing the EUL, GM had already maintained a hot weather test complex outside of Phoenix for its vehicles since 1953, but decided to relocate due to rapid urbanization, encroachment, and high property values. Both the Army and GM will benefit greatly from the EUL at YPG – both GM and

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[2] The useful life of an asset is primarily related to its economic value and not its physical life. Elements affecting an asset's useful life include: 1) physical deterioration; 2) functional obsolescence; 3) technological obsolescence; and 4) economic obsolescence. For additional information, agencies should consult with the agency's Chief Financial Officer.

[3] Other Federal laws and EOs include the Rural Development Act of 1972, as amended, EO 13006 "Locating Federal Facilities on Historic Properties in our Nation's Central Cities," and EO 12072 "Federal Space Management."

[4] For additional information on assessing utilization, contact your agency's Senior Real Property Officer.

the Army will be able to test their vehicles on the new site and upon conclusion of the lease, the facilities built within the EUL will revert to the Army.

Construction of a new world-class hot weather testing facility would have cost the Army millions of dollars, but through the EUL, the YPG project is funded by private dollars and costs taxpayers nothing. When finalized, the YPG site will include new facilities valued at over $100 million, including a new high speed oval track, two parallel paved straightaway tracks to simulate freeway driving, a ride and hauling course that consists of various road surfaces and terrain conditions, a large skid pad for braking, and both administrative and vehicle maintenance buildings. GM also is providing additional funds to construct separate automotive test facilities for Army-unique needs.

The EUL at YPG is a prime example of efficient and economical use of a Federal real property asset through the careful consideration of an agency's utilization of its resources and creative joint use. Through the EUL, Federal land, infrastructure, and facilities will be more fully utilized and needed facilities will be constructed that benefit the Army, the taxpayer, and the national economy.

Source: 2007 GSA Achievement Award for Real Property Innovation Entry "Department of Army Enhanced Use Leasing Program and Case Study – Yuma Proving Grounds, AZ".

PRINCIPLE #5

DISPOSE OF UNNEEDED ASSETS

An asset should be designated as surplus property — and redeployed, demolished, or replaced — when it no longer meets a Federal need. The decision to dispose of an asset is best made when it is based on an in-depth strategic portfolio review. This approach includes assessing market availability, supply and demand, property performance, physical conditions, future mission needs, and prospective housing profiles.

Retaining ownership of underutilized or unneeded properties results in:

- Lost equity value, while not contributing to the Federal Government's mission or strategic goals;
- Negative impact on local economies, tax revenues, and employment;
- Increased operating costs;
- Drain on limited agency resources; and
- Ineffective property stewardship for the Federal real property portfolio.

The most common options for asset disposition, depending on agency specific authorities, include:

- Transferring the asset to another Federal agency;
- Exchanging it for another mission-related property;
- Outleasing to non-Federal organizations;
- Making property available for public benefit conveyances; and
- Selling or leasing the property to generate revenue for the Federal Government.

EO 13327 is intended to reduce the number of unneeded Federal assets. An asset that has no potential use by any Federal agency should be designated as "surplus property" and disposed of appropriately in accordance with Federal statutes and regulations.

Agencies should consider outleasing space in historic properties to non-Federal entities under Section 111 of the National Historic Preservation Act. Section 111 enables private reinvestment and re-use of federal historic buildings while the Federal Government continues to hold fee title to the property.

Selection of the disposition option should be based on an economic analysis of the alternatives. If the transaction is handled properly, it will result in a smooth transition of ownership and produce a return to the Federal Government that is in the best interest of the taxpayers.

Case Study: Real Property Asset Listing Portal is Transforming the Way Federal Agencies Dispose of Surplus Federal Assets

In 2001, the President's Management Council adopted 24 electronic government (E-Gov) initiatives to improve the quality of service for citizens and businesses. Among them, the Federal Asset Sales (FAS) initiative was introduced as a way to improve the way Federal agencies dispose of surplus Federal assets. The scope of the FAS initiative was expanded in 2006 to include Real Property. In response, a team comprised of members from the General Services Administration's Public Buildings Service, the Department of Agriculture and the Department of Housing and Urban Development worked to develop the Real Property Asset Listing Portal, a web-based portal that allows any Federal agency to advertise — in one place — all of its surplus, forfeited, and foreclosed property available for sale. The portal is a component of the FedAssetSales E-Gov Initiative, an overarching program designed to improve and optimize the way the Federal Government disposes of its assets.

Information that was once spread out over 100 Federal web sites is now located in the one-stop shop of the Real Property Asset Listing Portal, which ultimately links all agencies with real property disposal authority. Implementing a single location where the vast majority of surplus government real property is advertised for sale leads to a more effective advertisement, more bidders, and more competition – not to mention higher auction prices for the thousands of foreclosed and forfeited houses and farms, and surplus government land and buildings, which are sold each year.

The portal has changed the way the entire government sells real property. Before the portal was launched, each agency with real property disposal authority was responsible for advertising its surplus, foreclosed, and forfeited property that was available for sale. Each agency had its own staff, its own process, and its own performance measures for meeting this task. As a result, the process variance between agencies was staggering and the cost to taxpayers significant. With the Real Property Asset Listing Portal, there is now one simplified process, as well as consistent performance measures, for all real property disposal agencies – which lead to greater awareness of sales/sales attendance, higher bids and sales prices, and more efficient use of taxpayer dollars.

Approximately 90,000 houses, 200 farms, and $1 billion in buildings and land are advertised annually on the portal. Currently, all 26 scorecard agencies participate in the portal, and there have been discussions on including state and local governments. The portal simplifies and streamlines how citizens learn about and buy surplus government property. The more exposure citizens have to surplus real property, the greater the likelihood of increased sales of unneeded Federal assets. The portal may be accessed at http://www.govsales.gov/html/index.htm.

Source: 2007 GSA Achievement Award for Real Property Innovation Entry "Real Property Asset Listing Portal".

PRINCIPLE #6

PROVIDE APPROPRIATE LEVELS OF INVESTMENT

The Federal Government is accountable for providing appropriate asset investment, which includes determining the costs and benefits of the investment and how the assets are designed, constructed, maintained, managed, protected, and disposed. Ultimately, the Federal Government must manage effectively its global property portfolio – consisting of approximately $1.5 trillion (total replacement value) in assets to obtain optimal use and efficiency.

> There is a high level of deterioration in existing federal assets, which has significant financial implications. GAO estimates the repair backlog to be in the range of tens of billions of dollars.

Effective portfolio management requires agencies to analyze investment decisions, such as whether to construct, alter, repair, or acquire workspace, or any combination of the foregoing, to meet changing mission needs, continuously. Decisions for major investments should be based on an investment framework consisting of financial analyses, valuation criteria, and other required information to determine the proper level of investment. The Capital Programming Guide, Supplement to Part 3 of OMB Circular No. A-11, provides guidance for employing a disciplined capital programming process and focuses on key principles, such as thorough planning, risk management, full funding, portfolio analysis, performance-based acquisition management, accountability for meeting goals, and cost-effective life-cycle management.[5]

> Reinvestment projects are major renovation or reconstruction activities necessary to keep existing facilities modern and relevant in an environment of changing standards and missions. Reinvestment extends the service life of facilities or restores lost service life.

Agencies are encouraged to modernize and maintain real property, so that it continues to support the Federal Government's mission. Appropriate reinvestment:

- Provides healthy and safe workplaces;
- Increases the asset's desirability and fair market value;
- Supports advancing business practices and technologies; and
- Enhances hiring, retention, morale, and productivity of employees.

An agency also can reinvest in existing high-value assets by supplementing them with new construction instead of completely replacing them. This type of investment increases the Federal Government's equity in high-value assets.

Case Study: Lawrence Berkeley National Laboratory Prioritizes Capital Investment Decisions Through Integrated Facilities Assessment System

Managed by the University of California and overseen/funded by the U.S. Department of Energy (DOE), the Lawrence Berkeley National Laboratory is one of the leading government-sponsored research centers in the country. The laboratory complex consists of 107 buildings on 203 acres.

DOE requires all national laboratories under its custody to meet its standards for the programming, budgeting, operation, maintenance, and disposal of real property. Each national laboratory also must report on facility condition and value, which is then included in DOE's Facility Information Management System that supports the department's facility planning, budgeting, and execution decisions.

[5] To view the Capital Programming Guide, go to www.whitehouse.gov/omb/circulars/a11/cpgtoc.html.

Prior to 2006, Berkeley used several systems, including spreadsheets and databases, to maintain facility and infrastructure condition information, which was used to generate reports for DOE. While the use of separate systems allowed Berkeley to meet DOE's basic reporting requirements, it did not allow Berkeley to run cost modeling, nor successfully integrate with the software system Berkeley used to manage the execution of facilities projects.

Founded in 1931, the Lawrence Berkeley National Laboratory is the oldest of the Department of Energy's National Laboratories. The lab operates on an annual budget of more than $600 million (FY 2008).

Seeking a more integrated, sophisticated approach to maintaining facility information, Berkeley implemented a comprehensive facilities assessment, analysis, planning, work execution, and reporting system. The new system not only incorporates consistent facility condition assessments with DOE reporting requirements, but also allows Berkeley to develop cost models, view life-cycle information, and prioritize projects. In addition, the system automatically updates condition information upon the completion of maintenance and renewal projects, including updates on actual costs and indices.

DOE also requires that each national laboratory allocate 2% of its replacement value to ongoing maintenance costs. The new system allows Berkeley to generate more accurate replacement values, replacing its previous method of estimating replacement value based on insurance policy values.

Berkeley's comprehensive facilities assessment system not only supports its DOE reporting compliance, but has also facilitated Berkeley's five-year sustainment plan and life-cycle renewal forecasting for its ten-year site plan. Berkeley's system has been recognized by DOE as a best practice integrated facilities management solution. Berkeley's data collection leads to the ability to make informed investment decisions in the allocation and prioritization of dollars, and demonstrates effective portfolio management as a whole.

Source: Berkeley Web site (www.lbl.gov) and 2006 VFA Case Study, "Integrated Facilities Condition Management at Lawrence Berkeley National Laboratory".

PRINCIPLE #7

ACCURATELY INVENTORY AND DESCRIBE ALL ASSETS

Real property holding agencies must develop and maintain inventory-tracking systems to assist in managing their asset portfolios. The collection of reliable, uniform data enables agency decision makers to:

- Improve asset management;
- Provide data to aid in timely and informed portfolio management decisions; and
- Respond to inquiries from Congress, the Administration, stakeholders, and the private sector.

Case Study: U.S. Department of Agriculture's Corporate Property Automated Information System (CPAIS) Program Improves Inventory Accuracy

The U.S. Department of Agriculture's (USDA) focus on improving asset management accountability illustrates a real property transformation that benefits not only USDA, but the Federal real property community as a whole. To improve its inventory accountability, USDA implemented a departmentwide real property automated information system, called the Corporate Property Automated Information System (CPAIS). CPAIS is a fundamental and critical corporate system that allows USDA to manage its entire portfolio for the first time in USDA history.

As one of the largest Federal landholders, an accurate inventory and description of its real property assets is vital to USDA's real property management. As of March 2008, USDA's inventory consisted of approximately 193 million acres of land, as well as approximately 22,600 owned buildings and 31,000 owned structures.

CPAIS provides an integrated solution to inventory management by standardizing USDA real property accounting, real property business process, and management of the entire real property portfolio, including real property, commercial leases, and General Services Administration (GSA) assignments. USDA also uses CPAIS as the primary tool in tracking capital and operating leases, as well as reviewing the status of current leases and renewal dates. As a single and descriptive database of USDA's real property assets, CPAIS gives USDA the capability to manage assets at both an agency and bureau level and collects all data required by Federal Real Property Council (FRPC) directives.

As USDA's primary inventory reporting and portfolio management tool for its entire real property portfolio, CPAIS both meets and exceeds FRPC requirements, including:

- Tracking specific data elements, including all 24 FRPC data elements, necessary to meet external mandatory requirements and ad hoc query requirements;
- Maintaining data elements required to calculate Total Capitalization Value and Total Accumulated Depreciation of property under USDA's jurisdiction, custody or control;
- Collecting and managing data related to purchase cost and Work in Progress (WIP) accounting;
- Tracking condition ratings;
- Generating depreciation expense transactions; and
- Tracking the breakdown of total costs distributed by service agencies in collocated locations.

USDA is just one of the 29 Federal agencies that successfully reported inventory and performance data on more than 1.2 million assets in Fiscal Year (FY) 2006. Agency data is collected and reported to a single, centralized descriptive database of all real property managed by executive branch agencies – this database is known as the Federal Real Property Profile (FRPP). GSA has been collecting governmentwide real property inventory data and producing a summary report for Congress since 1955 – but after the signing of Executive Order (EO) 13327 in 2004, the FRPP was enhanced to satisfy EO requirements.

USDA implemented CPAIS to improve its inventory accountability. In the same way, the improved asset level reporting in the FRPP from FY 2005 to FY 2007 is the direct result of agency efforts to capture and

report accurate inventory and performance data for each constructed asset.

Source: USDA FY 2007 Asset Management Plan/USDA Web site.

PRINCIPLE #8

EMPLOY BALANCED PERFORMANCE MEASURES

The Federal Real Property Council (FRPC) promotes the use of balanced performance measures and management techniques to monitor and evaluate asset efficiency regularly. FRPC identifies and defines performance measures that Federal agencies are required to collect and report to the governmentwide inventory system maintained by the General Services Administration (GSA). The results of these performance measures assist Federal agencies in determining the effectiveness of their asset management decisions. FRPC has defined four "First Tier" performance measures:[6]

1. Utilization;
2. Condition Index;
3. Mission Dependency; and
4. Annual Operating Costs.

FRPC continues to evaluate additional performance measures that may be included in the inventory reporting system in the future.

In addition to these governmentwide performance measures, many agencies currently maintain and track their own agency-specific performance measures.

> Performance measures are specific data definitions that enable agencies to track their progress toward achieving management objectives. Performance measures provide vital management information through the life of an asset, providing senior management with a reliable monitoring system.

Case Study: GSA PBS's Linking Budget to Performance (LB2P) Program Uses Scorecard Measures to Reward Good Performance

Since its 1998 rollout, GSA's Public Buildings Service (PBS) Linking Budget to Performance (LB2P) program has linked its budget to performance measurement goals successfully. PBS sets annual targets for each of the nine performance measures for each of its 11 regional offices to achieve. Annual targets are based on PBS national goals and the regional baseline measurement from historical data. Each regional office then works to achieve the performance measure targets and receives its budgetary allocation in each of the categories based on its ability to meet or exceed the targets. Regional offices that exceed the national performance goal for each of the measures receive a bonus pool of money.

Referred to as the "Big Nine," the LB2P performance measures include:

- Funds from operations;
- Customer satisfaction;
- Impact of non-revenue producing space;
- Lease costs;
- Maintenance costs;
- Cleaning costs;
- Construction costs within budget;
- Construction costs within schedule; and
- Indirect costs as a percent of revenue.

LB2P encourages creative and innovative thinking, while improving PBS performance and customer service. Each PBS region has demonstrated improved results, since the implementation of the program. In 2000, PBS received a Global Innovators Award from CoreNet Global which recognizes the successful application of new ideas to corporate real estate and workplace management.

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[6] For additional information on the "First Tier" performance measures, contact your agency's Senior Real Property Officer.

Instituted as a way for PBS to focus on providing the best service for its customers while achieving the maximum return on investment, LB2P has led to significant revenue increases, cost savings, and cost avoidance.

Source: PBS Web site.

PRINCIPLE #9

ADVANCE CUSTOMER SATISFACTION

To advance customer satisfaction, agencies need to assess their customer relationships holistically by:

- Focusing on an occupant's mission;
- Proactively monitoring changing space; and
- Providing a productive workplace.

Customer satisfaction is increased when agencies work collaboratively with their occupants to define specific requirements, integrate these requirements into asset management decisions, and transform decisions into innovative and responsive workplaces. Agencies continually should strive to improve occupant relations and advance customer satisfaction.

As part of these efforts, agencies are encouraged to develop high-performance workplaces and alternative workplace strategies tailored to the user's needs.

High-performance workplaces are those that meet agency business needs, are best suited to their employees' work functions, and are readily adapted to accommodate new work practices and strategies with minimal expense and delay.

Case Study: GSA's Lease Administration and Management Program Leads to Improved Customer Satisfaction Scores

The General Services Administration (GSA) Northeast and Caribbean Region developed the web-based Lease Administration and Management system as a way to document its lease inspections and track tenant concerns and lessor performance efficiently. Currently including more than 700 tracked leases and 8,000 documented lease inspections, the tool has enabled GSA to focus its efforts in addressing tenant concerns by tracking lessor performance and identifying patterns in tenant issues – ultimately resulting in improved customer satisfaction scores.

The Lease Administration and Management system is designed to be both a repository of critical information and a tool for tracking lease deficiencies. GSA's ultimate goal in using the system is to improve customer satisfaction scores in leased locations. Using the tool, GSA employees can input any customer complaints by location in chronological order, as well as the specific actions taken to rectify any problems.

Prior to the tool's implementation, vital lease data was not centrally maintained; lease inspections were either not being documented or being recorded on paper. Without the lease data, GSA was at a disadvantage in working to remedy customer problems and issues. With the Lease Administration and Management program, any GSA regional employee easily can document and access lease inspection data. Each inspection is time-stamped and remains open until a GSA employee enters a resolution date for any outstanding issues. Employees can track reports with outstanding issues by building, agency, office, or service district.

The program also features a unique capability in which any employee can run reports showing all leases with customer satisfaction scores below a given level. Account managers can use the program data to negotiate lease extensions and renewals. When a tenant has a question about an asset or location, any employee can respond. In addition, each employee can run his or her own lease reports, which has eliminated the need for each office to compile data individually and then have the entire GSA region assimilate the data into one report.

Within one year of the program's implementation, the Northeast and Caribbean Region's customer satisfaction scores increased from the mid 50s to the low 90s. Customer satisfaction scores in lease locations have also increased, which is reflected in standard customer surveys and ordering official surveys. GSA is currently planning a national rollout of the program, which is scheduled for a Fiscal Year 2008 completion.

Source: 2007 GSA Achievement Award for Real Property Innovation Entry "Lease Administration/Overtime Utility".

PRINCIPLE #10

PROVIDE FOR SAFE, SECURE, AND HEALTHY WORKPLACES

Effective management of Federal facilities requires that buildings provide safe, secure, and healthy working environments that support a productive workforce. Implementing standard policies and procedures and developing action plans to monitor and maintain workplaces complement the development of, and are basic requirements for, robust asset management strategies. These policies include:

- Minimizing environmental problems and liabilities;
- Complying with building security, fire, and life-safety codes and standards; and
- Meeting historic building and applicable accessibility requirements.

The highest priority for real property holding agencies is to protect their most important assets – their employees.

In today's world, agencies are developing concepts to promote safe, secure, and healthy workplaces that go beyond simple compliance. Referring to principles established by President John F. Kennedy in 1962 in the Guiding Principles for Federal Architecture, agencies are designing Federal Government facilities that are not only "efficient and economical," but also contemporary architectural expressions of the "dignity, enterprise, vigor, and stability of the American Government." As this ideal has matured, the goal has been to establish a definition of excellence that makes safe, secure, and healthy workplaces integral aspects of Federal building projects.

Case Study: Sustainable Features an Integral Component of U.S. Environmental Protection Agency Potomac Yard Facility

The U.S. Environmental Protection Agency (EPA), working in partnership with the General Services Administration (GSA), is leasing a speculative facility in Arlington, Virginia. The complex, known as One Potomac Yard and Two Potomac Yard, comprises a total of 654,000 square feet of office and retail space, located on a formerly abandoned railroad yard. EPA included environmental provisions as part of its competitive Solicitation for Offers for the space, citing energy and water efficiency, as well as environmentally preferable materials and design, as mandatory elements of the facility's design and construction.

After construction was completed in July 2006, the facility achieved the U.S. Green Building Council's Leadership in Environment and Energy Design (LEED) Gold-level certification for sustainability. One and Two Potomac Yard's sustainability features include:

- Energy and water conservation;
- Site selection to minimize impacts on surrounding environment;
- Proximity to alternative transportation;
- Responsible stormwater management;
- Water reduction;
- Recycling;
- Use of green building materials;
- Improved indoor air quality through the use of low volatile organic compound products and careful ventilation practices during construction and renovation; and
- Green roof to reduce urban heat island effect.

EPA worked closely with a team of experienced professionals to develop the building designs. The team included an environmental building consultant and commissioning authority to educate the design team about sustainable design. EPA's developer created a quality control program, including frequent field inspections and regular meetings with various stakeholders, to enforce the implementation of sustainable requirements.

By working as a team and keeping each stakeholder informed, the Potomac Yard facility was able to achieve LEED Gold-level certification and maintain reasonable costs and schedules. As a result, One and Two Potomac Yard exemplify a balance of function, cost, security, and sustainability – enabling EPA employees to occupy a facility that features environmental attributes, saves money, and contributes to a safer, healthier, and more productive work environment.

Source: EPA Web site, 2006 GSA Achievement Award for Real Property Innovation Entry "Property Innovation at EPA's New Arlington, Virginia Offices: Reaching for 'Green,' Achieving Gold in a Speculative Building".

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–0281; 30-day notice]

Agency Information Collection Request. 30-Day Public 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.

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) 690–5683. Send written comments and recommendations for the proposed information collections within 30 days of this notice directly to the OS OMB Desk Officer; faxed to OMB at 202–395–6974.

Proposed Project: Prevention Communication Formative Research—Revision—OMB No. 0990–0281—Office of Disease Prevention and Health Promotion

Abstract: The information collected will be formative research to develop messages and materials, in support of development of disease prevention and health promotion information, including the Physical Activity and Dietary Guidelines for Americans. It is necessary to obtain consumer input to understand the information needs, attitudes, and beliefs of the audience in order to tailor messages, as well as to assist with clarity, understandability, and acceptance of prototyped messages, materials, and online tools. This generic clearance request describes data collection activities involving a limited set of consumer interviews, focus groups, Web concept testing, message testing, and usability testing. Frequency, reporting is on occasion. The program requests a three-year clearance.

ESTIMATED ANNUALIZED BURDEN TABLE

Data collection task	Instrument/form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total response burden
In depth interviews (Limited Literacy Consumers).	Screener	133	1	10/60	22
	Interview	33	1	1.5	50
	Confidentiality Agreement	33	1	5/60	3
In depth Interviews (Health Intermediaries).	Screener	75	1	10/60	13
	Interview	25	1	1.5	38
	Confidentiality Agreement	25	1	5/60	2
In depth Interviews (Public Health Professionals).	Screener	50	1	10/60	8
	Interview	25	1	1.5	38
	Confidentiality Agreement	25	1	5/60	2
In person Focus Groups (35)—Limited Literacy Consumers.	Screener	372	1	10/60	62
	Focus Group	93	1	2	186
	Confidentiality Agreement	93	1	5/60	8
In Person Focus Groups (20)—Health Intermediaries.	Screener	159	1	10/60	27
	Focus Group	53	1	2	106
	Confidentiality Agreement	53	1	5/60	4
In person Focus Groups (15)—Public Health Professionals.	Screener	80	1	10/60	13
	Focus Group	40	1	2	80
	Confidentiality Agreement	40	1	5/60	3
Usability and other testing of prototype materials (print and Web).	Screener	400	1	10/60	68

ESTIMATED ANNUALIZED BURDEN TABLE—Continued

Data collection task	Instrument/form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total response burden
	Usability Test	100	1	1.5	150
	Confidentiality Agreement	100	1	5/60	8
Web-based concept and prototype testing.	Screener	0	1	0	0
	Web-test	167	1	1	167
	Confidentiality Agreement	167	1	5/60	14
In person message testing	Screener	200	1	10/60	33
	Message Test	50	1	1	50
	Confidentiality Agreement	50	1	5/60	4
Telephone-based message testing	Screener	268	1	10/60	45
	Telephone Test	67	1	1	67
	Confidentiality Agreement	67	1	5/60	6
Web-based message testing	Screener	0	1	10/60	0
	Web-test	115	1	1	115
	Confidentiality Agreement	115	1	5/60	10
Total					1,402

Mary Oliver-Anderson,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. E8–18346 Filed 8–7–08; 8:45 am]

BILLING CODE 4150–32–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Solicitation for Written Comments on the Development of Healthy People 2020

AGENCY: Department of Health and Human Services, Office of the Secretary, Office of Public Health and Science, Office of Disease Prevention and Health Promotion.

ACTION: Notice.

Authority: 42 U.S.C. 200u.

SUMMARY: The Office of Disease Prevention and Health Promotion (ODPHP), Office of Public Health and Science (OPHS), U.S. Department of Health and Human Services (HHS), is soliciting written comments on key elements of *Healthy People 2020,* including the vision, mission, overarching goals and framework. Every 10 years, through the Healthy People initiative, HHS leverages scientific insights and lessons from the past decade, along with the new knowledge of current data, trends, and innovations to develop the next iteration of national health promotion and disease prevention objectives. Healthy People provides science-based, 10-year national objectives for promoting health and preventing disease. Since 1979, Healthy People has set and monitored national health objectives to meet a broad range of health needs, encourage collaborations across sectors, guide individuals toward making informed health decisions, and measure the impact of our prevention and health promotion activities. Healthy People 2020 will reflect assessments of major risks to health and wellness, changing public health priorities, and emerging issues related to our nation's health preparedness and prevention.

Background: The Healthy People process is inclusive: its strength is directly tied to collaboration. The development process strives to maximize transparency, public input and stakeholder dialogue to ensure that Healthy People 2020 is relevant to diverse public health needs and seizes opportunities to achieve its goals. Since its inception, Healthy People has become a broad-based, public engagement initiative with thousands of citizens helping to shape it at every step along the way. Drawing on the expertise of a Secretary's Advisory Committee on National Health Promotion and Disease Prevention Objectives for 2020 and public input, Healthy People will organize and establish a framework to address risk factors and determinants of health and the diseases and disorders that are affecting our communities.

Public participation will shape Healthy People 2020, its purpose, goals, organization, and action plans. HHS has sought input from communities and stakeholders across the nation through six regional meetings and is soliciting written public comments on the development of *Healthy People 2020* through an online public comment database. As a national initiative, Healthy People's success depends on a coordinated commitment to improve the health of the nation. Individuals may subscribe to the listserv at: *http://www.healthypeople.gov/Contact* for the latest information on Healthy People 2020 and to receive email notices of related Healthy People 2020. Healthy People 2020 will be released in two-phases. The vision, mission, overarching goals, and organizing framework will be released in late 2008-early 2009. A year later, in January 2010, the specific Healthy People 2020 objectives with baselines and targets will be released.

DATES: In order for comments on the proposed vision, mission, overarching goals, and framework for *Healthy People 2020* to be considered by the Secretary's Advisory Committee on National Health Promotion and Disease Prevention Objectives for 2020, written comments must be submitted via the Internet at the Healthy People Web site *http://www.healthypeople.gov/hp2020/comments* by the close of business Eastern Daylight Time on September 2, 2008. Comments submitted to the Web site after September 2, 2008 and before September 15, 2008 will be considered by HHS but not reviewed by the Secretary's Advisory Committee.

ADDRESSES: The proposed vision, mission, overarching goals, and framework for *Healthy People 2020* can be viewed and commented on at *http://www.healthypeople.gov/hp2020/Comments.*

FOR FURTHER INFORMATION CONTACT: E-mail the Office of Disease Prevention and Health Promotion, Office of Public Health and Science, U.S. Department of Health and Human Services, at *HP2020@hhs.gov* or to Hilary Scherer at *HP2020@norc.org* (e-mail), (301) 634–9374 (phone) or (301) 634–9301 (fax).

Dated: July 24, 2008.

Penelope Slade Royall,

RADM, USPHS, Deputy Assistant Secretary for Health, (Disease Prevention and Health Promotion).

[FR Doc. E8–18299 Filed 8–7–08; 8:45 am]

BILLING CODE 4150–32–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Center for Preparedness, Detection, and Control of Infectious Diseases

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Clinical Laboratory Improvement Advisory Committee (CLIAC).

Times and Dates: 8:30 a.m.–5 p.m., September 10, 2008; 8:30 a.m.–3 p.m., September 11, 2008.

Place: Centers for Disease Control and Prevention, 1600 Clifton Road, NE., Tom Harkin Global Communications Center, Building 19, Room 232, Auditorium B, Atlanta, Georgia 30333.

New Information—Online Registration Required: In order to expedite security clearance process at the CDC Roybal Campus located on Clifton Road, all CLIAC attendees are required to register in advance for the meeting at *http://www.cdc.gov/cliac/default.aspx* by clicking the Register for a ''Meeting'' link and completing all forms according to the instructions given. Please complete all the required fields and submit your registration as far in advance of the meeting date as possible.

Note: The cut-off date for registration for domestic attendees is Thursday, September 4, 2008; the cut-off date for international attendees to register is Monday, August 25, 2008.

Status: Open to the public, limited only by the space available. The meeting Room accommodates approximately 100 people.

Purpose: This Committee is charged with providing scientific and technical advice and guidance to the Secretary of Health and Human Services, the Assistant Secretary for Health, and the Director, CDC, regarding the need for, and the nature of, revisions to the standards under which clinical laboratories are regulated; the impact on medical and laboratory practice of proposed revisions to the standards; and the modification of the standards to accommodate technological advances.

Matters to Be Discussed: The agenda will include updates from the CDC, the Centers for Medicare & Medicaid Services, and the Food and Drug Administration; a report from the CLIAC Workgroup on Good Laboratory Practices for Genetic Testing, and discussion of the Workgroup's proposals related to such; presentations and discussion related to laboratory quality control through risk management; and an introduction to the status of waived testing and discussion of the potential for waiver of automated hematology devices. Agenda items are subject to change as priorities dictate.

Providing Oral or Written Comments: It is the policy of CLIAC to accept written public comments and provide a brief period for oral public comments whenever possible.

Oral Comments: In general, each individual or group requesting to make an oral presentation will be limited to a total time of five minutes (unless otherwise indicated). Speakers must also submit their comments in writing for inclusion in the meeting's Summary Report. To assure adequate time is scheduled for public comments, individuals or groups planning to make an oral presentation should, when possible, notify the contact person below at least one week prior to the meeting date.

Written Comments: For individuals or groups unable to attend the meeting, CLIAC accepts written comments until the date of the meeting (unless otherwise stated). However, the comments should be received at least one week prior to the meeting date so that the comments may be made available to the Committee for their consideration and public distribution. Written comments, one hard copy with original signature, should be provided to the contact person below. Written comments will be included in the meeting's Summary Report.

Contact Person for Additional Information: Nancy Anderson, Chief, Laboratory Practice Standards Branch, Division of Laboratory Systems, National Center for Preparedness, Detection, and Control of Infectious Diseases, Coordinating Center for Infectious Diseases, CDC, 1600 Clifton Road, NE., Mailstop F–11, Atlanta, Georgia 30333; telephone (404) 498–2741; fax (404) 498–2219; or via e-mail at *Nancy.Anderson@cdc.hhs.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for CDC and the Agency for Toxic Substances and Disease Registry.

Dated: July 28, 2008.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E8–18285 Filed 8–7–08; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Center for Health Statistics (NCHS), Classifications and Public Health Data Standards Staff; Modifications to the International Classification of Diseases, Ninth Revision, Clinical Modification (ICD–9–CM), Supplementary Classification of External Causes of Injury and Poisoning

ACTION: Notice.

National Center for Health Statistics (NCHS), Classifications and Public Health Data Standards Staff, announces the following modifications to the International Classification of Diseases, Ninth Revision, Clinical Modification (ICD–9–CM), Supplementary Classification of External Causes of Injury and Poisoning. These codes will become effective October 1, 2008.

External Cause Tabular

New code E927.0 Overexertion from sudden strenuous movement. Sudden trauma from strenuous movement

New code E927.1 Overexertion from prolonged static position

New code E927.2 Excessive physical exertion from prolonged activity

New code E927.3 Cumulative trauma from repetitive motion

New code E927.4 Cumulative trauma from repetitive impact

New code E927.8 Other overexertion and strenuous and repetitive movements or loads

New code E927.9 Unspecified overexertion and strenuous and repetitive movements or loads

CONTACT PERSON FOR ADDITIONAL INFORMATION: Donna Pickett, Medical Systems Specialist, Classifications and Public Health Data Standards Staff, NCHS, 3311 Toledo Road, Room 2402, Hyattsville, Maryland 20782, e-mail *dfp4@cdc.gov,* telephone 301–458–4434. The complete diagnosis addenda may be accessed on the NCHS Web site using the URL: *http://www.cdc.gov/nchs/datawh/ftpserv/ftpicd9/ftpicd9.htm#addenda.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to modifications to the ICD–9–CM, for both CDC and the

Agency for Toxic Substances and Disease Registry.

Daniel Riedford,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E8–18284 Filed 8–7–08; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 73 FR 35140, dated June 20, 2008) is amended to reflect the reorganization of the Office of the Director, Centers for Disease Control and Prevention.

Section C–B, Organization and Functions, is hereby amended as follows: Delete in their entirety the titles and functional statements for the *Office of Strategy and Innovation (CAM)* and the *Office of Chief of Public Health Practice (CAR)* and insert the following:

Office of Strategy and Innovation (CAM). The Office of Strategy and Innovation (OSI) serves as the focal point for accelerating the health impact of CDC's work within and beyond CDC's programs. In carrying out its mission, OSI: (1) Leads CDC's efforts to develop, monitor, evaluate, and advance agency strategic direction, planning, and priorities; (2) fosters strategic excellence and innovation across the agency; (3) provides superior decision support to CDC's executive leadership; (4) leads the development of health in all policies; (5) promotes the health, safety, and quality of life of women; and (6) improves the health of the public through law.

Office of the Director (CAM1). (1) Develops, monitors, and advances CDC's strategic direction, planning, and priorities; (2) provides leadership and vision for formulating and evaluating policy; (3) fosters strategic excellence and innovation across the agency; (4) applies knowledge management tools and decision support systems in allocation of resources and improves agency decision-making; (5) communicates key messages to CDC employees and partners about CDC's strategic direction, planning, and priorities; and (6) works directly with the strategy and innovation officers within the coordinating centers to develop, monitor, and advance CDC strategic direction and priorities and institutionalize organizational change, improvement, and accountability.

Office of Women's Health (CAM12). The Office of Women's Health (OWH) aims to promote and improve the health, safety, and quality of life of women. As a leader for women's health issues at CDC, the Office of Women's Health: (1) Advises the CDC Director on matters relating to women's health research, programs, and strategies; (2) promotes the health and well-being of women; (3) communicates health information, research findings, and prevention strategies to a diverse group of providers, consumers, and organizations; (4) advances sound scientific knowledge for public health action, promotes the role of prevention, and works to improve the understanding of women's health priorities; (5) fosters partnerships and collaborations within CDC and with other public and private organizations, agencies, institutions, and others to improve the health and safety of women; (6) publishes newsletters and other documents that highlight prevention programs, research findings, publications, health campaigns, health promotion strategies, and other information available at CDC; (7) leads CDC Women's Health Committee by facilitating and coordinating agency-wide efforts and enhancing channels for communication and cooperation; (8) supports the development of future women's health and public health professionals through various training and student positions within the office; (9) prepares agency reports, briefing documents, and other materials addressing women's health issues; (10) stimulates and supports prevention research, programs, and other activities through funding; (11) represents the agencies at meetings, committees, workgroups, conferences, and briefings; (12) serves as liaison for women's health between CDC and other agencies and organizations; (13) develops opportunities for, promotes, and supports the agency as a resource for women's health issues; and (14) provides assistance to state and local programs on women's health issues.

Public Health Law Program (CAM13). The mission of the Public Health Law Program is to improve the health of the public through law. The program: (1) Provides technical assistance to CDC centers and to extramural partners in developing their legal preparedness to address the full spectrum of health protection goals; (2) collaborates with CDC and extramural partners in developing tools for use in assessing and improving the public health legal preparedness of the health system; (3) strengthens the competencies of practitioners in public health, emergency management, law, and other sectors to apply law to improve public health; (4) supports and conducts applied research in public health law and translates findings into practice; (5) provides consultation and analysis in public health law to CDC programs and extramural constituents; (6) establishes partnerships among CDC and other organizations active in public health law and assists in strengthening their public health law capacity and expertise; and (7) develops and disseminates authoritative information on public health law and public health law best practices to practitioners and policy makers.

Office of Chief of Public Health Practice (CAR). The Office of Chief of Public Health Practice (OCPHP) serves as the advocate, guardian, promoter, and conscience of public health practice throughout CDC and in the larger public health community; ensures coordination and synergy of CDC's scientific and practice activities; and promotes and protects the public's health through science-based, practice-relevant standards, policies, and legal tools. To carry out its mission, OCPHP: (1) Establishes robust partnerships among CDC programs, public health practitioners and key sectors, including elected officials, the legal community, and law enforcement and emergency response organizations; (2) establishes a functional area focused specifically on standards and improvement in practice among state and local public health systems; (3) advances the development and implementation of a national agency accreditation system; (4) relates relevant research and policy analysis to public health practice; (5) monitors and anticipates public health practice trends and issues; and (6) coordinates and addresses cross-cutting issues related to public health practice within CDC; and (7) develops, monitors and advances agency-wide goals for improving health equity, fostering strategic excellence and innovation across CDC, and organizational development and the transition process.

Dated: July 31, 2008.

William H. Gimson,

Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. E8–18177 Filed 8–7–08; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–R–138, CMS–10147, CMS–10146, CMS–10064, and CMS–10225]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Agency: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the Agency's function; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicare Geographic Classification Review Board (MGCRB) Procedures and Criteria and Supporting Regulations in 42 CFR, Section 412.256 & 412.230; *Use:* Section 1886(d)(10) of the Social Security Act established the MGCRB, an entity that has the authority to accept short-term hospital inpatient prospective payment system (IPPS) hospital applications requesting geographic reclassification for wage index or standardized payment amounts and to issue decisions on these requests. Since it is important to ensure the accuracy of the MGCRB decisions and remain apprised of potential payment impacts, the regulations note that CMS should also receive a copy of any hospital's application to the MGCRB. The information submitted by the hospitals is used by CMS staff to determine the validity of the hospitals' requests and the discretion used by the MGCRB in reviewing and making decisions regarding hospitals' requests for geographic reclassification. Since CMS wrote the guidelines for the MGCRB, it is essential that CMS staff monitor this process. *Form Number:* CMS–R–138 (OMB# 0938–0573); *Frequency:* Yearly; *Affected Public:* Business or other for-profits and Not-for-profit institutions; *Number of Respondents:* 300; *Total Annual Responses:* 300; *Total Annual Hours:* 300.

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicare Prescription Drug Coverage and Your Rights; *Use:* Section 42 CFR 423.562, requires each Part D plan sponsor to arrange with its network pharmacies to post or distribute the Medicare Prescription Drug Coverage and Your Rights notice to Part D plan enrollees at each pharmacy visit when the enrollee disagrees with the information provided by the pharmacist. The purpose of this notice is to provide enrollees with information about how to contact their Part D plans to request a coverage determination, including a request for an exception to the Part D plan's formulary. *Form Number:* CMS 10147 (OMB# 0938–0975); *Frequency:* Daily; *Affected Public:* Business or other for-profits; *Number of Respondents:* 40,000; *Total Annual Responses:* 30,000,000; *Total Annual Hours:* 500,000.

3. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Notice of Denial of Medicare Prescription Drug Coverage; *Use*: Section 1860D–4(g)(1) of the Social Security Act, requires Part D plan sponsors that deny prescription drug coverage to provide a written notice of the denial to the enrollee. The written notice must include a statement, in clear language, of the reasons for the denial and a description of the appeals process. *Form Number:* CMS 10146 (OMB# 0938–0976); *Frequency:* Daily; *Affected Public:* Business or other for-profits; *Number of Respondents:* 758; *Total Annual Responses:* 290,344; *Total Annual Hours:* 145,172.

4. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Minimum Data Set (MDS) for Swing Bed Hospitals and Supporting Regulations in 42 CFR 413.114(a)(2) and 413.343(a); *Use:* Exercising CMS' authority under section 1888(e)(7) of the Social Security Act to determine the most appropriate manner in which to implement the Skilled Nursing Facility Prospective Payment System (SNF PPS) for swing bed hospitals, CMS designed a 2-page MDS instrument for use by swing bed hospitals that includes all resident assessment data needed to reimburse swing bed hospitals for SNF-level care furnished to Medicare beneficiaries and to provide CMS with the basic demographic and utilization data for future planning and analysis. *Form Number:* CMS–10064 (OMB# 0938–0872); *Frequency:* Occasionally; *Affected Public:* Business or other for-profits, Not-for-profit institutions and State, Local, or Tribal Governments; *Number of Respondents:* 481; *Total Annual Responses:* 50,505; *Total Annual Hours:* 328,283.

5. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Disclosures to Patients by Certain Hospitals and Critical Access Hospitals and Supporting Regulations in 42 CFR 489.20; *Form Number:* CMS–10225 (OMB#: 0938–1035); *Use:* This information request relates to proposed required third party disclosures by certain Medicare-participating hospitals and critical access hospitals (CAHs) to their patients. The policy is contained in the FY 2009 Inpatient Prospective Payment System Final Rule. Because this information request is closely related to the previously approved collection burden under 0938–01034, we have included a discussion of both the approved provisions and the new provisions in the supporting statement document.

In addition to the two existing collections previously approved under 0938–1034, we are revising § 489.3 to define a physician-owned hospital as a hospital in which a physician, or an immediate family member of a physician has an ownership or investment interest in the hospital. Because of this change to the definition of a physician-owned hospital, new § 489.20(u)(1) will require that hospitals with ownership or investment interests by a physician or immediate family member disclose this information to all their patients. Additionally, we revised § 489.20(u) by creating § 489.20(u)(1) that requires any physician-owned hospital to furnish patients with written notice that the hospital is physician-owned and provide the list of physician owners (including immediate family members) to the patient at the time the patient or someone on the patient's behalf requests it.

We also require three new collections which are the primary focus of this supporting statement. First, we have added new § 489.20(u)(2) to require a hospital to require all physicians who are members of the hospital's medical staff to agree, as a condition of continued medical staff membership or admitting privileges, to disclose in writing to all patients they refer to the hospital any ownership or investment interest in the hospital held by themselves or by an immediate family member. The burden associated with this requirement is two-fold and pertains to both hospitals and physicians. First, hospitals are required to update by-laws and policies and procedures to reflect that as a condition of medical staff membership or admitting privileges, physicians must agree to disclose ownership or investment interests to patient. In addition, physicians are required to develop disclosure notices, distribute them to patients and maintain these disclosures in the patients' medical records.

Finally, we are including new language under § 489.20(v) to provide for an exception to the disclosure requirements for a physician-owned hospital that does not have at least one referring physician who has an ownership or investment interest in the hospital (or who has an immediate family member with an ownership or investment interest in the hospital), provided that the hospital attests, in writing, to that effect and maintains such attestation in its files. The burden associated with this requirement is limited to those physician-owned hospitals that do not have physician owners who refer patients to the hospital.

The intent of the disclosures is to increase the transparency of the hospital's ownership and operations to patients as they make decisions about receiving care at the hospital. *Frequency:* Reporting—Occasionally; *Affected Public:* Business or other for-profit; *Number of Respondents:* 2,697; *Total Annual Responses:* 49,735,828; *Total Annual Hours:* 840,318.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received by the OMB desk officer at the address below, no later than 5 p.m. on September 8, 2008.

OMB Human Resources and Housing Branch, Attention: OMB Desk Officer, New Executive Office Building, Room 10235, Washington, DC 20503, Fax Number: (202) 395–6974.

Dated: July 31, 2008.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. E8–18361 Filed 8–7–08; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0429]

Food Labeling; Current Trends in the Use of Allergen Advisory Labeling: Its Use, Effectiveness, and Consumer Perception; Public Hearing; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public hearing; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public hearing on the use of advisory labeling of allergens in foods. FDA is developing a long-term strategy to assist manufacturers in using allergen advisory labeling that is truthful and not misleading, conveys a clear and uniform message, and adequately informs food-allergic consumers and their caregivers. To that end, FDA is soliciting comments and information to assist the agency in determining how manufacturers currently use advisory labeling, how consumers interpret different advisory labeling statements, and what wording is likely to be most effective in communicating to consumers the likelihood that an allergen may be present in a food. The agency is also interested in receiving comments about whether consumers find advisory labeling helpful for making food purchasing decisions. This public hearing is the first step in closing existing knowledge gaps in developing our long-term strategy.

DATES: The public hearing will be held on September 16, 2008, from 9 a.m. to 4:30 p.m. The closing date for registration is September 8, 2008. See section V of this document for other dates associated with participation in the hearing. Submit written or electronic comments (i.e., submissions other than notices of participation and written material associated with an oral presentation) by January 14, 2009. The administrative record of the hearing will remain open until January 14, 2009.

ADDRESSES: *Public hearing.* The public hearing will be held at the Harvey W. Wiley Federal Building, Food and Drug Administration, Center for Food Safety and Applied Nutrition, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, (Metro stop: College Park on the Green Line).

Registration. Submit electronic notices of participation for the hearing to *http://www.cfsan.fda.gov/register.html.* We encourage you to use this method of registration, if possible. Submit written notices of participation by mail, fax, or e-mail to Isabelle Howes, U.S. Department of Agriculture Graduate School, 600 Maryland Ave., SW., suite 330, Washington, DC 20024–2520, FAX: 202–479–6801, or e-mail: *Isabelle_Howes@grad.usda.gov.* You may also submit oral notices of participation by phone to Isabelle Howes, U.S. Department of Agriculture Graduate School (see **FOR FURTHER INFORMATION CONTACT**).

Written material associated with an oral presentation. Submit written material associated with an oral presentation by mail, fax, or e-mail to Isabelle Howes.

Comments. Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov.* For additional information on submitting comments, see section VI in this document.

FOR FURTHER INFORMATION CONTACT:

For questions about registration or written material associated with an oral presentation, or to register orally: Isabelle Howes, 202–314–4713.

For all other questions about the hearing or if you need parking or special accommodations due to a disability: Juanita Yates, Center for Food Safety and Applied Nutrition, Food and Drug Administration, 301–436–1731, e-mail: *Juanita.Yates@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Food allergies affect approximately two percent of adults and about five

percent of infants and young children in the United States. Currently, there is no cure for food allergies. The only successful method to manage food allergies is avoidance of foods containing allergens. Consumers can attempt to avoid food substances to which they are allergic by reading ingredient labels to see whether a food product contains an allergenic ingredient. However, allergenic substances may be inadvertently incorporated into food products that are not formulated to contain these substances; consequently, their presence is not required to be declared on food labels. FDA is concerned with food allergens, including food allergens inadvertently incorporated into manufactured foods, due to the number of reports concerning consumers who have experienced adverse reactions following exposure to an allergenic substance in a food. This concern has prompted several agency actions targeting food manufacturers, including: (1) Issuing a notice to manufacturers entitled ''Label Declaration of Allergenic Substances in Foods'' in 1996 (Ref. 1); (2) forming an FDA/state partnership in 1998 to increase industry's understanding of food allergens and to identify effective manufacturing controls; and (3) issuing a food allergen guidance document in 2001 (Ref. 2). Information on these initiatives is available at the FDA Web site on allergens at *http://www.cfsan.fda.gov/~dms/wh-alrgy.html*.

FDA stated in the 1996 notice to manufacturers that it is aware that some manufacturers are voluntarily labeling their products with statements such as ''may contain (*allergen*).'' FDA advised that, because adhering to current good manufacturing practices (CGMPs) is essential for effective reduction of adverse allergic reactions, advisory labeling[1] should not be used in lieu of adherence to CGMPs. The agency urged food manufacturers to take all steps necessary to eliminate cross-contact[2] and to ensure the absence of allergens in their finished food products. In addition, FDA encouraged manufacturers to declare voluntarily any allergenic ingredient of a flavor, spice, or color by identifying the allergenic ingredient in the ingredient list.

A. Food Allergen Labeling and Consumer Protection Act of 2004

On August 2, 2004, the United States Congress enacted the Food Allergen Labeling and Consumer Protection Act of 2004 (FALCPA) (Title II of Public Law No. 108–282). FALCPA amended the Federal Food, Drug, and Cosmetic Act (the act) by imposing new labeling requirements on packaged foods that contain ''major food allergens.'' Section 201(qq) of the act (21 U.S.C. 321(qq)) defines ''major food allergen'' as milk, eggs, fish, Crustacean shellfish, tree nuts, wheat, peanuts, and soybeans or any other ingredient that contains protein derived from one of these foods or food groups. FALCPA requires that the labels of foods that contain an ingredient that is a major food allergen declare this ingredient in one of two ways: (1) By including the name of the food source from which the allergen is derived in parentheses following the common or usual name of the major food allergen in the list of ingredients in instances when the name of the food source of the major food allergen does not appear elsewhere in the ingredient statement or is not used in the common or usual name of the ingredient, or (2) by placing the word ''Contains'' followed by the name of the food source from which the major food allergen is derived immediately after or adjacent to the list of ingredients.

These allergen labeling requirements assist consumers in avoiding substances to which they are allergic. However, as previously discussed in this section, allergenic substances may be inadvertently incorporated into food products that are not formulated to contain them. FALCPA does not require the use of advisory labeling, including statements describing the potential presence of unintentional ingredients in food products resulting from the food manufacturing process.

B. Information Available to FDA Regarding Advisory Labeling

FDA has gathered information on advisory labeling by conducting its own consumer research and reviewing other published consumer research. Additionally, the agency investigated cross-contact that occurs during manufacturing and examined manufacturers' use of advisory labeling to alert consumers to the possibility that a food may contain allergens. The information FDA has collected provides insight into the types of advisory statements currently used by manufacturers and the reasons manufacturers use advisory labeling. Furthermore, the consumer research provides an understanding as to how consumers perceive particular advisory statements and what wording consumers prefer and find credible. FDA's findings are summarized as follows:

1. Cross-Contact and Use of Advisory Labeling

FDA has found that unintentional cross-contact of foods with major food allergens may occur at almost any step of the manufacturing process and for various reasons (Ref. 3). Cross-contact can occur due to allergens in raw ingredients or in processing aids, allergens in reworked product,[3] and allergen carry-over from the use of shared equipment. Such potential sources of unintentional allergen cross-contact exist regardless of the manufacturer's size or food product. Many food manufacturers have allergen-control measures in place, such as the use of dedicated facilities or dedicated production lines, to prevent the cross-contact of major food allergens with their products. Manufacturers also use a variety of advisory statements on package labels, such as, ''May contain (allergen),'' ''Produced in a plant that processes (allergen),'' ''Produced on shared equipment that processes (allergen),'' and ''Processed on equipment that also processes (allergen).'' These manufacturers use advisory labeling for a variety of reasons, such as to advise consumers of the potential presence of an allergen, to avoid the need to develop and use multiple labels, or to reduce legal liabilities.

2. Consumer Studies

FDA surveyed food-allergic adults or their caregivers and non-food-allergic adults to learn which of the following food-allergen advisory statements they preferred (Ref. 4):

[1] The purpose of advisory labeling is generally to alert food-allergic consumers to the possibility of allergen cross-contact. Although these labels vary by content, common formulations include ''This product was processed on machinery used to process (allergen)'' and ''May contain (allergen).'' While this document uses, where appropriate, the term ''advisory labeling,'' FDA considers the term ''advisory labeling'' to be synonymous with ''precautionary labeling,'' a term sometimes used to describe these circumstances.

[2] Cross-contact occurs when a residue or other trace amount of a food allergen is present on a food contact surface or production machinery, or is airborne, and unintentionally becomes incorporated into a product not intended to contain the allergen. Cross-contact may also result from customary methods of growing and harvesting crops, as well as from the use of shared storage, transportation, or production equipment. FDA considers the term ''cross-contact'' to be synonymous with ''cross-contamination,'' a term sometimes used to describe these circumstances.

[3] As a verb, ''rework'' refers to the practice of reintroducing food product material that has been through some or all of the manufacturing process into an earlier stage of the production process of a subsequently produced food product. As a noun or adjective, ''rework'' refers to the food product material that is reintroduced into the production process.

(1) ''Allergy Information: May contain peanuts.''

(2) ''May Contain Peanuts.''

(3) ''Manufactured on the same equipment as foods that contain peanut.''

(4) ''Produced in a facility with an allergy control plan. The possibility of contact with allergenic ingredients has been minimized. May still contain trace amount of peanut.''

Survey participants preferred the statement ''Allergy Information: May contain peanuts'' over the other three statements. This finding is similar to other research that shows that people prefer warning information that is preceded by signal words, such as ''Allergy Information,'' possibly because signal words help to quickly draw people's attention to important information (Ref. 5).

FDA also conducted an experiment that compared the four statements listed previously relative to buying, eating, or serving a food item (Ref. 4). The experiment yielded two important findings. The first important finding was that participants thought the risk of the food containing allergens was greater when any of the four advisory statements was on the food label than when there was no allergen advisory statement. The second important finding was that participants answered the questions about buying, eating, or serving the product differently depending on which advisory statement they were responding to. The experimental results showed that participants who looked at food packages bearing the advisory statements ''Allergy information: May contain peanuts'' or ''May contain peanuts'' believed these foods were more likely to contain peanuts. In contrast, participants looking at food packages with the other two statements believed those foods were less likely to contain peanuts.[4]

FDA also reviewed research conducted by the Food Allergy & Anaphylaxis Network (FAAN). FAAN's consumer surveys explored how consumers with food allergies responded to advisory labeling by either heeding it or ignoring it (Ref. 6). According to FAAN's consumer surveys, consumers with food allergies are increasingly ignoring advisory labeling. Additional FAAN research examined retail packaged foods bearing various advisory labeling statements for peanuts and then analyzed the products to determine the prevalence of peanut residue. FAAN's analysis found detectable peanut residues in some of the products with allergy advisory statements. This finding is important because it indicates that allergic consumers who ignore advisory labeling statements are risking their health by consuming foods that have advisory labeling because some of these foods contain allergens.

C. Other Initiatives on Food Allergen Advisory Labeling

The use of advisory labeling has steadily increased in the United States. As mentioned in section I.B.1. of this document, different food companies use different advisory statements and have different reasons for using advisory labeling. FDA is aware that voluntary criteria for determining when to use advisory labeling exist in the United States. In 2001, in response to food allergy concerns, the Food Allergy Issues Alliance (Ref. 7), a private group of representatives from industry, a trade group, a consumer group, and academia recommended using the following criteria to evaluate a food to determine whether advisory labeling is appropriate:

- Whether the presence of a major food allergen is documented through visual examination or analytical testing of the processing line, equipment, ingredient or product, or other means;
- Whether the risk of presence of a major food allergen is unavoidable even when current good manufacturing practices are followed;
- Whether a major food allergen is present in some, but not all, of the product; and
- Whether the presence of a major food allergen is potentially hazardous.

FDA is aware that other countries have developed or are currently developing criteria to ensure uniformity in the use of advisory labeling to warn consumers that a food may inadvertently contain an allergen. The Canadian government is currently reviewing precautionary statements for food allergens and making recommendations regarding their use on the labels of packaged foods. For example, Canada is updating its policy to restrict the options for different precautionary statements. The proposed options for precautionary statements in Canada are: (1) ''may contain (allergen)'' or (2) ''not suitable for consumption by persons with an allergy to (allergen)'' (Ref. 8). Further, where incoming ingredients have been labeled with a precautionary statement, manufacturers are advised to use the same statement on the finished product label unless the allergen in the finished product is not likely to represent a health risk.

Similar initiatives are evolving in Australia and New Zealand. An industry forum has developed the Voluntary Incidental Trace Allergen Labeling (VITAL) procedure to provide a risk-based approach for food manufacturers to use in assessing the impact of allergen cross-contact and to provide appropriate allergen advisory labeling (Ref. 9). The VITAL Allergen Action Level Grid (''Vital Grid'') determines whether allergens present in a food due to incidental cross-contact should be labeled and, if so, whether this labeling should state whether an allergen may be present or whether an allergen is actually present (i.e., identified as an ingredient). VITAL uses a three-level grid to determine if the presence of residual protein from allergenic substances through unavoidable cross-contact warrants advisory labeling. The VITAL Action Levels are: (1) Action Level 1—Green Zone—advisory labeling is not required for the allergen under evaluation; (2) Action Level 2—Yellow Zone—advisory labeling stating that the allergen under evaluation may be present is advised; and (3) Action Level 3—Red Zone—significant levels of the allergen are likely to be present in the food; therefore, listing the allergen in the ingredient list is advised.

D. Need for Long-Term United States Strategy to Manage Allergen Advisory Labeling

As previously discussed in this document, FDA has reviewed available information and data and found that the use of advisory label statements is not uniform. In addition, research indicated a range of consumer understanding and behavior with regard to advisory labeling. Research also indicated that some food products that contain advisory labeling have been shown to contain detectable residues of food allergens (Ref. 6). Allergic consumers who ignore advisory label statements assume the risk of potential adverse reactions by consuming these food products. If manufacturers choose to use advisory labeling to inform consumers of the potential presence of food allergens in the finished products, such labeling must be truthful and not misleading and should provide clear, uniform, and accurate information to food-allergic consumers about the potential presence of food allergens. As currently used in the marketplace,

[4] It is important to keep in mind that these two consumer research studies focused on the presence of peanuts. Peanut allergy can produce severe allergic responses, and even those not affected by peanut allergy appear to be aware that peanut allergy is serious for those with the allergy. The research results may have been different had a food allergen other than peanut been the subject of the advisory statements.

advisory labeling may not be protecting the health of allergic consumers; therefore, FDA believes that it is in the best interest of the public health, especially for food-allergic consumers, that FDA develop a long-term strategy to address allergen advisory labeling.

II. Purpose and Scope of the Hearings

FDA is developing a long-term strategy to assist manufacturers in using allergen advisory labeling that is truthful and not misleading, conveys a clear and uniform message, and adequately informs allergic consumers and their caregivers. To that end, FDA is soliciting comments and information to assist the agency in determining how manufacturers currently use advisory labeling, how consumers interpret different advisory labeling statements, and what wording is most effective in communicating to consumers the likelihood that an allergen may be present in a food. The agency is also interested in learning whether consumers find advisory labeling helpful for making food purchasing decisions.

The scope of this hearing is determined by this document. FDA invites general comments on the issues and questions listed in section III of this document.

III. Issues and Questions for Discussion

The following issues and questions will be discussed at the public hearing:

Issue 1: FDA is developing a long-term strategy to assist manufacturers in ensuring that allergen advisory labeling is truthful and not misleading, conveys a clear and uniform message, and adequately informs allergic consumers and their caregivers. To help us better understand under what circumstances manufacturers use advisory labeling, we ask the following questions:

Question 1. What manufacturing circumstances prompt manufacturers to place advisory statements on a food label? What manufacturing circumstances do not prompt manufacturers to include an advisory statement? Why?

Question 2. If we decide to develop guidance for using advisory labeling, should we incorporate any of the guidelines from the Food Allergy Issues Alliance or the principles of the VITAL system? If so, why?

Question 3. Are there circumstances under which there is no possibility of cross-contact with a food allergen? If so, what are they?

Question 4. When manufacturers declare an allergenic ingredient in the ingredient list or in the ''Contains'' statement, do they also use an advisory statement indicating the presence of that ingredient? If so, why? What do allergic consumers think of such labeling? Do consumers consume the food product if they are allergic to the allergen referred to in the advisory statement? Is the presence of both an advisory statement and a ''Contains'' statement that include the same allergen on the same food label confusing? Why or why not?

Question 5. What criteria and considerations does a small firm rely on when determining whether to use advisory labeling? Are these the same criteria and considerations that a large firm relies on? How frequently does a small firm use advisory labeling compared to a large firm? If we decide to develop guidance for using advisory labeling, what options should we investigate to consider the circumstances of small firms?

Question 6. How do manufacturers decide whether to label their finished products with advisory labeling when their incoming ingredients are labeled with advisory statements?

Issue 2: FDA is also assessing whether advisory labeling is useful to consumers and how consumers interpret advisory labeling statements. Currently, industry uses many different advisory statements, such as ''May contain (allergen),'' ''(allergen) traces,'' ''Produced on shared equipment that processes (allergen),'' and ''Produced in a plant that processes (allergen).'' We are concerned that allergic consumers may be risking their health by ignoring labeling designed to inform them of the potential presence of allergens in foods. To help us better understand what type of advisory labeling is most effective in helping consumers avoid adverse allergic reactions, we ask the following questions:

Question 7. Consumer research suggests that different advisory statements convey different degrees of potential for the inadvertent presence of an allergen in a food. What message do manufacturers want to convey by an advisory statement generally?

Question 8. What specific advisory statements adequately inform consumers of the potential risk of cross-contact with allergenic materials? What advisory statements most accurately communicate to consumers and their caregivers the potential risk of the presence of the allergen? Why?

Question 9. If you are a food-allergic consumer or caregiver to such a consumer, do you ever ignore advisory statements? If so, which types of statements, and why?

Question 10. In addition to the information and data mentioned in this document, what additional information or data are available that would assist us in understanding consumers' perceptions of, use of, and need for specific advisory statements and advisory labeling in general?

Issue 3: FDA is assessing how advisory statements should be worded to be the most effective in communicating the likelihood that an allergen may be present in a food. Consumer focus group research shows that the elements essential for an effective warning or safe handling statement are: a description of the hazard, handling instructions for avoiding the hazard, and an instructional statement that describes conditions under which the hazard occurs and what action to take if the hazard is not avoided (Ref. 10). This same research indicates that label messages are more credible when consumers know the reason for the message. The agency has previously used this consumer study information to craft the warning statements and safe handling statements found in 21 CFR 101.17. To help us better understand how advisory statements should be worded to be the most effective in communicating the likelihood that an allergen may be present in a food, we ask the following questions:

Question 11. What elements are needed in an advisory statement to adequately inform consumers of the potential for the inadvertent presence of an allergen and would communicate to allergic consumers a consistent and effective message regarding the risk of consuming the product?

Question 12. How would the use of consistent and effective advisory labeling affect consumer understanding of the potential for an allergen to be present in a food?

IV. Notice of Hearing Under 21 CFR Part 15

Under authority delegated by the Commissioner of Food and Drugs (the Commissioner), the Associate Commissioner for Policy and Planning finds that it is in the public interest to permit persons to present information and views at a public hearing regarding the use of allergen advisory labeling and is announcing that the public hearing will be held in accordance with part 15 (21 CFR part 15). The presiding officer will be the Commissioner or his designee. The presiding officer will be accompanied by a panel of FDA employees with relevant expertise.

Persons who wish to participate in the hearing (either by making a presentation or as a member of the audience) must file a notice of participation (see **DATES**, **ADDRESSES**, **FOR FURTHER INFORMATION**

CONTACT, and section V of this document). Under authority delegated by the Commissioner, the Associate Commissioner for Policy and Planning has determined under § 15.20(c) that advance submissions of oral presentations are necessary for the panel to formulate useful questions to be posed at the hearing under § 15.30(e), and that the submission of a comprehensive outline or summary is an acceptable alternative to the submission of the full text of the oral presentation. For efficiency, we request that individuals and organizations with common interests consolidate their requests for oral presentation and request time for a joint presentation through a single representative. After reviewing the notices of participation and accompanying information, we will schedule each oral presentation and notify each participant of the time allotted to the presenter and the approximate time that the presentation is scheduled to begin. If time permits, we may allow interested persons who attend the hearing but did not submit a notice of participation in advance to make an oral presentation at the conclusion of the hearing. The hearing schedule will be available at the hearing.

After the hearing, the schedule and a list of participants will be placed on file in the Division of Dockets Management (see **ADDRESSES**) under the docket number listed in brackets in the heading of this document.

To ensure timely handling of any mailed notices of participation, written material associated with presentations, or comments, any outer envelope should be clearly marked with the docket number listed in brackets in the heading of this document along with the statement ''Food Labeling; Current Trends in the Use of Allergen Advisory Labeling: Its Use, Effectiveness, and Consumer Perception; Public Hearing; Request for Comments.''

Under § 15.30(f), the hearing is informal, and the rules of evidence do not apply. No participant may interrupt the presentation of another participant. Only the presiding officer and panel members may question any person during or at the conclusion of each presentation.

Public hearings under part 15 are subject to FDA's policy and procedures for electronic media coverage of FDA's public administrative proceedings (part 10 (21 CFR part 10, subpart C)). Under § 10.205, representatives of the electronic media may be permitted, subject to the procedures and limitations in § 10.206, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants. The hearing will be transcribed as stipulated in § 15.30(b). For additional information about transcripts, see section VII in this document.

Any handicapped persons requiring special accommodations to attend the hearing should direct those needs to the appropriate contact person (see **FOR FURTHER INFORMATION CONTACT**).

To the extent that the conditions for the hearing, as described in this document, conflict with any provisions set out in part 15, this document acts as a waiver of these provisions as specified in §§ 10.19 and 15.30(h). In particular, § 15.21(a) states that the notice of hearing will provide persons an opportunity to file a written notice of participation with the Division of Dockets Management within a specified period of time. If the public interest requires, e.g., if a hearing is to be conducted within a short period of time, the notice may name a specific FDA employee and telephone number to whom an oral notice of participation may be given. If the public interest requires, the notice may also provide for submitting notices of participation at the time of the hearing. In this document, the conditions for the hearing specify that notices of participation be submitted electronically to an agency Web site, to a contact person who will accept notices of participation by mail, telephone, fax, or e-mail, or in person on the day of the hearing (as time and space permits). In addition, the conditions for the hearing specify that written material associated with an oral presentation be provided to a contact person who will accept it by mail, fax, or e-mail rather than to the Division of Dockets Management. We are using these procedures to facilitate the exchange of information between participants and the agency. Under authority delegated by the Commissioner, the Associate Commissioner for Policy and Planning finds under § 10.19 that no participant will be prejudiced, the ends of justice will thereby be served, and the action is in accordance with law if notices of participation are submitted by any of the procedures listed in this document.

V. How to Participate in the Hearing

Registration by submission of a notice of participation is necessary to ensure participation and will be accepted on a first-come, first-served basis. The closing date for registration is September 8, 2008. The notice of participation may be submitted electronically, orally, or by fax, mail, or e-mail (see **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT**). We encourage you to submit your notice of participation electronically. A single copy of any notice of participation is sufficient.

The notice of participation must include your name, title, business affiliation (if applicable), address, telephone number, fax number (if available), and e-mail address (if available). If you wish to request an opportunity to make an oral presentation during the open public comment period of the hearing, your notice of participation also must include the title of your presentation, the sponsor of the oral presentation (e.g., the organization paying travel expenses or fees), if any; and the approximate amount of time requested for the presentation. Presentations will be limited to the questions and subject matter identified in section III of this document, and, depending on the number of requests received, we may be obliged to limit the time allotted for each presentation (e.g., 5 minutes each).

Under § 15.20(c), if you request an opportunity to make an oral presentation, you must submit your presentation (either as the full text of the presentation or as a comprehensive outline or summary). You may submit your presentation by e-mail, fax, or mail. A single copy of your presentation is sufficient. See **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** for information on where to send your presentation.

Persons who wish to request an opportunity to make an oral presentation must submit a notice of participation by August 26, 2008, and also must submit either the full text of the oral presentation or a comprehensive outline or summary of the oral presentation by September 8, 2008. Individuals who request an opportunity to make an oral presentation will be notified of the scheduled time for their presentation prior to the hearing. All other persons wishing to attend the hearing must submit a notice of participation by September 8, 2008. Persons requiring special accommodations due to a disability must submit a notice of participation by September 8, 2008, and should inform the contact person of their request (see **FOR FURTHER INFORMATION CONTACT**). Persons wishing to park onsite should inform the contact person of their request by September 10, 2008.

We will also accept notices of participation onsite on a first-come, first-served basis; however, space is limited and registration will be closed when the maximum seating capacity is

reached. Requests for an opportunity to make a presentation from individuals or organizations that did not make such a request in advance may be granted if time permits.

Persons who submit a notice of participation in advance of the hearing should check in at the on-site registration desk between 8 a.m. and 9 a.m. Persons who wish to submit a notice of participation on-site on the day of the hearing may do so at the registration desk between 8 a.m. and 9 a.m. We encourage all participants to attend the entire hearing. Because the hearing will be held in a Federal building, hearing participants must present photo identification and plan adequate time to pass through the security system.

We may post all submissions and received comments without change to *http://www.regulations.gov*, including any personal information provided.

VI. Request for Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments for consideration at or after the hearing in addition to, or in place of, a request for an opportunity to make an oral presentation (see section V of this document). Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Please note that on January 15, 2008, the FDA Division of Dockets Management Web site transitioned to the Federal Dockets Management System (FDMS). FDMS is a Government-wide, electronic docket management system. Electronic comments or submissions will be accepted by FDA only through FDMS at *http://www.regulations.gov*.

VII. Transcripts

Please be advised that as soon as a transcript is available, it will be accessible at *http://www.fda.gov/ohrms/dockets/ac/acmenu.htm*. It may be viewed at the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. A transcript will also be available in either hardcopy or on CD-ROM after submission of a Freedom of Information request. Written requests are to be sent to Division of Freedom of Information (HFI–35), Office of Management Programs, Food and Drug Administration, 5600 Fishers Lane, rm. 6–30, Rockville, MD 20857.

VIII. References

We have placed the following references on display in the Division of Dockets Management (see **ADDRESSES**) and interested parties may see them between 9 a.m. and 4 p.m., Monday through Friday. (FDA has verified the Web site addresses, but FDA is not responsible for any subsequent changes to the Web site after this document publishes in the **Federal Register**.)

1. Center for Food Safety and Applied Nutrition, U.S. Food and Drug Administration, ''Notice to Manufacturers, Label Declaration of Allergenic Substances in Foods,'' June 10, 1996.

2. Food and Drug Administration, 2001, ''Statement of Policy for Labeling and Preventing Cross-contact of Common Food Allergens; Compliance Policy Guide'' accessible at *http://www.fda.gov/ora/compliance_ref/cpg/cpgfod/cpg555–250.htm*

3. Center for Food Safety and Applied Nutrition, U.S. Food and Drug Administration, ''Report to the Committee on Health, Education, Labor, and Pensions, United States Senate and the Committee on Energy and Commerce, United States House of Representatives,'' July 2006, accessible at *http://www.cfsan.fda.gov/~acrobat/alrgrep.pdf*

4. Verrill, Linda and Conrad J. Choinière. (2009). ''Are Food Allergen Advisory Statements Really Warnings?: Variation in Consumer Preferences and Consumption Decisions,'' *Journal of Food Products Marketing*. 15(2) (accepted for publication).

5. Wogalter, M.S., M.J. Kalsher, R. Rashid, (1999), ''Effect of Signal Word and Source Attribution on Judgments of Warning Credibility and Compliance Likelihood,'' *International Journal of Industrial Ergonomics*. 1999 24:185–192.

6. Hefle, S.L., T.J. Furlong, L. Niemann, H. Lemon-Mule, S. Sicherer, S.L. Taylor, (2007), ''Consumer Attitudes and Risks Associated With Packaged Foods Having Advisory Labeling Regarding the Presence of Peanuts,'' *Journal of Allergy and Clinical Immunology*, 120(1):171–176.

7. Food Allergy Issues Alliance, ''Food Allergen Labeling Guidelines,'' May 2001.

8. Canadian Food Inspection Agency, ''Precautionary Labelling Regarding Food Allergens in Pre-packaged Foods'' September 25, 2007, accessible at *http://www.inspection.gc.ca/english/fssa/invenq/inform/20070925e.shtml* on March 26, 2008.

9. Australian Food and Grocery Council Allergen Forum, ''Food Industry Guide to Allergen Management and Labelling,'' 2007 revised edition, accessible at *http://www.allergenbureau.net/downloads/allergen-guide/Allergen_Guide_2007.pdf on March 26*, 2008.

10. Levy, A.S., ''Review of Research Communicating Warning Information,'' Consumer Studies Branch, Office of Scientific Analysis and Support, Center for Food Safety and Applied Nutrition, Food and Drug Administration, June 1997.

Dated: July 30, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8–18280 Filed 8–7–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group, Subcommittee I—Career Development.

Date: September 30–October 1, 2008.

Time: 8 a.m. to 5 a.m.

Agenda: To review and evaluate grant applications.

Place: Crowne Plaza National Airport, 1480 Crystal Drive, Arlington, VA 22202.

Contact Person: Sonya Roberson, PhD, Scientific Review Officer, Resources And Training Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Blvd., Room 8109, Bethesda, MD 20892, 301–594–1182, *robersos@mail.nih.gov*.

Name of Committee: National Cancer Institute Initial Review Group, Subcommittee H—Clinical Groups.

Date: October 13–14, 2008.

Time: 8 a.m. to 9 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Timothy C. Meeker, MD, PhD, Scientific Review Officer, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 8103, Bethesda, MD 20892, (301) 594–1279, *meekert@mail.nih.gov*.

Name of Committee: National Cancer Institute Initial Review Group, Subcommittee G—Education.

Date: October 23–24, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Sand Key Resort, 1160 Gulf Blvd., Clearwater, FL 33767.

Contact Person: Jeannette F Korczak, PhD, Scientific Review Officer, Review Training Resources Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Blvd., Room 8115, Bethesda, MD 20892, 301–496–9767, *korczakj@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: July 31, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–18278 Filed 8–7–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel: SBIR Phase II—Topics 44, 53 and 55B.

Date: August 21, 2008.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Aileen Schulte, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd, Room 6140, MSC 9608, Bethesda, MD 20892–9608, 301–443–1225, *aschulte@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: August 1, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–18243 Filed 8–7–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Newborn Screening Network Coordinating Center.

Date: August 27, 2008.

Time: 2:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6100 Executive Boulevard, Room 5B01, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Samiyyah Manning, Extramural Support Assistant, Division of Scientific Review, National Institute of Child Health, and Human Development, NIH, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892–7510, (301) 435–6899, *mannings@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: August 1, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–18248 Filed 8–7–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Deafness and Other Communication Disorders Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Deafness and Other Communication Disorders Advisory Council.

Date: September 12, 2008.

Closed: 8:30 a.m. to 10:50 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Bethesda, MD 20892.

Open: 10:50 a.m. to 2:30 p.m.

Agenda: Staff reports on divisional, programmatic, and special activities.

Place: National Institutes of Health, Building 31, 31 Center Drive, Bethesda, MD 20892.

Contact Person: Craig A. Jordan, PhD, Director, Division of Extramural Activities, NIDCD, NIH, Executive Plaza South, Room 400C, 6120 Executive Blvd., Bethesda, MD 20892–7180, 301–496–8693, *jordanc@nidcd.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.nidcd.nih.gov/about/groups/ndcdac/.* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: August 4, 2008.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–18354 Filed 8–7–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Neurological Disorders and Stroke Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Neurological Disorders and Stroke Council.

Date: September 18–19, 2008.

Open: September 18, 2008, 10:30 a.m. to 5 p.m.

Agenda: Report by the Director, NINDS; Report by the Director, Division of Extramural Research, and other administrative and program developments.

Place: National Institutes of Health, Building 31, 31 Center Drive, C Wing, Conference Room 10, Bethesda, MD 20892.

Closed: September 19, 2008, 8 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, C Wing, Conference Room 10, Bethesda, MD 20892.

Contact Person: Robert Finkelstein, PhD, Associate Director for Extramural Research, National Institute of Neurological Disorders and Stroke, NIH, 6001 Executive Blvd., Suite 3309, MSC 9531, Bethesda, MD 20892, (301) 496–9248.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *www.ninds.nih.gov*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: August 1, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–18355 Filed 8–7–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Amended Notice of Workgroup Meeting

Notice is hereby given of a change in the meeting of the Strategic Planning Implementation Workgroup organized by the Interagency Autism Coordinating Committee (IACC). This telephone conference meeting will be held on August 8, 2008, from 11 a.m. to 3 p.m. EDT, at the Neuroscience Center, Conference Room A, 6001 Executive Boulevard, Rockville, MD 20892. Notice of this workgroup meeting was published in the **Federal Register** on July 31, 2008, 73 FR 44756.

Audio of this workgroup meeting will now be accessible to the public via a teleconference phone link and there will be Web-based access to information displayed at the meeting via computer/projector.

Access information:

Phone Number: 888–455–2920.

Access Number: 3857872.

Webinar registration address: https://www1.gotomeeting.com/register/921061447.

Attendance at the meeting will be limited due to space available.

The purpose of the workgroup meeting is to discuss future budgetary requirements for the IACC Strategic Plan for Autism Spectrum Disorder (ASD) Research.

The workgroup findings will be forwarded to the IACC for consideration and discussion at the next committee meeting on November 21, 2008.

Information about the IACC is available on the Web site: *http://www.nimh.nih.gov/research-funding/scientific-meetings/recurring-meetings/iacc/index.shtml.*

Dated: August 1, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–18245 Filed 8–7–08; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

National Protection and Programs Directorate; Submission for Review: Constellation/Automated Critical Asset Management System; (C/ACAMS) Functional Survey, 1670-NEW

AGENCY: National Protection and Programs Directorate, Office of

Infrastructure Protection, Infrastructure Information Collection Division, DHS.

ACTION: 30-Day Notice and request for comments.

SUMMARY: The Department of Homeland Security (DHS) invites the general public and other federal agencies the opportunity to comment on new information collection request 1670-NEW, Constellation/Automated Critical Asset Management System (C/ACAMS) Functional Survey. As required by the Paperwork Reduction Act of 1995, (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), DHS is soliciting comments for this collection. The information collection was previously published in the **Federal Register** on June 5, 2008 at 73 FR 32037 allowing for a 60-day public comment period. No comments were received on this information collection. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: Comments are encouraged and will be accepted until September 8, 2008. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Officer for National Protection and Programs Directorate, DHS or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW, Washington, DC 20503, Attention: Desk Officer for National Protection and Programs Directorate, DHS or via electronic mail to *oira_submission@omb.eop.gov*.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Analysis:

Agency: Department of Homeland Security, National Protection and Programs Directorate, Infrastructure Protection, Infrastructure Information Collection Division.

Title: Constellation/Automated Critical Asset Management System (C/ACAMS) Functional Survey.

OMB Number: 1670–NEW.

Frequency: Once a year.

Affected Public: State employees.

Number of Respondents: 650 per year.

Estimated Time Per Respondent: 15 minutes.

Total Burden Hours: 163 hours.

Total Burden Cost (capital/startup): $1,800.00.

Total Burden Cost (operating/maintaining): $1,250.00 (This is a shared cost which will diminish as more surveys use the system.)

Description: The C/ACAMS Program Management Office (PMO) uses the Functional Survey customer survey to determine levels of customers' satisfaction with experience using the C/ACAMS tool. The survey supports data-based decision-making because it evaluates quantitative and qualitative data to identify improvements and identify significant issues based on customers' experience.

Dated: July 29, 2008.

Matt Coose,

Acting Chief Information Officer, National Protection and Programs Directorate, Department of Homeland Security.

[FR Doc. E8–18294 Filed 8–7–08; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5186–N–32]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Kathy Ezzell, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7266, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for ''off-site use only'' recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Theresa Rita, Division of Property Management, Program Support Center, HHS, Room 5B–17, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application

packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: ARMY: Ms. Veronica Rines, Headquarters, Department of the Army, Office of the Assistant Chief of Staff for Installation Management, 2511 Jefferson Davis Hwy., Arlington, VA 22202; (703) 601–2545; ENERGY: Mr. Mark Price, Department of Energy, Office of Engineering & Construction Management, MA–50, 1000 Independence Ave, SW., Washington, DC 20585; (202) 586–5422; GSA: Mr. John Smith, Deputy Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th & F Streets, NW., Washington, DC 20405; (202) 501–0084; NAVY: Mrs. Mary Arndt, Acting Director, Department of the Navy, Real Estate Services, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE., Suite 1000, Washington, DC 20374–5065; (202) 685–9305; (These are not toll-free numbers).

Dated: July 31, 2008.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

Title V, Federal Surplus Property Program FEDERAL REGISTER Report for 08/08/2008

Suitable/Available Properties

Building

Montana

Bldg. 1045
Kootenai
Hwy 508
Lincoln MT 59935
Landholding Agency: GSA
Property Number: 54200830007
Status: Surplus
GSA Number: 7–A–MT–0627
Comments: 1385 sq. ft., most recent use—residence, off-site use only

Bldg. 1063
Kootenai
Hwy 508
Lincoln MT 59935
Landholding Agency: GSA
Property Number: 54200830008
Status: Surplus
GSA Number: 7–A–MT–0627
Comments: 3145 sq. ft., most recent use—residence, off-site use only

Bldg. 1324
Kootenai
Hwy 508
Lincoln MT 59935
Landholding Agency: GSA
Property Number: 54200830009
Status: Surplus
GSA Number: 7–A–MT–0627
Comments: 2297 sq. ft., presence of asbestos, most recent use—bunkhouse, off-site use only

Suitable/Available Properties

Building

Montana

Bldg. 1325
Kootenai
Hwy 508
Lincoln MT 59935
Landholding Agency: GSA
Property Number: 54200830010
Status: Surplus
GSA Number: 7–A–MT–0627
Comments: 2297 sq ft., presence of asbestos, most recent use—bunkhouse, off-site use only

Bldg. 2326
Kootenai
Hwy 508
Lincoln MT 59935
Landholding Agency: GSA
Property Number: 54200830011
Status: Surplus
GSA Number: 7–A–MT–0627
Comments: 180 sq. ft., most recent use—storage, off-site use only

Bldg. 2641
Kootenai
Hwy 508
Lincoln MT 59935
Landholding Agency: GSA
Property Number: 54200830012
Status: Surplus
GSA Number: 7–A–MT–0627
Comments: 63 sq. ft., most recent use—storage, off-site use only

Suitable/Available Properties

Building

Montana

Bldg. 2000
Beaverhead MT 59762
Landholding Agency: GSA
Property Number: 54200830013
Status: Surplus
GSA Number: 7–A–MT–0627
Comments: 998 sq. ft., most recent use—office, off-site use only

Bldg. 3501
Jefferson MT
Landholding Agency: GSA
Property Number: 54200830014
Status: Surplus
GSA Number: 7–A–MT–0627
Comments: 50 ft., most recent use—tower, off-site use only

Bldg. 2002
Flathead
Big Fork MT 59911
Landholding Agency: GSA
Property Number: 54200830015
Status: Surplus
GSA Number: 7–A–MT–0627
Comments: 750 sq. ft., most recent use—office, off-site use only

Bldg. 2155
Flathead
Big Fork MT 59911
Landholding Agency: GSA
Property Number: 54200830016
Status: Surplus
GSA Number: 7–A–MT–0627
Comments: 440 sq. ft., most recent use—storage, off-site use only

Suitable/Available Properties

Building

Montana

Bldg. 1000
Lewis & Clark
Judith Basin MT 59479
Landholding Agency: GSA
Property Number: 54200830017
Status: Surplus
GSA Number: 7–A–MT–0627
Comments: 1432 sq. ft., most recent use—residence, off-site use only

Bldg. 2429
Lewis & Clark
Judith Basin MT 59479
Landholding Agency: GSA
Property Number: 54200830018
Status: Surplus
GSA Number: 7–A–MT–0627
Comments: 240 sq. ft., most recent use—shed, off-site use only

Unsuitable Properties

Building

California

Bldgs. 2, 10, 59

Naval Base
Point Loma CA
Landholding Agency: Navy
Property Number: 77200830012
Status: Unutilized
Reasons: Secured Area

New York

Bldg. 913T
Brookhaven Natl Laboratory
Upton NY 11973
Landholding Agency: Energy
Property Number: 41200830001
Status: Unutilized
Reasons: Extensive deterioration; Secured Area; Within 2000 ft. of flammable or explosive material

Ohio

National Guard Facility
1512 Oak Harbor Rd.
Fremont OH 43420
Landholding Agency: GSA
Property Number: 54200830006
Status: Excess
GSA Number: 1–D–OH–834
Reasons: Within 2000 ft. of flammable or explosive material

Unsuitable Properties

Building

Utah

Bldg. 00143
Tooele Army Depot
Tooele UT 84074
Landholding Agency: Army
Property Number: 21200830002
Status: Unutilized
Reasons: Extensive deterioration

Virginia

Bldgs. NH–18, NH–21
Naval Support Activity
Norfolk VA 23551
Landholding Agency: Navy
Property Number: 77200830014
Status: Excess
Reasons: Extensive deterioration; Secured Area

Bldg. 100
Naval Support Activity
Lafayette River Annex
Norfolk VA 23551
Landholding Agency: Navy
Property Number: 77200830015
Status: Excess
Reasons: Extensive deterioration; Secured Area

Unsuitable Properties

Land

North Carolina

0.23 acres
Marine Corps Base
Camp Lejeune NC
Landholding Agency: Navy
Property Number: 77200830013
Status: Unutilized
Reasons: Secured Area

[FR Doc. E8–18181 Filed 8–7–08; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5224–N–01]

Reconsideration of Waivers Granted to and Alternative Requirements for Community Development Block Grant Disaster Recovery Grantees Under Public Laws 109–148 and 109–234

AGENCY: Office of the Secretary, HUD.

ACTION: Notice.

SUMMARY: This Notice reconsiders and generally affirms the waivers made under the three ''common'' Notices governing grant funds for Community Development Block Grant (CDBG) disaster recovery grants for the purpose of assisting in the recovery in the most impacted and distressed areas related to the consequences of Hurricanes Katrina, Rita, and Wilma in the Gulf of Mexico in 2005. These prior notices were published in the **Federal Register** on February 13, 2006, October 30, 2006, and August 24, 2007. The Notice published today addresses the purpose and use of these funds, while highlighting unique components of the three notices and noting any changes made by HUD as the result of the required reconsideration of the waivers. For the most part, HUD is repeating or restating the original explanatory text so that grantees and program administrators may continue to have the explanation of a changed requirement and the requirement itself in a single document.

DATES: *Effective Date:* August 8, 2008.

FOR FURTHER INFORMATION CONTACT: Jessie Handforth Kome, Director, Disaster Recovery and Special Issues Division, Office of Block Grant Assistance, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7286, Washington, DC 20410, telephone number 202–708–3587. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at 800–877–8339. Fax inquiries may be sent to Ms. Kome at 202–401–2044. (Except for the 800 number, these telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

Authority To Grant Waivers

The Department of Defense, Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act, 2006 (Pub. L. 109–148, approved December 30, 2005) (Appropriations Act) appropriated $11.5 billion, and Chapter 9 of Title II of the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Hurricane Recovery, 2006 (Pub. L. 109–234, approved June 15, 2006), appropriated $5.2 billion for a combined total of $16.7 billion in CDBG funds for necessary expenses related to disaster relief, long-term recovery, and restoration of infrastructure directly related to the consequences of the covered disasters. These 2006 Acts (collectively ''the supplemental Acts'') authorize the Secretary to waive, or specify alternative requirements for, any provision of any statute or regulation that the Secretary administers in connection with the obligation by the Secretary or by the five eligible states' use of these funds, except for requirements related to fair housing, nondiscrimination, labor standards, and the environment, upon a request by one of the five states and a finding by the Secretary that such a waiver would not be inconsistent with the overall purpose of the statute. The difference between the waiver authorizations in the supplemental Acts is that Public Law 109–148 directs that the Secretary ''shall'' make the waivers in response to a state's request and a consistency finding, while Public Law 109–234 states that the Secretary ''may'' make such waivers.

This Notice reconsiders and generally affirms the waivers made under the three ''common'' Notices governing grant funds for CDBG disaster recovery grants for the purpose of assisting in the recovery in the most impacted and distressed areas related to the consequences of Hurricanes Katrina, Rita, and Wilma in the Gulf of Mexico in 2005. These prior notices were published in the **Federal Register** on February 13, 2006 (71 FR 7666), October 30, 2006 (71 FR 63337), and August 24, 2007 (72 FR 48804). The reconsideration of the February 13, 2006, Notice is required at this time. HUD is reconsidering the October 30, 2006, and August 24, 2007, Notices earlier than required by statute because publication of all common waivers and alternative requirements in a single Notice will produce a more sensible administrative and regulatory result.

The following waivers and alternative requirements for funds provided under either 2006 Act are in response to requests from all five states receiving CDBG disaster recovery grants under those Acts. In accordance with the states' earlier requests for administrative consistency to the extent feasible (noted in 71 FR 63337, published October 30, 2006), each waiver or alternative requirement will apply to assistance

provided under either Act wherever appropriate and possible.

After reconsideration, the Secretary affirms that the following waivers and alternative requirements, as described below, are not inconsistent with the overall purpose of Title I of the Housing and Community Development Act of 1974, as amended, or the Cranston-Gonzalez National Affordable Housing Act, as amended.

Under the requirements of the Department of Housing and Urban Development Reform Act of 1989 (the HUD Reform Act), as amended 42 U.S.C. 3535(q), regulatory waivers must be justified and published in the **Federal Register**.

Further, the supplemental Acts direct the Secretary to publish in the **Federal Register** any waiver (or reconsideration thereof) of any statute or regulation that the Secretary administers pursuant to Title I of the Housing and Community Development Act of 1974, no later than 5 days before the effective date of such waiver.

Except as described in this and other notices applicable to these grants, statutory and regulatory provisions governing the CDBG program for states, including those at 24 CFR part 570, shall apply to the use of these funds. In accordance with the supplemental Acts, HUD is reconsidering every published waiver 2 years from its date of publication.

Allocations

The supplemental Acts provide a combined total of $16.7 billion for the CDBG program for:

Necessary expenses related to disaster relief, long-term recovery, and restoration of infrastructure in the most impacted and distressed areas related to the consequences of Hurricanes Katrina, Rita, or Wilma in the Gulf of Mexico in 2005.

The $11.5 billion allocation appropriated under Public Law 109–148 is also discussed and expanded upon in the conference report (H.R. Rep. No. 109–359). The conference agreement included $11.5 billion for necessary expenses related to disaster relief, long-term recovery, restoration of infrastructure, and mitigation in communities in any declared disaster area in Louisiana, Mississippi, Alabama, Florida, and Texas related to Hurricanes Katrina, Rita, or Wilma. The conference agreement emphasizes the requirement that the states with the most impacted and distressed areas in connection with the Gulf of Mexico hurricanes receive priority consideration in the allocation of funds by HUD.

Public Law 109–148 further states:

That funds provided under this heading shall be administered through an entity or entities designated by the Governor of each state. And that no state shall receive more than 54 percent of the amount provided under this heading.

Public Law 109–234 also states:

That funds provided under this heading shall be administered through an entity or entities designated by the Governor of each state. And that no state shall receive more than $4.2 billion of the amount provided under this heading.

As provided for in Public Law 109–148 and Public Law 109–234, the funds may not be used for activities reimbursable by or for which funds are made available by the Federal Emergency Management Agency (FEMA) or the Army Corps of Engineers. Further, none of the funds made available under Public Law 109–234 may be used by a state or locality as a matching requirement, share, or contribution for any other federal program.

Also as required by Public Law 109–234, not less than $1.0 billion of the $5.2 billion appropriation (which computes to 19.3311 percent of any state's allocation, excluding $27.0 million in administrative set-asides) shall be used for repair, rehabilitation, and reconstruction (including demolition, site clearance, and remediation) of the affordable rental housing stock (including public and other HUD-assisted housing) in the impacted areas. Therefore, HUD requires that not less than 19.3311 percent of each state's grant under Public Law 109–234 be used for these activities.

The allocations from Public Law 109–148 are as follows:

TABLE 1—FEBRUARY 13, 2006, DISASTER RECOVERY ALLOCATION

State	Disaster	Allocation amount ($)
Alabama	Hurricane Katrina (FEMA–1605–DR)	74,388,000
Florida	Hurricane Katrina (FEMA–1602–DR), Hurricane Wilma (FEMA–1609–DR)	82,904,000
Louisiana	Hurricane Katrina (FEMA–1603–DR), Hurricane Rita (FEMA–1607–DR)	6,210,000,000
Mississippi	Hurricane Katrina (FEMA–1604–DR)	5,058,185,000
Texas	Hurricane Rita (FEMA–1606–DR)	74,523,000

The allocations from the supplemental appropriation, as provided for in Public Law 109–234, are as follows:

TABLE 2—OCTOBER 30, 2006, DISASTER RECOVERY SUPPLEMENTAL ALLOCATION

State	Disaster	Allocation amount ($)	Minimum amount for affordable rental housing ($)
Alabama	Hurricane Katrina (FEMA–1605–DR)	21,225,574	4,103,146
Florida	Hurricane Katrina (FEMA–1602–DR), Hurricane Wilma (FEMA–1609–DR)	100,066,518	19,344,001
Louisiana	Hurricane Katrina (FEMA–1603–DR), Hurricane Rita (FEMA–1607–DR)	4,200,000,000	811,907,984
Mississippi	Hurricane Katrina (FEMA–1604–DR)	423,036,059	81,777,703
Texas	Hurricane Rita (FEMA–1606–DR)	428,671,849	82,867,166

The amounts in Table 2 include the minimum amount of the allocations each state is required to use, pursuant to Public Law 109–234, for repair, rehabilitation, and reconstruction (including demolition, site clearance, and remediation) of the affordable rental housing stock (including public and other HUD-assisted housing) in the impacted areas.

In the case of Louisiana, the Department reviewed data chronicling the massive impact of the disasters on affordable rental housing, including public housing, in the areas of the state most affected by the disasters. In light of the state's unprecedented housing needs resulting from the disasters, the Secretary gave priority to affordable rental housing through an alternative requirement on the grant under Public Law 109–234. Under a prior Notice, HUD required that before the state of Louisiana expended any funds to meet the minimum requirement for affordable rental housing (see table above), the Governor of Louisiana had to demonstrate to the Secretary's satisfaction that the state will provide funds or has identified dedicated resources sufficient to meet the key disaster recovery needs for repair, rehabilitation, and reconstruction of affordable rental housing stock, including public housing, in the most impacted areas of the state. This notice continues the requirement to ensure that any fund reprogramming continues to prioritize such housing.

Pursuant to this Notice, HUD continues to invite each of the five states to submit an Action Plan for Disaster Recovery in accordance with prior Notices.

The supplemental Acts require that funds be used only for disaster relief, long-term recovery, and restoration of infrastructure in the most impacted and distressed areas related to the consequences of hurricanes in the Gulf of Mexico in 2005. The supplemental Acts direct that each grantee describe in its Action Plan for Disaster Recovery how the use of the grant funds gives priority to infrastructure development and the rehabilitation and reconstruction of the affordable rental housing stock, including public and other HUD-assisted housing. HUD monitors compliance with this direction and may be compelled to disallow expenditures if it finds that uses of funds are not disaster-related, or that funds allocated duplicate other benefits. HUD encourages grantees to contact their assigned HUD offices for guidance in complying with these requirements during development of their Action Plans for Disaster Recovery and any amendments or if they have any questions regarding meeting these requirements.

For the state of Louisiana, which suffered major impacts from two of the hurricanes, HUD estimated that more than 85 percent of the major and severe damage due to those storms was in the New Orleans-Metairie-Bogalusa Metropolitan Area (Jefferson, Orleans, Plaquemines, St. Bernard, St. Charles, St. John the Baptist, and St. Tammany parishes). HUD, therefore, expects the state to target a substantial majority of its disaster recovery funds under Public Law 109–234 toward the disaster recovery needs in the New Orleans-Metairie-Bogalusa Metropolitan Area, and included an alternative requirement to that effect.

Prevention of Fraud, Abuse, and Duplication of Benefits

The supplemental Acts also directed the Secretary to: Establish procedures to prevent recipients from receiving any duplication of benefits and report quarterly to the Committees on Appropriations with regard to all steps taken to prevent fraud and abuse of funds made available under this heading, including duplication of benefits.

To meet this directive, HUD has taken five courses of action. First, HUD established by Notice specific reporting, written procedures, monitoring, and internal audit requirements for grantees. Second, to the extent that its resources allowed, HUD instituted risk analysis and on-site monitoring of grantee management of the grants and of the specific uses of funds. Third, HUD has been extremely cautious in considering any waiver related to basic financial management requirements. The standard, time-tested CDBG financial requirements will continue to apply to future waiver requests. Fourth, HUD collaborated with the HUD Office of Inspector General to plan and implement oversight of these funds. Fifth, HUD followed the direction of the conference report for Public Law 109–494 and applied $6 million of funds appropriated for the Working Capital Fund for ''immediate enhancement of the capabilities of the Disaster Recovery Grant Reporting system by building additional electronic controls that are intended to increase accountability while further decreasing the risk of fraud, waste, or abuse.''

Waiver Justification

In general, waivers already granted to the states of Alabama, Florida, Louisiana, Mississippi, and Texas and alternative requirements already specified for CDBG disaster recovery grant funds provided under the supplemental Acts apply unless determined to be excepted or limited under this Notice. The notices in which these prior waivers and alternative requirements appear are shown in the table below.

Notice	Date	Applicability
71 FR 7666, FR–5051–N–01	02/13/2006	Common Allocation/Application for $11.5 billion.
71 FR 34448, FR–5051–N–02	06/14/2006	State of Alabama.
71 FR 34451, FR–5051–N–04	06/14/2006	State of Louisiana.
71 FR 34457, FR–5051–N–03	06/14/2006	State of Mississippi.
71 FR 43622, FR–5051–N–05	08/01/2006	State of Texas.
71 FR 51678, FR–5051–N–06	08/30/2006	State of Florida.
71 FR 62372, FR 5051–N–07	10/24/2006	State of Mississippi.
71 FR 63337, FR–5089–N–01	10/30/2006	Common Allocation/Application, and Applicability of Prior Waivers for $5.2 billion.
72 FR 10014, FR–5089–N–03	03/06/2007	State of Louisiana.
72 FR 10020, FR–5089–N–04	03/06/2007	State of Mississippi.
72 FR 48804, FR–5089–N–05	08/24/2007	Common waiver of Section 414 of the Stafford Act and alternative requirements.
72 FR 48808, FR–5051–N–08	08/24/2007	State of Mississippi.
72 FR 61788, FR–5051–N–09	10/31/2007	State of Mississippi.
72 FR 70472, FR–5183–N–01	12/11/2007	State of Louisiana for $3 billion.

The provisions of this Notice do not apply to funds provided under the regular CDBG program or other HUD or federally funded programs. The provisions provide additional flexibility in program design and implementation

and implement statutory requirements unique to these appropriations.

Section 414 of the Stafford Act

The states requested and were granted a waiver of Section 414 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended, for all their disaster recovery programs. Section 414 requires special measures that are designed to assist the efforts of the five states in expediting the rendering of aid and emergency services and in the reconstruction and rehabilitation of devastated areas, as necessary. In addition, the Secretary provided alternative requirements more consistent with the purpose of the supplemental Acts, which have assisted and supported disaster recovery in the areas most impacted by the effects of the three 2005 Gulf hurricanes. Hurricanes Katrina, Rita, and Wilma resulted in unprecedented destruction in the Gulf states, which will continue to require reconstruction for many years (and possibly decades) to come. The Department surveyed other federal agencies' administration of Section 414 and found varying interpretations for long-term, post-disaster projects involving the acquisition, rehabilitation, or demolition of disaster-damaged housing. The five states have also launched programs, such as rental rehabilitation, that could be affected by this statute if a clear direction to restore affordable rental housing to the devastated areas is not realized. Therefore, to avoid possible risk to the recovery effort by further delay in providing the states with a definitive answer, the Department issued a partial statutory waiver and specified alternative requirements. HUD is continuing this statutory waiver by this Notice because affordable housing programs are under way in all five of the states that rely on this waiver and alternative requirements. For programs or projects covered by this waiver (''covered programs or projects'') that are initiated within 3 years after the applicable disaster, an affected state must select one of the two alternative requirements specified in 72 FR 48804 and restated in this Notice.

Alternative One

The state may provide relocation assistance to a former residential occupant whose former dwelling is acquired, rehabilitated, or demolished for a covered program or project initiated within 3 years after the disaster, even though the actual displacements were caused by the effects of the disaster. To the extent practicable, such relocation assistance must be offered in a manner consistent with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (URA) and its implementing regulations, except as modified by applicable waivers and alternative requirements.

Alternative Two

If the state determines that the first alternative would substantially conflict with meeting the disaster recovery purposes of the supplemental Acts, the state may establish a re-housing plan for a covered program or project initiated within 3 years after the disaster. Such determinations must be made on a program or project basis (not person or household). The re-housing plan must include, at minimum, the following:

1. A description of the class(es) of persons eligible for assistance, including all persons displaced from their residences by particular enumerated, or all, effects of the disaster, and including all persons still receiving temporary housing assistance from FEMA for the covered disaster(s);

2. A description of the types and amount of financial assistance to be offered, if any;

3. A description of other services to be made available, including, at minimum, outreach efforts to eligible persons and housing counseling providing information about available housing resources. Outreach efforts and housing counseling information should be provided in languages other than English to persons with limited English proficiency; and

4. Contact information and a description of any applicable application process, including any deadlines.

5. If the program or project involves rental housing, the re-housing plan must also include the following:

(i) Placement services for former and prospective tenants;

(ii) A public registry of available rental units assisted with CDBG disaster recovery and/or other funds; and

(iii) A description of application materials, award letters, and operating procedures requiring property owners to make reasonable attempts to contact their former residential tenants and offer them a unit upon completion if they meet the program's eligibility requirements.

Justification for Waiver

This section of the Notice describes the basis for granting the section 414 waivers represented by the states in their requests. The principal reasons are highlighted here:

- Hurricanes Katrina, Rita, and Wilma caused unprecedented destruction in the Gulf Coast region. The magnitude of destruction resulted in massive displacements and decimated the region's affordable housing stock. Continued ambiguity on Section 414's applicability may cause substantial delays in long-term recovery along the Gulf Coast, particularly in Louisiana, Mississippi, and Texas;
- URA assistance may duplicate insurance proceeds and federal, state, or local housing assistance that has already been disbursed; and
- The opportunity to simplify the administration of disaster recovery projects or programs initiated years following the disaster.

Persons in physical occupancy who are displaced by a HUD-assisted disaster recovery project will continue to be eligible for URA assistance. Persons displaced by the effects of the disaster may continue to apply for assistance under the states' approved disaster recovery programs, which are designed to bring affordable housing to the affected areas. This waiver does not address programs or projects receiving other HUD funding, or funding from other federal sources.

A state may already be performing some elements of a re-housing plan, such as providing a public rental registry or undertaking outreach and placement services to those former residents still receiving FEMA housing assistance. Description in the re-housing plan of how those existing efforts will be available for covered programs or projects may be used in satisfying the requirements of this Notice. These waivers and alternative requirements streamline the pre-grant process and set the guidelines for a state's application for allocations.

Application for Allocations Under Public Laws 109–148 and 109–234

Overall benefit to low- and moderate-income persons. Pursuant to explicit authority in the supplemental Acts, HUD granted an overall benefit waiver that allows for up to 50 percent of the grants to assist activities under the urgent need or under the prevention or elimination of slums and blight national objectives, rather than the 30 percent allowed in the annual state CDBG program. The primary objective of Title I of the Housing and Community Development Act of 1974 and of the funding program of each grantee is ''development of viable urban communities, by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of

low and moderate income.'' The statute goes on to set the standard of performance for this primary objective for the annual CDBG program at 70 percent of the aggregate of the funds used for support of activities producing benefit to low- and moderate-income persons. Because extensive damage to community development and housing affected those with varying incomes, and the hardest-hit grantees have designed their programs to take advantage of this waiver, HUD is retaining the waiver of the 70 percent overall benefit requirement and leaving the 50 percent requirement, in order to give grantees continued flexibility to carry out recovery activities within the confines of the CDBG program national objectives. HUD may provide additional waivers of this requirement only if it makes a finding of compelling need. The requirement that each activity meet one of the three national objectives is not waived. HUD did reconsider, but is not altering this waiver. The states have already budgeted the vast majority of the funds under the terms of the initial waiver. Changing the waiver and alternative requirement now might be counter-productive to the recovery efforts across the Gulf Coast and, most particularly, in Louisiana. The state of Mississippi has been granted additional overall benefit waivers and alternative requirements as published in Notices other than the three under reconsideration in the current Notice. The first of Mississippi's other Notices is scheduled for reconsideration in June 2008.

Expanded distribution and direct action. The waivers and alternative requirements allowing distribution of funds by a state to entitlement communities and Indian tribes, and to allow a state to carry out activities directly rather than distribute all funds to units of local government, are consistent with waivers granted for previous similar disaster recovery cases. HUD believes that, in recommending the Lower Manhattan Development Corporation (LMDC) as a model and in increasing the administrative cap, Congress is signaling its intent that the states under this appropriation also be able to carry out activities directly. Therefore, HUD waived and continues its waiver of certain program requirements to support direct implementation of activities by the states. HUD stated in prior Notices and restates in this Notice the necessary complementary waivers and alternative requirements related to subrecipients to ensure proper management and disposition of funds during the grant execution and at closeout.

Consistency with the consolidated plan. HUD waived the requirement for consistency with the consolidated plan priorities because the effects of a major disaster usually alter a grantee's priorities for meeting housing, employment, and infrastructure needs. To emphasize that uses of grant funds must be consistent with the overall purposes of the Housing and Community Development Act of 1974, HUD requires the scope of the waiver to be consistent with the consolidated plan; the waiver applies only until the grantee first updates its consolidated plan priorities following the disaster. Because of limited data availability or staff resources, not all grantees have completely updated their consolidated plans. Therefore, HUD is continuing this waiver.

Action Plan for Disaster Recovery. HUD waived the CDBG action plan requirements and substituted an Action Plan for Disaster Recovery. HUD is continuing this waiver and restates the Action Plan for Disaster Recovery requirements under this Notice. This waiver allowed for rapid implementation of disaster recovery grant programs and ensured conformance with provisions of the supplemental Acts. Where possible, the Action Plan for Disaster Recovery, including certifications, does not repeat common action plan elements that the grantee already committed to carry out as part of its annual CDBG submission. Although a state as the grantee may designate an entity or entities to administer the funds, the state is responsible for compliance with federal requirements. During the course of these grants, HUD is monitoring the states' uses of funds and their actions for consistency with the Action Plan. A state may submit an initial, partial Action Plan and amend it one or more times subsequently until the Action Plan describes uses for the combined total grant amount. A state may also amend activities in its Action Plan.

The following new elements to a state's Action Plan for Disaster Recovery apply only to the supplemental funds allocated under Public Law 109–234:

These elements include a description of how the state gives priority to infrastructure development and rehabilitation and how the state gives priority to the rehabilitation and reconstruction of the affordable rental housing stock, including public and other HUD-assisted housing. The state must explain how its choices for the use of funds will result in the state meeting the requirement to use not less than 19.3311 percent of its allocation under Public Law 109–234 for repair, rehabilitation, and reconstruction (including demolition, site clearance, and remediation) of the affordable rental housing stock (including public and other HUD-assisted housing) in the impacted areas. The explanation should include how the state has considered the unique challenges that individuals with disabilities face in finding accessible and affordable housing.

Citizen participation. The citizen participation waiver and alternative requirements permit a more streamlined public process, but one that still provides for reasonable public notice, appraisal, examination, and comment on the CDBG disaster recovery grant fund activities. The waiver removes the requirement at both the grantee and state grant recipient levels for public hearings or meetings as the method for disseminating information or collecting citizen comments. Instead, grantees are encouraged to employ innovative methods to communicate with citizens and solicit their views on proposed uses of disaster recovery funds, and to indicate in the Action Plan how the grantee has addressed these views. After reconsidering this waiver, HUD decided to leave it in place because the need for speedy decision-making is still necessary in some of the states. However, HUD is providing guidance that, as time since the hurricanes elapses, HUD expects grantees to provide for increased time for public comments and for provision of public hearings related to amendments to the Action Plan whenever hearings are administratively feasible. HUD notes that most grantees are making good use of the Internet to provide disaster recovery information on plan amendments and resources for their citizens, and HUD expects this practice will continue.

Administration limitation. State program administration requirements must be modified to be consistent with the Appropriations Act, which allows up to 5 percent of the grant to be used for the state's administrative costs. The provisions at 42 U.S.C. 5306(d) and 24 CFR 570.489(a)(1)(i) and (iii) will not apply to the extent that they cap state administration expenditures and require a dollar-for-dollar match of state funds for administrative costs exceeding $100,000. HUD does not waive 24 CFR 570.489(a)(3) to allow the state to exceed the overall planning, management, and administrative cap of 20 percent.

Use of Subrecipients

The state CDBG program rule does not make specific provision for the treatment of the entities called ''subrecipients'' in the CDBG entitlement program. The waiver allowing a state to carry out activities directly creates a situation in which the state may use subrecipients to carry out activities in a manner similar to entitlement communities. HUD and its Office of Inspector General have long identified the use of subrecipients as a practice that increases the risk of abuse of funds. HUD's experience is that this risk can be successfully managed by adhering to the CDBG entitlement requirements and related guidance. Therefore, HUD requires that a state taking advantage of the waiver allowing it to carry out activities directly must follow the alternative requirements that are drawn from the CDBG entitlement rule and specified in this Notice, when using subrecipients.

Reporting

HUD waives the annual reporting requirement because Congress requires quarterly reports from the grantees and from HUD on various aspects of the uses of funds and of the activities funded with these grants. Many of the data elements the grantees will report to Congress quarterly are the same as those that HUD uses to exercise oversight for compliance with the requirements of this Notice and for prevention of fraud, abuse of funds, and duplication of benefits. To collect these data elements and to meet its reporting requirements, HUD requires each grantee to report to HUD quarterly using the online Disaster Recovery Grant Reporting system. HUD uses grantee reports to monitor for anomalies or performance problems that suggest fraud, abuse of funds, and duplication of benefits; to reconcile budgets, obligations, fund draws, and expenditures; to calculate applicable administrative and public service limitations and the overall percent of benefit to low- and moderate-income persons; and to establish a basis for risk analysis in determining a monitoring plan.

Originally, HUD's guidance was that after HUD reviews each report and accepts a report, the grantee must post the report on an Internet site with public access for its citizens. On reconsideration, HUD is requiring grantees to post each report as it is submitted. After HUD reviews the report, the grantee may also post the reviewed version, if HUD makes any changes. If a grantee chooses, it may use its report, together with a statement regarding any sole source procurements, as its required quarterly submission to the Committees on Appropriations. Each quarter, HUD will submit to the Committees a summary description of its report reviews, of other HUD monitoring and technical assistance activities undertaken during the quarter, and of any significant conclusions related to fraud, abuse of funds, or duplication of benefits.

Certifications

HUD waived the standard certifications and substituted alternative certifications. The alternative certifications are tailored to CDBG disaster recovery grants and remove certifications and references that are redundant or appropriate to the annual CDBG formula program.

Applicable Rules, Statutes, Waivers, and Alternative Requirements

The following discussion is comprised of two parts: a common section that applies to **Federal Register** notices 71 FR 7666, 71 FR 63337, and 72 FR 48804, and a unique section that highlights components of these three notices that are different.

Common Section

1. *General note.* Prerequisites to a grantee's receipt of CDBG disaster recovery assistance include adoption of a citizen participation plan; publication of its proposed Action Plan for Disaster Recovery; public notice and comment; and submission to HUD of an Action Plan for Disaster Recovery, including certifications. Except as described in this Notice, the statutory, regulatory, and notice provisions that shall apply to the use of these funds are:

a. The state-specific Notices governing the funds appropriated under Public Law 109–148 and Public Law 109–234 (the supplemental Acts) and already published in the **Federal Register**;

b. Those governing the CDBG program for states, including those at 42 U.S.C. 5301 *et seq.* and 24 CFR part 570.

2. *Overall benefit waiver and alternative requirement.* The requirements at 42 U.S.C. 5301(c), 42 U.S.C. 5304(b)(3)(A), and 24 CFR 570.484 that at least 70 percent of funds are for activities that benefit low- and moderate-income persons are waived to stipulate that at least 50 percent of disaster recovery grant funds from each grant must assist activities that principally benefit low- and moderate-income persons.

3. *Section 414 of the Stafford Act waiver and alternative requirements.*

a. Section 414 of the Stafford Act, 42 U.S.C. 5181 (including its implementing regulation at 49 CFR 24.403(d)), is waived to the extent that it would apply to CDBG disaster recovery-funded programs or projects initiated at least one year after the incident-date of Hurricane Katrina, Rita, or Wilma (as applicable) by the states of Alabama, Florida, Louisiana, Mississippi, and Texas under an approved Action Plan for Disaster Recovery for its grants under Public Law 109–148 or Public Law 109–234; provided that such program or project was not planned, approved, or otherwise under way prior to the disaster.

b. For all programs or projects covered by this waiver (''covered programs or projects'') that are initiated at least one year after but within no more than 3 years after the applicable disaster, the states of Alabama, Florida, Louisiana, Mississippi, and Texas must comply with one of the following two alternative requirements (for programs or projects initiated after the 3-year period, the alternative requirements would not apply; only the waiver would be applicable):

1. Relocation Assistance. The state may provide relocation assistance to a former residential occupant whose former dwelling is acquired, rehabilitated, or demolished for a covered program or project initiated within 3 years after the disaster, even though the actual displacements were caused by the effects of the disaster. To the extent practicable, such relocation assistance must be offered in a manner consistent with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, and its implementing regulations, except as modified by prior waivers and alternative requirements granted to the states.

2. Re-housing Plan. If the state determines that the first alternative would substantially conflict with meeting the disaster recovery purposes of the supplemental Acts, the grantee may establish a re-housing plan for a covered program or project initiated at least one year after, but within no more than 3 years after, the disaster. Such a determination must be made on a program or project basis (not person or household). The re-housing plan must include, at minimum, the following:

i. A description of the class(es) of persons eligible for assistance, including all residents displaced from their residences by either certain enumerated or all effects of the covered disaster, and including all disaster-displaced residents still receiving temporary housing assistance from FEMA for the covered disasters;

ii. A description of the types and amount of financial assistance to be provided, if any;

iii. A description of other services to be made available, including, at a minimum, outreach efforts to eligible persons and housing counseling that provide information about available housing resources;

iv. Contact information for additional program information;

v. A description of any applicable application process, including any deadlines; and

vi. If the program or project covered by this waiver involves rental housing, the grantee shall establish procedures for the following:

A. Application materials, award letters, and operating procedures that require property owners to make reasonable attempts to contact their former tenants and to offer a unit, upon completion, to those tenants meeting the program's eligibility requirements;

B. Placement services for former and prospective tenants; and

C. A public registry of available rental units assisted with CDBG disaster recovery and/or other funds.

c. Eligible Project Costs. The cost of relocation assistance and the reoccupancy plan are eligible project costs in the same manner and to the same extent as other project costs authorized under the supplemental Acts. For covered programs or projects involving affordable rental housing, the relocation and planning costs required by this Notice may be paid from funds reserved for the affordable rental housing stock in the impacted areas under Public Law 109–234.

4. *Direct grant administration by states and means of carrying out eligible activities.* Requirements at 42 U.S.C. 5306 are waived to the extent necessary to allow the state to use its disaster recovery grant allocation directly to carry out state-administered activities eligible under this Notice. Activities eligible under this Notice may be undertaken, subject to state law, by the recipient through its employees or through procurement contracts, through loans or grants under agreements with subrecipients, or by one or more entities that are designated by the chief executive officer of the state. Activities made eligible under section 105(a)(15) of the Housing and Community Development Act of 1974, as amended, may be undertaken only by entities specified in that section, regardless of whether the assistance is provided to such an entity from the state or from a unit of general local government.

5. *Consolidated Plan waiver.* Requirements at 42 U.S.C. 12706 and 24 CFR 91.325(a)(6), that housing activities undertaken with CDBG funds be consistent with the strategic plan, are waived. Further, the requirement at 42 U.S.C. 5304(e), to the extent that it would require HUD to annually review grantee performance under the consistency criteria, is also waived. These waivers apply only until the time that the grantee first updates its consolidated plan priorities following the hurricane.

6. *Citizen participation waiver and alternative requirement.* Provisions of 42 U.S.C. 5304(a)(2) and (3), 42 U.S.C. 12707, 24 CFR 570.486, and 24 CFR 91.115(b), with respect to citizen participation requirements, are waived and replaced by the requirements below. The streamlined requirements do not mandate public hearings at either the state or local government level, but do require providing a reasonable opportunity for citizen comment and ongoing citizen access to information about the use of grant funds. The streamlined citizen participation requirements for this grant are:

a. Before the grantee adopts the action plan for this grant or any substantial amendment to this grant, the grantee will publish the proposed plan or amendment (including the information required in this Notice for an Action Plan for Disaster Recovery). The manner of publication (including prominent posting on the state, local, or other relevant Web site) must afford citizens, affected local governments, and other interested parties a reasonable opportunity to examine the plan or amendment's contents. Subsequent to publication, the grantee must provide a reasonable time period and method(s) (including electronic submission) for receiving comments on the plan or on any substantial amendment to it. The grantee's plans to minimize displacement of persons or entities and to assist any persons or entities displaced must be published with the action plan. HUD expects the grantee to hold a public hearing on a proposed plan amendment unless doing so would hinder the provision of expedient disaster recovery.

b. In the action plan, each grantee will specify its criteria for determining what changes in the grantee's activities constitute a substantial amendment to the plan. At a minimum, adding or deleting an activity or changing the planned beneficiaries of an activity will constitute a substantial change. The grantee may modify or substantially amend the action plan if it follows the same procedures required in this Notice for the preparation and submission of an Action Plan for Disaster Recovery. The grantee must notify HUD, but is not required to notify the public, when it makes any plan amendment that is not substantial.

c. The grantee must consider all comments received on the action plan or any substantial amendment and submit to HUD a summary of those comments and the grantee's response with the action plan or substantial amendment.

d. The grantee must make the action plan, any substantial amendments, and all performance reports available to the public. HUD recommends posting them on the Internet. In addition, the grantee must make these documents available in a form accessible to persons with disabilities and non-English-speaking persons. During the term of this grant, the grantee will provide citizens, affected local governments, and other interested parties with reasonable and timely access to information and records relating to the action plan and to the grantee's use of this grant.

e. The grantee will provide a timely written response to every citizen complaint. Such response will be provided within 15 working days of the receipt of the complaint, if practicable.

7. *Modify requirement for consultation with local governments.* Currently, the statute and regulations require consultation with affected units of local government in the non-entitlement area of the state regarding the state's proposed method of distribution. HUD is waiving 42 U.S.C. 5306(d)(2)(C)(iv), 24 CFR 91.325(b), and 24 CFR 91.110, with the alternative requirement that the state consult with all disaster-affected units of general local government, including any CDBG entitlement communities, in determining the use of funds.

8. *Action Plan waiver and alternative requirement.* The requirements at 42 U.S.C. 12705(a)(2), 42 U.S.C. 5304(a)(1), 42 U.S.C. 5304(m), 42 U.S.C. 5306(d)(2)(C)(iii), 24 CFR 1003.604, and 24 CFR 91.320 are waived for these disaster recovery grants. Each state must submit to HUD an Action Plan for Disaster Recovery that describes:

a. The effects of the covered disaster, especially in the most impacted areas and populations, and the greatest recovery needs resulting from the covered disaster that have not been addressed by insurance proceeds, other federal assistance, or any other funding source;

b. The grantee's overall plan for disaster recovery, including:

1. How the state will promote sound short- and long-term recovery planning at the state and local levels, especially land use decisions that reflect

responsible flood plain management, removal of regulatory barriers to reconstruction, and prior coordination with planning requirements of other state and federal programs and entities;

2. How the state will encourage construction methods that emphasize high quality, durability, energy efficiency, and mold resistance, including how the state will promote enactment and enforcement of modern building codes and mitigation of flood risk, where appropriate;

3. How the state will provide or encourage provision of adequate, flood-resistant housing for all income groups that lived in the disaster-impacted areas prior to the incident date(s) of the applicable disaster(s), including a description of the activities it plans to undertake to address emergency shelter and transitional housing needs of homeless individuals and families (including subpopulations), to prevent low-income individuals and families with children (especially those with incomes below 30 percent of median) from becoming homeless, to help homeless persons make the transition to permanent housing and independent living, and to address the special needs of persons who are not homeless-identified, in accordance with 24 CFR 91.315(d);

c. Monitoring standards and procedures that are sufficient to ensure that program requirements, including non-duplication of benefits, are met and that provide for continual quality assurance, investigation, and internal audit functions, with responsible staff reporting independently to the Governor of the state or, at a minimum, to the chief officer of the governing body of any designated administering entity;

d. A description of the steps the state will take to avoid or mitigate occurrences of fraud, abuse, and mismanagement, especially with respect to accounting, procurement, and accountability, with a description of how the state will provide for increasing the capacity for implementation and compliance of local governments, subrecipients, subgrantees, contractors, and any other entity responsible for administering activities under this grant; and

e. The state's method of distribution. The method of distribution shall include descriptions of the method of allocating funds to units of local government and of specific projects the state will carry out directly, as applicable. The descriptions will include:

1. When funds are to be allocated to units of local government; and all criteria used to select applications from local governments for funding, including the relative importance of each criterion, and including a description of how the disaster recovery grant resources will be allocated among all funding categories, plus the threshold factors and grant size limits that are to be applied; and

2. In cases where the state will carry out activities directly, the projected uses for the CDBG disaster recovery funds broken down by responsible entity, activity, and geographic area;

3. How the method of distribution or use of funds described in accordance with the above subparagraphs will result in eligible uses of grant funds related to long-term recovery from specific effects of the disaster(s) or restoration of infrastructure; and

4. Sufficient information so that citizens, units of general local government, and other eligible subgrantees or subrecipients will be able to understand and comment on the action plan and, if applicable, be able to prepare responsive applications to the state.

f. Required certifications (see the applicable Certifications section of this Notice); and

g. A completed and executed federal form SF–424.

9. *Allow reimbursement for pre-agreement costs.* The provisions of 24 CFR 570.489(b) are applied to permit a grantee to reimburse itself for otherwise allowable costs incurred on or after the incident date of the covered disaster.

10. *Clarifying note on the process for environmental release of funds when a state carries out activities directly.* Usually, a state distributes CDBG funds to units of local government and takes on HUD's role in receiving environmental certifications from the grant recipients and approving releases of funds. For this grant, HUD will allow a state grantee to also carry out activities directly instead of distributing all funds to other governments. According to the environmental regulations at 24 CFR 58.4, when a state carries out activities directly, the state must submit the certification and request for release of funds to HUD for approval.

11. *Duplication of benefits.* In general, 42 U.S.C. 5155 (section 312 of the Robert T. Stafford Disaster Assistance and Emergency Relief Act, as amended) prohibits any person, business concern, or other entity from receiving financial assistance with respect to any part of a loss resulting from a major disaster as to which such person/business/entity has received financial assistance under any other program or from insurance or any other source. The appropriations acts stipulate that funds may not be used for activities reimbursable by, or for which funds have been made available by, the Federal Emergency Management Agency or by the Army Corps of Engineers.

12. *Waiver and alternative requirement for distribution to CDBG metropolitan cities and urban counties.*

a. Section 5302(a)(7) of title 42, U.S.C. (definition of ''non-entitlement area''), and provisions of 24 CFR part 570 that would prohibit a state from distributing CDBG funds to units of general local government in entitlement communities and to Indian tribes, are waived, including 24 CFR 570.480(a), to the extent that such provisions limit the distribution of funds to units of general local government located in entitlement areas and to state or federally recognized Indian tribes. The state is required instead to distribute funds to the most adversely affected and impacted areas related to the consequences of the covered disaster(s) without regard to a local government or Indian tribe status under any other CDBG program.

b. Additionally, because a state grantee under this appropriation may carry out activities directly, HUD is applying the regulations at 24 CFR 570.480(c) with respect to the basis under which HUD determines whether the state has failed to carry out its certifications; the basis shall be that the state has failed to carry out its certifications in compliance with applicable program requirements. Also, HUD is waiving 24 CFR 570.494, regarding timely distribution of funds. However, HUD expects each state grantee to expeditiously obligate and expend all funds, including any recaptured funds or program income, and to carry out activities in a timely manner.

13. *Note that use of grant funds must relate to the covered disaster(s).* The supplemental Acts impose fundability criteria in addition to the annual CDBG requirement that each activity must be eligible under 42 U.S.C. 5305(a) or this Notice and meet a CDBG national objective under the penultimate paragraph of 42 U.S.C. 5304(b)(3). Public Laws 109–148 and 109–234 require that each activity assisted must be related to disaster relief, long-term recovery, and restoration of infrastructure in the most impacted and distressed areas related to the consequences of Hurricanes Katrina, Rita, and Wilma in communities included in Presidential disaster declarations.

14. *Note on the change to the administration limitation.* Up to 5 percent of the grant amount may be used for the state's administrative costs.

The provisions of 42 U.S.C. 5306(d) and 24 CFR 570.489(a)(1)(i) and (iii) will not apply to the extent that they cap state administration expenditures and require a dollar-for-dollar match of state funds for administrative costs exceeding $100,000. HUD does not waive 24 CFR 570.489(a)(3) to allow a state to exceed the overall planning, management, and administrative cap of 20 percent.

Reporting

15. *Waiver of performance report and alternative requirement.* The requirements for submission of a Performance Evaluation Report (PER) pursuant to 42 U.S.C. 12708 and 24 CFR 91.520 are waived. The alternative requirement is that:

a. Each grantee must submit its Action Plan for Disaster Recovery, including performance measures, into HUD's Web-based Disaster Recovery Grant Reporting (DRGR) system. (The signed certifications and the form SF–424 must be submitted in hard copy.) As additional detail about uses of funds becomes available to the grantee, the grantee must enter this detail into DRGR, in sufficient detail to serve as the basis for acceptable performance reports.

b. Each grantee must submit a quarterly performance report, as HUD prescribes, no later than 30 days following each calendar quarter, beginning after the first full calendar quarter, after grant award and continuing until all funds have been expended and all expenditures reported. Each quarterly report will include information about the uses of funds during the applicable quarter, including (but not limited to) the project name, activity, location, and national objective, funds budgeted, obligated, drawn down, and expended; the funding source and total amount of any non-CDBG disaster funds; beginning and ending dates of activities; and performance measures such as numbers of low- and moderate-income persons or households benefiting. Quarterly reports to HUD must be submitted using HUD's Web-based DRGR system.

16. *Use of subrecipients.* The following alternative requirement applies for any activity that a state carries out directly by funding a subrecipient:

a. 24 CFR 570.503, except that specific references to 24 CFR parts 84 and 85 need not be included in subrecipient agreements.

b. 570.502(b), except to the extent that it mandates compliance with Office of Management and Budget (OMB) Circular A–110 (implemented at 24 CFR part 84, ''Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations''). HUD recommends application of 24 CFR part 84, but does not require it.

17. *Recordkeeping.* Recognizing that the state may carry out activities directly, 24 CFR 570.490(b) is waived in such a case and the following alternative provision shall then apply: state records. The state shall establish and maintain such records as may be necessary to facilitate review and audit by HUD of the state's administration of CDBG disaster recovery funds under 24 CFR 570.493. Consistent with applicable statutes, regulations, waivers and alternative requirements, and other federal requirements, the content of records maintained by the state shall be sufficient to: enable HUD to make the applicable determinations described at 24 CFR 570.493; make compliance determinations for activities carried out directly by the state; and show how activities funded are consistent with the descriptions of activities proposed for funding in the action plan. For fair housing and equal opportunity purposes and, as applicable, such records shall include data on the racial, ethnic, and gender characteristics of persons who are applicants for, participants in, or beneficiaries of the program.

18. *Change of use of real property.* This waiver conforms the change of use of real property rule to the waiver allowing a state to carry out activities directly. For purposes of this program, in 24 CFR 570.489(j), (j)(1), and the last sentence of (j)(2), ''unit of general local government'' shall be read as ''unit of general local government or state.''

19. *Responsibility for state review and handling of noncompliance.* This change conforms the rule with the waiver allowing the state to carry out activities directly. 24 CFR 570.492 is waived and the following alternative requirement applies: The state shall make reviews and audits, including on-site reviews of any subrecipients, designated public agencies, and units of general local government as may be necessary or appropriate to meet the requirements of section 104(e)(2) of the Housing and Community Development Act of 1974, as amended, and modified by this Notice. In the case of noncompliance with these requirements, the state shall take such actions as may be appropriate to prevent a continuance of the deficiency, to mitigate any adverse effects or consequences, and to prevent a recurrence. The state shall establish remedies for noncompliance by any designated public agencies or units of general local governments and for its subrecipients.

20. *Information collection approval note.* HUD has approval for information collection requirements in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) under OMB control number 2506–0165. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, nor is a person required to respond to, a collection of information, unless the collection displays a valid control number.

Certifications

21. *Certifications for state governments, waiver, and alternative requirement.* Section 91.325 of title 24 of the Code of Federal Regulations is waived. Each state must make the following certifications prior to receiving a CDBG disaster recovery grant:

a. The state certifies that it will affirmatively further fair housing, which means that it will conduct an analysis to identify impediments to fair housing choice within the state, take appropriate actions to overcome the effects of any impediments identified through that analysis, and maintain records reflecting the analysis and actions in this regard. (See 24 CFR 570.487(b)(2).)

b. The state certifies that it has in effect and is following a residential anti-displacement and relocation assistance plan in connection with any activity assisted with funding under the CDBG program.

c. The state certifies its compliance with restrictions on lobbying required by 24 CFR part 87, together with disclosure forms, if required by that part.

d. The state certifies that the Action Plan for Disaster Recovery is authorized under state law and that the state, and any entity or entities designated by the state, possesses the legal authority to carry out the program for which it is seeking funding, in accordance with applicable HUD regulations and this Notice.

e. The state certifies that it will comply with the acquisition and relocation requirements of the URA, as amended, and implementing regulations at 49 CFR part 24, except where waivers or alternative requirements are provided for this grant.

f. The state certifies that it will comply with section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), and implementing regulations at 24 CFR part 135.

g. The state certifies that it is following a detailed citizen participation plan that satisfies the

requirements of 24 CFR 91.115 (except as provided for in notices providing waivers and alternative requirements for this grant), and that each unit of general local government that is receiving assistance from the state is following a detailed citizen participation plan that satisfies the requirements of 24 CFR 570.486 (except as provided for in notices providing waivers and alternative requirements for this grant).

h. The state certifies that it has consulted with affected units of local government in counties designated in covered major disaster declarations in the non-entitlement, entitlement, and tribal areas of the state in determining the method of distribution of funding;

i. The state certifies that it is complying with each of the following criteria:

1. Funds will be used solely for necessary expenses related to disaster relief, long-term recovery, and restoration of infrastructure in the most impacted and distressed areas related to the consequences of the Gulf Coast hurricanes of 2005 in communities included in Presidential disaster declarations.

2. With respect to activities expected to be assisted with CDBG disaster recovery funds, the action plan has been developed so as to give the maximum feasible priority to activities that will benefit low- and moderate-income families.

3. The aggregate use of CDBG disaster recovery funds shall principally benefit low- and moderate-income families in a manner that ensures that at least 50 percent of the amount is expended for activities that benefit such persons during the designated period.

4. The state will not attempt to recover any capital costs of public improvements assisted with CDBG disaster recovery grant funds, by assessing any amount against properties owned and occupied by persons of low- and moderate-income, including any fee charged or assessment made as a condition of obtaining access to such public improvements, unless: (A) disaster recovery grant funds are used to pay the proportion of such fee or assessment that relates to the capital costs of such public improvements that are financed from revenue sources other than under this title; or (B) for purposes of assessing any amount against properties owned and occupied by persons of moderate income, the grantee certifies to the Secretary that it lacks sufficient CDBG funds (in any form) to comply with the requirements of clause (A).

j. The state certifies that the grant will be conducted and administered in conformity with title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and the Fair Housing Act (42 U.S.C. 3601–3619) and implementing regulations.

k. The state certifies that it has and that it will require units of general local government that receive grant funds to certify that they have adopted and are enforcing:

1. A policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in non-violent civil rights demonstrations; and

2. A policy of enforcing applicable state and local laws against physically barring entrance to or exit from a facility or location that is the subject of such non-violent civil rights demonstrations within its jurisdiction.

l. The state certifies that each state grant recipient or administering entity has the capacity to carry out disaster recovery activities in a timely manner, or that the state has a plan to increase the capacity of any state grant recipient or administering entity that lacks such capacity.

m. The state certifies that it will not use CDBG disaster recovery funds for any activity in an area delineated as a special flood hazard area in FEMA's most current flood advisory maps, unless it also ensures that the action is designed or modified to minimize harm to or within the floodplain in accordance with Executive Order 11988 and 24 CFR part 55.

n. The state certifies that it will comply with applicable laws.

22. *Duration of funding.* Availability of funds provisions in 31 U.S.C. 1551–1557, added by section 1405 of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101–510), limit the availability of certain appropriations for expenditure. This limitation may not be waived. However, the appropriations acts for these grants direct that these funds be available until expended unless, in accordance with 31 U.S.C. 1555, the Department determines that the purposes for which the appropriation has been made have been carried out and that no disbursement has been made against the appropriation for 2 consecutive fiscal years. In such a case, the Department shall close out the grant prior to expenditure of all funds.

Provisions Unique to Grants Under Public Law 109–234

23. *Action Plan additional elements.* The disaster recovery grantees receiving funding under Public Law 109–234 must provide the following elements as part of the overall plan for disaster recovery:

a. An explanation of how the state will give priority to the rehabilitation and reconstruction of the affordable rental housing stock, including public and other HUD-assisted housing, a description of the activities the state plans to undertake with grant funds under this priority, and a description of the unique challenges that individuals with disabilities face in finding accessible and affordable housing;

b. An explanation of how the state will give priority to infrastructure development and rehabilitation, and a description of the infrastructure activities it plans to undertake with grant funds; and

c. An explanation of how the method of distribution or use of funds described in accordance with the applicable notices will result in the state meeting the requirement that at least 19.3311 percent of its allocation under this notice shall be used for repair, rehabilitation, and reconstruction (including demolition, site clearance, and remediation) of the affordable rental housing stock (including public and other HUD-assisted housing) in the impacted areas.

24. *Alternative requirements regarding targeting in Louisiana.*

a. The State of Louisiana will target 70 percent of its disaster recovery funds under Public Law 109–234 toward the disaster recovery needs in the New Orleans-Metairie-Bogalusa Metropolitan Area; and

b. Before Louisiana expends any funds to meet the minimum requirement for affordable rental housing under this notice, the Governor of Louisiana shall demonstrate to the Secretary's satisfaction that the state will provide funds or has identified dedicated resources sufficient to meet the key disaster recovery needs for repair, rehabilitation, and reconstruction of affordable rental housing stock, including public housing disaster recovery in the most impacted areas of the state.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers for the disaster recovery grants under this Notice are as follows: 14.219; 14.228.

Finding of No Significant Impact

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The FONSI is available for public inspection between 8 a.m. and 5

p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the finding by calling the Regulations Division at 202–402–3055 (this is not a toll-free number).

Dated: July 28, 2008.

Roy A. Bernardi,

Deputy Secretary.

[FR Doc. E8–18281 Filed 8–7–08; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Exxon Valdez Oil Spill Trustee Council; Notice of Meeting

AGENCY: Office of the Secretary, Department of the Interior.

ACTION: Notice of meeting.

SUMMARY: The Department of the Interior, Office of the Secretary is announcing a public meeting of the *Exxon Valdez* Oil Spill Public Advisory Committee.

DATES: September 3, 2008, at 9 a.m.

ADDRESSES: Exxon Valdez Oil Spill Trustee Council Office, 441 West 5th Avenue, Suite 500, Anchorage, Alaska.

FOR FURTHER INFORMATION CONTACT: Douglas Mutter, Department of the Interior, Office of Environmental Policy and Compliance, 1689 ''C'' Street, Suite 119, Anchorage, Alaska, 99501, (907) 271–5011.

SUPPLEMENTARY INFORMATION: The Public Advisory Committee was created by Paragraph V.A.4 of the Memorandum of Agreement and Consent Decree entered into by the United States of America and the State of Alaska on August 27, 1991, and approved by the United States District Court for the District of Alaska in settlement of *United States of America* v. *State of Alaska*, Civil Action No. A91–081 CV. The meeting agenda will include review of the draft fiscal year 2009 program development and implementation budget, and invitation; 2008 update to the Injured Resources and Services List; Integrated Herring Restoration Program; fiscal year 2008 projects requesting extensions; and personnel changes.

Willie R. Taylor,

Director, Office of Environmental Policy and Compliance.

[FR Doc. E8–18341 Filed 8–7–08; 8:45 am]

BILLING CODE 4310–RG–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R7-R-2008-NO182] [70138-1263-0000-4A]

Information Collection Sent to the Office of Management and Budget (OMB) for Approval; Alaska Guide Service Evaluation

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (Fish and Wildlife Service) have sent an Information Collection Request (ICR) to OMB for review and approval. The ICR, which is summarized below, describes the nature of the collection and the estimated burden and cost. We 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.

DATES: You must submit comments on or before September 8, 2008.

ADDRESSES: Send your comments and suggestions on this ICR to the Desk Officer for the Department of the Interior at OMB-OIRA at (202) 395-6566 (fax) or OIRA_DOCKET@OMB.eop.gov (e-mail). Please provide a copy of your comments to Hope Grey, Information Collection Clearance Officer, Fish and Wildlife Service, MS 222-ARLSQ, 4401 North Fairfax Drive, Arlington, VA 22203 (mail); (703) 358-2269 (fax); or hope_grey@fws.gov (e-mail).

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Hope Grey by mail, fax, or e-mail (see ADDRESSES) or by telephone at (703) 358–2482.

SUPPLEMENTARY INFORMATION:

OMB Control Number: None. This is a new collection.

Title: Alaska Guide Service Evaluation.

Service Form Number(s): 3-2349.

Type of Request: New collection.

Affected Public: Clients of permitted commercial guide service providers.

Respondent's Obligation: Voluntary.

Frequency of Collection: One time following use of commercial guide services.

Estimated Annual Number of Respondents: 396.

Estimated Total Annual Responses: 396.

Estimated Time Per Response: 15 minutes.

Estimated Total Annual Burden Hours: 99.

Abstract: We are proposing to collect information to help us evaluate commercial guide services on our national wildlife refuges in the State of Alaska (State). The National Wildlife Refuge Administration Act of 1966, as amended (16 U.S.C. 668dd-ee), authorizes us to permit uses, including commercial visitor services, on national wildlife refuges when we find the activity to be compatible with the purposes for which the refuge was established. With the objective of making available a variety of quality visitor services for wildlife-dependent recreation on National Wildlife Refuge System lands, we issue permits for commercial guide services, including big game hunting, sport fishing, wildlife viewing, river trips, and other guided activities. We plan to use FWS Form 3-2349 (Alaska Guide Service Evaluation) as a method to:

(1) Monitor the quality of services provided by commercial guides.

(2) Gauge client satisfaction with the services.

(3) Assess the impacts of the activity on refuge resources.

The client is the best source of information on the quality of commercial guiding services. We plan to collect:

(1) Client name.

(2) Guide name(s).

(3) Type of guided activity.

(4) Dates and location of guided activity.

(5) Information on the services received such as the client's expectations, safety, environmental impacts, and client's overall satisfaction.

We will encourage respondents to provide any additional comments that they wish regarding the guide service or refuge experience, and ask whether or not they wish to be contacted for additional information.

The above information, in combination with State-required guide activity reports and contacts with guides and clients in the field, will provide a comprehensive method for monitoring permitted commercial guide activities. A regular program of client evaluation will help refuge managers detect potential problems with guide services so that we can take corrective actions promptly. In addition, we will use this information during the competitive selection process for big game and sport fishing guides to evaluate an applicant's

ability to provide a quality guiding service.

We will provide the evaluation form to clients by one of several methods:

(1) The refuge may mail the form to the clients.

(2) On websites of refuges where guide services are permitted.

(3) Upon request.

Comments: On January 22, 2008, we published in the Federal Register (73 FR 3752) a notice of our intent to request that OMB approve this information collection. In that notice, we solicited comments for 60 days, ending on March 24, 2008. We received one comment, which did not address issues surrounding the proposed collection of information. The commenter objected to the issuing of permits for guided hunting services on national wildlife refuges. We did not make any changes to our information collection requirements as a result of this comment.

We again invite comments concerning this information collection on:

(1) whether or not the collection of information is necessary, including whether or not the information will have practical utility;

(2) the accuracy of our estimate of the burden for this collection of information;

(3) ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) ways to minimize the burden of the collection of information on respondents.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

Dated: June 23, 2008

Hope Grey,

Information Collection Clearance Officer, Fish and Wildlife Service.

FR Doc. E8–18338 Filed 8–7–08; 8:45 am

BILLING CODE 4310–55–S

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R9-R-2008-NO181] [93261-1261-0000-5A]

Information Collection Sent to the Office of Management and Budget (OMB) for Approval; Hunting and Fishing Application Forms and Activity Reports for National Wildlife Refuges

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (Fish and Wildlife Service) have sent an Information Collection Request (ICR) to OMB for review and approval. The ICR, which is summarized below, describes the nature of the collection and the estimated burden and cost. We 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.

DATES: You must send comments on or before September 8, 2008.

ADDRESSES: Send your comments and suggestions on this ICR to the Desk Officer for the Department of the Interior at OMB-OIRA at (202) 395-6566 (fax) or OIRA_DOCKET@OMB.eop.gov (e-mail). Please provide a copy of your comments to Hope Grey, Information Collection Clearance Officer, Fish and Wildlife Service, MS 222-ARLSQ, 4401 North Fairfax Drive, Arlington, VA 22203 (mail) or hope_grey@fws.gov (e-mail).

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Hope Grey by mail or e-mail (see ADDRESSES) or by telephone at (703) 358–2482.

SUPPLEMENTARY INFORMATION:

OMB Control Number: None. This is a new collection.

Title: Hunting and Fishing Application Forms and Activity Reports for National Wildlife Refuges, 50 CFR 25.41, 25.43, 25.51, 26.32, 26.33, 27.42, 30.11, 31.15, 32.1 to 32.72.

Service Form Number(s): FWS Forms 3-2354, 3-2355, 3-2356, 3-2357,3-2358, 3-2359, 3-2360, 3-2361, 3-2362.

Type of Request: New collection.

Affected Public: Individuals and households.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion. For applications, usually once per year at beginning of hunting season. For activity reports, once at conclusion of hunting/fishing experience.

Nonhour Cost Burden: We estimate the annual nonhour cost burden to be $60,000 for hunting application fees at some refuges.

Activity	Number of annual respondents	Number of annual responses	Completion time per response	Annual burden hours
FWS Form 3-2354 (Quota Deer Hunt Application)	175,000	175,000	30 minutes	87,500
FWS Form 3-2355 (Waterfowl Lottery Application)	90,000	90,000	30 minutes	45,000
FWS Form 3-2356 (Big Game Hunt Application)	2,500	2,500	30 minutes	1,250
FWS Form 3-2357 (Migratory Bird Hunt Application)	5,000	5,000	30 minutes	2,500
FWS Form 3-2358 (Fishing/Shrimping/Crabbing Application)	2,500	2,500	30 minutes	1,250
FWS Form 3-2359 (Big Game Harvest Report)	85,000	85,000	15 minutes	21,250
FWS Form 3-2360 (Fishing Report)	400,000	400,000	15 minutes	100,000
FWS Form 3-2361 (Migratory Bird Hunt Report	30,000	30,000	15 minutes	7,500
FWS Form 3-2362 (Upland/Small Game/Furbearer Report)	25,000	25,000	15 minutes	6,250
Totals	815,000	815,000		272,500

Abstract: The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd-668ee), as amended (Administration Act), and the Refuge Recreation Act of 1962 (16 U.S.C. 460k-460k-4) (Recreation Act) govern the administration and uses of national wildlife refuges and wetland management districts. The Administration Act consolidated all the different refuge areas into a single Refuge System. It also authorizes us to permit public uses, including hunting and fishing, on lands of the Refuge System when we find that the activity is compatible and appropriate with the purpose for which the refuge was established. The Recreation Act allows the use of refuges for public recreation when the use is not inconsistent or does

not interfere with the primary purpose(s) of the refuge.

There are 389 national wildlife refuges where we administer hunting and/or fishing programs. We only collect user information at about 20 percent of these refuges. Information that we plan to collect will help us to:

(1) Administer and monitor hunting and fishing programs on refuges.

(2) Distribute hunting and fishing permits in a fair and equitable manner to eligible participants.

We are proposing nine new application and report forms associated with hunting and fishing on refuges. We may not allow all opportunities on all refuges; therefore, we developed different forms to simplify the process and avoid confusion for applicants. Not all refuges will use each form and some refuges may collect the identical information in a nonform format.

We will use the following application forms when we assign areas, dates, and/or types of hunts via a drawing because of limited resources, high demand, or when a permit is needed to hunt. We will issue application forms for specific periods, usually seasonally or annually.

(1) FWS Form 3-2354 (Quota Deer Hunt Application).

(2) FWS Form 3-2355 (Waterfowl Lottery Application).

(3) FWS Form 3-2356 (Big Game Hunt Application).

(4) FWS Form 3-2357 (Migratory Bird Hunt Application).

(5) FWS Form 3-2358 (Fishing/Shrimping/Crabbing Application)

We plan to collect information on:

(1) Applicant (name, address, phone number) so that we can notify applicants of their selection.

(2) User preferences (dates, areas, method) so that we can distribute users equitably.

(3) Whether or not the applicant is applying for a special opportunity for disabled or youth hunters.

(4) Age of youth hunter(s) so that we can establish eligibility.

We will ask users to report on their success after their experience so that we can evaluate hunting/fishing quality and resource impacts. We will use the following activity reports, which we will distribute during appropriate seasons, as determined by State or Federal regulations.

(1) FWS Form 3-2359 (Big Game Harvest Report).

(2) FWS Form 3-2360 (Fishing Report).

(3) FWS Form 3-2361 (Migratory Bird Hunt Report).

(4) FWS Form 3-2362 (Upland/Small Game/Furbearer Report).

We plan to collect information on:

(1) Names of users so we can differentiate between responses.

(2) City and State of residence so that we can better understand if users are local or traveling.

(3) Dates, time, and number in party so we can identify use trends to allocate staff and resources.

(4) Details of success by species so that we can evaluate quality of experience and resource impacts.

Comments: On April 22, 2008, we published a notice in the Federal Register (72 FR 21640) announcing our intent to request that OMB approve this information collection. We solicited public comment for 60 days, ending on June 23, 2008. We did not receive any comments in response to this notice.

We again invite comments concerning this information collection on:

(1) whether or not the collection of information is necessary, including whether or not the information will have practical utility;

(2) the accuracy of our estimate of the burden for this collection of information;

(3) ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) ways to minimize the burden of the collection of information on respondents.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

Dated: June 30, 2008

Hope Grey,

Information Collection Clearance Officer, Fish and Wildlife Service.

FR Doc. E8–18339 Filed 8–7–08; 8:45 am

BILLING CODE 4310–55–S

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R3–R–2008–N0186; 30136–1265–0000–S3]

Notice of Decision and Availability of the Record of Decision for the Final Comprehensive Conservation Plan and Environmental Impact Statement for Trempealeau National Wildlife Refuge, Buffalo and Trempealeau Counties, WI

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of decision and availability of the record of decision.

SUMMARY: The U.S. Fish and Wildlife Service announces the decision and availability of the Record of Decision (ROD) for the Final Comprehensive Conservation Plan (CCP) and Environmental Impact Statement (EIS) for Trempealeau National Wildlife Refuge (NWR) in Wisconsin. A thorough analysis of the environmental, social, and economic considerations was completed and presented in the Final CCP/EIS. The Final CCP/EIS was released to the public and a Notice of Availability was published in the **Federal Register** on April 15, 2008, (73 FR 20329). The ROD documents the selection of Alternative C, the Preferred Alternative in the Final CCP/EIS, as the CCP for Trempealeau National Wildlife Refuge. The ROD was signed by the Regional Director, U.S. Fish and Wildlife Service, Midwest Region, on June 17, 2008.

ADDRESSES: The ROD and Final CCP/EIS may be viewed at Trempealeau National Wildlife Refuge Headquarters. You may obtain a copy of the ROD at the planning website *http://www.fws.gov/midwest/planning/Trempealeau* or by writing to the following address: U.S. Fish and Wildlife Service, Division of Conservation Planning, Bishop Henry Whipple Federal Building, 1 Federal Drive, Fort Snelling, Minnesota 55111.

FOR FURTHER INFORMATION CONTACT: Vickie Hirschboeck, (608) 539–2311 extension 12.

SUPPLEMENTARY INFORMATION: The Trempealeau National Wildlife Refuge CCP will provide management guidance for conservation of Refuge resources and public use activities during the next 15 years. Three alternatives and their consequences were described in detail in the Draft and Final Environmental Impact Statement. Under all alternatives threatened and endangered species will be protected; cultural resources will be protected; the Refuge's Fire Management Plan will guide prescribed

fire and wildfire suppression; mosquito control will only be allowed in cases of a documented human health emergency; appropriate control of fish and wildlife disease will be undertaken if warranted, feasible, and effective; an emergency response plan and training will be developed to address possible contaminant spills; regulations regarding harvesting of fruit, nuts, and other plant parts will be clarified; neighboring landowners will be contacted frequently to discuss issues of concern; an easement and rights-of-way management plan will be developed; and general public use regulations will be annually reviewed and updated.

Alternative A. No Action. Present management practices would continue under this Alternative. The No Action alternative is a status quo alternative where current conditions and trends continue. The alternative served as the baseline to compare and contrast with the other alternatives.

Alternative B. Wildlife and Habitat Focus. Under this alternative there would be minimal disturbance to wildlife from public use and increased level of effort on fish and wildlife habitat management. Habitat management would be a high priority. Invasive species control in the forested habitats would allow restoration of prairie and oak savanna. Prescribed fire and mowing would be used to manage 11 prairie units totaling 585 acres. Pine plantations would be eliminated. Additional dikes and water control structures would be placed within existing impoundments. The deer hunt and furbearer management would continue as in the past. Public use opportunities would be reduced. Environmental education programs would be limited to those that explain Refuge regulations. No waterfowl hunting would be allowed. To reduce disturbance to migrating birds, all pools would be closed to water craft during fall migration (from September 15 through November 15). The Refuge would maintain its present entrance road, which is open to all traffic except for an average of 6 weeks each year when the road is flooded. The Refuge office would remain as is, but the 70-year-old shop would be replaced. The staff would include the addition of a permanent full-time biologist and a private lands biologist and a seasonal biological technician and tractor operator.

Alternative C. Integrated Public Use and Wildlife and Habitat Focus (Preferred Alternative). The Service has selected Alternative C, the Preferred Alternative, as the CCP for the Refuge. Implementation of the CCP will occur over the next 15 years and will depend on future staffing levels and funding.

Under this alternative the focus will be on returning upland areas to pre-European settlement habitats, increasing flexibility in wetland management within impoundments, and increasing public use opportunities. Prairie and oak savanna restoration will be a high priority. Increased efforts to control invasive species will be made using biological, mechanical, and chemical methods. Prescribed fire and mowing will be used to manage 11 prairie units totaling 435 acres. Half of the trees in the pine plantations will be removed through selective thinning. Additional dikes and water control structures will be placed within existing impoundments. The deer hunt and furbearer management will continue as in the past. Public use opportunities will be expanded. Environmental education programs will be promoted at local schools and to community groups and the general public. Waterfowl hunting opportunities will be expanded by opening the area west of the Canadian National Railroad dike to a limited hunt. Ski trails will be maintained when conditions permit. Options to alleviate flooding of the entrance road to provide year-round access to the Refuge will be explored. Use of volunteers will be expanded in all programs. A Trempealeau NWR Friends Group will be started. A multi-purpose Room will be added to the office/visitor contact station to accommodate larger groups and provide a place for orientation. The staff will include the addition of three seasonal positions, including a biological technician, a tractor operator, and a park ranger. Law enforcement duties will be covered by a new position shared with the Winona District. A private lands biologist will also be shared with the Winona District.

Basis for the Decision

Alternative C is the most environmentally preferable alternative. Chapter 1 of the Final EIS identified three broad needs: (1) Contribute to the Refuge System mission; (2) fulfill the purposes of the Refuge; and (3) achieve Refuge goals. Alternative C meets these needs through the most balanced and integrated approach compared to the other alternatives. The rationale for choosing the selected alternative as the best alternative for the Comprehensive Conservation Plan is based on the impact of this alternative on the issues and concerns that surfaced during the planning process. The environmental impacts of the alternatives were analyzed as to how they will impact: (1) Landscape; (2) wildlife and habitat; (3) public use; (4) neighboring landowners and community; and (5) administration and operations. Alternative C has long-term benefits to the natural and human environment. Alternative C will increase water quality and more effectively control invasive plants. This alternative will ensure abundant opportunity for all current recreational uses (e.g., hunting, fishing, observation and photography, interpretation and environmental education). It will have a positive economic impact and will increase the capacity of the Refuge to meet its purposes and mission of the Refuge System. Alternative C is also expected to lead to improved communication and problem solving with neighboring land owners.

Dated: July 22, 2008.

Charles M. Wooley,

Acting Regional Director, U.S. Fish and Wildlife Service, Fort Snelling, Minnesota.

[FR Doc. E8–18296 Filed 8–7–08; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Jicarilla Apache Nation Liquor Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the Jicarilla Apache Nation Amended Liquor Ordinance. The amended Ordinance regulates and controls the possession, sale, and consumption of liquor within the Jicarilla Apache Nation. The Nation is located on trust land and this amended Ordinance allows for the possession and sale of alcoholic beverages within the exterior boundaries of the Jicarilla Indian Reservation. This amended Ordinance will increase the ability of the tribal government to control the distribution and possession of liquor within their Reservation and at the same time will provide an important source of revenue and strengthening of the tribal government and the delivery of tribal services.

DATES: *Effective Date*: This Act is effective as of September 8, 2008.

FOR FURTHER INFORMATION CONTACT: Iris A. Drew, Tribal Government Services Officer, Southwest Regional Office, 1001 Indian School Road, Albuquerque, New Mexico 87104; Telephone (505) 563–3530; Fax (505) 563–3060; or Elizabeth Colliflower, Office of Tribal Services, 1849 C Street, NW., Mail Stop 4513–

MIB, Washington, DC 20240; Telephone (202) 513–7627; Fax (202) 208–5113.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953; Public Law 83–277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice* v. *Rehner,* 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register**, notice of adopted liquor ordinances for the purpose of regulating liquor transactions in Indian Country. The Jicarilla Apache Nation Legislative Council adopted this amended Liquor Ordinance by Ordinance No. 2007–O–525–12 on December 5, 2007. The purpose of this amended Ordinance is to govern the sale, possession, and distribution of alcohol within the Jicarilla Apache Reservation. This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs. I certify that this amended Liquor Ordinance of the Jicarilla Apache Nation was duly adopted by the Legislative Council on December 5, 2007.

Dated: July 30, 2008.

George T. Skibine,

Acting Deputy Assistant Secretary for Policy and Economic Development.

The Jicarilla Apache Nation Amended Liquor Ordinance reads as follows:

ORDINANCE OF THE LEGISLATIVE COUNCIL

AMENDMENT OF LIQUOR LICENSING ORDINANCE (JICARILLA APACHE NATION CODE, TITLE 22, CHAPTER 1)

ORDINANCE NO. 2007–O–55–12

WHEREAS, Article XI of the Revised Constitution of the Jicarilla Apache Nation (Revised Constitution) vests the inherent powers of the Jicarilla Apache Nation (Nation), including those conferred by Section 16 of the Act of June 18, 1934 (48 Stat. 984), as amended, in the Legislative Council; and

WHEREAS, Article XI of the Revised Constitution authorizes the Legislative Council to enact ordinances to promote to peace, safety, property, health, and general welfare of the people of the Reservation; and

WHEREAS, on March 20, 2000, Ordinance No. 2000–O–133–03 (the Liquor Licensing Ordinance) was adopted repealing and replacing all previous Legislative Council enactments pertaining to the regulation of liquor within the Jicarilla Apache Nation Reservation, which was approved by the Secretary of the Interior on February 11 2003, as published in Volume 68, **Federal Register**, Pager 6935; and

WHEREAS, the Legislative Council finds that it is in the best interest of the Nation to further amend the Nation's Liquor Licensing Ordinance for the safety and protection of the public; and

NOW, THEREFORE; BE IT ORDAINED, that the Legislative Council of the Jicarilla Apache Nation hereby enacts the following Ordinance to amend Title 22, Chapter 1 of the Jicarilla Apache Nation Code by amending Chapter 1, Sections 4(B) and 8(H), adding to Chapter 1 a new section 9, and by renumbering the existing sections 9 through 13 accordingly. Title 22, Chapter 1, as so amended, shall read as follows:

CHAPTER I: LIQUOR LICENSING

§ 1 DEFINITIONS.

As used in this Chapter the following definitions shall apply.

(A) **COMMISSION**. The Jicarilla Apache Gaming Regulatory Commission.

(B) **INTOXICATION or INTOXICATED**. A state in which a person's mental or physical functioning is noticeably impaired as a result of the use of alcohol or drugs.

(C) **LICENSED PREMISES**. The area within a Liquor Establishment in which the Licensee is authorized to sell Liquor.

(D) **LICENSEE**. Any person who owns a valid, current Liquor License issued by the Nation, or his or her valid agent or designee.

(E) **LIQUOR**. Distilled or rectified spirits, potable alcohol, brandy, whisky, rum, gin, vodka, aromatic bitters, or any similar alcoholic beverage, including blended and fermented beverages, dilutions, or mixtures of one or more of the foregoing, containing more than one-half of one percent alcohol, but excluding medicinal bitters. Liquor also includes beers, or any other alcoholic beverage created by the fermentation of any infusion or decoction of barley, malt, and hops or other cereals in water, and includes porter, beer, ale, and wine, which means alcoholic beverages obtained by the fermentation of natural sugar contained in fruit or other agricultural products, with or without the addition of sugar or other products, which do not contain less than one-half of one percent alcohol by volume.

(F) **LIQUOR ESTABLISHMENT.** A location licensed by the Jicarilla Apache Gaming Regulatory Commission to serve or sell liquor, including the grounds and parking lot of such location.

(G) **LIQUOR OFFENSES SECTION.** J.A.N.C. § 7–2–12.

(H) **MINOR.** Any person under the age of twenty-one (21) years.

(I) **PACKAGE.** Any unbroken, unopened container or receptacle used for holding liquor.

(J) **PUBLIC PLACE.** Includes streets, plazas, highways, Toads, stores, shopping centers, and other businesses, government, and other public buildings, schools, churches, public meeting halls, buses, and bus depots within the Nation which are open to and generally used by the public and the ground thereof; it also includes parks and playgrounds and other open spaces within the Nation which are open to and generally used by the public.

(K) **PURCHASE.** Includes the exchange, barter, traffic, or receipt with or without consideration, by any means whatsoever, of liquor.

(L) **SALE.** Includes the exchange, barter, traffic, or donation with or without consideration, in addition to the selling, supplying, or distributing, by any means whatsoever, of liquor.

(M) **ENTITY OF THE NATION**. Any entity owned by the Jicarilla Apache Nation.

(N) **NATION.** Referring to territory, *NATION* means all lands within the territory defined by JANC. § 1–1–5.

(O) **LIQUOR LICENSE.** A license granted by the Jicarilla Apache Gaming Regulatory Commission in accordance with the provisions of this Chapter to distribute liquor at a liquor establishment.

(P) **POLITICAL SUBDIVISION.** Any political subdivision or department of the Jicarilla Apache Nation.

§ 2 APPLICABILITY.

This Chapter shall apply to all persons engaging or seeking to engage in the purchase or sale of liquor within the Nation; provided, however, that nothing in this Chapter shall apply to:

(A) Liquor used for scientific research or for manufacturing products other than liquor;

(B) Liquor used medical purposes under the direction of a physician or a hospital, or a mental health, health care, or dental clinic;

(C) Liquor contained in preparations not fit for human consumption such as cleaning compounds; and

(D) Liquor for sacramental use under a religion recognized as valid by the Commission. Denial of recognition of a religion by the Commission shall be subject to immediate review by the Council.

§ 3 JICARILLA APACHE GAMING REGULATORY COMMISSION.

(A) The Jicarilla Apache Gaming Regulatory Commission created by J.A.N.C. § 22–2–7 shall exercise the regulatory authority of the Nation under

this Chapter. In addition to the qualifications set forth in J.A.N.C. § 22–2–7(F), no person may serve on the Commission if he or she:

(1) Has within five (5) years been convicted of a liquor-related misdemeanor; or

(2) Has any direct financial interest in, or is a manager of any liquor establishment. A member of the Nation will not be disqualified from serving on the Commission on the basis of the Nation's ownership of a liquor establishment.

(B) In addition to the powers and duties under J.A.N.C. § 22–2–7(I), the Commission shall be empowered:

(1) To review applications for a liquor license and either grant a liquor license or deny the application;

(2) To conduct, or cause to be conducted, a background investigation of any person having or seeking to have an ownership interest in, or who is or is seeking to be a manager of a liquor management (sic);

(3) To inspect, on its own initiative or a response to an affidavit based on a reasonable, good faith belief that a violation may have occurred, on its own or in collaboration with the Jicarilla Apache Police Department, alleged violations by licensees of this Chapter;

(4) To conduct, on its own initiative or in response to a complaint, hearings on alleged violations by licensees of this Chapter. The Commission may issue subpoenas and compel any licensee, or his agent or servant, to appear before it and to provide any information or documents it requires. The Commission may order any licensee to take any appropriate action it deems necessary to comply with this Chapter;

(5) To bring, in the name of the Nation, any civil action in the Nation's Court or in any court of competent jurisdiction of any State or the United States to enforce the provisions of this Chapter or to enjoin or otherwise prevent any violation of this Chapter. The Commission may also refer suspected criminal violations of this Chapter to the appropriate governmental authority for investigation and prosecution;

(6) To adopt an annual operating budget which shall be subject to the approval of the Council and, in accordance with this budget employ a staff as it deems necessary to fulfill its responsibilities under this Chapter. The Commission shall submit an annual report of the revenues it receives to the Council; such as revenues shall be used to fund the operations of the Commission;

(7) To promulgate and adopt regulations, subject to approval by the Council, to assist in the implementation of this Chapter and to govern the purchase and sale of liquor within the Nation; and

(8) To require payment of reasonable fees associated with licensing a liquor establishment additional to those set forth in this Chapter.

§ 4 LICENSING.

(A) *General Qualifications for License; Standards for Evaluating a License Application.*

(1) *Applicants.* If the applicant for a Liquor License is an individual person, the person must be an enrolled member of the Jicarilla Apache Nation who has not been convicted of a liquor-related misdemeanor within the last five (5) years or a felony and who is at least twenty-one (21) years of age. If the applicant is a corporation, partnership, or other business entity, majority ownership and control of the entity must be held by the Jicarilla Apache Nation, entities of the Nation, political subdivisions and enrolled members of the Nation; and the manager of the proposed licensed premises must be a person who has not been convicted of a liquor-related misdemeanor within the last five (5) years or a felony and who is at least twenty-one (21) years of age. For purposes of this Section, majority ownership and control means the right to fifty-one percent (51%) or more of the profits and losses of the entity and the power to direct the management, policy, and operations of the entity. No person may own or control ten percent (10%) or more of an entity holding a liquor license if that person has been convicted of a liquor-related misdemeanor within the last five (5) years or a felony or is less than twenty-one (21) years of age.

(2) *Evaluation of Application.* The Commission shall issue a Liquor License only if the qualifications set forth in this Chapter are satisfied and, in addition, if the Commission concludes within its discretion that issuing the license will serve the best interests of the community and the regulatory goals of this Chapter. The Commission shall not issue a liquor license if the Commission determines that:

(a) The proposed activity is likely to undermine economic development of the Nation;

(b) The proposed activity is likely to impose undue burdens on public safety;

(c) The applicant has failed to demonstrate financial capability to meet all obligations of this Chapter; or

(d) The applicant has failed to identify adequate procedures to prevent violations of this Chapter on the proposed licensed premises.

(3) *Factors to be considered by Commission.* In deciding whether a proposed license will serve the best interests of the community, the Commission may consider the following factors among others:

(a) Whether the application is for the operation of a new or existing liquor establishment;

(b) Whether the applicant is in compliance with applicable laws of the Nation and the United States;

(c) Whether the applicant has violated any provision of this Chapter, and if so, whether the violation has been remedied;

(d) The location, number, and density of liquor establishments within the Nation;

(e) Whether food is sold at the establishment; and

(f) The health and welfare of the public.

(4) *Public Comments.* Before the issuance of any Liquor License, the Commission shall allow comments from the public at a time and place advertised in a local newspaper of general circulation.

(5) *Location of Licensed Premises.* The Commission shall not grant a Liquor License to any proposed liquor establishment which is located within four hundred (400) feet of the property boundary of a church or school. The Commission may designate other areas that are similarly to be protected.

(B) *Specific License Application Requirements.* In order to apply for a liquor license, an applicant must:

(l) Submit to the Commission a written application for the license under oath, on a form prescribed by and stating the information required by the Commission, together with a non-refundable application fee of Five Hundred Dollars ($500.00);

(2) Submit to the Commission for its approval floor plans which show the proposed licensed premises for which the license application is submitted;

(3) Submit to the Commission an area map designating the location of the proposed licensed premises;

(4) Submit to the Commission proof of liquor liability insurance as required under § 9 of this Chapter; and

(5) Submit such additional information as the Commission may require.

(C) *Fingerprints.* If required by the Commission, an applicant for a Liquor License who is not the Nation or a Political Subdivision of the Nation, if an individual, shall file with the application two complete sets of the applicant's fingerprints taken under the supervision of and certified to by an officer of the Jicarilla Apache Police

Department or a State, county, or municipal police department. If the applicant is a corporation, it shall, upon request by the Commission, file two complete sets of fingerprints of each principal officer and of the agent responsible for the operation of the licensed business and the receipt of service. If the applicant is a limited partnership, it shall, upon request by the Commission, submit two complete sets of fingerprints of each general partner and of the agent responsible for the operation of the licensed business and the receipt of service. If the applicant is a limited liability company or other business entity, it shall, upon request by the Commission, submit fingerprints as required by the Commission. The Commission may issue a temporary license pending resolution of the background clearances, subject to revocation by the Commission, at any time, with or without cause.

(D) *Classes of Licenses; Special Restrictions on License.* The Commission is authorized to establish by regulation various classes of Liquor Licenses and to specify the activities authorized by each class, including but not limited to licenses for restaurants, bars, package sales, home brewing, and special events. When the Commission grants a liquor license, it may grant such license with any special restrictions, such as restrictions on type of liquor served or hours of operation, as it deems appropriate. The Commission shall explain in writing the reasons for imposing any special restrictions on a license. A licensee may appeal the imposition of any special restrictions to the Council as provided in J.A.N.C. § 22–1–10.

(E) *Commission Action on Application.* After reviewing the complete application, the Commission shall send the applicant a proposed decision on the application. The applicant shall have twenty (20) working days to respond in writing to the proposed decision and may request a hearing before the Commission. The Commission may conduct a hearing on any application on its own initiative, with notice to the applicant. Following any hearing on the application and the expiration of the time allowed for a written response to the proposed decision, the Commission shall issue a final written decision. The written decision shall include findings of fact and an explanation of the grounds for the decision.

(F) *Annual Renewal of License.* Each person or entity holding a Liquor License shall apply to renew that license annually on a form provided by the Commission with a nonrefundable renewal fee in an amount set by regulation of the Commission. The Commission may decline to renew a liquor license only for good cause, such as a repeated and intentional violation of any of the provisions of this Chapter, or failure to submit in a timely manner the renewal application and the renewal fee. The Commission may renew a Liquor License with special restrictions in addition to any imposed on the expired license. Denial of an application to renew a Liquor License or the imposition of special restrictions shall be appealable under J.A.N.C. § 22–1–10.

(G) *Amendments of Applicable Law.* All Liquor Licenses are subject to any amendment of the Jicarilla Apache Nation Code or regulations of the Commission which may be adopted or made effective after the license is approved.

§ 5 TRANSFER OR LEASE OF LIQUOR LICENSE.

No Liquor License shall be transferred or leased other than with approval of the Commission through the procedure set forth in J.A.N.C. § 22–1–4.

§ 6 REPORTING.

(A) Every licensee shall keep, in current and available form on the licensed premises, records of all purchases, sales, quantities on hand, and such other information as the Commission may reasonably require, including but not limited to, copies of audits, tax returns, and any forms that the Commission may require to be filled out.

(B) The Commission may require a licensee to provide it with periodic reports, and it may require the production of any book, record, document, invoice, or voucher kept, maintained, received, or issued by any such licensee in connection with his or her business. If a licensee fails or refuses to furnish within a reasonable period of time any reports or information requested by the Commission, the Commission or its designee may enter the premises of such licensee where the records are kept and make such examinations as it deems necessary.

(C) A licensee who is convicted of a violation of the Liquor Offenses Section shall, within two (2) working days of such conviction, report the conviction to the Commission. In addition to any other civil assessment imposed under the Nation's law, there shall be an assessment of One Hundred Dollars ($100.00) for each day a licensee is late in reporting this information to the Commission.

§ 7 VIOLATION OF LIQUOR OFFENSES SECTION.

Any violation of the Liquor Offenses Section by a licensee is a violation of this Chapter.

§ 8 RESTRICTIONS ON LIQUOR SALES.

(A) *Sales Only by Holders of Liquor License and Only at Licensed Premises; Exception.* No sales of liquor shall be made within the Nation except by persons holding a Egnor license issued by the Commission and except at licensed premises; provided, however, that nothing in this Chapter shall prohibit social gifts of liquor to someone who would not otherwise be prevented from obtaining liquor under this Chapter or other applicable law. The Commission may issue a special use permit to enrolled members of the Nation authorizing specific sales of liquor for specific time periods not to exceed one (1) week, on terms to be established by its regulations.

(B) *Hours and Days a/Business; Election Days.*

(1) Liquor may be sold, served, or consumed on any licensed premises only during hours authorized by the Commission. The Commission shall set hours of operation for each liquor establishment individually, subject to appeal under J.A.N.C. § 22–1–10 to the Council.

(2) Alcoholic beverages shall not be sold, served, or consumed on licensed premises during voting hours on the days of any election to any office of the Nation, the United States or the State of New Mexico.

(3) The Council may prohibit the purchase, sale, or consumption of liquor during days and hours in addition to those set forth in this Section 8(B).

(4) Nothing in this Section 8(B) shall prohibit, or authorize the prohibition of, the consumption at any time of Liquor in guest Rooms of hotels or by people in their own homes, or by people who are guests in the home of another.

(C) *Sales to be made by Adults.* All sales of liquor pursuant to this Chapter shall be made by persons twenty-one (21) years of age or older.

(D) *Evidence of Age and Identity.* Evidence of age and identity of a purchaser of liquor must be shown by current and valid driver's license or a United States passport, which contains the signature, birth date, and picture of the holder of the license or passport, or any other form of identification acceptable to the Commission.

(E) *Demand for Identification.* Liquor establishments shall have the authority to demand of any person the production

of proper evidence of age and identity before making a sale of liquor to such person.

(F) *Right/Duty to Refuse Sale.* A Liquor establishment shall have the authority and duty to refuse to sell liquor to any person who is unable to produce proper evidence of age and identity as prescribed by this Section 8, any person who the seller believes is already under the influence of liquor, or to anyone else if the seller reasonably believes that the transaction would lead to a violation of this Chapter. The operator of a liquor establishment shall have the authority to require that a person who the operator reasonably believes is already under the influence of liquor vacate the licensed premises.

(G) *Wholesale Liquor Distributors.* A person holding a valid Liquor License may purchase liquor from any wholesale liquor distributor validly licensed in the jurisdiction of its principal place of business. Wholesale liquor distributors are expressly prohibited from selling liquor within the Nation or for distribution within the Nation to anyone not holding a Liquor License issued by the Commission, subject to the exception set forth in J.A.N.C. § 22–1–8(A).

(H) *Sales only to be made by Certified Servers; Alcohol Server Training Required/or License Renewal.* All sales, delivery, and serving of liquor authorized by this Chapter shall be made by persons twenty-one (21) years of age or older; who have successfully completed a liquor server training program approved by the Commission and are certified as having completed the course by the Commission or the entity that provides the training program. Such certification shall be valid for five (5) years from the date of certification. Any Licensee seeking renewal of a license shall submit to the Commission, as a condition of license renewal, proof that each server employed by the Licensee during the prior licensing year had a current valid certification that the server completed an alcohol server program approved by the Commission.

(I) *Happy Hours.* The Commission may adopt a policy on happy hours and on pricing schemes where liquor is sold on certain occasions or at certain times for a price that is substantially lower than the price it is sold for at other times. The Commission may at any time request from a liquor establishment a written description of its policies on such happy hours and pricing schemes and either approve or disapprove such policies. Disapproval of such a policy shall be appealable to the Council under the procedure set forth in J.A.N.C. § 22–1–10.

§ 9 LIQUOR LIABILITY INSURANCE.

Each Licensee is required to obtain and maintain liquor liability insurance coverage that will provide, at a minimum, personal injury coverage of one million dollars ($1,000,000.00) per incident and two million dollars ($2,000,000.00) aggregate per policy year. Such insurance must cover the Licensee and every alcohol server employed by the Licensee. Proof of such insurance in a form acceptable to the Commission must be submitted with every Liquor License application and renewal. The Commission must be given no less than thirty (30) calendar days written notice prior to the termination or cancellation of such insurance coverage. Failure to maintain such insurance coverage, or failure to provide the Commission with the required notice prior to cancellation or termination of insurance shall constitute grounds for the revocation of the Licensee's Liquor License and the imposition of sanctions as provided in this Chapter.

§ 10 SUSPENSION OR REVOCATION OF LIQUOR LICENSE; SPECIAL RESTRICTIONS; MONETARY SANCTIONS.

The Commission is authorized to revoke or suspend a Liquor License or to impose special restrictions on a license for a violation or violations of any provision of this Chapter, after the licensee is given at least seven (7) calendar days notice of the proposed action and the opportunity to appear and to be heard before the Commission, either in person or through a representative, and to submit such evidence as the Commission deems relevant to the matter at issue. Such suspensions, revocations, and imposition of special restrictions are appealable to the Council under J.A.N.C. § 22–1–10. In addition to any civil assessment provided by the Nation's law, the Commission may initiate an action in the Nation's Court for the imposition of monetary sanctions against a licensee for a violation of this Chapter to compensate the Nation for economic losses it suffers, directly or indirectly, as a result of the violation.

§ 11 APPEAL TO COUNCIL.

(A) *Appealable Actions.* Any person or entity who is denied a Liquor License, or whose Liquor License is suspended or revoked, or whose Liquor License has been limited by special restrictions may appeal the adverse action to the Council within thirty (30) days of final action by the Commission.

(B) *Record on Appeal.* The record on appeal shall consist of the final written decision of the Commission; all evidence presented to or relied on by the Commission, a taped or transcribed record of any hearing, and any other records of the Commission or any other information requested by the Council.

(C) *Stay Pending Appeal.* Suspension or revocation of a Liquor License may be stayed pending an appeal under this Section, at the discretion of the Council. The Council may request that the appellant post an appeal bond in an amount set by the Council.

(D) *Decision of Council Final.* All decisions of the Council on appeals under this Section shall be final and not subject to further appeal or review.

§ 12 PRIVATE RIGHT OF ACTION.

Subject to the limitations of J.A.N.C. § 22–1–12, any person who suffers personal injury or property damage as a result of a violation of J.A.N.C. § 22–1–7 or J.A.N.C. § 22–1–8 shall have a right of action for money damages against the person or entity whose violation caused or contributed to his or her injury.

§ 13 NO WAIVER OF SOVEREIGN IMMUNITY.

Nothing in this Chapter is intended to be or shall be construed as or as authorizing any waiver of the sovereign immunity of the Jicarilla Apache Nation or any of its political subdivisions or of any business entity owned in whole or in part by the Nation.

§ 14 SEVERABILITY.

If any provision of this Chapter is found to be invalid or unenforceable, all remaining provisions shall be given full force and effect to the fullest extent practicable. [End of amended Ordinance]

BE IT FURTHER ORDAINED that the amended Ordinance shall be effective upon the date that all requirements of tribal and Federal law are complete, including publication of this Ordinance by the Secretary of the Interior in the **Federal Register** to the extent such publication is required by law. All violations occurring before that date shall be penalized under the law as it existed when the violation occurred.

CERTIFICATION

The foregoing Ordinance was enacted by the Legislative Council of the Jicarilla Apache Nation on the ***5th*** day of ***December 2007,*** by a vote of ***8*** for, ***0*** against, and ***0*** abstaining, at a duly called meeting at which a quorum of the Legislative Council members were present.

/signed/

President

CERTIFICATION

The foregoing Ordinance was enacted by the Legislative Council of the Jicarilla Apache Nation on the ***5th*** day of ***December 2007,*** by a vote of ***8*** for, ***0*** against, and ***0*** abstaining, at a duly called meeting at which a quorum of the Legislative Council members were present.
ATTEST:
/signed/
Secretary of the Nation

[FR Doc. E8–18287 Filed 8–7–08; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–050–1610–012J]

Notice of Availability of Richfield Field Office Proposed Resource Management Plan and Final Environmental Impact Statement (PRMP/FEIS)

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969 and the Federal Land Policy and Management Act of 1976, the Bureau of Land Management (BLM) has prepared a Proposed Resource Management Plan/Final Environmental Impact Statement (PRMP/FEIS) for the Richfield Field Office.

DATES: The BLM planning regulations (43 CFR 1610.5–2) state that any person who meets the conditions as described in the regulations may protest the BLM's PRMP/FEIS. A person who meets the conditions and files a protest must file the protest within 30 days of the date that the Environmental Protection Agency publishes this notice in the **Federal Register**.

ADDRESSES: Copies of the Richfield Field Office PRMP/FEIS were sent to affected Federal, state, and local government agencies and to interested parties. Copies of the PRMP/FEIS are available for public inspection at: Richfield Field Office, 150 East 900 North, Richfield, UT 84701. Utah State Office, 440 West 200 South, Salt Lake City, UT 84145.

Interested persons may also review the PRMP/FEIS on the Internet at *http://www.blm.gov/ut/st/en/fo/richfield/planning.html*. All protests must be in writing and mailed to the following addresses:

Regular Mail: BLM Director (210), Attention: Brenda Hudgens-Williams, P.O. Box 66538, Washington, DC 20035

Overnight Mail: BLM Director (210), Attention: Brenda Hudgens-Williams, 1620 L Street, NW., Suite 1075, Washington, DC 20036

FOR FURTHER INFORMATION, CONTACT: John Russell, Richfield Field Office, 150 East 900 North, Richfield, UT 84701; phone: (435)896–1500; or e-mail at: *John_Russell@blm.gov*.

SUPPLEMENTARY INFORMATION: The Richfield RMP planning area is located in central Utah. The BLM administers approximately 2.1 million acres of surface estate and 3.0 million acres of Federal mineral estate within the planning area.

The Richfield RMP will provide future broad-scale management direction for land use allocations and allowable uses on public lands within the planning area. Implementation of the decisions of the PRMP/FEIS would apply only to BLM-administered public lands and Federal mineral estate. In the Draft RMP/EIS (DRMP/DEIS), which was released for public review and comment in October 2007, five alternatives were analyzed, including a No Action alternative. These alternatives were developed through issue identification during the scoping process. Such issues included: visual resources, non-WSA lands with wilderness characteristics, livestock grazing, recreation, travel management (OHVs), minerals and energy resources, and special designations (ACECs and WSRs).

The PRMP/FEIS would designate one new Area of Critical Environmental Concern (ACEC), and the continuation of one existing ACEC, totaling 2,530 acres. Resource use limitations that apply to the proposed ACECs include a range of different prescriptions as described in Table 1 below.

TABLE 1—EVALUATION OF AREAS OF CRITICAL ENVIRONMENTAL CONCERN

Area name	Values of concern	Resource use limitations	Acres
North Caineville Mesa	Relict vegetation	No surface occupancy for oil and gas, recommend withdrawal from mineral entry, unsuitable for surface coal mining, unavailable for livestock grazing, closed to OHV use.	2,200
Old Woman Front	Relict vegetation	No wildlife habitat manipulation; prohibit introduction or spread of exotic animal species; no logging or harvest of woodland products, fuelwood gathering, or Christmas tree cutting; unavailable for livestock grazing; no range improvements; no special recreation permits; closed to OHV use; no new roads, trails, or physical improvements; no surface occupancy for oil and gas; recommend withdrawal from mineral entry.	330

Comments on the Richfield Field Office DRMP/DEIS received from the public and internal BLM review were considered and incorporated as appropriate into the PRMP/FEIS. Public comments resulted in the addition of clarifying text, but did not significantly change proposed land use plan decisions.

Instructions for filing a protest with the Director of the BLM regarding the PRMP/FEIS may be found in the Dear Reader Letter of the Richfield Field Office PRMP/FEIS and at 43 CFR 1610.5–2.

E-mail and faxed protests will not be accepted as valid protests unless the protesting party also provides the original letter by either regular or overnight mail postmarked by the close of the protest period. Under these conditions, the BLM will consider the e-mail or faxed protest as an advance copy and it will receive full consideration. If you wish to provide the BLM with such advance notification, please direct faxed protests to the attention of the BLM protest coordinator at 202–452–5112, and e-mails to *Brenda_Hudgens-Williams@blm.gov*. All protests, including the follow-up letter (if e-mailing or faxing) must be in writing and mailed to the appropriate address,

as set forth in the **ADDRESSES** section above.

Before including your phone number, e-mail address, or other personal identifying information in your protest, you should be aware that your entire protest—including your personal identifying information—may be made publicly available at any time. While you can ask us in your protest to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 40 CFR 1506.6, 43 CFR 1610.2, 43 CFR 1610.5–1.

Selma Sierra,

State Director.

[FR Doc. E8–18192 Filed 8–7–08; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–400–1010–MU–241A]

Notice of Public Meeting, Coeur d'Alene District Resource Advisory Council Meeting and Recreation Subcommittee Meeting; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA), the Federal Advisory Committee Act of 1972 (FACA), and the Federal Lands Recreation Enhancement Act of 2004 (FLREA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Coeur d'Alene District Resource Advisory Council (RAC) and Recreation RAC Subcommittee will meet as indicated below.

DATES: September 9, 2008. The meeting will start at 10 a.m. and end no later than 4 p.m. The public comment period will be from 1 p.m. to 1:30 p.m. The meeting will be held at the Idaho Department of Labor and Commerce, 1350 Troy Rd, Moscow, ID.

FOR FURTHER INFORMATION CONTACT: Lisa Wagner, RAC Coordinator, BLM Coeur d'Alene District, 3815 Schreiber Way, Coeur d'Alene, Idaho 83815 or telephone at (208) 769–5014.

SUPPLEMENTARY INFORMATION: The 15-member RAC advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in Idaho. The agenda will include the following topic: Forest Service recreation fee proposals (Recreation RAC Subcommittee). Additional topics may be added and will be included in local media announcements. More information is available at *http://www.blm.gov/rac/id/id_index.htm*.

All meetings are open to the public. The public may present written comments to the RAC in advance of or at the meeting. Each formal RAC meeting will also have time allocated for receiving public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the BLM as provided above.

Dated: August 4, 2008.

Gary D. Cooper,

District Manager.

[FR Doc. E8–18293 Filed 8–7–08; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–420–1610–DQ–034D]

Notice of Availability of the Proposed Cottonwood Resource Management Plan and Final Environmental Impact Statement; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969 (NEPA, 42 U.S.C. 4321 *et seq.*) and the Federal Land Policy and Management Act of 1976 (FLPMA, 43 U.S.C. 1701 *et seq.*), the Bureau of Land Management (BLM) has prepared a Proposed Resource Management Plan/Final Environmental Impact Statement (PRMP/FEIS) for the Cottonwood Field Office, Idaho.

DATES: The BLM Planning Regulations (43 CFR 1610.5–2) state that any person who participated in the planning process, and has an interest which is or may be adversely affected, may protest BLM's approval of a Resource Management Plan. You must file a protest within 30 days of the date that the Environmental Protection Agency publishes their Notice of Availability in the **Federal Register**. Instructions for filing of protests are described in the Dear Reader letter of the Cottonwood PRMP/FEIS and in the **SUPPLEMENTARY INFORMATION** section of this notice. To ensure compliance with the protest regulations, please consult BLM's Planning Regulations at 43 CFR 1610.5–2.

FOR FURTHER INFORMATION CONTACT: Dean Huibregtse, RMP Team Lead, BLM Cottonwood Field Office, 1 Butte Drive, Cottonwood, ID 83522; (208) 962–3784; or *Dean_Huibregtse@blm.gov*.

SUPPLEMENTARY INFORMATION: The planning area covers approximately 143,830 acres of public lands within the following Idaho Counties: Latah, Clearwater, Nez Perce, Lewis, Idaho and Adams. The Cottonwood RMP, when completed, will provide management guidance for use and protection of the resources managed by the Cottonwood Field Office. The Draft Cottonwood RMP/EIS was published for public comment on August 25, 2006. During the 90-day public comment period BLM received 30 comment letters, e-mails, and faxes containing 376 individual comments. Comments on the Draft RMP/EIS from the public and internal BLM review comments were incorporated into the proposed plan. Public comments resulted in the addition of clarifying text and minor changes to the Preferred Alternative, but did not significantly change proposed land use decisions. The planning issues addressed in the PRMP/FEIS include: invasive plant species, forest vegetation, special status species, watershed management, transportation and travel management, commercial land uses, fuels reduction treatments, public land management and recreational demands.

Copies of the Cottonwood PRMP/FEIS have been sent to affected Federal, State and Local Government agencies and to interested parties. Copies of the PRMP/FEIS are available for public inspection at the BLM Cottonwood Field Office at the address shown above. Interested persons may review the PRMP/FEIS on the Internet at *http://www.blm.gov/rmp/id/cottonwood/*. You may also obtain a copy on CD–ROM, or paper copy at the BLM Cottonwood Office at the address listed above, or by contacting Dean Huibregtse at (208) 962–3784.

As noted above, instructions for filing a protest with the Director of the BLM regarding the PRMP/FEIS may be found at 43 CFR 1610.5–2. A protest may only raise those issues which were submitted for the record during the planning process. E-mail and faxed protests will not be accepted as valid protests unless the protesting party also provides the original letter by either regular or overnight mail postmarked by the close of the protest period. Under these conditions, BLM will consider the e-mail or faxed protest as an advance copy

and it will receive full consideration. If you wish to provide the BLM with such advance notification, please direct faxed protests to the attention of the BLM protest coordinator at 202–452–5112, and e-mails to *Brenda_Hudgens-Williams@blm.gov*.

All protests including the follow-up letter (if e-mailing or faxing) must be in writing and mailed to one of the following addresses:

Regular mail:	Overnight mail:
Director (210), Attention: Brenda Hudgens-Williams, P.O. Box 66538, Washington, DC 20035.	Director (210), Attention: Brenda Hudgens-Williams, 1620 L Street, NW., Suite 107, Washington, DC 20036.

Before including your address, phone number, e-mail address, or other personal identifying information in your protest, you should be aware that your entire protest—including your personal identifying information—may be made publicly available at any time. While you can ask us in your protest to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Thomas H. Dyer,

Idaho State Director.

[FR Doc. E8–18193 Filed 8–7–08; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–921–08–1430–ET–1920–4625–24–1A; UTU 86103]

Notice of Proposed Legislative Withdrawal and Public Meeting; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of the Army, Corps of Engineers, has filed an application requesting the Secretary of the Interior to process, in accordance with the Engle Act (43 U.S.C. 155–158), a proposed legislative withdrawal from all forms of appropriation under the public land laws, including the mining laws, of approximately 18,248 acres of public lands located in Tooele County, Utah. The withdrawal would reserve the lands for use as a military training range. This notice temporarily segregates the lands from surface entry and mining for up to two years while the legislative withdrawal application is being processed.

DATES: A public meeting will be held from 5 p.m. to 7 p.m. on Wednesday, September 24, 2008, at the BLM Salt Lake District Office, 2370 South 2300 West, Salt Lake City, Utah. Written comments must be received on or before November 6, 2008.

ADDRESSES: Comments should be sent to the State Director, Utah State Office, Bureau of Land Management, P.O. Box 45155, Salt Lake City, Utah 84145, or e-mail: *rhonda_flynn@blm.gov*.

FOR FURTHER INFORMATION CONTACT: Rhonda Flynn, Realty Specialist, at the above address; telephone (801) 539–4132; e-mail: *rhonda_flynn@blm.gov*.

SUPPLEMENTARY INFORMATION: Acting on behalf of the Department of the Air Force, Hill Air Force Base, the U.S. Army Corps of Engineers (ACE) has filed an application with the Bureau of Land Management (BLM) requesting the Secretary of the Interior to process a legislative withdrawal pursuant to the Engle Act (43 U.S.C. 155–158). The proposed withdrawal would withdraw and reserve the following described public lands located within the exterior boundaries of the Utah Test and Training Range (UTTR) in Tooele County, Utah, from settlement, sale, location or entry under the general land laws, including the mining laws, subject to valid existing rights, for use as a military training range:

Salt Lake Meridian

T. 2 S., R. 14 W.,
secs. 32 and 36.
T. 2 S., R. 15 W.,
sec. 32, W½;
sec. 36.
T.3 S., R. 15 W.,
sec. 2, lots 1–4 inclusive, S½N½ and S½;
secs. 16, 32 and 36.
T. 2 S., R. 16 W.,
secs. 32 and 36.
T. 2 S., R. 17 W.,
secs. 32 and 36.
T. 2 N., R. 15 W.,
secs. 2, 16, 32 and 36.
T. 2 S., R. 18 W.,
sec. 36.
T. 3 S., R. 18 W.,
secs. 2, 16, 32 and 36.
T. 3 S., R. 19 W.,
secs 2, 16, 32 and 36.
T.4 S., R. 19 W.,
secs. 2, 16, 32 and 36.

The areas described contain approximately 18,248 acres in Tooele County.

The purpose of the proposed legislative withdrawal is to withdraw and reserve the lands for use as a military training range, involving aerial bombing and a gunnery range necessary for national security. The withdrawal would be established by an act of Congress approved by the President. The duration of the withdrawal would be determined by Congress.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed action may present their views in writing to the BLM Utah State Director, at the address noted above.

Comments, including names and street addresses of respondents, and records relating to the proposed land transfer will be available for public review during regular business hours at the BLM Utah State Office at the address specified above. Individual respondents may request confidentiality. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

A public meeting has been scheduled in connection with the proposed legislative withdrawal. The purpose of the meeting is to provide information and solicit public comments on the proposed action.

There are no suitable alternative sites since the lands herein described lie within the exterior boundaries of the existing UTTR.

This withdrawal application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of two years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. Land uses currently occurring may continue during the segregative period. If the proposed legislative withdrawal has been submitted to Congress but not enacted into law by the end of the two-year segregation period, consideration will be given to entertaining an application for a temporary withdrawal in aid of pending legislation.

(Authority: 43 CFR 2310.3–1(b)(1))

Selma Sierra,

State Director.

[FR Doc. E8–18306 Filed 8–7–08; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–230–07–1610–DQ–081A]

Notice of Availability of the Proposed Resource Management Plans and Final Environmental Impact Statement for the Agua Fria National Monument and Bradshaw-Harquahala Planning Area

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969 and the Federal Land Policy and Management Act of 1976, the Bureau of Land Management (BLM) has prepared Proposed Resource Management Plans and a Final Environmental Impact Statement (PRMPs/FEIS) for the Agua Fria National Monument and Bradshaw-Harquahala Planning Area.

DATES: BLM Planning Regulations (43 CFR 1610.5–2) state that any person who participated in the planning process, and has an interest that may be adversely affected, may protest the approval of the resource management plan. The protest must be filed within 30 days of the date that the Environmental Protection Agency publishes this notice in the **Federal Register**. Instructions for filing of protests are described in the cover letter of the PRMPs/FEIS and included in the ''Additional Protest Information'' section of this notice. Please consult the BLM's planning regulations at 43 CFR 1610.5–2 for further instructions on protests.

FOR FURTHER INFORMATION CONTACT: Dr. Connie Stone, Bureau of Land Management, Hassayampa Field Office, 21605 North 7th Avenue, Phoenix, Arizona 85027, 623–580–5500.

SUPPLEMENTARY INFORMATION: The two planning areas encompass more than 3 million acres in Maricopa and Yavapai Counties, located in central and western Arizona. The Hassayampa Field Office administers 967,000 surface acres within these planning boundaries, including 70,900 of the 72,344 acres within the Agua Fria National Monument (Monument), which was established by Presidential Proclamation on January 11, 2000. The BLM also retains subsurface (mineral) rights to 346,000 additional acres within the Bradshaw-Harquahala planning area boundaries, and another 181,200 acres of subsurface (mineral) rights north and east of the boundaries, which are addressed in the PRMP/FEIS for the Bradshaw-Harquahala area.

The BLM has prepared two proposed resource management plans, one for the Monument and another for the Bradshaw-Harquahala Planning Area. Both plans are analyzed separately within the same environmental impact statement. BLM developed the PRMPs/FEIS with broad public participation through a 5-year collaborative planning process. In preparing the document, the BLM conducted public meetings and alternatives development workshops, and considered community vision statements developed by several communities within the planning area. The PRMPs address the challenges of managing lands and resources adjacent to Phoenix and other areas of rapid population growth. Specifically, the PRMP for the Monument provides for the protection of its significant cultural and natural resources; the PRMP for the Bradshaw-Harquahala area includes management actions for protecting the natural, cultural, scenic, and recreational values of the area while managing multiple uses in support of communities. Four action alternatives for each PRMP, as well as the No Action alternative for each PRMP, were developed and analyzed for the PRMPs/FEIS.

The PRMP for the Bradshaw-Harquahala Planning Area identifies four new Areas of Critical Environmental Concern (ACECs): Tule Creek ACEC (640 acres); Vulture Mountain ACEC (6,120 acres); Harquahala Mountains ACEC (74,950 acres); and Black Butte ACEC (8,260 acres). The following types of resource use limitations would generally apply to these ACECs: (1) Motorized travel would be permitted only on existing (temporary) or designated open routes; (2) new recreation facilities would be limited to projects that protect ACEC values; (3) new mineral material disposal sites would not be authorized; (4) areas would be unavailable for livestock grazing in the Tule Creek ACEC, and there would be no grazing improvements that would encourage concentrated livestock use in the Harquahala Mountains ACEC; and (5) rock climbing would be prohibited in the Vulture Mountain and Black Butte ACECs to protect wildlife habitat.

The PRMP for the Agua Fria National Monument removes designations of the Perry Mesa ACEC and Larry Canyon ACEC, established in the Phoenix Resource Management Plan (1988). The protective management prescriptions for the two ACECs are incorporated into the Monument PRMP or, in the case of lands and minerals actions, are more restrictive under the Monument Proclamation.

The BLM will prepare two Records of Decision; one for the Agua Fria National Monument and one for the Bradshaw-Harquahala Planning Area.

Copies of the PRMPs and Final Environmental Impact Statement for the Agua Fria National Monument and Bradshaw-Harquahala Planning Area have been sent to affected Federal, State, and local government agencies, and to interested parties. Copies are available for public inspection at 21605 North 7th Avenue, Phoenix, Arizona 85027. Interested persons may also review the PRMP/FEIS on the Internet accessed through links from the Arizona Public Web Pages at *http://www.blm.gov/az//st/en.html*. Comments on the Draft RMPs/EIS received from the public and internal BLM review were incorporated into the PRMPs. Public comments resulted in the addition of clarifying text, corrections, and changes that did not significantly modify the proposed land use decisions.

Additional Protest Information: E-mail and faxed protests will not be accepted as valid protests unless the protesting party also provides the original letter by either regular or overnight mail postmarked by the close of the protest period. Under these conditions, the BLM will consider the e-mail or faxed protest as an advance copy and it will receive full consideration. If you wish to provide the BLM with such advance notification, please direct faxed protests to the attention of the BLM protest coordinator at 202–452–5112, and e-mails to *Brenda_Hudgens-Williams@blm.gov*.

All protests must be in writing and mailed to the following address:

Regular mail:	Overnight mail:
Director (WO–210), Bureau of Land Management, Attention: Brenda Williams, P.O. Box 66538, Washington, DC 20035.	Director (WO–210), Bureau of Land Management, Attention: Brenda Williams, 1620 L Street, NW., Suite 1075, Washington, DC 20036.

Before including your address, telephone number, e-mail address, or other personal identifying information in your protest, you should be aware that your entire protest—including your personal identifying information—may be made publicly available at any time. While you can ask us in your protest to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of

organizations or businesses, will be available for public inspection in their entirety.

Helen M. Hankins,

Associate State Director.

[FR Doc. E8–18194 Filed 8–7–08; 8:45 am]

BILLING CODE 4310–32–P

INTERNATIONAL TRADE COMMISSION

Notice of Appointment of Individuals To Serve as Members of Performance Review Boards

AGENCY: United States International Trade Commission.

ACTION: Appointment of individuals to serve as members of Performance Review Board.

DATES: *Effective:* September 26, 2005.

FOR FURTHER INFORMATION CONTACT: Jeri L. Buchholz, Director of Human Resources, U.S. International Trade Commission (202) 205–2651.

SUPPLEMENTARY INFORMATION: The Chairman of the U.S. International Trade Commission has appointed the following individuals to serve on the Commission's Performance Review Board (PRB):

Chairman of PRB—Vice-Chairman Deanna Tanner Okun.

Chairman of PRB—Commissioner Jennifer A. Hillman.

Member—Robert A. Rogowsky.

Member—Lyn M. Schlitt.

Member—Stephen A. McLaughlin.

Member—Lynn I. Levine.

Member—Robert G. Carpenter.

Member—Robert B. Koopman.

Member—James Lyons.

Member—Karen Laney-Cummings.

This notice is published in the **Federal Register** pursuant to the requirement of 5 U.S.C. 4314(c)(4). Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 205–1810.

Issued: September 26, 2005.

By order of the Chairman.

Marilyn R. Abbott,

Secretary.

[FR Doc. E8–18316 Filed 8–7–08; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–08–022]

Government in the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: August 11, 2008 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. 701–TA–453 and 731–TA–1136–1137 (Final)(Sodium Nitrite from China and Germany)—briefing and vote. (The Commission is currently scheduled to transmit its determinations and Commissioners' opinions to the Secretary of Commerce on or before August 20, 2008.)
5. Outstanding action jackets:

(1) Document No. GC–08–147: Final disposition of Inv. No. 337–TA–487 (Certain Agricultural Vehicles and Components Thereof).

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. Earlier announcement of this meetings was not possible.

By order of the Commission.

Issued: August 5, 2008.

William R. Bishop,

Hearings and Meetings Coordinator.

[FR Doc. E8–18326 Filed 8–7–08; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–08–023]

Government in the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: August 12, 2008 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. 701–TA–452 and 731–TA–1129–1130 (Final)(Raw Flexible Magnets from China and Taiwan)—briefing and vote. (The Commission is currently scheduled to transmit its determinations and Commissioners' opinions to the Secretary of Commerce on or before August 25, 2008.)
5. Outstanding action jackets: (1) Document No. GC–08–147: Final disposition of Inv. No. 337–TA–487 (Certain Agricultural Vehicles and Components Thereof).

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: August 5, 2008.

William R. Bishop,

Hearings and Meetings Coordinator.

[FR Doc. E8–18327 Filed 8–7–08; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–08–024]

Government in the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: August 15, 2008 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. 701–TA–448 and 731–TA–1117 (Final) (Certain Off-the-Road Tires from China)—briefing and vote. (The Commission is currently scheduled to transmit its determinations and Commissioners' opinions to the Secretary of Commerce on or before August 28, 2008.)
5. Outstanding action jackets:

1) Document No. GC–08–147: Final disposition of Inv. No. 337–TA–487 (Certain Agricultural Vehicles and Components Thereof).

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: August 5, 2008.

William R. Bishop,

Hearings and Meetings Coordinator.

[FR Doc. E8–18328 Filed 8–7–08; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Federal Register Notice

Notice is hereby given pursuant to the Defense Production Act of 1950, 50 U.S.C. App. § 2158 (''DPA'') that the Attorney General finds that the purpose of a Voluntary Tanker Agreement (''VTA'') proposed by the Maritime Administration (''MarAd'') may not reasonably be achieved through a voluntary agreement or plan of action having less anticompetitive effects or without any voluntary agreement of plan of action. The text of the proposed VTA was published in Volume 72 of the **Federal Register** at pages 41099–41103 (July 26, 2007).

Under the DPA, MarAd may enter into agreements with representatives of private industry for the purpose of improving the efficiency with which private firms contribute to the national defense when conditions exist that may pose a direct threat to the national defense or its preparedness. Such arrangements are generally known as ''voluntary agreements.'' A defense to actions brought under the antitrust laws is available to each participant acting within the scope of a voluntary agreement that has come into force under the DPA.

The DPA requires that each proposed voluntary agreement be reviewed by the Attorney General prior to becoming effective. If, after consulting with the Chairman of the Federal Trade Commission, the Attorney General finds that the purpose of the DPA ''may not be reasonably achieved through a voluntary agreement having less anticompetitive effects or without any voluntary agreement or plan of action,'' the agreement may become effective. 50 U.S.C. App. § 2158(f)(1)(B). The Attorney General's authority is delegated to the Assistant Attorney General for the Antitrust Division by 28 CFR 0.40(e).

The purpose of the proposed VTA is to support Department of Defense (''DoD'') contingency requirements to provide tanker capacity during times of crisis through procedures agreed in advance. The proposed VTA establishes the terms, conditions and procedures under which participants agree voluntarily to make tankers available to the DoD. MarAd has certified that the proposed VTA is necessary to carry out its purpose.

MarAd requested that the Antitrust Division issue a finding that the proposed VTA satisfies the statutory criteria set forth in 50 U.S.C. App. § 21 58(f)(1)(B). The Antitrust Division reviewed the proposed agreement, attended an open meeting of interested persons pursuant to the requirements of 44 CFR 332.2, and consulted with the Chairman of the Federal Trade Commission as to the competitive effect of the proposed agreement. On July 23, 2008, by letter to Sean T. Connaughton, Maritime Administrator for MarAd, Thomas O. Barnett, Assistant Attorney General for the Antitrust Division, issued a finding that the proposed agreement satisfies the statutory criteria.

J. Robert Kramer II,

Director of Operations, Antitrust Division.

[FR Doc. E8–17996 Filed 8–7–08; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Biotechnology Research and Development Corporation (''BRDC'')

Notice is hereby given that, on June 30, 2008, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (the ''Act''), Biotechnology Research and Development Corporation (''BRDC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Global Protein Products, Inc., Winslow, ME has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and BRDC intends to file additional written notification disclosing all changes in membership.

On April 13, 1988, BRDC filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on May 12, 1988 (53 FR 16919).

The last notification was filed with the Department on September 23, 2003. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on October 14, 2003 (68 FR 59197).

Patricia Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. E8–18184 Filed 8–7–08; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—the Information Technology Industry Council, Inc./the International Committee for Information Technology Standards

Notice is hereby given that, on June 25, 2008, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), The Information Technology Industry Council, Inc./The InterNational Committee for Information Technology Industry Council, Inc. (''ITI/INCITS'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions or changes to its standards development activities. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, ITI/INCITS has approved 100 new national standards in such areas as Biometrics, Fibre Channel, Office Processing, Identification Cards and OSI, initiated numerous other new standards development projects, and restructured several of its technical committees, task groups and management committees. More detail regarding these activities—including a catalog of current standards, descriptions of proposed standards under public review, and information concerning comment procedure and deadlines—may be found at *http://www.incits.org.*

On September 21, 2004, ITI/INCITS filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section

6(b) of the Act on December 16, 2004 (69 FR 75346).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. E8–18182 Filed 8–7–08; 8:45 am]

BILLING CODE 4410–11–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before September 8, 2008. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting the Life Cycle Management Division (NWML) using one of the following means:

Mail: NARA (NWML), 8601 Adelphi Road, College Park, MD 20740–6001.

E-mail: requestschedule@nara.gov.

Fax: 301–837–3698.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Laurence Brewer, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: 301–837–1539. E-mail: *records.mgt@nara.gov.*

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

The schedules listed in this notice are media neutral unless specified otherwise. An item in a schedule is media neutral when the disposition instructions may be applied to records regardless of the medium in which the records are created and maintained. Items included in schedules submitted to NARA on or after December 17, 2007, are media neutral unless the item is limited to a specific medium. (See 36 CFR 1228.24(b)(3).)

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of Agriculture, Food and Nutrition Service (N1–462–04–3, 4 items, 4 temporary items). Inputs, master file and Web site records associated with a Web-based food ordering system used by state and local governments, the Federal Government, and private industry. The proposed disposition instructions are limited to electronic records for certain items and to paper records for other items.

2. Department of Agriculture, Food Safety and Inspection Service (N1–462–04–9, 1 item, 1 temporary item). Master file associated with an electronic information system that provides information on microbiological, chemical, and pathological analyses of domestic and imported meat and poultry and their processed products. The proposed disposition instructions are limited to electronic records.

3. Department of Justice, Federal Bureau of Investigation (N1–65–08–20, 1 item, 1 temporary item). This schedule requests authority to destroy case 29J–OC–63713, which pertains exclusively to the investigation of the captioned individual. This request responds to a Federal Pre-Trial Diversion Program court order to delete the records of the captioned individual.

4. Department of State, Bureau of Near Eastern Affairs (N1–59–08–10, 7 items, 4 temporary items). Subject files, biographic files, extra copies of briefing books, and departmental task force/working group files. Proposed for permanent retention are bureau-level task force/working group files, geographic office briefing books, and unique collections of records relating to historically significant events within the geographic region covered by the bureau. The proposed disposition instructions for permanent items are limited to paper records.

5. Federal Housing Finance Board, Office of the Inspector General (N1–485–08–2, 10 items, 10 temporary

items). Records relating to audits, policies, procedures, legislation, regulations, and workload. The proposed disposition instructions are limited to paper records.

6. National Reconnaissance Office, Management Services and Operations (N1–525–08–2, 1 item, 1 temporary item). Audio and video tapes of polygraph interviews of agency staff and contractors containing adverse information.

7. Office of Personnel Management, Federal Investigative Services Division (N1–478–08–2, 8 items, 8 temporary items). Records pertaining to the government-wide security background investigation program including investigation case files, reports, indexes, adjudications, and appraisals of agency security/suitability investigation programs.

8. Office of Personnel Management, Office of the Inspector General (N1–478–08–1, 16 items, 16 temporary items). Records include administrative sanction files, audit files, investigative files, legislative files, and legal files. The proposed disposition instructions are limited to paper records for most items.

Dated: August 1, 2008.

Michael J. Kurtz,

Assistant Archivist for Records Services—Washington, DC.

[FR Doc. E8–18380 Filed 8–7–08; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: On July 2, 2008, the National Science Foundation published a notice in the **Federal Register** of permit applications received. A permit was issued on August 5, 2008 to: Kristin M. O'Brien, Permit No. 2009–011.

Nadene G. Kennedy,

Permit Officer.

[FR Doc. E8–18317 Filed 8–7–08; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No.: 40–8905]

Environmental Assessment and Finding of No Significant Impact for Site Protection Measures From Surface Water Flow, License Amendment No. 59; Rio Algom Mining, LLC, Ambrosia Lake, NM—SUA–1473

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Issuance of Environmental Assessment.

FOR FURTHER INFORMATION CONTACT: Thomas McLaughlin, Project Manager, Materials Decommissioning Branch, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC, 20555. Telephone: (301) 415–5869; fax number: (301) 415–5369; e-mail: *tgm@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

By letter dated October 24, 2007, as supplemented on January 31, 2008, and March 21, 2008, Rio Algom Mining, LLC, (Rio Algom, or the Licensee) submitted an application to the U.S. Nuclear Regulatory Commission (NRC), requesting an amendment to Source Materials License SUA–1473 for the Ambrosia Lake Mill Facility, in Ambrosia Lake, New Mexico. Rio Algom seeks the approval of its proposed site erosion protection measures designed to prevent surface water flow from damaging its uranium mill tailings site. The NRC prepared an Environmental Assessment (EA) for this proposed action in accordance with the requirements of 10 CFR Part 51. Based on the EA, the NRC concluded that a Finding of No Significant Impact (FONSI) is appropriate with respect to the proposed action. The amendment would be issued following the publication of this FONSI and EA in the **Federal Register**.

The Licensee has indicated that the proposed site erosion protection measures from surface water flow are the final component of the overall site reclamation plan. The Licensee previously has addressed, and NRC has approved, the remaining site-wide reclamation plan elements through separate licensing actions, including the original reclamation plan for Tailings Cells 1, 2, and 3 (approved in September 1990), mill demolition, relocation of lined evaporation pond sediments, soil decommissioning plan, and groundwater remediation. The expansion of Tailings Cell 2 was approved by License Amendment No. 58. The current licensing action is to protect the Tailing Cells from erosion from surface water by constructing a channel to divert water flow around them.

II. Environmental Assessment

1.0 Background

The Ambrosia Lake site is in the Ambrosia Lake Mining District of New Mexico, 25 miles north of Grants, New Mexico. Rio Algom began processing ore in 1958, and processed approximately 33 million tons of ore through 1985. The site continued to be an active uranium production facility through December 2002. Site reclamation activities commenced in 1989 with some work on the top surface of the largest tailings cell. There are three tailings/waste cells situated adjacent to each other at the Rio Algom site: The large Tailings Cell 1, Tailings Cell 2 to the west of Cell 1, and a small Cell 3 east of Cell 1 that was used to dispose of contaminated windblown material. Reclamation of Cell 1 is complete, and cover construction of Cells 2 and 3 is still ongoing and almost complete. Reclamation activities have at times included unlined evaporation pond residue excavation and disposal, contaminated windblown soil cleanup, tailings impoundment reclamation, surface water erosion protection feature construction, and mill building demolition.

In meetings and discussions with the Licensee in 2006 and 2007, the NRC staff was informed that Rio Algom intended to leave remaining contaminants under Ponds 4, 5, and 6 in place in the Arroyo del Puerto floodplain. Ponds 4, 5, and 6 were unlined and uranium, radium-226, and thorium-230, have been found to extend to 10 feet deep in some areas. The top 4 to 5 feet of contaminated soil in these Ponds have been removed and the material placed in Tailings Cell 3, then the footprint was covered with 1 to 2 feet of clean soil. The staff expressed concerns that the remaining contaminates under the Ponds needed to be protected from erosion due to

periodic flooding that occurs in the Arroyo del Puerto. These Ponds extend over an area of about 50 acres and must be stabilized and protected from erosion. They are located inside the exterior diversion berm, but need to be protected from the effects of direct precipitation and the resulting overland runoff. RAMC proposes to provide a 3-inch thick layer of rock to protect the top slope from erosion. Rio Algom's decision to leave this material in place has resulted in significant changes to the overall design of the Arroyo del Puerto channel. Major revisions included construction of a very large diversion channel and significant additions of riprap to protect against erosion and lateral migration of the re-aligned channel.

The re-design and protection of the Arroyo del Puerto channel is the last phase of the Ambrosia Lake facility reclamation. The NRC staff recently approved License Amendment 58 which finalized the capping of the remaining mill tailing waste in Tailings Cell 2. An extensive EA was prepared for this licensing action (See ADAMS ML072670278 dated 10/31/2007) which included the discussion of land use, geology, surface and ground water, ecology (flora and fauna), climate, socioeconomic impact, historical and cultural resources, public and occupational health, and transportation. The scope of the current EA, which evaluates the construction of a channel to divert water flow away from the three Tailings Cells and Ponds 4, 5, and 6 to protect them from erosion, is limited to the construction impacts, as all other impacts were previously evaluated in the Tailings Cell 2 expansion EA completed in October 2007.

2.0 The Proposed Action

The proposed action is to amend NRC Source Materials License SUA–1473 to approve the construction of a channel to divert water flow away from the three Tailings Cells and Ponds 4, 5, and 6 to protect them from erosion caused by surface water flow. To comply with Criterion 6 of 10 CFR 40, Appendix A (which requires stability of mill Tailings Cells for 1000 years to the extent reasonably achievable and in any case for 200 years), the Licensee proposes to significantly modify the alignment of the original channel by constructing a new channel and berm on the east side of Ponds 4, 5, and 6. The overall design includes construction of: (1) A new exterior diversion channel and berm; (2) a new interior drainage channel; (3) modified riprap protection for mill Tailing Cell 3; and (4) additional riprap protection for Ponds 4, 5, and 6. Each of these design features requires rock riprap erosion protection to assure long-term stability.

3.0 Need for the Proposed Action

The need for the proposed action is to address NRC concerns about the potential periodic flood conditions of the original channel due to heavy rains, and the long-term stability for the three mill Tailings Cells, and for protection of Ponds 4, 5, and 6. Periodic heavy rains have the potential to wash away the covered uranium mill waste in the three Tailings Cells and under Ponds 4, 5 and 6, and carry the uranium waste outside the property boundary of the Licensee. The purpose of the re-designed channel is to divert any flood water away from the three Tailings Cells and Ponds 4, 5 and 6. This EA fulfills the NRC's responsibilities under the Atomic Energy Act to make a decision on a proposed license amendment in a manner that ensures protection of the environment.

4.0 The Environmental Impacts of the Proposed Action

The potential direct impacts of the proposed action are short-term impacts from construction. Long-term and indirect impacts are considered as part of the previously cited analysis. The direct impacts from construction activities primarily would be dust generation due to excavating material to form the channel, noise generated by construction equipment, and water surface runoff. Fugitive dust from heavy equipment operation would be mitigated through the use of dust suppression methods on haul roads. Noise suppression devices will be worn by workers when necessary. The Licensee's implementation of its National Pollutant Discharge Elimination System (NPDES) permits, its Storm Water Pollution Prevention Plan for the site, its site Health, Safety and Environment Management System, and NRC license requirements would provide adequate assurances to avoid adverse impacts to the environment. Additional ambient air monitoring stations have been installed to collect data from the dust produced during the work activity to demonstrate that control measures would be implemented and effective. These high volume air sampling stations measure the amount of natural Uranium, Th-230, Ra-226, and Pb-210, and the concentrations are compared to the limits described in License Condition No. 10. Potential impacts at the tailings cell area would be small since the area is already disturbed from site reclamation activities and the associated impacts were previously evaluated.

The staff evaluated the potential impacts associated with the Licensee's proposed construction of a channel to divert water from the three mill Tailings Cells and Ponds 4, 5, and 6. The staff finds that the mill tailings waste contained in the three Tailings Cells, and the contaminants in Ponds 4, 5, and 6 would be adequately protected from the effects of erosion that can be caused by the periodic flooding of the Arroyo del Puerto.

The Licensee prepared a technical memorandum to respond to New Mexico Department of Environmental Quality (NMDEQ) comments about the disruption or elimination of monitoring wells during the construction of the channel. The technical memorandum stated that no monitoring wells would be abandoned or replaced as the result of the construction of the new diversion channel. However, there are five wells within the area of construction that would have changes in their final surface elevations from construction activities.

The NMDEQ and NRC staff also had concerns about the potential for surface water infiltration. The Licensee prepared a second technical memorandum to respond to the question of surface water infiltration and the potential for ground water recharge to the alluvial system beneath the channel from surface water flow. After reviewing the Licensee's response in their second technical memorandum, NRC staff concluded that Rio Algom adequately explained that the infiltration potential within the Ambrosia Lake Mill site would be small. The following are the most significant points stated by the Licensee that supports its conclusion that infiltration (recharge to the water table) is small:

- The drainage area for the Interior Drainage Channel is limited (less than a square mile—440 acres), thus, the surface runoff amounts would be small.
- The soils in the vicinity of the Arroyo del Puerto at the Ambrosia Mill site are greater than 30 feet deep, and are composed of fine sandy silt to silty fine sand. Because of their fine texture and low permeability, they would retain more soil moisture than coarser textured soils. As a result, the evapotranspiration process would remove much of the soil moisture before it reaches the water table.

The evaporation rate for this site (54 inches/year) is greater (more than 6 times) than the annual precipitation (8.83 inches/year).

5.0 Alternatives to the Proposed Action

The staff considered denial of Rio Algom's request (*i.e.*, the no action alternative) as the only reasonable alternative to the proposed action. Denial of the Licensee's request would result in no protection from the spreading of contaminants from the capped mill tailing cells or the contaminants in Ponds 4, 5, and 6 from potential flooding in the Arroyo del Puerto floodplain.

6.0 Agencies and Persons Consulted

This EA was prepared by the NRC staff, and coordinated with the NMDEQ. NRC staff provided a draft of its EA to NMDEQ for review. NMDEQ had multiple comments on the Draft EA and the overall design of the proposed channel. Several discussions were held with the staff of NMDEQ and their comments were incorporated into the Draft EA and the technical evaluation report which would accompany the license amendment.

A cultural resource survey was conducted on the archeological site discovered during the site inspection, and concluded that no cultural resource sites are present, and that the area is ineligible for inclusion in the National Register. Rio Algom sent a letter to the State of New Mexico Department of Cultural Affairs (NMDCA), Historic Preservation Division (HPD), notifying them of the archeological site and the redesign of the channel and 1000-year (flood control) berm to avoid disturbing the area. The NRC staff contacted the NMDCA, HPD, which stated that the site was eligible for inclusion in the National Register, but concurred with the proposed realignment of the channel project to avoid the archeological site, and stated that, as long as the site is avoided, the project would not affect historic properties. The NRC staff has determined that no further consultation would be required under Section 106 of the National Historic Preservation Act.

The NRC staff has determined that the proposed action would not affect any federally- or state-listed (threatened and endangered) species or their critical habitat. Therefore, no further consultation would be required under Section 7 of the Endangered Species Act. The NRC staff advised the Licensee to contact the U.S. Army Corps of Engineers (USACE) to inquire if this project would require a Section 404 (Clean Water Act) permit. The NRC staff contacted the USACE about the Section 404 permit and they requested that NRC send the technical memoranda from the licensee, the concurrence from NMDCA, HPD on the proposed channel design, and the **Federal Register** Notice (FRN) with the EA (See ADAMS ML081890038). The NRC staff sent the technical memorandums and concurrence from NMDCA, HPD to the USACE and will send the FRN when it is finalized. The USACE will then decide if a Section 404 permit is required.

7.0 Conclusion

The NRC staff prepared this EA in support of the proposed action. Based on the analysis contained in this EA, the staff concluded that there are no environmental impacts from the proposed action, and that the preparation of an Environmental Impact Statement is not warranted. Accordingly, the NRC determined that a Finding of No Significant Impact is appropriate.

III. Further Information

For further details with respect to the proposed action, see the Licensee's letter and report dated October 24, 2007 (See ADAMS ML073060379, ML073060380, ML073060381, ML073060382, and ML073060383), a report from the Licensee dated January 31, 2008 (See ADAMS ML080350250, ML080350251, ML080350252, ML080350254, and ML080350259), a report from the Licensee dated March 21, 2008 (See ADAMS ML080990026, ML080990027, ML080990034, and ML080990035), a technical memorandum from the Licensee dated May 8, 2008 (See ADAMS ML081280101), and a revised technical memorandum from the Licensee dated May 21, 2008 (See ADAMS ML081490526), all of which are available for public inspection, and can be copied for a fee, at the U.S. Nuclear Regulatory Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, 20852. The NRC maintains an Agency-wide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the internet at *http://www.nrc.gov.*

Persons who do not have access to ADAMS or who have problems in accessing the documents located in ADAMS may contact the PDR reference staff at 1–800–397–4209, 301–415–4737 or by e-mail at *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 1st day of August, 2008.

For The Nuclear Regulatory Commission.

Rebecca Tadesse,

Acting Deputy Director, Decommissioning and Uranium Recovery, Licensing Directorate, Division of Waste Management, and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. E8–18289 Filed 8–7–08; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. C2008–3; Order No. 92]

Complaint of Capital One Services, Inc.

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission has initiated a case to address allegations of undue discrimination and other issues raised by Capital One Services, Inc. (Capital One) in a formal complaint. The allegations stem from Capital One's interest in obtaining a rate agreement from the Postal Service on terms that are the same as or similar to those another major mailer has received. Accepting the case will provide an opportunity for review of pertinent issues.

DATES: Notices of intervention are due on August 13, 2008. A prehearing conference will be held on August 14, 2008.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.*

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6820 and *stephen.sharfman@prc.gov.*

SUPPLEMENTARY INFORMATION: The Complaint of Capital One Services, Inc. Regarding Discrimination and Other Violations of Law by the United States Postal Service (Complaint) was filed on June 19, 2008. The Complaint asserts several claims concerning Capital One's unsuccessful attempts to enter into a negotiated service agreement similar to the agreement that the Postal Service recently commenced with Bank of America. In support of the Complaint, Capital One filed the Declaration of Ben Lamm, and correspondence between Capital One and the Postal Service dated May 15, 2008, May 27, 2008, May 30, 2008, and June 4, 2008.[1]

The Answer of the United States Postal Service (Answer) in response to the Complaint was filed on July 21,

[1] The May 30, 2008 correspondence includes a copy of a negotiated service agreement proffered by Capital One to the Postal Service.

2008, together with a Motion of the United States Postal Service to Dismiss Complaint (Motion to Dismiss). On July 28, 2008, the Opposition of Capital One Services, Inc. to Motion to Dismiss of the United States Postal Service (Opposition to Dismiss) was filed in response to this motion.

The Commission finds that the Complaint raises material issues of fact and law, and shall begin proceedings to hear the issues involved. 39 U.S.C. 3662(b). The Motion to Dismiss does not persuade the Commission that Capital One should not be provided an opportunity to present evidence and argument in support of its Complaint, and thus, the Motion to Dismiss is denied.

I. The Capital One Complaint

Capital One asserts that it has repeatedly approached the Postal Service in attempts to obtain a negotiated service agreement that is similar to the agreement that the Postal Service entered with Bank of America Corporation.[2] It alleges that the Postal Service refuses to enter into a similar agreement and insists that any agreement with Capital One would have to include mailer-specific baselines and reduced per-piece discounts.[3] Complaint at 3. Capital One contends that because the Postal Service insists on an agreement incorporating mailer-specific baselines and reduced per-piece discounts, Capital One is not being offered an agreement on similar terms to Bank of America.

By denying Capital One a negotiated service agreement under the same terms, Capital One contends that (1) the Postal Service has unduly or unreasonably discriminated among users of the mails and granted an undue or unreasonable preference in violation of 39 U.S.C. 403(c); (2) the Postal Service has created a special classification not available on public and reasonable terms to similarly situated mailers, which creates unreasonable harm to the marketplace in violation of 39 U.S.C. 3622(c)(10); and (3) the Postal Service has violated Commission rules 3010.40 *et seq.* because the rules incorporate by reference the legal standards of 39 U.S.C. 3622(c)(10). *Id.* at 17–19.

Capital One contends the Postal Service should not be allowed to deny an agreement to Capital One on the same terms granted to Bank of America. Capital One also argues the Postal Service should not be allowed to contest whether the Bank of America agreement is a pay-for-performance agreement, arguing that this was fully litigated and resolved in Docket No. MC2007–1. *Id.* at 19–20.

Capital One requests relief in the form of a ruling that the Postal Service has violated 39 U.S.C. 403(c), 39 U.S.C. 3622(c)(10), and/or Commission rules 3010.40 *et seq.* It requests a ruling stating that Capital One is entitled to an agreement with the same substantive terms, or at a minimum, includes the same financial incentives offered to Bank of America. It requests any other relief deemed appropriate, including but not limited to the Commission ordering approval of a new product (agreement) substantively identical to the Bank of America agreement, without further need for negotiations between the Postal Service and Capital One. *Id.* at 22.

II. The Postal Service Motion to Dismiss

The Postal Service argues that the Complaint fails to establish that the Postal Service unduly discriminated against Capital One or otherwise violated title 39. Motion to Dismiss at 2–4. In support of this argument, the Postal Service asserts that it has long been established that functional equivalence does not mean identical, and that all agreements, including functionally equivalent agreements, are tailored to each partner's unique situation and to how the agreement then benefits the Postal Service. It quotes Commission holdings that a proposed functionally equivalent agreement must primarily rest on the same substantive functional elements as the identified baseline agreement, and must provide a comparable benefit to the Postal Service.[4] It argues that an analysis of functional elements would allow for a far wider range of functionally equivalent agreements than Capital One's argument allows. It concludes that the Postal Service's refusal to approve just one example of a functionally equivalent agreement as presented by Capital One does not constitute an undue or unreasonable preference or create a special classification not available on public and reasonable terms to similarly situated mailers.

The Postal Service further contends that the Complaint is premature because the parties never engaged in, or exhausted, reasonable efforts to negotiate a functionally equivalent agreement. *Id.* at 4–7. It asserts that the Postal Service was and remains prepared to continue negotiations with Capital One.

In response, Capital One contends that reference to its Complaint at 3 and 12–15, and the Opposition to Dismiss at 9–12, present ample indications that despite its extended good faith efforts to negotiate, additional discussions would be futile.

III. Commission Analysis

The Postal Service asserts that Capital One fails to establish undue discrimination. *Id.* at 2–4. Capital One discusses the importance of the opportunity to bring complaints under the Postal Accountability and Enhancement Act (PAEA) and suggests a standard for the legal sufficiency of complaints similar to the standard set forth in the Federal Rules of Civil Procedure. Opposition to Dismiss at 4–5. The Commission has previously applied a ''*colorable claim*'' standard. *See* PRC Order No. 1307 at 9. The Commission finds this an applicable standard to apply under section 3662. Under this standard, Capital One does not have to establish undue discrimination as argued in the Motion to Dismiss; it only has to establish a colorable claim raising material issues of fact or law for the Commission to initiate a proceeding. Once a colorable claim is established, the complainant is provided an opportunity to develop its case, and the respondent is given an opportunity to refute the allegations.

Capital One contends that it has not been able to obtain a negotiated service agreement with the Postal Service on similar terms to the agreement that the Postal Service has with Bank of America. Complaint at 3, para. 6. The Postal Service appears to acknowledge that any agreement with Capital One must use mailer-specific baselines, and that the discounts will have to be reduced to reflect that Capital One was not the first adopter. *See* Complaint at 15, para. 42 and Answer at 7, para. 42. Capital One alleges this constitutes undue or unreasonable discrimination in violation of 39 U.S.C. 403(c).

The Postal Service argues that negotiations have not been given an opportunity to run their course. Motion to Dismiss at 4–7. Capital One contends that negotiations are at a standstill. Opposition to Dismiss at 9–12.

[2] *See* PRC Op. MC2007–1. The Bank of America negotiated service agreement requires Bank of America to implement several advanced mailing practices and provides Bank of America discounts for proven performance improvements relative to six negotiated baselines.

[3] Capital One argues that requiring Capital One to use mailer-specific baselines in place of the Bank of America baselines (which were developed from dated industry averages) radically alters the incentives (and implicitly the agreement) available to Capital One. Complaint at 16.

[4] *Id.* at 3. *See also* Docket No. MC2007–4, Order Regarding Limitation of Issues and Establishing Procedural Schedule, September 7, 2007, at 2 referencing Docket No. RM2003–5, PRC Order No. 1391, February 11, 2004, at 49–51.

The Commission finds that this exchange raises issues of both law and fact relevant to whether or not the actions, or inactions, of the Postal Service rise to the level of undue or unreasonable discrimination among users of the mails, or to the granting of undue or unreasonable preferences to any such users in violation of 39 U.S.C. 403(c).

The pleadings raise several other mixed issues of law and fact. These include whether Capital One and Bank of America are ''similarly situated,'' what constitutes a ''functionally equivalent'' agreement in this situation, and what, if any, harm Capital One has or will incur.

Capital One contends that because the Postal Service only addresses one of the six claims presented by Capital One, the claims that were not addressed are properly before the Commission. *Id.* at 14–15. For example, Capital One raises claims concerning the factor of the PAEA that encourages special classifications, available on public and reasonable terms to similarly situated mailers, which do not cause unreasonable harm to the marketplace. *See* 39 U.S.C. 3622(c)(10). The Postal Service does not specifically address these claims other than offering a denial. Motion to Dismiss at 3. The Commission shall hear all issues presented by the Complaint.

IV. Opportunity for Intervention

Any interested person may file a notice of intervention, consistent with the Commission's rules of practice, as a full or limited participant. *See* 39 CFR 3001.20 and 3001.20a. The notice of intervention shall be filed using the Internet (Filing Online) at the Commission's Web site (*http://www.prc.gov*), unless a waiver is obtained for hard copy filing. *See* 39 CFR 3001.9(a) and 3001.10(a). Notices of intervention are due no later than August 13, 2008.

V. Discovery

Capital One, the Postal Service, and the Public Representative may begin discovery immediately. Discovery may begin upon intervention by others. *See* 39 CFR 3001.25–28.

VI. Prehearing Conference

A prehearing conference is scheduled for August 14, 2008, at 2:30 p.m. in the Commission's hearing Room. Capital One shall be prepared to discuss any additional time needed for discovery, and the time needed to prepare to present its case. In light of the representations made as to the potential for further negotiations (Motion to Dismiss at 6), the parties are encouraged to search for common ground and report on any progress during the prehearing conference.

VII. Representation of the General Public

Pursuant to 39 U.S.C. 505, E. Rand Costich is appointed to serve as officer of the Commission (Public Representative) to represent the interests of the general public in the above-captioned docket.

It is Ordered

1. The Commission finds that the Complaint of Capital One Services, Inc., Regarding Discrimination and Other Violations of Law by the United States Postal Service, filed June 19, 2008, raises material issues of fact or law and shall begin proceedings in this Complaint.

2. The Motion of the United States Postal Service to Dismiss Complaint, filed July 21, 2008, is denied.

3. The Commission will sit *en banc* in this proceeding.

4. The deadline for filing notices of intervention is August 13, 2008. Notices shall indicate whether the intervening party intends to participate in the hearing and the nature of that participation.

5. A prehearing conference will be held in the Commission's hearing Room on August 14, 2008, at 2:30 p.m.

6. The Commission appoints E. Rand Costich as Public Representative to represent the interests of the general public in this proceeding.

7. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Steven W. Williams,

Secretary.

[FR Doc. E8–18292 Filed 8–7–08; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on August 5, 2008 at 5 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(5), (7), 9(B) and (10) and 17 CFR 200.402(a)(5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Casey, as duty officer, voted to consider the items listed for the Closed Meeting in closed session, and determined that no earlier notice thereof was possible.

The subject matter of the Closed Meeting scheduled for August 5, 2008 will be: Institution and settlement of injunctive actions; and other matters related to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: August 5, 2008.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–18394 Filed 8–7–08; 8:45 am]

BILLING CODE 8010–01–P

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of proposed priorities.

SUMMARY: As part of its statutory authority and responsibility to analyze sentencing issues, including operation of the federal sentencing guidelines, and in accordance with Rule 5.2 of its Rules of Practice and Procedure, the Commission is seeking comment on possible priority policy issues for the amendment cycle ending May 1, 2009.

DATES: Public comment should be received on or before September 8, 2008.

ADDRESSES: Send comments to: United States Sentencing Commission, One Columbus Circle, NE., Suite 2–500, South Lobby, Washington, DC 20002–8002, *Attention:* Public Affairs-Priorities Comment.

FOR FURTHER INFORMATION CONTACT: Michael Courlander, Public Affairs Officer, *Telephone:* (202) 502–4590.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission is

an independent agency in the judicial branch of the United States Government. The Commission promulgates sentencing guidelines and policy statements for federal sentencing courts pursuant to 28 U.S.C. 994(a). The Commission also periodically reviews and revises previously promulgated guidelines pursuant to 28 U.S.C. 994(o) and submits guideline amendments to the Congress not later than the first day of May each year pursuant to 28 U.S.C. 994(p).

The Commission provides this notice to identify tentative priorities for the amendment cycle ending May 1, 2009. The Commission recognizes, however, that other factors, such as the enactment of any legislation requiring Commission action, may affect the Commission's ability to complete work on any of the tentative priorities by the statutory deadline of May 1, 2009. Accordingly, it may be necessary to continue work on some of these issues beyond the amendment cycle ending on May 1, 2009.

As so prefaced, the Commission has identified the following tentative priorities:

(1) Continuation of its work on federal sentencing policy with the congressional, executive, and judicial branches of the government, and other interested parties, in light of *United States* v. *Booker* and subsequent Supreme Court decisions, possibly including (A) an evaluation of the impact of those decisions on the federal sentencing guideline system, (B) development of amendments to the federal sentencing guidelines, (C) development of recommendations for legislation regarding federal sentencing policy, and (D) a study of statutory mandatory minimum penalties;

(2) Consideration of alternatives to incarceration, including preparation and dissemination of information and materials from the ''*Symposium on Crime and Punishment in the United States: Alternatives to Incarceration*,'' hosted by the Commission on July 14–15, 2008, in Washington, DC;

(3) Implementation of crime legislation enacted during the 110th or 111th Congress warranting a Commission response, including (A) the Court Security Improvement Act of 2007, Public Law 110–177; and (B) any other legislation authorizing statutory penalties or creating new offenses that requires incorporation into the guidelines;

(4) Continuation of its work with Congress and other interested parties on cocaine sentencing policy to implement the recommendations set forth in the Commission's 2002 and 2007 reports to Congress, both entitled *Cocaine and Federal Sentencing Policy*, and to develop appropriate guideline amendments in response to any related legislation;

(5) A multi-year study of the definition of ''crime of violence'' used in both statutes and guidelines;

(6) Continuation of its efforts, in light of recent Supreme Court jurisprudence and pursuant to the Commission's ongoing authority and responsibility under 28 U.S.C. 995(a)(17), (18), and (21), to receive feedback and provide expanded training on the federal sentencing guidelines, including possibly holding regional public hearings;

(7) Resolution of circuit conflicts, pursuant to the Commission's continuing authority and responsibility, under 28 U.S.C. 991(b)(1)(B) and *Braxton* v. *United States*, 500 U.S. 344 (1991), to resolve conflicting interpretations of the guidelines by the federal courts; and

(8) Consideration of miscellaneous guideline application issues regarding (A) offenses involving counterfeit bearer obligations of the United States, (B) application of § 3C1.3 (Commission of Offense While on Release), and (C) other miscellaneous issues coming to the Commission's attention from case law and other sources.

The Commission hereby gives notice that it is seeking comment on these tentative priorities and on any other issues that interested persons believe the Commission should address during the amendment cycle ending May 1, 2009. Further, with respect to item (7), the Commission requests specific comment regarding what circuit conflict issues it should address. To the extent practicable, public comment should include the following: (1) A statement of the issue, including scope and manner of study, particular problem areas and possible solutions, and any other matters relevant to a proposed priority; (2) citations to applicable sentencing guidelines, statutes, case law, and constitutional decisions; and (3) a direct and concise statement of why the Commission should make the issue a priority.

Authority: 28 U.S.C. 994(a), (o); USSC Rules of Practice and Procedure 5.2.

Ricardo H. Hinojosa,

Chair.

[FR Doc. E8–18288 Filed 8–7–08; 8:45 am]

BILLING CODE 2211–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending July 18, 2008

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et seq.*).

The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: DOT–OST–2008–0211.

Date Filed: July 16, 2008.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 6, 2008.

Description: Amended Application of Spirit Airlines, Inc. requesting (1) a certificate of public convenience and necessity for scheduled combination foreign air transportation between points in the United States via intermediate points to Manaus, Brazil and beyond to points in Argentina, Uruguay, Paraguay, and Chile; (2) an exemption for a minimum of two years or until the grant of certificate authority to operate such service; (3) an allocation of seven (7) weekly frequencies for this service to commence in the Fall, 2009; and (4) a designation to the Government of Brazil for this service. Spirit further requests any further relief that the Department may deem necessary.

Docket Number: DOT–OST–2008–0228.

Date Filed: July 16, 2008.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 6, 2008.

Description: Application of Centurion Air Cargo, Inc. (''Centurion'') requesting a certificate of public convenience and necessity to the extent necessary to permit it to engage in scheduled foreign air transportation of property and mail between a point or points in the United States, via intermediate points, and the Brazilian co-terminal points Manaus, Brasilia, Rio de Janeiro, Sao Paulo, Recife, Porto Alegre, Belem, Belo

Horizonte, Curitiba, Fortaleza, and Salvador, and beyond Brazil to Argentina, Uruguay, Paraguay and Chile. Centurion also requests, to the extent necessary or as an alternative, an exemption to permit Centurion to conduct such service for an initial period of two years or until the grant of the requested certificate authority. Centurion also requests that it be designated under the U.S.-Brazil Air Transport Agreement, that the Department allocate it seven (7) weekly U.S.-Brazil all-cargo frequencies, and that the Department integrate the requested authority with Centurion's existing exemption and certificate authority.

Docket Number: DOT–OST–2008–0231.

Date Filed: July 15, 2008.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 5, 2008.

Description: Application of Avjet Corporation (''Avjet'') requesting a certificate of public convenience and necessity authorizing Avjet to engage in foreign charter air transportation of persons, property and mail.

Docket Number: DOT–OST–2008–0222.

Date Filed: July 15, 2008.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 5, 2008.

Description: Application of euroAtlantic Airways Transportes Aereos, S.A. requesting a foreign air carrier permit to provide: (a) Foreign charter air transportation of persons, property and mail from any point or points behind any Member State of the European Community via any point or points in any Member State and via intermediate points to any point or points in the United States and beyond; (b) foreign charter air transportation of persons, property and mail between any point or points in the United States and any point or points in any member of the European Common Aviation Area; (c) foreign charter cargo air transportation between any point or points in the United States and any other point or points; (d) other charters pursuant to prior approval; and (e) charter transportation consistent with any future, additional rights that may be granted to foreign air carriers of the Member States of the European Union.

Docket Number: DOT–OST–2008–0224.

Date Filed: July 15, 2008.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 5, 2008.

Description: Application of Avjet Corporation (''Avjet'') requesting a certificate of public convenience and necessity authorizing Avjet to engage in interstate charter air transportation of persons, property and mail.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. E8–18304 Filed 8–7–08; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Seeking OMB Approval

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget's (OMB) revision of a current information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on May 15, 2008, vol. 73, no. 95, page 28182. The rule regarding the protection of voluntarily submitted information acts to ensure that certain non-required information offered by air carriers will not be disclosed.

DATES: Please submit comments by September 8, 2008.

FOR FURTHER INFORMATION CONTACT: Carla Mauney at *Carla.Mauney@faa.gov*.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Protection of Voluntarily Submitted Information.

Type of Request: Extension without change of a currently approved collection.

OMB Control Number: 2120–0646.

Forms(s): There are no FAA forms associated with this collection.

Affected Public: An estimated 10 Respondents.

Frequency: This information is collected on occasion.

Estimated Average Burden per Response: Approximately 1 hour per response.

Estimated Annual Burden Hours: An estimated 5 hours annually.

Abstract: The rule regarding the protection of voluntarily submitted information acts to ensure that certain non-required information offered by air carriers will not be disclosed.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to Nathan Lesser, Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, July 30, 2008.

Carla Mauney,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. E8–18082 Filed 8–7–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Seeking OMB Approval

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget's (OMB) revision of a current information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on May 14, 2008, vol. 73, no. 94, page 27885. The Advanced Qualification Program (AQP) incorporates data driven quality control processes for validating and maintaining the effectiveness of air carrier training program curriculum content.

DATES: Please submit comments by September 8, 2008.

FOR FURTHER INFORMATION CONTACT: Carla Mauney at *Carla.Mauney@faa.gov*.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Advanced Qualification Program (AQP).

Type of Request: Extension without change of a currently approved collection.

OMB Control Number: 2120–0701.

Forms(s): There are no FAA forms associated with this collection.

Affected Public: An estimated 18 Respondents.

Frequency: This information is collected monthly.

Estimated Average Burden per Response: Approximately 1.2 hours per response.

Estimated Annual Burden Hours: An estimated 432 hours annually.

Abstract: The Advanced Qualification Program (AQP) incorporates data driven quality control processes for validating and maintaining the effectiveness of air carrier training program curriculum content.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to Nathan Lesser, Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on July 30, 2008.

Carla Mauney,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. E8–18083 Filed 8–7–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Seeking OMB Approval

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget's (OMB) revision of a current information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on May 14, 2008, vol. 73, no. 94, pages 27885–27886. This collection covers the reporting of unauthorized illumination of aircraft by lasers.

DATES: Please submit comments by September 8, 2008.

FOR FURTHER INFORMATION CONTACT: Carla Mauney at *Carla.Mauney@faa.gov*.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Advisory Circular (AC): Reporting of Laser Illumination of Aircraft.

Type of Request: Extension without change of a currently approved collection.

OMB Control Number: 2120–0698.

Forms(s): There are no FAA forms associated with this collection.

Affected Public: An estimated 400 Respondents.

Frequency: This information is collected as needed.

Estimated Average Burden per Response: Approximately 15 minutes per response.

Estimated Annual Burden Hours: An estimated 100 hours annually.

Abstract: This collection covers the reporting of unauthorized illumination of aircraft by lasers.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to Nathan Lesser, Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on July 30, 2008.

Carla Mauney,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. E8–18085 Filed 8–7–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Seeking OMB Approval

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget's (OMB) revision of a current information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on May 15, 2008, vol. 73, no. 95, page 28182. Aircraft operators seeking operational approval to conduct RVSM operations within the 48 contiguous United States (U.S.), Alaska and a portion of the Gulf of Mexico must submit an application to the Certificate Holding District Office.

DATES: Please submit comments by September 8, 2008.

FOR FURTHER INFORMATION CONTACT: Carla Mauney at *Carla.Mauney@faa.gov*.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: FAA Research and Development Grants.

Type of Request: Extension without change of an approved collection.

OMB Control Number: 2120–0679.

Forms(s): There are no FAA forms associated with this collection.

Affected Public: An estimated 2,275 Respondents.

Frequency: This information is collected on occasion.

Estimated Average Burden per Response: Approximately 30 hours per response.

Estimated Annual Burden Hours: An estimated 68,250 hours annually.

Abstract: Aircraft operators seeking operational approval to conduct RVSM operations within the 48 contiguous United States (U.S.), Alaska and a portion of the Gulf of Mexico must submit an application to the Certificate Holding District Office.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to

the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to Nathan Lesser, Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on July 30, 2008.

Carla Mauney,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. E8–18088 Filed 8–7–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Seeking OMB Approval

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget's (OMB) revision of a current information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on May 14, 2008, vol. 73, no. 94, page 27887. Pursuant to Public Law 104–50, the FAA has implemented an acquisition management system that addresses the unique needs of the agency. This document established the policies and internal procedures for the FAA's acquisition system.

DATES: Please submit comments by September 8, 2008.

FOR FURTHER INFORMATION CONTACT: Carla Mauney at *Carla.Mauney@faa.gov*.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: FAA Acquisition Management System (FAAAMS).

Type of Request: Revision of a currently approved collection.

OMB Control Number: 2120–0595.

Forms(s) 93 Forms available online: *http://fast.faa/gov/docs/forms/form.html.*

Affected Public: An estimated 15,298 Respondents.

Frequency: This information is collected on occasion.

Estimated Average Burden per Response: Approximately 7.6 hours per response.

Estimated Annual Burden Hours: An estimated 2,002,569 hours annually.

Abstract: Pursuant to Public Law 104–50, the FAA has implemented an acquisition management system that addresses the unique needs of the agency. This document established the policies and internal procedures for the FAA's acquisition system.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to Nathan Lesser, Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on July 30, 2008.

Carla Mauney,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. E8–18099 Filed 8–7–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Airborne Omega Receiving Equipment

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of cancellation of: (1) Omega navigation system Technical Standard Orders (TSO); and (2) the revocation of Omega navigation system TSO Authorizations (TSOA).

SUMMARY: This notice announces the cancellation of Technical Standard Orders (TSO) C–94, Airborne Omega Receiving Equipment; TSO–C94a, Omega Receiving Equipment Operating Within the Radio Frequency Range of 10.2 to 13.6 Kilohertz; and TSO–C120, Airborne Area Navigation Equipment Using Omega/VLF Inputs. The effect of the cancelled TSOs will result in the revocation of all Technical Standard Order Authorizations issued for the production of those navigational systems. These actions are necessary because the Omega Navigation System ceased operation on September 30, 1997.

DATES: Comments must be received on or before September 8, 2008.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin Bridges, AIR–130, Room 815, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Telephone (202) 385–4627, fax (202) 385–4651, e-mail to: *kevin.bridges@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

You are invited to comment on the cancellation of the three (3) TSOs and the revocation of those associated TSOAs by submitting written data, views, or arguments to the above address. Comments received may be examined, both before and after the closing date, in Room 815 at the above address, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m. The Director, Aircraft Certification Service, will consider all comments received on or before the closing date.

Background

The Omega navigation system ceased operation on September 30, 1997. Because the Omega system has been decommissioned for over 10 years, the FAA intends to cancel all Omega Technical Standard Orders and revoke all associated Technical Standard Order Authorizations (TSOA).

The FAA database contains three (3) specific TSOs for equipment based on the Omega system as a means of navigation, and numerous TSOAs issued for the design and manufacture of Omega avionics equipment. This announcement serves as notice to all Omega TSOA holders that the FAA is cancelling all TSOs (including active historical TSOs) and revoking all TSOAs for Omega avionics equipment.

Issued in Washington, DC, on August 1, 2008.

Susan J. M. Cabler,

Assistant Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. E8–18133 Filed 8–7–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Approval of Noise Compatibility Program for Fresno-Yosemite International Airport, Fresno, CA

AGENCY: Federal Aviation Administration, DOT

ACTION: Notice

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the City of Fresno, California 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 6, 2005 (70 FR 50437–50438), the FAA determined that the noise exposure maps submitted by the city of Fresno under Part 150 were in compliance with applicable requirements. On July 28, 2008, the FAA approved the Fresno-Yosemite International Airport noise compatibility program. All of the recommendations of the program were approved. No program elements relating to new or revised flight procedures for noise abatement were proposed by the airport operator.

DATES: *Effective Date:* The effective date of the FAA's approval of the Fresno Yosemite International Airport noise compatibility program is July 28, 2008.

FOR FURTHER INFORMATION CONTACT: David B. Kessler, AICP, Regional Environmental Protection Specialist, Federal Aviation Administration, Western Pacific Region, Mailing address: P.O. Box 92007, Los Angeles, CA 90009–2007. Street Address: 15000 Aviation Boulevard, Hawthorne, California 90261. Telephone 310/725–3615. 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 Fresno-Yosemite International Airport, effective July 28, 2008.

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 FM 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 proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of 14 CFR Part 150 program recommendations is measured according to the standards expressed in 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 or 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, section 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 under the Airport and Airway Improvement Act of 1982, as amended. Where federal funding is sought, requests for project grants must be submitted to the FAA Airports District Office in Burlingame, California.

The City of Fresno submitted to the FAA on April 20, 2005, the Noise Exposure Maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from October 2002 through June 2006. The Fresno-Yosemite International Airport Noise Exposure Maps were determined by FAA to be in compliance with applicable requirements on July 6, 2005. Notice of this determination was published in the **Federal Register** on August 26, 2005 (70 FR 50437–50438).

The Fresno-Yosemite International Airport study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from (2004 to beyond the year 2009). It was requested that the FAA evaluate and approve this material as a Noise Compatibility Program as described in 49 U.S.C. § 47504 of the Act. The City of Fresno initially submitted its noise compatibility program for the subject airport to the FAA on May 26, 2006 (71 FR 33032–33033). In a letter received by FAA on September 15, 2006, the City of Fresno requested that FAA suspend its review and processing of the noise compatibility program in order to modify the document. FAA terminated its formal review of the City of Fresno's noise compatibility program effective September 15, 2006 (71 FR 56582). Subsequently, the City of Fresno submitted their revised noise compatibility program to FAA. Therefore, the FAA has formally received the noise compatibility program for FAT, effective on April 18, 2008. The FAA began its review of the program on April 18, 2008, and was required by a provision of the Act to approve or disapprove the program within 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 twenty-five (25) proposed actions for noise abatement, land use management and program management 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 was approved, by the Manager of the Airports Division, Western-Pacific Region, effective July 28, 2008.

Outright approval was granted for the two (2) noise abatement measures, all fourteen (14) land use management measures and nine (9) program management measures. The approved noise abatement measures included: Maintain CANG Noise Abatement Departure Track Procedures; and Continued Use of Minimum Altitudes Before Departure Turns Off Runways 29L and 29R.

Approved land use measures include: Land Acquisition of Developed Non-Compatible Property; Residential Sound Insulation Program; Noise Sensitive Public Building Sound Insulation Program; Purchase of Avigation Easements; Encourage Comprehensive Planning for Compatible Land Uses and Adoption of NEMs; Amend Zoning for Compatible Use; Adopt Airport Noise Overlay Zone; Amend Building Codes to Meet Interior Noise Levels; Require Avigation Easement with New Construction; Support Real Property Noise Disclosure; Transfer of Development Rights; Purchase of Development Rights; Purchase of Vacant Land That May Be Developed Into NonCompatible Use; Encourage the Local Jurisdictions to Develop Compatible Land Uses in the Airport Environs.

Approved Program Management measures include: Monitor Airport Operations to Determine Need for NEM and/or NCP Updates; Acquire a Flight Tracking System and/or Noise and Operations Monitoring System (NOMS); Monitor Aircraft Engine Run-ups and Complaints as a Trigger for a Future Ground Run-up Enclosure (GRE) Replacement Needs Analysis Study; Establish Staff Position to Monitor and Coordinate Implementation of the NCP Measures; Increase Community Outreach; Expand Airport Noise Section on the FAT Website; Develop Standardize Complaint Collection, Response, and Recording Procedures; Establish an Airport Noise Advisory Committee; Develop and Distribute Pilot Handouts.

These determinations are set forth, in detail, in the Record of Approval signed by the Manager of the Airports Division, Western-Pacific Region, on July 28, 2008. 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 offices of the City of Fresno. The Record of Approval will be available on-line at: *http://www.faa.gov/airports_airtraffic/airports/environmental/airport_noise/ part_150/states/*.

Issued in Hawthorne, California on July 29, 2008.

Mark A. McClardy

Manager, Airports Division, Western-Pacific Region, AWP–600

[FR Doc. E8–18086 Filed 8–7–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In July 2008, there were three applications approved. This notice also includes information on two applications, approved in June 2008, inadvertently left off the June 2008 notice. Additionally, 20 approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC Applications Approved

Public Agency: San Diego County Regional Airport Authority, San Diego, California.

Application Number: 08–05–C–00–SAN. APPLICATION TYPE: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $26,301,763.

Earliest Charge Effective Date: April 1, 2009.

Estimated Charge Expiration Date: October 1, 2009.

Class of Air Carriers Not Required to Collect PFC's: Non-scheduled/on-demand air carriers filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at San Diego International Airport.

Brief Description of Projects Approved for Collection and Use at a $4.50 PFC Level: Security checkpoint improvements. Airfield improvements. Replace aircraft rescue and firefighting vehicle. Noise mitigation.

Brief Description of Projects Approved for Collection and Use at A $3.00 PFC Level: Terminal area 12 kv electrical upgrade, phase I. Upgrade passenger information and paging systems. Part 150 study update. Conduct terminal planning study.

Decision Date: June 27, 2008.

For Further Information Contact: Darlene Williams, Los Angeles Airports District Office, (310) 725–3625.

Public Agency: City of Savannah and Savannah Airport Commission, Savannah, Georgia.

Application Number: 08–07–C–00–SAV.

Application Type: Impose and use a PFC. PFC LEVEL: $4.50.

Total PFC Revenue Approved in This Decision: $2,558,778.

Earliest Charge Effective Date: March 1, 2013.

Estimated Charge Expiration Date: November 1, 2013.

Class of Air Carriers Not Required to Collect PFC's: Air taxi/commercial operators filing FAA Form 1800–31.00–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Savannah/Hilton Head International Airport.

Brief Description of Projects Approved for Collection and Use:

Rehabilitation—runway shoulders.
PFC implementation and administration.
Construct taxiway—southwest quadrant.
Taxiway B extension.
Runway 18/36 extension.
Airport master plan.
Cool air system to nine jet bridges.
Taxiway C–2.
Airport layout plan update.
Bio Scrypt 15 boarding bridge doors.
Update main communication 800 Mhz system to digital.

Brief Description of Project Partially Approved for Collection and Use: Navigational aids.

Determination: Partially approved. One component of the proposed project,

the installation of localizers on runways 18 and 27 did not meet the requirements of § 158.15(b)(1).

Brief Description of Project Approved for Collection: Relocate airfield maintenance road.

Decision Date: June 27, 2008.

For Further Information Contact: John Marshall, Atlanta Airports District Office, (404) 305–7153.

Public Agency: Birmingham Airport Authority, Birmingham, Alabama.

Application Number: 08–07–C–00–BHM.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $15,173,639.

Earliest Charge Effective Date: October 1, 2008.

Estimated Charge Expiration Date: March 1, 2010.

Class of Air Carriers Not Required To Collect PFCs: Air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Birmingham International Airport.

Brief Description of Projects Approved for Collection and Use: Acquire noise land. Terminal modernization program—design.

Decision Date: July 2, 2008.

For Further Information Contact: Keafur Grimes, Jackson Airports District Office, (601) 664–9886.

Public Agency: City of Colorado Springs, Colorado.

Application Number: 08–13–C–00–COS.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $8,307,189.

Earliest Charge Effective Date: December 1, 2010.

Estimated Charge Expiration Date: January 1, 2014.

Class of Air Carriers Not Required to Collect PFCs: None.

Brief Description of Projects Approved for Collection and Use: West aviation development south taxilane. West aviation development south parking area.

Decision Date: July 23, 2008.

For Further Information Contact: Chris Schaffer, Denver Airports District Office, (303) 342–1258.

Public Agency: County of Kalamazoo, Kalamazoo, Michigan.

Application Number: 08–06–C–00–AZO.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $14,821,076.

Earliest Charge Effective Date: September 1, 2008.

Estimated Charge Expiration Date: September 1, 2024.

Class of Air Carriers Not Required to Collect PFC's: Non-scheduled/on-demand air taxi operators filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Kalamazoo-Baffle Creek International Airport.

Brief Description of Project Approved for Collection and Use: Construction of a replacement terminal building.

Decision Date: July 25, 2008.

For Further Information Contact: Irene Porter, Detroit Airports District Office, (734) 229–2915.

AMENDMENTS TO PFC APPROVALS

Amendment No., city, state	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
95–03–C–04–PNS, Pensacola, FL	06/20/08	$1,860,000	$1,747,888	08/01/99	08/01/99
92–01–C–05–PNS, Pensacola, FL	06/24/08	8,595,500	8,190,719	04/01/98	04/01/98
92–01–C–06–PNS, Pensacola, FL	06/24/08	8,190,719	7,760,275	04/01/98	04/01/98
95–02–U–01–PNS, Pensacola, FL	06/24/08	(1)	(1)	04/01/98	04/01/98
92–01–C–07–PNS, Pensacola, FL	06/24/08	7,760,275	8,041,242	04/01/98	04/01/98
95–03–C–03–PNS, Pensacola, FL	06/24/08	1,747,888	1,747,888	08/01/99	08/01/99
02–05–C–01–PNS, Pensacola, FL	06/24/08	350,000	182,914	09/01/07	09/01/07
01–02–C–01–CKB, Bridgeport, WV	07/02/08	182,344	101,489	08/01/02	08/01/02
99–04–C–02–PNS, Pensacola, FL	07/03/08	19,400,000	20,161,348	09/01/07	09/01/07
99–04–C–03–PNS, Pensacola, FL	07/03/08	20,161,348	15,303,041	09/01/07	09/01/07
03–06–U–01–PNS, Pensacola, FL	07/03/08	(1)	(1)	09/01/07	09/01/07
00–01–C–03–FAY, Fayetteville, NC	07/03/08	571,671	569,490	10/01/05	10/01/05
00–01–C–04–FAY, Fayetteville, NC	07/03/08	569,490	398,811	10/01/05	10/01/05
02–02–U–02–FAY, Fayetteville, NC	07/03/08	(1)	(1)	10/01/05	10/01/05
03–06–C–02–SLC, Salt Lake City, UT	07/08/08	62,532,179	62,670,838	09/01/04	02/01/05
06–05–C–01–LFT, Lafayette, LA	07/09/08	795,000	756,165	04/01/08	04/01/08
98–03–C–05–DSM, Des Moines, IA	07/11/08	12,882,783	7,174,449	05/01/04	05/01/04
93–01–C–05–CRW, Charleston, WV	07/17/08	2,504,316	2,304,154	12/01/97	12/01/97
02–08–C–03–JAC, Jackson, WY	07/17/08	1,189,579	1,189,579	01/01/04	08/01/04
98–04–C–03–CRW, Charleston, WV	07/21/08	700,795	698,992	05/01/00	05/01/00

[1] Not applicable.

Issued in Washington, DC, on July 31, 2008

Joe Hebert

Manager, Financial Analysis and Passenger Facility Charge Branch

[FR Doc. E8–18134 Filed 8–7–08; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2008–0204]

Application by American Trucking Associations, Inc. for a Preemption Determination on the City of Boston's Routing and Transportation Restrictions Applicable to Certain Hazardous Materials

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of application for preemption determination; request for comments.

SUMMARY: FMCSA provides notice and invites interested parties to submit comments on an application by the American Trucking Associations, Inc. (ATA) for an administrative determination on whether Federal law preempts highway routing designations issued by the City of Boston (Boston) restricting transportation of certain hazardous materials. ATA submits that Boston failed to comply with the Federal routing requirements set in 49 CFR 397.71 and that such routing designations are therefore preempted under 49 U.S.C. 5125 and 49 CFR 397.69.

DATES: Comments received on or before September 22, 2008 and rebuttal comments received on or before November 6, 2008 will be considered before an administrative ruling is issued. Rebuttal comments may discuss only those issues raised by comments received during the initial comment period and may not discuss new issues.

ADDRESSES: You may submit comments identified by Federal Docket Management System Number FMCSA–2008–0204 by any of the following methods:

- Web Site: *http://www.regulations.gov.* Follow the instructions for submitting comments on the Federal electronic docket site.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Each submission must include the Agency name and the docket ID for this Notice. Note that DOT posts all comments received without change to *http://www.regulations.gov*, including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19476; Apr. 11, 2000). This information is also available at *http://Docketinfo.dot.gov.*

Public Participation: The *http://www.regulations.gov* Web site is generally available 24 hours each day, 365 days each year. You can get electronic submission and retrieval help and guidelines under the ''help'' section of the *http://www.regulations.gov* Web site and also at the DOT's *http://docketsinfo.dot.gov* Web site. If you want confirmation of receipt of your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments online.

FOR FURTHER INFORMATION CONTACT: James O. Simmons, Chief, Hazardous Materials Division, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590, or at *james.simmons@dot.gov* (e-mail).

SUPPLEMENTARY INFORMATION: A copy of each comment must also be sent to Richard Moskowitz, Vice President and Regulatory Affairs Counsel, American Trucking Associations, 950 North Glebe Road, Arlington, VA 22203. You are required to include with your comments a certification that you provided a copy of your comments to Mr. Moskowitz. (The following format is suggested: ''I certify copies of this comment were sent to Mr. Moskowitz at the address specified in the **Federal Register**.'')

Background

Title 49 U.S.C. 5125 includes several preemption provisions. Section 5125(c)(1) allows a State or Indian tribe to establish, maintain, or enforce a highway routing designation over which hazardous material may or may not be transported by motor vehicles, or a limitation or requirement related to highway routing, only if the designation, limitation, or requirement complies with 49 U.S.C. 5112(b).

Section 5112(b) requires the Secretary of Transportation (the Secretary), in consultation with the States, to prescribe by regulation standards for the States and Indian tribes to follow when designating specific highway routes for transportation of hazardous materials. The Secretary has delegated to the Administrator of the FMCSA authority and responsibility for highway routing of hazardous materials. See 49 CFR 1.73(d)(2).

The standards required by 49 U.S.C. 5112(b) for establishing highway routing requirements for non-radioactive hazardous materials are set forth in 49 CFR part 397, subpart C, and apply to any designations established or modified on or after November 14, 1994. *See* 49 CFR 397.69(a). A State or Indian tribe must follow FMCSA standards when establishing highway routing requirements for hazardous materials. *See* 49 CFR 397.71 (Federal standards for routing of nonradioactive hazardous materials (NRHM)). Except as provided in §§ 397.75 (dispute resolution) and 397.219 (waiver), a NHRM route designation made in violation of § 397.69(a) is preempted pursuant to section 105(b)(4) of the Hazardous Materials Transportation Act, as amended, 49 U.S.C. 5125(c), 49 CFR 397.69(b).

ATA alleges that Boston, in the course of the construction of the Central Artery Tunnel (often referred to as the ''Big Dig''), changed designated hazardous materials routes through Boston and, in doing so, failed to comply with the requirements of § 397.71. ATA has submitted an application for a preemption determination pursuant to

the procedures set forth in 49 CFR part 397, subpart E—Preemption Procedures. ATA requests that the FMCSA Administrator make a determination on whether the highway routing designations established by Boston are preempted pursuant to § 397.69(b). A copy of the ATA application for preemption determination is available for review in the docket for this notice. You may view or obtain a copy of the application online by visiting *http://www.regulations.gov* and going to the docket number for this matter (FMCSA–2008–0204).

Public Comments

FMCSA seeks comments on whether 49 CFR 397.69(b) preempts Boston's highway routing designations that are being challenged by ATA. Comments should specifically address the preemption standard established under 49 CFR 397.69(b) and 49 U.S.C. 5125(c).

Issued on: August 1, 2008.

John H. Hill,

Administrator.

[FR Doc. E8–18344 Filed 8–7–08; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA–2008–0024]

Notice of Buy America Waiver for the National Fuel Cell Bus Technology Development Program

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of Buy America waiver.

SUMMARY: On May 22, 2008, the Federal Transit Administration (FTA) published a Notice of Proposed Buy America Waiver for the National Fuel Cell Bus Technology Development Program (Fuel Cell Bus Program). After careful review of comments, FTA has decided to waive its Buy America requirements for projects funded under the Fuel Cell Bus Program. This Notice sets forth FTA's justification and response to comments.

FOR FURTHER INFORMATION CONTACT: For program questions please contact Christina Gikakis at (202) 366–2637 or *christina.gikakis@dot.gov.* For legal questions please contact Jayme L. Blakesley at (202) 366–0304 or *jayme.blakesley@dot.gov.*

SUPPLEMENTARY INFORMATION: This Notice sets forth the Federal Transit Administration's (FTA) justification for waiving its Buy America requirements for projects funded under the National Fuel Cell Bus Technology Development Program (Fuel Cell Bus Program).

The National Fuel Cell Bus Technology Development Program

Section 3046 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), Public Law 109–59, instructed FTA ''to establish a national fuel cell bus technology program [Fuel Cell Bus Program] to facilitate the development of commercially viable fuel cell bus technology and related infrastructure.''

By notice dated April 14, 2006, FTA solicited applications to the Fuel Cell Bus Program and restated the statutory criteria for evaluating applications. These criteria included the ability of the project ''to contribute significantly to furthering fuel cell technology as it relates to transit bus operations, including hydrogen production, energy storage, fuel cell technologies, vehicle systems integration, and power electronics technology,'' and to advance ''different fuel cell technologies, including hydrogen-fueled and methanol-powered liquid-fueled fuel cell technologies, that may be viable for public transportation systems.'' 71 FR 19612 (April 14, 2006).

FTA selected three consortia to participate in the Fuel Cell Bus Program: the Center for Transportation and the Environment in Atlanta, the Northeast Advanced Vehicle Consortium in Boston, and Westart/CALSTART in Pasadena. These consortia will manage fourteen projects. Of these, eight are development and demonstration projects, two are component technology development, and four support analysis, outreach and coordination.

The Fuel Cell Bus Program seeks to develop commercially viable fuel cell buses by demonstrating that buses powered by fuel cell technology can achieve several technical targets, including a four to six year (20,000 to 30,000 hour) fuel cell durability, a cost of less than five times that of an equivalent diesel, greater than 90% reliability, twice the fuel efficiency of a comparable bus, emissions below the 2010 Environmental Protection Agency standards and vehicle performance comparable to a diesel bus.

Public Interest Waiver

The purpose of this notice is to articulate FTA's justification for waiving its Buy America requirements for all projects funded under the Fuel Cell Bus Program.

With certain exceptions, FTA's ''Buy America'' requirements prevent FTA from obligating an amount that may be appropriated to carry out its program for a project unless ''the steel, iron, and manufactured goods used in the project are produced in the United States.'' 49 U.S.C. 5323(j)(1). One such exception is if applying the Buy America requirements ''would be inconsistent with the public interest.'' 49 U.S.C. 5323(j)(2)(A). After considering all appropriate factors on a case-by-case basis, 49 CFR 661.7(b), if FTA determines that the conditions exist to grant a public interest waiver, FTA will issue a detailed written statement justifying why the waiver is in the public interest, and will publish this justification in the **Federal Register**, providing the public with a reasonable time for notice and comment of not more than seven calendar days. 49 CFR 661.7(b).

Justification

Because the U.S. market for fuel cell bus technology and related infrastructure is not fully developed, participants in the Fuel Cell Bus Program asked FTA to waive its Buy America requirements for projects funded under the Fuel Cell Bus Program. According to one participant, ''[a] successful Fuel Cell transit bus must meet and be consistent with the public transit market's ability to incorporate and afford such technology on a mass scale. * * * At this stage of technology development more engineering data is necessary to accurately specify a fuel cell for a competitive bid. [Requiring participants to comply with FTA's Buy America requirements] would significantly delay the development effort, would be extremely expensive, and would result in a huge set back to the overall development of Fuel Cell technology. [Allowing participants to use all available technology, regardless of origin,] is the fastest, soundest method to perfect the technology, assure future competition, and hasten the advent of fuel cell buses in transit.''

In order to develop commercially viable fuel cell buses, FTA's Fuel Cell Bus Program must examine all current technologies. But at this time, because fuel cell technologies for transit are still in the developmental and technical validation phase, it is impossible to determine which configurations are most likely to reach commercialization. As development continues, the industry will require objective demonstrations and evaluations of different bus propulsion systems. Permitting participants to use foreign and domestic suppliers will allow FTA to evaluate which technologies are closest to successful deployment. If certain

technologies are omitted from the program because they are of foreign origin, it will severely affect FTA's ability to fully analyze fuel cell bus technology.

There are several benefits to waiving FTA's Buy America requirements on a program-wide basis. FTA selected projects to include all significant technologies within a centrally managed program. By granting a waiver for the entire program, FTA can decrease the start-up time for individual projects. Otherwise, each project would have to apply for waivers on a case-by-case basis. This is impractical in a research setting. Research projects often encounter unexpected problems that require changes to the scope of work. The continued development of Fuel Cell technology will result in more choices for FTA grantees and better, more environmentally friendly, buses for the riding public. Successful demonstrations through the Fuel Cell Bus Program will increase awareness of fuel cell technology and foster a domestic industry by identifying and mitigating barriers and uncertainties in the market. A limited waiver to support research and development will increase and improve domestic technical expertise. Moreover, a fully inclusive public interest waiver will allow Fuel Cell Bus Program participants to collaborate to achieve the program goals in an appropriate timeframe. By reducing risk and expanding expertise, the Fuel Cell Bus Program will improve the availability of capital for a self-sustaining domestic fuel cell industry.

Summary of Comments

On May 22, 2008, pursuant to 49 CFR 661.7(b), FTA published a detailed written statement in the **Federal Register** at 73 FR 29841. This notice stated why FTA proposed to waive its Buy America requirements for projects funded under the Fuel Cell Bus Program and allowed interested parties a reasonable time to comment on the proposed waiver.

By an overwhelming margin, the commenters supported waiving FTA's Buy America requirements. Of the nine parties that submitted comments, six favor and only one opposes waiving FTA's Buy America requirements. The remaining two comments were ambiguous. One expressed interest in working with FTA but did not state its position on waiving FTA's Buy America requirements. The other stated the commenter's intent to submit comments at a later date (this intent was not realized as this party has not submitted comments to date). The following is a summary of the comments received.

1. GE Global Research stated, ''[t]his program is supporting leading-edge research that requires sourcing partners from around the world to satisfy the challenging requirements set forth in the program.''

2. The Northeast Advanced Vehicle Consortium commented, ''[t]he very nature of the research * * * requires that participating corporations are granted access to the most appropriate and advanced technologies in, what is in the United States, a nascent industry. Several of the participating business [sic], all experts in fuel-cell transportation research and development, have determined that procuring the best possible technologies will at times require them to acquire parts from foreign sources if they are to develop internationally competitive transportation products. * * * any delay in this critical development program [is] a lost opportunity to satisfy America's transportation needs for the twenty-first century.''

3. Alameda-Contra Costa Transit District (AC Transit), an entity that has been developing fuel cell bus technology and supporting hydrogen fueling infrastructure since 1999, expressed its support of FTA's recommendation to waive the Buy America requirements for projects funded under the Fuel Cell Bus Program, stating that ''FTA staff has made a convincing case for a sound and reasonable process to expedite the research and development efforts in support of the deployment of fuel cell technology in the United States.'' According to AC Transit, demonstrating ''overall vehicle reliability and durability under real-world, heavy-duty operating conditions'' will open up ''a new generation of technology * * * that not only can deliver significant benefits in air quality, noise reduction, and carbon emissions reductions, but will serve to help diversify our nation's fuel supply towards the goal of energy independence.''

4. Nuvera Fuel Cells, a U.S.-based company that utilizes international cooperation for the fuel cell engine that will be used in the Fuel Cell Bus Program, supports a waiver, stating that ''[t]his waiver is important to ensure timely access to the latest engine technology.''

5. UTC Power, a United Technologies Company based in South Windsor, Connecticut, supports waiving FTA's Buy America requirements because (1) ''the waiver will facilitate timely achievement of the Fuel Cell Bus Program objectives''; (2) ''validation of the commercial viability of fuel cell buses will stimulate and further expand the U.S. fuel cell industry''; and (3) ''the scope of the waiver is limited solely to the Fuel Cell Bus Program.''

6. Santa Clara Valley Transportation Authority supports FTA's proposal ''so that [fuel cell bus] technology can develop beyond the present developmental/technical validation phase.''

7. Delphi Corporation submitted comments but did not state whether it favored or disfavored waving FTA's Buy America requirements for projects funded under the Fuel Cell Bus Program. Delphi believes that its ''U.S.-developed fuel cell technology is applicable to heavy duty vehicle applications,'' and ''look[s] forward to any current or future opportunities to work with the FTA on assessing, developing, demonstrating and commercializing solid oxide fuel cell systems in public transit applications.''

8. Air Products and Chemicals, Inc. (Air Products) submitted comments opposed to waiving FTA's Buy America requirements. According to Air Products, ''domestic sourcing difficulty does not apply to hydrogen fueling infrastructure and hydrogen'' because ''the two largest merchant hydrogen producers in the world are United States companies. The production capacity of these two firms can easily fuel 1 million personal vehicles or 30,000 buses.''

9. North American Bus Industries (NABI) submitted a comment stating that it ''intends to provide comments on the captioned matter within the next seven to ten days.'' To date, FTA has not received comments from NABI.

Response to Comments

While it is not the intent of FTA to support or fund foreign suppliers of fueling infrastructure, FTA does feel that restricting the selected projects to U.S. suppliers would limit the ability of the managing consortia to select and demonstrate a range of innovative technologies.

FTA agrees with Air Products that the Nation would be poorly served by a research program that contributes to the transfer of market leadership or Intellectual Property (IP) to foreign interests in the market for hydrogen infrastructure. FTA has determined that the infrastructure components of the Fuel Cell Bus Program are very small relative to the national hydrogen infrastructure markets, and appear to involve predominantly U.S. suppliers of infrastructure. Furthermore, some demonstration sites have not finalized plans for fueling infrastructure. Requiring project managers to apply for individual waivers as these decisions are finalized will significantly delay

project implementation. It would also restrict the flexibility of the sites to quickly change project partners and cost share, which is important in research programs to respond to unforeseen problems.

Therefore, FTA feels there is no risk that this research program will contribute to the transfer of market leadership from a U.S. to a foreign entity in the national market for hydrogen infrastructure.

In regard to IP, FTA fully appreciates the importance of IP in highly competitive industries. FTA has no interest in facilitating the transfer of IP from U.S. firms to foreign entities. FTA assures all concerned that, within the Fuel Cell Bus Program, all IP developed or retained by U.S. interests will remain under the control of those interests. There is no additional risk that IP belonging to U.S. interests will be unwittingly transferred to outside entities. Foreign companies participating in the National Fuel Cell Bus Program are required to agree to standardized data collection. Objective evaluations of the bus demonstration programs are a major component of the program and will provide U.S. companies non-proprietary performance data and analysis of all fueling infrastructure used in the program.

FTA recognizes that U.S. companies have significant experience developing and operating hydrogen fueling stations. However, though hydrogen production has advanced further than fuel cell technology, FTA determines it is still beneficial to examine all available and developing technologies. In cases where infrastructure funding is a major component of the project, it is focused on novel applications, not on replicating or competing with efforts where U.S. companies have already proven to be capable leaders.

In conclusion, FTA's review of the selection process and industry comments relating to the Fuel Cell Bus Program support our judgment that the transit industry and American public at large will best be served by a fuel cell bus research program not bound by Buy America requirements.

Waiver

Therefore, after carefully considering all comments, and for the reasons stated in its justification above, FTA hereby waives its Buy America requirements for all projects funded through its Fuel Cell Bus Program. Quick and successful deployment of fuel cell bus technology and infrastructure is in the public interest. Fuel cell technology will benefit the environment by lessening carbon emissions and decreasing the use of petroleum and other fossil fuels. Allowing foreign technologies will allow the project teams to focus on commercial viability instead of having to make fundamental advances independent of existing technology. Ultimately, this will lead to increased domestic demand for fuel cell bus technology and infrastructure, resulting in a sustainable U.S. market.

Issued this 31st day of July, 2008.

Severn E.S. Miller,

Chief Counsel.

[FR Doc. E8–18313 Filed 8–7–08; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket Number: FTA–2008–0020]

Final Guidance on New Starts/Small Starts Policies and Procedures

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of Availability of Final Guidance on New Starts/Small Starts Policies and Procedures.

SUMMARY: This notice conveys the Federal Transit Administration's (FTA) Final Guidance on New Starts/Small Starts Policies and Procedures.

DATES: Effective Date: These policies and procedures will take effect on August 8, 2008.

FOR FURTHER INFORMATION CONTACT: Ron Fisher, Office of Planning and Environment, telephone (202) 366–4033, Federal Transit Administration, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., East Building, Washington, DC 20590 or *Ronald.Fisher@dot.gov.*

Availability of Comments Considered in the Development of This Guidance

A copy of the notice of availability of the proposed Guidance, issued on April 18, 2008, and comments and material received from the public as a part of its review of the proposed Guidance, are part of docket FTA–2008–0020 and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, West Building, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may retrieve the comments online at: *http://www.regulations.gov.* Enter docket number FTA–2008–0020 in the search field. In the ''Narrow Results'' section on the left side of the screen, click on ''Rules.'' The Web site is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the Web site. An electronic copy of this document may also be downloaded by using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may also reach the Office of the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's Web page at: *http://www.gpoaccess.gov/fr/index.html.*

Response to Comments and New and Small Starts Program Changes

The purpose of this notice is to convey the Final Guidance on New Starts/Small Starts Policies and Procedures, reflecting the changes implemented as a result of comments received on the April 18, 2008 Notice of Availability (73 FR 21170). FTA finds that there is good cause to make this guidance effective upon publication of this notice in order to assist grantees to enter or complete development of proposed projects.

1. Initiation Package

FTA adopts as final its proposal to require that project sponsors beginning an alternatives analysis prepare and provide to FTA a package of information on: (1) The problems that motivate consideration of major transit alternatives in a corridor; (2) the alternatives that have been identified for consideration; and (3) the information that will be prepared to support decisions on the alternatives along with the identification of the general approach to development of that information.

Preparing the package at the beginning of an alternative analysis allows FTA and other stakeholders to better understand the key considerations for an alternatives analysis. We anticipate that this will result in a more streamlined process.

Comments: A significant number of respondents supported this measure as a way to discuss potential road blocks that may occur in the project development process. Several commenters opposed this proposal indicating the scope of the proposal is best suited for a rulemaking process and is beyond the level of change appropriate for annual policy guidance.

Response: The proposal is a small change in FTA requirements that is properly implemented through policy guidance.

Comments: A few commenters suggested that the proposal should not require approval or delay an alternatives analysis study and that FTA should provide guidance on the initiation package to aid the project sponsor in the planning process.

Response: FTA does not intend to formally approve these documents, but will instead comment on them. If FTA expresses significant concerns with the description of problems in the study corridor, the nature of the alternatives, or the methodology, this could delay study progress. Because FTA must eventually agree to both the alternatives studied and the methodological approach as it affects development of information used for FTA evaluation, addressing these issues early in a study with possible delays means that technical work will not have to be redone later, which would likely result in more significant study delays. FTA has encouraged study sponsors to produce this kind of document for several years and provides guidance for what the document should contain on its Web site (*http://www.fta.dot.gov/planning/newstarts/planning_environment_2589.html*).

Comments: A few other respondents requested that care be taken so that the Federal perspective will not hamper the local project development process.

Response: We agree. FTA's responsibility is to ensure that a reasonable range of alternatives is considered to fulfill its responsibilities under the National Environmental Policy Act (NEPA) and the alternatives analysis requirement in 49 U.S.C. 5309. It is also FTA's responsibility to ensure that the information developed for its evaluations is consistent with good planning practice and FTA guidance. FTA does not dictate what kind of information should be developed to serve local decision-making needs.

Comment: One commenter stated that FTA should be aware that even with the most thorough planning efforts, new alternatives may arise after the initiation package is complete due to circumstances beyond the project sponsor's control.

Response: It is FTA's aspiration to minimize changes to alternatives being studied by vetting them early with all interested parties. FTA understands that new alternatives could arise later in the study as a result of study findings.

2. Small Starts Eligibility

a. FTA adopts as final the modification of the Small Starts eligibility requirements for proposed projects that do not include an actual fixed guideway but meet the definition of being a corridor-based bus project. FTA eliminates the requirement that all four project elements (low-floor buses, traffic signal priority/pre-emption, significant stations, and branding) must be part of the project, and instead allows a project to be eligible if it includes at least three of the four elements.

Heretofore, non-fixed guideway projects were not eligible for Small Starts funding if any of the four elements listed above already existed in the corridor. Our experience has shown that minor improvements already made in a corridor, such as the existence of one of the elements, prevents worthy projects from being eligible for Small Starts funding. Our intent for the Small Starts program has been to differentiate the Small Starts program from the Section 5309 Bus Program by funding significant corridor improvements. By revising the policy to allow projects in corridors with one of the existing elements to apply for Small Starts funding, FTA has attempted to strike a balance between being too restrictive so that many worthy projects are excluded from eligibility, and being too flexible thus allowing eligibility for projects that are not significant corridor improvements but rather incremental improvements better funded under another program.

Comments: A few commenters opposed the measure, stating that no project should be eligible for funding under 49 U.S.C. 5309 unless it is an actual fixed guideway that includes rails or the exclusive use of right-of-way.

Response: The Safe, Accountable, Flexible, Efficient Transportation Equity Act—A Legacy for Users (SAFETEA–LU) amended 49 U.S.C. 5309 to make non-fixed guideway projects eligible for Small Starts funding.

Comments: A significant number of respondents supported the elimination of the low-floor bus requirement for Small Starts projects.

A few commenters supported and expanded on the measure by stating that if one or more Small Starts elements are already present in a corridor that they should not preclude a project from Small Starts funds.

One respondent encouraged FTA to allow some level of existing BRT components, but suggested that FTA clarify that it will not fund installation or replacement of existing components. One commenter suggested that FTA allow a project to qualify if it contains four of the following six elements : (1) Low floor buses/level boarding; (2) significant stations; (3) high frequency service; (4) branding; (5) traffic signal priority/pre-emption; and (6) real-time customer information. One respondent supported the use of a minimum threshold for Small Starts projects.

Response: While the proposal was to eliminate only the low-floor requirement, we have modified that in response to comments asking for more flexibility. FTA has tried to be more flexible in its eligibility requirements while still ensuring that the improvements are substantial enough to differentiate the Small Starts program from the Section 5309 Bus Program. In order to keep the program as simple as possible, we have not required a large number of elements, instead settling on a few that we think are necessary for premium transit services that will result in significant improvements in service. Should a proposed corridor already include one of the four required elements and request that, as part of the proposed project, this element be replaced or upgraded, FTA considers these an eligible capital expense in the Small Starts Program. In addition, FTA considers installation an eligible capital expense. Should, however, a project involve repair to an existing element, this item would need to be considered on a case-by-case basis. As for a minimum threshold, FTA assumes that this is a reference to a minimum project cost or Federal funding threshold. FTA declines to adopt a minimum threshold, however, as any such threshold could discourage low-cost transit solutions.

b. FTA adopts as final the removal of the current prohibition of dividing a Small Starts project envisioned for a corridor into multiple Very Small Starts projects.

The intent is to allow smaller projects to qualify as Very Small Starts, since the eligibility provisions for Very Small Starts guarantee that the projects will have acceptable ratings for project justification regardless of whether they will eventually be part of a larger project or not.

Comments: In the same comment, several respondents both supported the proposal to divide Small Starts into Very Small Starts projects and also noted that the Very Small Starts program is not authorized in SAFETEA–LU. In addition, these respondents stated that the project requirements for Very Small Starts are inherently mode-biased.

Response: The Federal Transit Administrator may impose any terms and conditions on a grant award under 49 U.S.C. 5309 as he ''determines to be necessary or appropriate'' to carry out the purposes of the Section 5309 capital programs FTA is mindful, of course, that in enacting SAFETEA–LU, the Congress expected the agency to develop criteria and procedures for

certain types of projects that would be simpler, and quicker, than those applicable to New Starts, to meet travel demands in discrete corridors that are growing, but do not yet necessitate the cost or careful development of a traditional New Starts fixed guideway. The Very Small Starts program is an exercise of the Administrator's inherent, discretionary authorities to make grants under Section 5309 and to meet the growing demand across the Nation for projects that do not require the time or expense of larger Small Starts projects—which, in many instances, resemble those of traditional New Starts projects.

Any project seeking funding, regardless of mode, must have an acceptable project justification rating. The eligibility requirements for Very Small Starts were set to guarantee that a project has an acceptable project justification rating. To meet an acceptable cost effectiveness rating, the costs for eligibility were constrained so that the user benefits resulting from the travel time and non-travel time benefits assure an acceptable cost effectiveness rating.

Due to the generally higher cost and other variables of a fixed guideway, it is not possible to automatically assure that such a project can be cost-effective unless it meets the requirements put in place for Very Small Start projects.

Comments: A few commenters opposed the proposal to allow for the subdivision of Small Starts projects into Very Small Starts projects because the project sponsor may potentially circumvent cost effectiveness, the National Environmental Policy Act (NEPA) process, and public input.

Response: The eligibility requirements for Very Small Starts ensure that a project will have an acceptable cost effectiveness rating. There is nothing in the Very Small Starts program that allows a project to either circumvent NEPA or avoid public input.

Comments: A few respondents opposed the measure, arguing that Very Small Starts projects do not guarantee a high quality transit project that is permanent enough to help a region move to a sustainable transportation system.

Response: The Very Small Starts eligibility requirements were developed to ensure that premium transit service is provided. FTA requires in its grant agreements that the federally funded assets stay in public transportation service for their entire useful lives, otherwise FTA must be reimbursed its share of the fair market value of the assets. This provision gives some permanence to Very Small Start projects.

Comments: Several respondents also encouraged FTA to allow New Starts projects to be subdivided into Small Starts projects.

Response: FTA does not allow New Starts projects to be subdivided into multiple Small Starts projects because we believe it violates the intent of the Small Starts program, eliminates the need for the more intense scrutiny required for larger projects, and stretches FTA oversight resources too far. The Small Starts program is authorized at only $200 million per year, which would be used up very quickly were FTA to allow New Starts projects to be divided into multiple Small Starts projects.

Comments: A few commenters responded to the category of Small Starts eligibility by suggesting that if FTA notices an increase in the number of Small Starts project development applications, FTA should request a greater amount of funding for this program.

Response: The President's annual budget request of Congress is based on an evaluation of the many competing priorities for public transportation across the Nation, not simply the demand for funding for Small Starts projects.

3. Documentation of Uncertainties in Predictions of Capital Cost and Ridership

FTA adopts as final its proposal to require that predictions of capital costs and project ridership for the locally preferred alternative (LPA) be expressed as ranges with accompanying explanations of the contributing sources of uncertainty that bracket the range. This requirement would apply to predictions submitted to FTA in support of requests to advance the LPA into preliminary engineering or, for Small Starts projects, project development, to all subsequent environmental documents, and to requests for entry into final design. The requirement does not apply to Very Small Starts. The requirement will go into effect six months after FTA issues separate guidance concerning this provision, expected before the end of calendar year 2008. Three months after guidance is issued, project sponsors are required to consult with FTA on the approach for the analysis to ensure that it meets FTA expectations.

The intent of this requirement is to comply with a number of SAFETEA–LU provisions that relate to project uncertainties. An analysis of project uncertainties provides the underpinnings for the reasonability of key information that FTA must confirm to assure that its evaluations and ratings are sufficient for Federal funding decisions. As a result, the time required for FTA technical reviews will be shortened because uncertainties will be disclosed, reducing FTA questions and requests for follow-up analysis and the attendant impacts on review times.

The requirement will support more effective FTA compliance with SAFETEA–LU provisions relating to reliability of forecasting methods, the Before and After Study, the Contractor Performance Incentive Report, incentive awards when forecasts of costs and ridership are close to those achieved, and grantee consideration of the Contractor Performance Assessment Report (all found on *http://www.fta.dot.gov*). This is because FTA will be able to better understand the context of forecasts when comparing outcomes to forecasts, in contrast to having single estimate forecasts with no explanation of variances as a result of other causal factors.

Comments: A significant number of respondents stated that the measure would add to the burden of the New and Small Starts project development process by delaying planning and increasing costs for very little additional information. Several respondents opposed the measure noting that expressing forecasts in terms of a range is unreasonable and does not add to the utility of the project's forecast.

Response: FTA believes that any additional overall level of effort and time impacts for documentation of cost and ridership uncertainties will be modest if good planning practices are followed. For costs, the documentation of scope-related uncertainties relies on information that is surfaced in the routine course of the development of alternatives. The representation of these uncertainties can be captured in the existing spreadsheet framework of FTA's standard cost categories (SCCs). For ridership, the basis of the analysis is easily generated by rerunning models with minor changes in the inputs, thus significantly reducing the level of analysis necessary to understand the reasonableness of forecasts.

FTA believes that expressing forecasts in terms of ranges acknowledges the uncertainties that are endemic to any profession that makes forecasts of the future. That the actual capital costs and ridership of major transit projects have varied significantly from previous forecasts is evidence of the uncertainties that exist in forecasts for transit projects.

Comments: Several commenters stated that this measure is more

appropriately considered in a rulemaking process, not an annual policy guidance document. A few commenters suggested that if FTA were to accept this proposal as final that FTA should conduct research to establish the efficacy of the methodology and subject the research to a formal rulemaking process.

Response: FTA finds that this policy addresses good practice for planning and project development at a level of detail not usually addressed in rulemaking, which is intended for establishing the framework for project eligibility and evaluation. FTA intends to use the results of the uncertainty analysis in its research related to ''before and after'' studies.

Comments: A few commenters expressed concern that FTA is seeking to impose this requirement three months after publishing guidance without consideration for project status and without providing training to project sponsors.

Response: FTA has extended the time for the requirement to go into effect from three months in the proposal to six months after FTA publishes guidance on the uncertainty analysis, which should provide ample time for project sponsors to develop the analysis. Projects already approved into final design prior to the eventual effective date of this requirement will not be subject to this requirement.

Comments: A few respondents stated that the project development process is intended to reduce uncertainty and develop a more accurate cost as the project progresses toward final design; not to provide a detailed assessment.

Response: We agree that current practice reduces the uncertainty in the capital cost estimate as project development progresses, but an analysis of those uncertainties is not usually described in public documents. Travel forecasts are rarely refined in project development, so that analysis of uncertainties would not be expected to change significantly.

Comments: A few respondents stated that FTA has not given existing improvements to its process that are already in place enough time to work and that this requirement would add extra work to an already cumbersome process.

Response: We believe that the improvements already in place should facilitate the analysis of uncertainties and reporting of ranges, which, at this time, are rarely described for the LPA and in environmental documents.

Comments: A few commenters stated that changing input variables would not indicate the accuracy of the travel model, but would only demonstrate sensitivity which is already documented in the methodology and demonstrated to be accurate based on actual behavior and the model calibration process.

Response: Changing input variables provides the sensitivity of ridership to those variables. Having a sense of the reliability of those variables, and interpreting how the forecasts are affected, provides insights into the uncertainties of the travel forecasts, rather than mechanically producing results as implied in the comment.

Comments: One respondent said that this measure would present a conflict to other FTA processes, noting that FTA's Office of Program Management requests the risk assessment process to begin when Preliminary Engineering is 20–50% complete.

Response: The uncertainty analysis should draw upon the best available information at the time the estimates of cost and ridership are developed.

Comment: One respondent stated that project sponsors depending on a Metropolitan Planning Organization (MPO) with a large number of member agencies will have great difficulty coming to a consensus on a high and low set of forecasts.

Response: It is not clear that they will have responsibility for facilitating a consensus on a range of forecasts, but if they do, one of the key missions of MPOs is to facilitate decisions on transportation issues.

Comment: One respondent stated that it was unfair to impose this requirement on New Starts and Small Starts projects when other Federally funded transit projects are not subject to the same scrutiny.

Response: The New and Small Starts programs have a number of special requirements spelled out in 49 U.S.C. 5309 that do not apply to other federally funded transit projects, for reasons of policy enunciated by the statute; we note, moreover, the New and Small Starts programs are discretionary, whereas most other program funding under 49 U.S.C. Chapter 53 is distributed by formulae.

Comment: One respondent noted that while qualitative concerns such as political or financial conditions may be described in text, the respondent questioned the value of using staff or consultant time to attempt to value such components.

Response: It is the responsibility of the project sponsor to decide which factors are important in performing the uncertainty analysis and how they should be interpreted.

Comments: A few commenters suggested that the best way to improve models is to encourage existing activities such as peer reviews, surveys, research, calibration, best practices, and before and after studies.

Response: FTA agrees that these actions can reduce the uncertainty inherent in forecasts.

Comments: A few commenters suggested FTA place greater emphasis on reducing trips and trip lengths by rewarding density in project corridors and at stations, rather than retaining a focus on travel time.

Response: This proposal addressed reporting of uncertainties, not evaluation of land use. FTA currently gives credit for transit-oriented development and densities in its ratings for the land use criterion.

Comments: A few respondents suggested that FTA identify uncertainties and allow project sponsors to respond with a short explanatory document that acknowledges the uncertainties that may affect the project's capital costs or ridership.

Response: Prior to this proposal, FTA has collaborated with project sponsors to refine ridership forecasts and estimates for capital costs. We expect that collaboration will be useful in the determination of the uncertainty analysis. The results of any analysis of uncertainties must be summarized in submittals to FTA in support of requests to advance the LPA into preliminary engineering or, for larger Small Starts projects, project development, in all subsequent environmental documents, and in requests for entry into final design.

Comments: A few respondents stated that this proposal should only be applied to those elements that are a direct component of a Section 5309 funded project, and not to ''concurrent non-project activities'' that are beyond the control of the project sponsor.

Response: It is FTA's intent to focus the uncertainty analysis on those project elements that relate to the transit project.

Comment: One comment suggested FTA reduce this requirement to allow project sponsors to report every other year or only at key milestones. In addition, the commenter noted that this requirement should not apply to Very Small Starts projects as it would make the simplified process too cumbersome.

Response: The requirement applies to key milestones only and does not apply to Very Small Starts.

Comments: Several respondents asked how cost effectiveness would be determined if cost and ridership are reported using ranges.

Response: FTA will use the best estimate of costs and ridership to

quantify the evaluation measures related to mobility impacts and cost effectiveness. The project sponsor, in collaboration with FTA, will determine what constitutes the best estimate.

Comment: One commenter stated that FTA has not clearly stated how the production of this information will result in an improved project.

Response: The reporting of uncertainties will help FTA in determining project merit. In addition, proper reporting of uncertainties could reduce review times by FTA, which in turn should result in shorter project development times and reduced costs.

Comment: One respondent requested clarification on what was meant by ''* * * FTA will give credit, perhaps approaching full credit for useful presentations of forecasts.''

Response: The quoted language means that during project development FTA would take into consideration an insightful uncertainty analysis when establishing the reliability rating discussed under item 4 of this paper. FTA would also use the uncertainty analysis when preparing the Before and After Study Report and the Contractor Performance Assessment Report. FTA would take into consideration an insightful uncertainty analysis if the predicted or actual costs and ridership varied from the best estimate and the reasons for the variance were discussed in the uncertainty analysis as possibilities. In contrast, if the predicted or actual costs and ridership varied in the same way from the best estimate and the uncertainty analysis provided no insights into the reasons for the actual variance, FTA would view the outcomes more negatively in its assessments.

Comment: One commenter sought clarification on the following questions: (1) To what extent will FTA hold up a project's advancement in relation to this requirement; (2) will FTA question the breadth of this range; and (3) what happens if a project sponsor submits a best estimate that is closer to the low end than the high end?

Response: FTA will treat this requirement consistent with how it treats other evaluation and rating requirements. Under rare circumstances, FTA may hold up a project's advancement if FTA believes there are good reasons for doing so. As stated in the proposal, FTA will work with project sponsors to establish the best estimate and allow project sponsors to establish the high and low ends of range. The choice of the range is made by the project sponsor. If the project sponsor thinks the best estimate is closer to the low end of the range for the ridership forecasts or cost estimate than the high end, the sponsor's accompanying explanation would describe why there is a low probability that actual ridership or cost would reach the higher end of the range.

4. Reliability Rating

FTA adopts as final the proposal to develop ratings of the reliability of capital cost estimates and ridership forecasts beginning in January 2009, and to consider these ratings in the determination of the project justification rating for proposed projects beginning in August 2009. The rating will be included under ''Other Factors'' for project justification. This requirement would apply to ratings made for requests to advance the LPA into preliminary engineering or, for larger Small Starts projects, project development, and to requests for entry into final design and prior to an FFGA. This requirement does not apply to Very Small Starts.

FTA is implementing this rating to better differentiate the worthiness of projects for funding recommendations and to minimize the likelihood for project scope reductions when projects have ratings near acceptable breakpoints. Projects seeking New Starts and Small Starts funding vary considerably in the risks inherent in their cost and ridership forecasts as evidenced in the variance between actual results compared to the estimates made during planning and project development. Capturing reliability within FTA's evaluation allows funding to be directed to projects that have the greatest likelihood of achieving their forecasts, which are the source of much of the information used for project ratings. Additionally, incorporating reliability into FTA's ratings will minimize changes to ratings (or project scope to maintain a rating) that can occur after a project advances into preliminary engineering or into final design. This allows FTA to better comply with the 49 U.S.C. 5309 mandate that a proposed New Starts or Small Starts project shall not advance through the project development process unless the Secretary determines that there is a reasonable likelihood that the project will continue to meet the evaluation requirements.

Comments: A significant number of respondents opposed this requirement stating that this should have been included in a rulemaking process, not annual policy guidance. Several commenters questioned why FTA singled out this factor versus others listed in SAFETEA–LU that are not currently included in the project justification rating.

Response: FTA does not believe adding reliability as an ''other factor'' rises to the level of rulemaking. In the past we have added several considerations under ''other factors'' without rulemaking. A number of the ''other factors'' listed in SAFETEA–LU are either incorporated into existing measures or are so difficult to compute that using them in our evaluations would be cumbersome and not add to the information we have on the merits of the project.

Comments: Several respondents stated that the sub-criteria for reliability are subjective. A few commenters said that reliability is already being addressed in FTA's risk assessment process. Other commenters stated that FTA works closely with all grantees to approve their transit demand models, so reliability of forecasting methods should already be accounted for.

Response: Assessing reliability of forecasts is largely a subjective process given there are few analytical tools that cover many of the factors that contribute to risk. FTA's risk assessment process deals with much of the assessment of required risk, but omits some of the factors described in the proposed policy guidance. FTA's oversight of travel forecasts results in a reasonable estimate of ridership and user benefits. However, the reliability of model results depends on a number of factors relating to the uncertainty of the input variables and the ability of the models to forecast certain travel markets. These and other factors are captured in FTA's rating of reliability.

Comments: A few commenters stated that FTA should identify specific project uncertainties and project sponsors would then respond to FTA's assessment.

Response: Prior to this proposal, FTA has collaborated with project sponsors to refine ridership forecasts and estimates for capital costs. We expect that collaboration will be useful in the determination of the reliability rating.

Comments: A few respondents recommended FTA implement this requirement with procedures that are consistent with Congressional intent for the Small Starts program (i.e., commensurate with the level of investment). A few respondents encouraged FTA to help project sponsors who are having trouble with the modeling process rather than penalizing them through the application of a subjective rating factor.

Response: FTA will continue to provide technical assistance to project sponsors undertaking cost and ridership forecasts and encourage the analysis to

be commensurate with level of investment.

Comments: A few commenters suggested that the following be added to the list of uncertainties: change of development patterns due to demographic changes, housing preferences for units close to transit, housing and transportation expense, and the growing concern over greenhouse gases.

Response: FTA intends to use the factors listed in the proposal as we believe we can discern reliability from them. Change in development patterns is one of the proposed factors, but the others listed in the comment are not. The other factors cannot easily be used to assess reliability because travel models do not include them; our understanding of the link between them and ridership is very weak; and they are difficult to forecast.

Comment: One commenter stated that the experience of the project sponsor or contractor is more appropriately used to determine the extent of the oversight needed.

Response: FTA believes that experience of the project sponsor is a key variable in determining the reliability of the estimates. FTA already considers the project sponsor's experience and technical capacity when making a decision to advance a project and when assigning oversight resources.

Comment: A few respondents requested clarification on how the reliability assessment will be made and a rating assigned.

Response: Given the multitude of factors that contribute to reliability, FTA believes that each project will have a variety of factors that will inform the rating, so a description of a rigid rating framework is not effective. The factors include: completeness of the documentation of uncertainties, the quality of efforts to collect appropriate data and test travel forecasting procedures, actions taken by the project sponsor to minimize uncertainties, FTA findings, the track record of the project sponsor for forecasts of previous projects, the national track record of forecasts for similar projects, and the extent to which the ridership forecasts depend on conditions in the corridor that are substantially different from today. The rating will be considered along with other considerations under ''Other factors'' and a decision made as to whether the project justification rating should be changed.

5. Local Financial Commitment for Recapitalization of the Existing Transit System

In rating potential New and Small Starts projects for local financial commitment, FTA adopts as final its proposal to give additional scrutiny to the adequacy of the local financial commitment for ongoing recapitalization of the existing transit system.

SAFETEA–LU included provisions that underscore the need for transit systems to first ensure they have sufficient funding for their recapitalization needs before spending additional resources for new projects that could exacerbate funding problems for recapitalization. This policy is intended to assure that transit agencies considering new projects have adequate resources to recapitalize their systems.

Comments: Several respondents sought clarification on what was meant by ''additional attention will be given to local financial commitment for ongoing recapitalization.'' A few commenters were not clear on the proposal or how it was different from current practice.

Response: FTA intends to review the estimates of recapitalization costs and revenues with greater scrutiny than it has done in the past. While FTA has always included an examination of these needs in its evaluation, project ratings have seldom been impacted. This policy merely describes the greater emphasis FTA will be placing on the recapitalization estimates.

Comments: A few commenters supported the proposal, stating that funding for maintenance and recapitalization are appropriate considerations in financial planning and FTA's project ratings. Several respondents stated that it is not clear why a financial plan that includes section 5307 and 5309 fixed guideway modernization funds should be rated less favorably, given that maintaining the existing system is an eligible use of these funds.

Response: The proposal stated that FTA would apply extra scrutiny to ensure the recapitalization needs of the existing system were covered with sufficient funds if a project sponsor proposed diverting Section 5307 and Section 5309 fixed guideway funds from recapitalization needs to help fund the capital cost of the New or Small Starts project. If FTA determines that insufficient funds are identified for recapitalization needs or that recapitalization cost estimates are significantly understated in the financial plan, then the financial rating for the ''capital cost estimates, planning assumptions, and financial capacity'' subfactor may be downgraded.

Comments: A few commenters stated that even if Congress had ''the state of good repair'' as its intent, that this is not applicable to Small Starts projects that only have to prove ''each proposed local source of capital and operating financing is stable, reliable, and available within the proposed project's timeline.''

Response: Section 5309(c)(1)(B) of Title 49, U.S. Code, requires that the grantee have the ''legal, technical, and financial capacity to carry out the project, including safety and security aspects of the project.'' FTA must have evidence that a transit agency has adequate resources to maintain and recapitalize the system before we can confirm that the project sponsor has the financial capacity to carry out the proposed project.

Comments: A few commenters stated that Congress did not intend to impose a state of good repair with this provision, but rather to ensure transit agencies not cut existing service in favor of the New Starts project.

Response: The plain language of 49 U.S.C. 5309(d)(4)(A)(iii) requires that ''local resources [be] available to recapitalize * * * the overall public transit system. * * *'' This language is clearly focused not only on reducing existing service, but rather on the overall system.

Comments: A few commenters stated that the triennial and planning certification reviews are more appropriate venues to assess maintenance and recapitalization funding than the New Starts project development process.

Response: While the triennial and planning certification reviews may touch on financial capacity and financial planning, FTA feels that the large number of topics addressed in those reviews does not allow for the level of scrutiny necessary to assure that project sponsors will be able to adequately recapitalize their systems.

Comment: One respondent stated that FTA should continue to review capital plans for continued maintenance of the base system, but did not support giving the proposed requirement more weight than other aspects of a project's financial plan.

Response: The adopted policy does not give more weight to this factor than others when evaluating and rating local financial commitment. The weights for the subfactors for rating local financial commitment are unchanged. Rather, the policy merely puts project sponsors on notice that additional scrutiny will be

applied to their projections of recapitalization costs and revenues.

Comments: Several respondents suggested that adjustments to capital costs should be considered for extraordinary cost increases or inflation; cost effectiveness break points should also be adjusted due to these cost escalations.

Response: FTA currently allows cost increases related to unforeseen commodities escalation or inflation. Per FTA's April 2005 Dear Colleague letter, the cost-effectiveness breakpoints are adjusted annually using the increase in the Gross National Product deflator.

6. Contractor Review of Information for the Before and After Study

FTA adopts as final its proposal that contractors involved in a project's capital cost estimation and travel forecasting be given an opportunity to review and comment each time the project sponsor is required to submit information for the ''before and after'' study. The contractor's comments, if any, must be included in the information submitted to FTA.

The intent of this provision is to facilitate communication between project sponsors and contractors on the responsibilities of contractors for variances between forecasts at the three milestones before a project opens and actual results two years after the project opens for revenue service. If this communication does not result in a common understanding that can be documented in the submittal of information from the ''before and after'' study to FTA, the contractor's comments would have to be included in the submittal by the project sponsor.

Comments: There was significant support for and no opposition to this requirement.

Issued in Washington, DC this 4th day of August, 2008.

James S. Simpson,

Administrator.

[FR Doc. E8–18315 Filed 8–7–08; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. Marad 2008 0047]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice of intention to request extension of OMB approval and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intention to request extension of approval (with modifications) for three years of a currently approved information collection.

DATES: Comments should be submitted on or before October 7, 2008.

FOR FURTHER INFORMATION CONTACT: Thomas Harrelson, Maritime Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone: 202–366–5737; or e-mail: *tom.harrelson@dot.gov*. Copies of this collection also can be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: Monthly Report of Ocean Shipments Moving under Export-Import Bank Financing.

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0013.

Form Numbers: MA–518.

Expiration Date of Approval: Three years from date of approval by the Office of Management and Budget.

Summary of Collection of Information: 46 App. U.S.C. 1241–1, Public Resolution 17, required MARAD to monitor and enforce the U.S.-flag shipping requirements relative to the loans/guarantees extended by the Export-Import Bank (EXIMBANK) to foreign borrowers. Public Resolution 17 requires that shipments financed by Eximbank and that move by sea, must be transported exclusively on U.S.-flag registered vessels unless a waiver is obtained from MARAD.

Need and Use of the Information: The prescribed monthly report is necessary for MARAD to fulfill its responsibilities under Public Resolution 17, to ensure compliance of ocean shipping requirements operating under Eximbank financing, and to ensure equitable distribution of shipments between U.S.-flag and foreign ships. MARAD will use this information to report annually to Congress the total shipping activities during the calendar year.

Description of Respondents: Shippers subject to Eximbank financing.

Annual Responses: 336 responses.

Annual Burden: 169 hours.

Comments: Comments should refer to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. Comments also may be submitted by electronic means via the Internet at *http://www.regulations.gov/search/index.jsp*. Specifically address whether this information collection is necessary for proper performance of the functions of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance the quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m. *EDT (or EST)*, Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at *http://www.regulations.gov/search/index.jsp*.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://www.regulations.gov/search/index.jsp*.

Authority: 49 CFR 1.66.

By Order of the Maritime Administrator.
Dated: August 4, 2008.

Leonard Sutter,

Secretary, Maritime Administration.

[FR Doc. E8–18378 Filed 8–7–08; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[USCG–2006–24644]

TORP Terminal LP, Bienville Offshore Energy Terminal Liquefied Natural Gas Deepwater Port License Application; Final Application Public Hearing and Final Environmental Impact Statement

AGENCY: Maritime Administration, DOT.

ACTION: Notice of availability; notice of public hearing; request for comments.

SUMMARY: The Maritime Administration and the U.S. Coast Guard (USCG) announce the availability of the Final Environmental Impact Statement (FEIS) for the TORP Terminal LP, Bienville Offshore Energy Terminal Liquefied Natural Gas Deepwater Port license application. The application describes a project that would be located in the Gulf of Mexico, in Main Pass block MP 258, approximately 63 miles south of Mobile Point, Alabama. The Coast Guard and Maritime Administration request public

comments on the FEIS and application. Publication of this notice begins a 45 day comment period and provides information on how to participate in the process.

DATES: A public hearing will be held in Mobile, Alabama on August 26, 2008. The public hearing will be held from 5 p.m. to 7 p.m. and will be preceded by an open house from 3 p.m. to 4:30 p.m. The public hearing may end later than the stated time, depending on the number of persons wishing to speak.

Material submitted in response to the request for comments on the FEIS and application must reach the Docket Management Facility by September 22, 2008 ending the 45 day comment period.

Federal and State agencies must also submit comments, recommended conditions for licensing, or letters of no objection by October 10, 2008 (45 days after the final public hearing). Also by October 10, 2008, the Governor of Alabama (the adjacent coastal state) may approve, disapprove, or notify the Maritime Administration of inconsistencies with State programs relating to environmental protection, land and water use, and coastal zone management for which the Maritime Administration may condition the license to make consistent.

The Maritime Administration must issue a record of decision (ROD) to approve, approve with conditions, or deny the DWP license application by November 24, 2008 (90 days after the public hearing).

ADDRESSES: The public hearing in Mobile will be held at the Mobile Convention Center, One South Water Street, Room 203, Mobile, Alabama 36602; telephone: 251–208–2100.

The FEIS, the application, comments and associated documentation are available for viewing at the Federal Docket Management System Web site: *http://www.regulations.gov* under docket number USCG–2006–24644. The FEIS is also available at public libraries in Mobile (Ben May Main Library and Spring Hill College Library), Bayou La Batre (Mose Hudson Tapia Public Library), Orange Beach (Orange Beach Public Library), Daphne (Daphne Public Library), and Gulf Shores (Thomas B. Norton Public Library).

Docket submissions for USCG–2006–24644 should be addressed to:

Department of Transportation, Docket Management Facility, 1200 New Jersey Avenue, SE., West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.

The Federal Docket Management Facility accepts hand-delivered submissions, and makes docket contents available for public inspection and copying at this address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Facility telephone number is 202–366–9329, the fax number is 202–493–2251, and the web site for electronic submissions or for electronic access to docket contents is *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: LT Hannah Kim, U.S. Coast Guard, telephone: 202–372–1438, e-mail: *Hannah.Kim@uscg.mil*. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone: 202–493–0402.

SUPPLEMENTARY INFORMATION:

Request for Comments

We request public comments or other information on the FEIS and application. The public hearing is not the only opportunity you have to comment. In addition to or in place of attending a hearing, you can submit comments to the Docket Management Facility during the public comment period (see **DATES**). The Coast Guard and the Maritime Administration will consider all comments and material received during the comment period.

Submissions should include:

- Docket number USCG–2006–24644.
- Your name and address.

Submit comments or material using only one of the following methods:

- Electronic submission to FDMS, *http://www.regulations.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 FDMS Web site (*http://www.regulations.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 FDMS 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 Federal Docket Management Facility (see **ADDRESSES**), electronically on the FDMS Web site, or later in this notice (see PRIVACY ACT).

Background

Information about deepwater ports, the statutes, and regulations governing their licensing, and the receipt of the current application for a liquefied natural gas (LNG) deepwater port appears in Volume 71 FR 26605, Friday, May 5, 2006. The Notice of Intent to Prepare an EIS for the proposed action was published in the **Federal Register** in Volume 71 FR 31258, Thursday, June 1, 2006 and the Notice of Availability of the Draft EIS was published in Volume 72 FR 37074, Friday, July 6, 2007. The FEIS, application materials and associated comments are available on the docket. Information from the ''Summary of the Application'' from previous **Federal Register** notices is included below for your convenience.

Proposed Action and Alternatives

The proposed action requiring environmental review is the Federal licensing of the proposed deepwater port described in ''Summary of the Application'' below. The alternatives to licensing the proposed port 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. The Coast Guard and the Maritime Administration are the lead Federal agencies for the preparation of the EIS. You can address any questions about the proposed action or the FEIS to the Coast Guard project manager identified in **FOR FURTHER INFORMATION CONTACT**.

Summary of the Application

TORP Terminal LP, proposes to own, construct, and operate a deepwater port, named Bienville Offshore Energy Terminal (BOET), in the Federal waters of the Outer Continental Shelf on Main Pass block MP 258, approximately 63 miles south of Mobile Point, Alabama, in a water depth of approximately 425 feet. The BOET Deepwater Port would be capable of mooring two LNG carriers of up to approximately 250,000 cubic meter capacity by means of Single Anchor Leg Moorings (SALMs).

The LNG carriers would be off loaded one at a time to HiLoad floating re-gasification facilities, which use four submerged shell-and-tube heat exchangers to vaporize the LNG before sending natural gas via 14-inch diameter flexible risers to a Pipeline End Manifold (PLEM) on the seafloor, then through a 30-inch diameter pipeline to the support platform, where the gas will be metered and further sent via

interconnecting pipelines to four existing pipelines (Dauphin Island Gathering System Feedline, Transco Feedline, Destin Feedline, and Viosca Knoll Gathering System Feedline).

The major components of the proposed deepwater port would be the Support Platform, two HiLoad floating LNG transfer and re-gasification units, two PLEMs with ancillary risers and terminal pipelines, HiLoad parking line pilings, and approximately 25 miles of new subsea pipeline.

BOET will have an average throughput capacity of 1.2 billion standard cubic feet per day (Bscfd) of natural gas. No new onshore pipelines or LNG storage facilities are proposed with this action. A shore based facility will be used to facilitate movement of personnel, equipment, supplies, and disposable materials between the terminal and shore.

Construction of the deepwater port would be expected to take 30 months; with startup of commercial operations in 2011, should a license be issued. The deepwater port, if licensed, would be designed, constructed and operated in accordance with applicable codes and standards and would have an expected operating life of approximately 25 years.

Privacy Act

The electronic form of all comments received into the Federal Docket Management System can be searched by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). The DOT Privacy Act Statement can be viewed in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70, pages 19477–78) or you may visit *http://www.regulations.gov*.

(Authority 49 CFR 1.66)

By Order of the Maritime Administrator.

Dated: August 1, 2008.

Leonard Sutter,

Secretary, Maritime Administration.

[FR Doc. E8–18100 Filed 8–7–08; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms, and Recordkeeping Requirements; Agency Information Collection Activity: Under OMB Review

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below will be forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and the expected burden. The **Federal Register** Notice with a 60-day comment period was published on February 4, 2008 (73 FR 6556–6558). No comments on this notice were received.

DATES: Comments must be submitted on or before 30 days from the date of publication.

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention NHTSA Desk Officer.

FOR FURTHER INFORMATION CONTACT: Keith D. Williams at the National Highway Traffic Safety Administration, Enforcement and Justice Services Division (NTI–122), 202–366–0543, 1200 New Jersey Ave., SE., W44–231, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration

Title: Demonstration of Speed Management Programs; Including Automated and Traditional Enforcement.

OMB Number: 2127—NEW.

Type of Request: Collection of information.

Abstract: The National Highway Traffic Safety Administration (NHTSA) proposes to conduct a series of telephone surveys that will examine the effectiveness of a speed management research and demonstration program in the city of Tucson, Arizona. As part of the program, surveys will be administered pre and post implementation of the countermeasure treatment program to measure awareness of the program in both Tucson and an as yet to be selected comparison community/ies in the State of Arizona. The pretreatment telephone surveys would be administered during the fall-winter 2008/2009 time period and the post-treatment survey 24 months afterward. The National Highway Traffic Safety Administration was established to reduce the mounting number of deaths, injuries, and economic losses resulting from motor vehicle crashes on the Nation's highways. As part of this statutory mandate, NHTSA is authorized to conduct research as a foundation for the development of motor vehicle standards and traffic safety programs. The speed demonstration project requires NHTSA to measure whether these initiatives were effective. The telephone surveys are instrumental in that measurement. The telephone surveys will be administered to a randomly selected sample of 400 persons pre and post treatment in the demonstration and comparison areas to persons age 18 and older. An essential part of this evaluation effort is to compare baseline and post-intervention measures of attitudes and intervention awareness to determine if the interventions were associated with changes on those indices.

Affected Public: Randomly selected members of the general public in telephone households.

Estimated Total Annual Burden: 266.67 hours (1,600 interviews averaging 10 minutes each).

Comments Are Invited On: Whether the proposed collection of information is necessary or the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A Comment to OMB is most effective if OMB receives it within 30 days of publication.

Authority: 44 U.S.C. 3506(c)(2)(A).

Dated: August 4, 2008.

Jeffrey Michael,

Acting Associate Administrator, Research and Program Development.

[FR Doc. E8–18300 Filed 8–7–08; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–116641–01, TD 9136 (Final); REG–163195–05 (NPRM)]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent

burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning existing proposed and final regulations, REG–116641–01, (TD 9136 (final)) and REG–163195–05 (NPRM), Information Reporting and Backup Withholding for Payment Card Transactions.

DATES: Written comments should be received on or before October 7, 2008 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to R. Joseph Durbala at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3634, or through the Internet at *RJoseph.Durbala@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Information Reporting and Backup Withholding for Payment Card Transactions.

OMB Number: 1545–1819.

Regulation Project Number: TD 9136.

Abstract: This document contains proposed and final regulations relating to the information reporting requirements, information reporting penalties, and backup withholding requirements for payment card transactions. This document also contains final regulations relating to the IRS TIN Matching Program.

Current Actions: As a result of the additional collection activities from the proposed regulations (REG–163195–05 (NPRM)), we are reporting a total burden increase of 25,489,570 hours.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Total Annual Reporting Burden: 37,239,570 hours.

Estimated Average Annual Burden per Respondent: 1 hour 55 minutes.

Estimated Number of Respondents: 31,254,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 4, 2008.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E8–18219 Filed 8–7–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–121063–97; TD 8972 (final)]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–121063–97 (TD 8972), Averaging of Farm Income (§ 1.1301–1).

DATES: Written comments should be received on or before October 7, 2008 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3634, or through the Internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Averaging of Farm Income.

OMB Number: 1545–1662.

Form Number: REG–121063–97; TD 8972(Final).

Abstract: Section 1301 of the Internal Revenue Code allows an individual engaged in a farming business to elect to reduce his or her regular tax liability by treating all or a portion of the current year's farming income as if it had been earned in equal proportions over the prior three years. To take advantage of income averaging, § 1301 requires that the taxpayer calculate the § 1 tax using the three prior years' tax tables and, if applicable, Schedule D, Capital Gains and Losses, (to apply the maximum capital gains tax rates), as well as the current year's tax tables or tax rate schedules. The regulation requires the taxpayer to use Schedule J of Form 1040 to record and total the amount of tax for each year of the four year calculation.

Current Actions: There are no changes to this existing regulation.

Type of Review: Extension of a currently approved collection.

The burden for this requirement is reflected in the burden estimate for Schedule J of Form 1040.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 4, 2008.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E8–18221 Filed 8–7–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–146895–05; TD 9412]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning the existing proposed and temporary regulations, REG–146895–05 (TD 9412), Election To Expense Certain Refineries.

DATES: Written comments should be received on or before *October 7, 2008,* to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to R. Joseph Durbala at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3634, or through the Internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Election To Expense Certain Refineries.

OMB Number: 1545–2103.

Regulation Project Number: REG–146895–05 (TD 9412).

Abstract: This document contains temporary regulations relating to the election to expense qualified refinery property under section 179C of the Internal Revenue Code, and affects taxpayers who own refineries located in the United States. These temporary regulations reflect changes to the law made by the Energy Policy Act of 2005. The text of these temporary regulations also serves as the text of the proposed Regulations.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 12.

Estimated Time per Respondent: 10 Hours.

Estimated Total Annual Burden Hours: 120.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 4, 2008.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E8–18223 Filed 8–7–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 13013, 13013–A, 13013–B, and 13013–C

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning the Form 13013, Citizen Advocacy Panel Membership Application—New York, 13013–A, Citizen Advocacy Panel Membership Application—Midwest, 13013–B, Citizen Advocacy Panel Membership Application—South Florida, and 13013–C, Citizen Advocacy Panel Membership Application—Pacific Northwest.

DATES: Written comments should be received on or before October 7, 2008 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to R. Joseph Durbala, (202) 622–3634, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *RJoseph.Durbala@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Taxpayer Advocacy Panel (TAP) Membership Application.

OMB Number: 1545–1788.

Form Number: 13013, 13013–A, 13013–B, 13013–C.

Abstract: These forms are used as an application to volunteer to serve on the Taxpayer Advocacy Panel (TAP), as an

advisory panel to the Internal Revenue Service. The TAP application is necessary for the purpose of recruiting prospective members to voluntarily participate on the Taxpayer Advocacy Panel for the Internal Revenue Service. It is necessary to gather information to rank applicants as well as to balance the panels demographically.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals, and business or other for-profit organizations.

Estimated Number of Respondents: 350.

Estimated Time Per Respondent: 1 hour, 30 minutes.

Estimated Total Annual Burden Hours: 525.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 4, 2008.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E8–18229 Filed 8–7–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8846

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8846, Credit for Employer Social Security and Medicare Taxes Paid on Certain Employee Tips.

DATES: Written comments should be received on or before October 7, 2008 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala, at (202) 622–3634, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Credit for Employer Social Security and Medicare Taxes Paid on Certain Employee Tips.

OMB Number: 1545–1414.

Form Number: 8846.

Abstract: Employers in food or beverage establishments where tipping is customary can claim an income tax credit for the amount of social security and Medicare taxes paid (employer's share) on tips employees reported, other than on tips used to meet the minimum wage requirement. Form 8846 is used by employers to claim the credit and by the IRS to verify that the credit is computed correctly.

Current Actions: There are no changes being made to the burden for Form 8846 at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Respondents: 37,200.

Estimated Time per Respondent: 8 hr., 55 min.

Estimated Total Annual Burden Hours: 331,452.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 4, 2008.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E8–18232 Filed 8–7–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8850

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information

collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8850, Pre-Screening Notice and Certification Request for the Work Opportunity and Welfare-to-Work Credits.

DATES: Written comments should be received on or before October 7, 2008 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala, at (202) 622–3634, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Pre-Screening Notice and Certification Request for the Work Opportunity and Welfare-to-Work Credits.

OMB Number: 1545–1500.

Form Number: 8850.

Abstract: Employers use Form 8850 as part of a written request to a state employment security agency to certify an employee as a member of a targeted group for purposes of qualifying for the work opportunity credit or the welfare-to-work credit. The work opportunity credit and the welfare-to-work credit cover individuals who begin work for the employer before July 1, 1999.

Current Actions: There are no changes being made to Form 8850 at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Respondents: 400,000.

Estimated Time per Respondent: 3 hr., 59 min.

Estimated Total Annual Burden Hours: 1,596,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 4, 2008.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E8–18233 Filed 8–7–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 2008–56

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Notice 2008–56, Relief from Certain Low-Income Housing Credit Requirements Due to Severe Storms and Flooding in Indiana.

DATES: Written comments should be received on or before October 7, 2008 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala, (202) 622–3634, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Relief from Certain Low-Income Housing Credit Requirements Due to Severe Storms and Flooding in Indiana.

OMB Number: 1545–2105.

Form Number: Notice 2008–56.

Abstract: This notice provides guidance to the Indiana Housing and Community Development Authority regarding the suspension of certain income limitation requirements under section 42 of the Internal Revenue Code for certain low-income housing tax credit properties as a result of the devastation caused by severe storms and flooding in Indiana.

Current Actions: There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profit organizations, Farms.

Estimated Number of Respondents: 500.

Estimated Time per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 125.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments Are Invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to

enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 4, 2008.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E8–18234 Filed 8–7–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 2008–66

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Notice 2008–66, Relief from Certain Low-Income Housing Credit Requirements Due to Severe Storms and Flooding in Missouri.

DATES: Written comments should be received on or before October 7, 2008, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala, (202) 622–3634, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Relief from Certain Low-Income Housing Credit Requirements Due to Severe Storms and Flooding in Missouri.

OMB Number: 1545–2108.

Form Number: Notice 2008–66.

Abstract: This notice provides guidance to the Indiana Housing and Community Development Authority regarding the suspension of certain income limitation requirements under section 42 of the Internal Revenue Code for certain low-income housing tax credit properties as a result of the devastation caused by Severe Storms and Flooding in Missouri.

Current Actions: There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profit organizations, Farms.

Estimated Number of Respondents: 500.

Estimated Time per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 125.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments Are Invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 4, 2008.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E8–18235 Filed 8–7–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

United States Mint

Notification of Price for 8–8–08 Double Prosperity Set

ACTION: Notification of Price for 8–8–08 Double Prosperity Set.

SUMMARY: The United States Mint is establishing the price for its 8–8–08 Double Prosperity Set.

Pursuant to 31 U.S.C. 5112(i) & (q), and in accordance with 31 U.S.C. 9701(b)(2)(B), the United States Mint is establishing the price of these coins.

Effective August 1, 2008, the United States Mint commenced selling the 8–8–08 Double Prosperity Set according to the following price schedule:

Description	Price
8–8–08 Double Prosperity Set	$1,228.88

FOR FURTHER INFORMATION CONTACT: Gloria C. Eskridge, Associate Director for Sales and Marketing, United States Mint, 801 Ninth Street, NW., Washington, DC 20220; or call 202–354–7500.

Dated: August 4, 2008.

Edmund C. Moy,

Director, United States Mint.

[FR Doc. E8–18298 Filed 8–7–08; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF THE TREASURY

United States Mint

Request for Citizens Coinage Advisory Committee Membership Applications

SUMMARY: Pursuant to United States Code, title 31, section 5135(b), the United States Mint is reopening and extending the submission period for applications for appointment to the Citizens Coinage Advisory Committee (CCAC) as a member representing the *interests of the general public* in the coinage of the United States. The CCAC was established to:

- Advise the Secretary of the Treasury on any theme or design proposals relating to circulating coinage, bullion coinage, Congressional Gold Medals, and national and other medals produced by the United States Mint.

• Advise the Secretary of the Treasury with regard to the events, persons, or places that the CCAC recommends to be commemorated by the issuance of commemorative coins in each of the five calendar years succeeding the year in which a commemorative coin designation is made.

• Make recommendations with respect to the mintage level for any commemorative coin recommended.

Total membership consists of eleven voting members appointed by the Secretary of the Treasury:

• One person specially qualified by virtue of his or her education, training or experience as a nationally or internationally recognized curator in the United States of a numismatic collection;

• One person specially qualified by virtue of his or her experience in the medallic arts or sculpture;

• One person specially qualified by virtue of his or her education, training, or experience in American history;

• One person specially qualified by virtue of his or her education, training, or experience in numismatics;

• Three persons who can represent the interests of the general public in the coinage of the United States; and

• Four persons appointed by the Secretary of the Treasury on the basis of the recommendations by the House and Senate leadership.

Members are appointed for a term of four years. No individual may be appointed to the CCAC while serving as an officer or employee of the Federal Government.

The CCAC is subject to the direction of the Secretary of the Treasury. Meetings of the CCAC are open to the public and are held approximately six to eight times per year. The United States Mint is responsible for providing the necessary support, technical services and advice to the CCAC. CCAC members are not paid for their time or services, but, consistent with Federal Travel Regulations, members are reimbursed for their travel and lodging expenses to attend meetings. Members are Special Government Employees and are subject to the Standards of Ethical Conduct for Employees of the Executive Branch (5 CFR part 2653).

The United States Mint will review all submissions and will forward its recommendations to the Secretary of the Treasury for appointment consideration. Candidates should include specific skills, abilities, talents, and credentials to support their applications. The United States Mint is also interested in candidates who have demonstrated leadership skills, have received recognition by their peers in their field of interest, have a record of participation in public service or activities, and are willing to commit the time and effort to participate in the CCAC meetings and related activities.

Application Deadline: August 22, 2008.

Receipt of Applications: Any member of the public wishing to be considered for participation on the committee should submit a resume and cover letter describing qualifications for membership, by fax to 202–756–6525 or by mail to the United States Mint, 801 9th Street, NW., Washington, DC 20001, *Attn:* Greg Weinman. Submissions must be postmarked no later than August 22, 2008. Individuals who submitted applications for appointment to the CCAC by the earlier January 20, 2008 deadline will continue to be considered for the open position and are not required to reapply. However, those with applications already on file may supplement their applications by the August 22, 2008 deadline.

Notice Concerning Delivery of First-Class and Priority Mail

The delivery of first-class mail to the United States Mint has been delayed since mid-October 2001, and delays are expected to continue. Until normal mail service resumes, please consider using alternate delivery services when sending time-sensitive material.

Some or all of the first-class and priority mail we receive may be put through an irradiation process to protect against biological contamination. Support materials put through this process may suffer irreversible damage. We encourage you to consider using alternate delivery services.

FOR FURTHER INFORMATION CONTACT: Cliff Northup, United States Mint Liaison to the CCAC, 801 Ninth Street, NW., Washington, DC 20220; or call 202–354–7463.

Dated: August 4, 2008.

Edmund C. Moy,

Director, United States Mint.

[FR Doc. E8–18277 Filed 8–7–08; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF VETERANS AFFAIRS

Blue Ribbon Panel on VA-Medical School Affiliations; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Blue Ribbon Panel on VA-Medical School Affiliations has scheduled a meeting for September 11, 2008, in Room 542 at 1800 G Street, NW., Washington, DC. The meeting will begin at 8:30 a.m. and will end at 2 p.m. The meeting is open to the public.

The purpose of the Panel is to advise the Secretary of Veterans Affairs, through the Under Secretary for Health, on issues related to a comprehensive philosophical framework to enhance VA's partnerships with medical schools and affiliated institutions.

At the September 11 meeting, members of the Panel will discuss results of recent surveys on VA's current affiliations with medical schools and their implications for the future.

Interested persons may attend and present oral statements to the Panel. Oral presentations will be limited to five minutes or less, depending on the number of participants. Requests to address the Panel should be sent by e-mail to *Gloria.Holland@va.gov*. Interested parties may also provide written comments for review by the Panel prior to the meeting or at any time, by e-mail to *Gloria.Holland@va.gov* or by mail to Gloria J. Holland, Ph.D., Special Assistant for Policy and Planning to the Chief Academic Affiliations Officer, 810 Vermont Avenue, NW (14), Washington, DC 20420.

By Direction of the Secretary.

Dated: August 4, 2008.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. E8–18303 Filed 8–7–08; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register

Vol. 73, No. 154

Friday, August 8, 2008

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF THE INTERIOR

Minerals Management Service

[Docket No. MMS–2008–MRM–0029]

Agency Information Collection Activities; Proposed Collection, Comment Request

Correction

In notice document E8–17730 beginning on page 45055 in the issue of Friday, August 1, 2008, make the following correction:

On page 45055, in the second column, under **DATES**, in the second line, ''September 2, 2008'' should read ''September 30, 2008''.

[FR Doc. Z8–17730 Filed 8–7–08; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Friday,
August 8, 2008

Part II

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Part 412

Medicare Program; Inpatient Rehabilitation Facility Prospective Payment System for Federal Fiscal Year 2009; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 412

[CMS–1554–F]

RIN 0938–AP19

Medicare Program; Inpatient Rehabilitation Facility Prospective Payment System for Federal Fiscal Year 2009

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

ACTION: Final rule.

SUMMARY: This final rule updates the prospective payment rates for inpatient rehabilitation facilities (IRFs) for Federal fiscal year (FY) 2009 (for discharges occurring on or after October 1, 2008 and on or before September 30, 2009) as required under section 1886(j)(3)(C) of the Social Security Act (the Act). Section 1886(j)(5) of the Act requires the Secretary to publish in the **Federal Register** on or before the August 1 that precedes the start of each fiscal year, the classification and weighting factors for the IRF prospective payment system's (PPS) case-mix groups and a description of the methodology and data used in computing the prospective payment rates for that fiscal year.

We are revising existing policies regarding the PPS within the authority granted under section 1886(j) of the Act.

DATES: These regulations are effective October 1, 2008. The updated IRF prospective payment rates are applicable for discharges on or after October 1, 2008 and on or before September 30, 2009 (FY 2009).

FOR FURTHER INFORMATION CONTACT: Susanne Seagrave, (410) 786–0044, for information regarding the payment policies.

Jeanette Kranacs, (410) 786–9385, for information regarding the wage index.

SUPPLEMENTARY INFORMATION:

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Acronyms

Because of the many terms to which we refer by acronym in this final rule, we are listing the acronyms used and their corresponding terms in alphabetical order below.

ASCA Administrative Simplification Compliance Act, Public Law 107–105
BBA Balanced Budget Act of 1997, Public Law 105–33
BBRA Medicare, Medicaid, and SCHIP [State Children's Health Insurance Program] Balanced Budget Refinement Act of 1999, Public Law 106–113
BIPA Medicare, Medicaid, and SCHIP [State Children's Health Insurance Program] Benefits Improvement and Protection Act of 2000, Public Law 106–554
CBSA Core-Based Statistical Area
CCR Cost-to-Charge Ratio
CFR Code of Federal Regulations
CMG Case-Mix Group
DRA Deficit Reduction Act of 2005, Public Law 109–171
DSH Disproportionate Share Hospital
ECI Employment Cost Index
FI Fiscal Intermediary
FR **Federal Register**
FY Federal Fiscal Year
GDP Gross Domestic Product
HHH Hubert H. Humphrey Building
HIPAA Health Insurance Portability and Accountability Act, Public Law 104–191
IFMC Iowa Foundation for Medical Care
IPF Inpatient Psychiatric Facility
IPPS Inpatient Prospective Payment System
IRF Inpatient Rehabilitation Facility
IRF–PAI Inpatient Rehabilitation Facility-Patient Assessment Instrument
IRF PPS Inpatient Rehabilitation Facility Prospective Payment System
IRVEN Inpatient Rehabilitation Validation and Entry
LIP Low-Income Percentage
LTCH Long-Term Care Hospital
MAC Medicare Administrative Contractor
MEDPAR Medicare Provider Analysis and Review
MMA Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Public Law 108–173
MMSEA Medicare, Medicaid, and SCHIP Extension Act of 2007, Public Law 110–173
MSA Metropolitan Statistical Area
NAICS North American Industrial Classification System
OMB Office of Management and Budget
PAI Patient Assessment Instrument
PPS Prospective Payment System
RAND RAND Corporation
RFA Regulatory Flexibility Act, Public Law 96–354
RIA Regulatory Impact Analysis
RIC Rehabilitation Impairment Category
RPL Rehabilitation, Psychiatric, and Long-Term Care Hospital Market Basket
SCHIP State Children's Health Insurance Program
SIC Standard Industrial Code
TEFRA Tax Equity and Fiscal Responsibility Act of 1982, Public Law 97–248

I. Background

A. Historical Overview of the Inpatient Rehabilitation Facility Prospective Payment System (IRF PPS)

Section 4421 of the Balanced Budget Act of 1997 (BBA), Public Law 105–33, as amended by section 125 of the Medicare, Medicaid, and SCHIP (State Children's Health Insurance Program) Balanced Budget Refinement Act of 1999 (BBRA), Public Law 106–113, and by section 305 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA), Public Law 106–554, provides for the implementation of a per discharge prospective payment system (PPS) under section 1886(j) of the Social Security Act (the Act) for inpatient rehabilitation hospitals and inpatient rehabilitation units of a hospital (hereinafter referred to as IRFs).

Payments under the IRF PPS encompass inpatient operating and capital costs of furnishing covered rehabilitation services (that is, routine, ancillary, and capital costs) but not direct graduate medical education costs, costs of approved nursing and allied health education activities, bad debts, and other services or items outside the scope of the IRF PPS. Although a complete discussion of the IRF PPS provisions appears in the original FY 2002 IRF PPS final rule (66 FR 41316) and the FY 2006 IRF PPS final rule (70 FR 47880), we are providing below a general description of the IRF PPS for fiscal years (FYs) 2002 through 2008.

Under the IRF PPS from FY 2002 through FY 2005, as described in the FY 2002 IRF PPS final rule (66 FR 41316), the Federal prospective payment rates were computed across 100 distinct case-mix groups (CMGs). We constructed 95 CMGs using rehabilitation impairment

categories (RICs), functional status (both motor and cognitive), and age (in some cases, cognitive status and age may not be a factor in defining a CMG). In addition, we constructed five special CMGs to account for very short stays and for patients who expire in the IRF.

For each of the CMGs, we developed relative weighting factors to account for a patient's clinical characteristics and expected resource needs. Thus, the weighting factors accounted for the relative difference in resource use across all CMGs. Within each CMG, we created tiers based on the estimated effects that certain comorbidities would have on resource use.

We established the Federal PPS rates using a standardized payment conversion factor (formerly referred to as the budget neutral conversion factor). For a detailed discussion of the budget neutral conversion factor, please refer to our FY 2004 IRF PPS final rule (68 FR 45684 through 45685). In the FY 2006 IRF PPS final rule (70 FR 47880), we discussed in detail the methodology for determining the standard payment conversion factor.

We applied the relative weighting factors to the standard payment conversion factor to compute the unadjusted Federal prospective payment rates under the IRF PPS from FYs 2002 through 2005. Within the structure of the payment system, we then made adjustments to account for interrupted stays, transfers, short stays, and deaths. Finally, we applied the applicable adjustments to account for geographic variations in wages (wage index), the percentage of low-income patients, location in a rural area (if applicable), and outlier payments (if applicable) to the IRF's unadjusted Federal prospective payment rates.

For cost reporting periods that began on or after January 1, 2002 and before October 1, 2002, we determined the final prospective payment amounts using the transition methodology prescribed in section 1886(j)(1) of the Act. Under this provision, IRFs transitioning into the PPS were paid a blend of the Federal IRF PPS rate and the payment that the IRF would have received had the IRF PPS not been implemented. This provision also allowed IRFs to elect to bypass this blended payment and immediately be paid 100 percent of the Federal IRF PPS rate. The transition methodology expired as of cost reporting periods beginning on or after October 1, 2002 (FY 2003), and payments for all IRFs now consist of 100 percent of the Federal IRF PPS rate.

We established a CMS Web site as a primary information resource for the IRF PPS. The Web site URL is *http://www.cms.hhs.gov/InpatientRehabFacPPS/* and may be accessed to download or view publications, software, data specifications, educational materials, and other information pertinent to the IRF PPS.

Section 1886(j) of the Act confers broad statutory authority upon the Secretary to propose refinements to the IRF PPS. In the FY 2006 IRF PPS final rule (70 FR 47880) and in correcting amendments to the FY 2006 IRF PPS final rule (70 FR 57166) that we published on September 30, 2005, we finalized a number of refinements to the IRF PPS case-mix classification system (the CMGs and the corresponding relative weights) and the case-level and facility-level adjustments. These refinements included the adoption of OMB's Core-Based Statistical Area (CBSA) market definitions, modifications to the CMGs, tier comorbidities, and CMG relative weights, implementation of a new teaching status adjustment for IRFs, revision and rebasing of the IRF market basket, and updates to the rural, low-income percentage (LIP), and high-cost outlier adjustments. Any reference to the FY 2006 IRF PPS final rule in this final rule also includes the provisions effective in the correcting amendments. For a detailed discussion of the final key policy changes for FY 2006, please refer to the FY 2006 IRF PPS final rule (70 FR 47880 and 70 FR 57166).

In the FY 2007 IRF PPS final rule (71 FR 48354), we further refined the IRF PPS case-mix classification system (the CMG relative weights) and the case-level adjustments, to ensure that IRF PPS payments continue to reflect as accurately as possible the costs of care. For a detailed discussion of the FY 2007 policy revisions, please refer to the FY 2007 IRF PPS final rule (71 FR 48354).

In the FY 2008 IRF PPS final rule (72 FR 44284), we updated the Federal prospective payment rates and the outlier threshold, revised the IRF wage index policy, and clarified how we determine high-cost outlier payments for transfer cases. For more information on the policy changes implemented for FY 2008, please refer to the FY 2008 IRF PPS final rule (72 FR 44284), in which we published the final FY 2008 IRF Federal prospective payment rates.

After publication of the FY 2008 IRF PPS final rule (72 FR 44284), section 115 of the Medicare, Medicaid, and SCHIP Extension Act of 2007, Public Law 110–173 (MMSEA), amended section 1886(j)(3)(C) of the Act to apply a zero percent increase factor for FYs 2008 and 2009, effective for IRF discharges occurring on or after April 1, 2008. Section 1886(j)(3)(C) of the Act requires the Secretary to develop an increase factor to update the IRF Federal prospective payment rates for each FY. Based on the legislative change to the increase factor, we revised the FY 2008 Federal prospective payment rates for IRF discharges occurring on or after April 1, 2008. Thus, the final FY 2008 IRF Federal prospective payment rates that were published in the FY 2008 IRF PPS final rule (72 FR 44284) were effective for discharges occurring on or after October 1, 2007 and on or before March 31, 2008; and the revised FY 2008 IRF Federal prospective payment rates are effective for discharges occurring on or after April 1, 2008 and on or before September 30, 2008. The revised FY 2008 Federal prospective payment rates are available on the CMS Web site at *http://www.cms.hhs.gov/InpatientRehabFacPPS/07_DataFiles.asp#TopOfPage*.

B. Operational Overview of the Current IRF PPS

As described in the FY 2002 IRF PPS final rule, upon the admission and discharge of a Medicare Part A fee-for-service patient, the IRF is required to complete the appropriate sections of a patient assessment instrument, the Inpatient Rehabilitation Facility-Patient Assessment Instrument (IRF–PAI). All required data must be electronically encoded into the IRF–PAI software product. Generally, the software product includes patient classification programming called the GROUPER software. The GROUPER software uses specific IRF-PAI data elements to classify (or group) patients into distinct CMGs and account for the existence of any relevant comorbidities.

The GROUPER software produces a five-digit CMG number. The first digit is an alpha-character that indicates the comorbidity tier. The last four digits represent the distinct CMG number. Free downloads of the Inpatient Rehabilitation Validation and Entry (IRVEN) software product, including the GROUPER software, are available on the CMS Web site at *http://www.cms.hhs.gov/InpatientRehabFacPPS/06_Software.asp.*

Once a patient is discharged, the IRF submits a Medicare claim as a Health Insurance Portability and Accountability Act (HIPAA), Public Law 104–191, compliant electronic claim or, if the Administrative Compliance Act (ASCA), Public Law 107–105, permits, a paper claim, a UB–04 or a CMS–1450, (as appropriate) using the five-digit CMG number and sends it to the

appropriate Medicare fiscal intermediary (FI) or Medicare Administrative Contractor (MAC). Claims submitted to Medicare must comply with both ASCA and HIPAA. Section 3 of the ASCA amends section 1862(a) of the Act by adding paragraph (22) which requires the Medicare program, subject to section 1862(h) of the Act, to deny payment under Part A or Part B for any expenses for items or services ''for which a claim is submitted other than in an electronic form specified by the Secretary.'' Section 1862(h) of the Act, in turn, provides that the Secretary shall waive such denial in situations in which there is no method available for the submission of claims in an electronic form or the entity submitting the claim is a small provider.

In addition, the Secretary also has the authority to waive such denial ''in such unusual cases as the Secretary finds appropriate.'' We refer the reader to the final rule, ''Medicare Program; Electronic Submission of Medicare Claims'' (70 FR 71008, November 25, 2005). Section 3 of the ASCA operates in the context of the administrative simplification provisions of HIPAA, which include, among others, the requirements for transaction standards and code sets codified in 45 CFR, parts 160 and 162, subparts A and I through R (generally known as the Transactions Rule). The Transactions Rule requires covered entities, including covered healthcare providers, to conduct covered electronic transactions according to the applicable transaction standards. (See the program claim memoranda issued and published by CMS at: *http://www.cms.hhs.gov/ElectronicBillingEDITrans/* and listed in the addenda to the Medicare Intermediary Manual, Part 3, section 3600. CMS instructions for the limited number of Medicare claims submitted on paper are available at: *http://www.cms.hhs.gov/manuals/downloads/clm104c25.pdf*.)

The Medicare FI or MAC processes the claim through its software system. This software system includes pricing programming called the ''PRICER'' software. The PRICER software uses the CMG number, along with other specific claim data elements and provider-specific data, to adjust the IRF's prospective payment for interrupted stays, transfers, short stays, and deaths, and then applies the applicable adjustments to account for the IRF's wage index, percentage of low-income patients, rural location, and outlier payments. For discharges occurring on or after October 1, 2005, the IRF PPS payment also reflects the new teaching status adjustment that became effective as of FY 2006, as discussed in the FY 2006 IRF PPS final rule (70 FR 47880).

II. Provisions of the Proposed Rule

As discussed in the FY 2009 IRF PPS proposed rule (73 FR 22674), we proposed to make revisions to the regulation text in response to section 115 of the MMSEA. Specifically, we proposed to revise 42 CFR part 412. We discuss these proposed revisions and others in detail below.

A. Section 412.23 Excluded Hospitals: Classifications

We proposed to revise the regulation text in paragraph (b)(2)(i) and remove paragraph (b)(2)(ii) in response to section 115 of the MMSEA. To summarize, for cost reporting periods—

(1) Beginning on or after July 1, 2005, the hospital has served an inpatient population of whom at least 60 percent require intensive rehabilitation services for treatment of one or more of the conditions specified at paragraph (b)(2)(ii) of this section (as amended by removing former (b)(2)(ii) and redesignating former (b)(2)(iii) as the new (b)(2)(ii)).

(2) A comorbidity that meets the criteria as specified in § 412.23(b)(2)(i) may continue to be used to determine the compliance threshold.

B. Additional Proposed Changes

- Update the FY 2009 IRF PPS relative weights and average length of stay values using the most current and complete Medicare claims and cost report data, as discussed in section II of the FY 2009 IRF PPS proposed rule (73 FR 22674, 22676 through 22680).
- Update the FY 2009 IRF PPS payment rates by the proposed wage index and labor related share in a budget neutral manner, as discussed in sections III.A and B of the FY 2009 IRF PPS proposed rule (73 FR 22674, 22680 through 22686).
- Update the outlier threshold amount for FY 2009, as discussed in section IV.A of the FY 2009 IRF PPS proposed rule (73 FR 22674, 22686 through 22687).
- Update the cost-to-charge ratio ceiling and the national average urban and rural cost-to-charge ratios for purposes of determining outlier payments under the IRF PPS, as discussed in section IV.B of the FY 2009 IRF PPS proposed rule (73 FR 22674 at 22687).

III. Analysis of and Responses to Public Comments

We received approximately 17 timely items of correspondence containing multiple comments on the FY 2009 IRF PPS proposed rule (73 FR 22674) from the public. We received comments from various trade associations, inpatient rehabilitation facilities, health care industry organizations, and health care consulting firms. The following discussion, arranged by subject area, includes a summary of the public comments that we received, and our responses to the comments appear under the appropriate subject heading.

IV. Update to the CMG Relative Weights and Average Length of Stay Values for FY 2009

As specified in 42 CFR 412.620(b)(1), we calculate a relative weight for each CMG that is proportional to the resources needed by an average inpatient rehabilitation case in that CMG. For example, cases in a CMG with a relative weight of 2, on average, will cost twice as much as cases in a CMG with a relative weight of 1. Relative weights account for the variance in cost per discharge due to the variance in resource utilization among the payment groups, and their use helps to ensure that IRF PPS payments support beneficiary access to care as well as provider efficiency.

In the FY 2009 IRF PPS proposed rule (73 FR 22674, 22676 through 22680), we proposed updates to the CMG relative weights and average length of stay values using the most recent available data (FY 2006 IRF claims, FY 2006 IRF-PAI, and FY 2006 IRF cost report data) to ensure that IRF PPS payments continue to reflect as accurately as possible the costs of care in IRFs. We proposed to do this using the same methodology, with one change, that was described in the original, FY 2002 IRF PPS final rule (66 FR 41316) and the FY 2006 IRF PPS final rule (70 FR 47880, 47887 through 47888). The proposed change to the methodology involves using new, more detailed cost-to-charge ratio (CCR) data from the cost reports of IRF subprovider units of primary acute care hospitals, instead of CCR data from the associated primary acute care hospitals, to calculate IRFs' average costs per case. In general, we proposed to make this change in the methodology because the more detailed CCR data from the IRF subprovider cost reports are now available in sufficient detail, and the relationship between costs and charge in the primary acute care hospital could differ from the relationship between costs and charges in the IRF subprovider units, making the data from the IRF subprovider units potentially more accurate for estimating the average costs per case in these units. For freestanding IRFs, we proposed to continue using CCR data from the

freestanding IRF's cost report. We also noted that in future years we would continue to estimate the CMG relative weights using both the primary acute care hospital CCRs and the IRF subprovider unit CCRs to ensure that we continue to use the most appropriate data in updating the CMG relative weights.

In addition, we proposed to make changes to the CMG relative weights for FY 2009 in such a way that total estimated aggregate payments to IRFs for FY 2009 would be the same with or without the proposed changes (that is, in a budget neutral manner) by applying a budget neutrality factor to the standard payment amount, as described in section II of the FY 2009 IRF PPS proposed rule (73 FR 22674 at 22677). To compute the budget neutrality factor used to update the CMG relative weights, we proposed to use the following steps:

Step 1. Calculate the estimated total amount of IRF PPS payments for FY 2009 (with no proposed changes to the CMG relative weights).

Step 2. Apply the proposed changes to the CMG relative weights (as discussed above) to calculate the estimated total amount of IRF PPS payments for FY 2009.

Step 3. Divide the amount calculated in step 1 by the amount calculated in step 2 to determine the budget neutrality factor that would maintain the same total estimated aggregate payments in FY 2009 with and without the proposed changes to the CMG relative weights.

Step 4. Apply the proposed budget neutrality factor to the FY 2008 IRF PPS standard payment amount after the application of the budget-neutral wage adjustment factor.

Note that the budget neutrality factor that we use to update the CMG relative weights for FY 2009 changed from 0.9969 in the proposed rule to 0.9939 in this final rule due to the use of updated FY 2007 IRF claims data in this final rule.

We received five comments on the proposed updates to the CMG relative weights and average length of stay values, which are summarized below.

Comment: Several commenters supported the proposed update to the CMG relative weights for FY 2009, with one commenter referring to the proposed update as a ''step in the right direction.'' However, several commenters specifically suggested that we analyze the FY 2007 IRF claims and cost report data in computing the CMG relative weights for FY 2009, as these data would reflect more of the impact of recent changes in the 75 percent rule and the IRF medical necessity reviews than the FY 2006 IRF claims and cost report data. Further, one commenter recommended that we seek additional cost information to use to compute the CMG relative weights, including nursing staff time data, ancillary cost data, and other alternatives to the IRF claims and cost report data that we currently use to compute the CMG relative weights. Finally, a couple of commenters recommended that we recalibrate the CMG relative weights more frequently, with one commenter specifically asking that we recalibrate the CMG relative weights again next year (for FY 2010) using the most recent available data.

Response: We agree with the commenters that we should analyze the most recent available IRF data to compute the CMG relative weights for FY 2009 in order to ensure that IRF PPS payments continue to reflect as accurately as possible the costs of care in IRFs. For the proposed rule, we used data from FY 2006 IRF claims, FY 2006 IRF-PAI, and FY 2006 IRF cost reports because that was the best available data at the time. For this final rule, we have updated the IRF claims data used in our analysis of the CMG relative weights and average length of stay values from FY 2006 to FY 2007.

We note that we used FY 2006 IRF-PAI data for analyzing the CMG relative weights in the proposed rule because we implemented some minor adjustments to the classification system for FY 2007 in the FY 2007 IRF PPS final rule (71 FR 48354, 48360 through 48370). Accordingly, some of the CMGs that appeared on the FY 2006 IRF claims data would not be the same CMGs that would be assigned under the current, post-FY 2007 IRF classification system. We therefore used the FY 2006 IRF–PAI data for the proposed rule to ensure that the appropriate current CMG was assigned for all of the FY 2006 claims. However, use of the IRF–PAI data was no longer necessary when we used the FY 2007 IRF claims data for this final rule because the CMG information on the FY 2007 IRF claims data incorporated all of the changes to the IRF classification system that were implemented in the FY 2007 IRF PPS final rule (71 FR 48354, 48360 through 48370). We did not implement any changes to the IRF classification system in the FY 2008 IRF PPS final rule (72 FR 44284). The results of our analysis of the FY 2007 IRF claims data are reflected in the CMG relative weights and average length of stay values presented in Table 1 in this final rule.

We further note that we have not updated the IRF cost report data used in this final rule. Although we agree with the commenter that it is important to analyze the most recent available cost report data to reflect as fully as possible the changes in IRF patient populations that may have occurred as a result of changes in the 75 percent rule and the IRF medical necessity reviews, only a small portion of the FY 2007 IRF cost reports are available for analysis at this time. Accordingly, we have continued to use the FY 2006 cost report data for analyzing IRFs' costs per case in this final rule because these are the most complete IRF cost report data available at this time. However, we will continue to evaluate the need for further updates and refinements to the CMG relative weights and average length of stay values in future years and would update the cost report data, as appropriate, when the data become available.

We appreciate the commenter's suggestions regarding alternative data to use in analyzing the costs of caring for IRF patients, and we will carefully consider the commenter's suggestions for future refinements to the methodology for computing the CMG relative weights.

Finally, we agree with the commenters that we may need to update the CMG relative weight and average length of stay analysis frequently to ensure that IRF payments continue to reflect the costs of caring for IRF patients, especially in light of recent changes resulting from changes to the 75 percent rule and the IRF medical necessity reviews. We intend to continue analyzing the most recent available data, and will propose future refinements to the IRF classification and weighting system based on that analysis, as appropriate.

Comment: One commenter stated a concern that the methodology used to revise the IRF classification system in the FY 2006 IRF PPS final rule (70 FR 47880) may have reduced the overall IRF case mix weights. This commenter asked CMS to re-examine this issue.

Response: As discussed in the FY 2006 IRF PPS final rule (70 FR 47880, 47886 through 47904), the FY 2007 IRF PPS final rule (71 FR 48354, 48373 through 48374), and the FY 2008 IRF PPS final rule (72 FR 44284 at 44293), we have analyzed the data and it continues to show that the FY 2006 refinements to the IRF classification system did not cause a reduction in the overall IRF case mix weights or in aggregate IRF payments. We have met with industry representatives several times in order to understand their concerns. We have also discussed the results of our analysis with them, which continues to show that we implemented the FY 2006 refinements to the IRF

classification system in a budget neutral manner, so that estimated aggregate payments to providers would not increase or decrease as a result of these refinements.

Comment: One commenter questioned why only 141 (40 percent) of the proposed FY 2009 CMG relative weight values increased compared with the FY 2008 CMG relative weight values, while 212 (60 percent) of the proposed FY 2009 CMG relative weight values decreased compared with the FY 2008 CMG relative weight values. This commenter generally expressed surprise at the proposed FY 2009 CMG relative weights values, but indicated that certain changes appeared to be correct, particularly the increases in the CMG relative weights for some of the orthopedic conditions. However, the commenter questioned why the CMG relative weight values for other types of cases decreased.

Response: As we discussed in the proposed rule (73 FR 22674 at 22680), updates to the CMG relative weights will result in some increases and some decreases to the CMG relative weight values. This is due to the distributional nature of CMG relative weight changes. However, our updated analysis of the CMG relative weight values presented in Table 1 of this final rule (which is based on more recent data than that used in the proposed rule, as explained previously in this section) now shows that more than half of the CMG relative weights will increase and, further, that more than half of beneficiaries are in payment groups for which the CMG relative weight will increase between FY 2008 and FY 2009. Specifically, our analysis shows that 57 percent of patients are classified into one of the 177 payment groups (that is, the combination of CMG and tier) that will experience an increase in the CMG relative weight value between FYs 2008 and 2009, and 43 percent of patients are classified into one of the 176 classification groups that will experience a decrease in the CMG relative weight value between FYs 2008 and 2009.

Final Decision: We received only positive comments in support of the proposal to change the methodology for determining IRFs' average costs per case by using more detailed cost-to-charge ratio (CCR) data from the cost reports of IRF subprovider units of primary acute care hospitals to calculate the IRF subprovider units' average costs per case. Thus, after carefully considering all of the comments that we received on the proposed updates to the CMG relative weights and average length of stay values, we are finalizing this change to the methodology for the reasons explained previously and as described in more detail in the proposed rule (73 FR 22674, 22676 through 22677). For freestanding IRFs, we will continue to use the CCR data from the freestanding IRFs' cost reports. Consistent with the methodology that we used to compute the CMG relative weights for FYs 2002 through 2008, with the one change described above, we are implementing the updates to the CMG relative weights and average length of stay values presented in Table 1 below. As recommended by the commenters, we have updated the CMG relative weights and average length of stay values in Table 1 using FY 2007 IRF claims data for this final rule. Further, as noted previously, we have continued to use FY 2006 IRF cost report data for this final rule because it is the best available cost report data at this time.

TABLE 1—RELATIVE WEIGHTS AND AVERAGE LENGTHS OF STAY FOR CASE-MIX GROUPS

CMG	CMG description (M=motor, C=cognitive, A=age)	Relative weight				Average length of stay			
		Tier 1	Tier 2	Tier 3	None	Tier 1	Tier 2	Tier 3	None
0101	Stroke: M>51.05	0.7712	0.7108	0.6381	0.6059	9	10	9	8
0102	Stroke: M>44.45 and M<51.05 and C>18.5.	0.9694	0.8936	0.8021	0.7617	11	11	11	10
0103	Stroke: M>44.45 and M<51.05 and C<18.5.	1.1478	1.0580	0.9496	0.9018	14	14	12	12
0104	Stroke: M>38.85 and M<44.45.	1.2192	1.1238	1.0087	0.9579	13	14	13	13
0105	Stroke: M>34.25 and M<38.85.	1.4320	1.3199	1.1848	1.1251	16	18	15	15
0106	Stroke: M>30.05 and M<34.25.	1.6632	1.5330	1.3761	1.3067	19	19	17	17
0107	Stroke: M>26.15 and M<30.05.	1.8970	1.7485	1.5695	1.4904	20	21	19	19
0108	Stroke: M<26.15 and A>84.5	2.2795	2.1011	1.8860	1.7910	27	26	23	22
0109	Stroke: M>22.35 and M<26.15 and A<84.5.	2.1786	2.0081	1.8025	1.7117	22	23	21	22
0110	Stroke: M<22.35 and A<84.5	2.7217	2.5087	2.2518	2.1384	30	30	27	26
0201	Traumatic brain injury: M>53.35 and C>23.5.	0.7556	0.6464	0.5818	0.5295	10	10	8	8
0202	Traumatic brain injury: M>44.25 and M<53.35 and C>23.5.	1.0305	0.8817	0.7935	0.7222	13	11	10	10
0203	Traumatic brain injury: M>44.25 and C<23.5.	1.1487	0.9828	0.8846	0.8051	12	13	12	11
0204	Traumatic brain injury: M>40.65 and M<44.25.	1.2934	1.1066	0.9959	0.9064	15	14	13	12
0205	Traumatic brain injury: M>28.75 and M<40.65.	1.5739	1.3466	1.2119	1.1030	17	17	16	14
0206	Traumatic brain injury: M>22.05 and M<28.75.	1.9530	1.6709	1.5039	1.3687	21	21	18	18
0207	Traumatic brain injury: M<22.05.	2.6307	2.2508	2.0257	1.8437	36	28	24	22

TABLE 1—RELATIVE WEIGHTS AND AVERAGE LENGTHS OF STAY FOR CASE-MIX GROUPS—Continued

CMG	CMG description (M=motor, C=cognitive, A=age)	Relative weight				Average length of stay			
		Tier 1	Tier 2	Tier 3	None	Tier 1	Tier 2	Tier 3	None
0301	Non-traumatic brain injury: M>41.05.	1.1084	0.9308	0.8358	0.7650	12	12	11	10
0302	Non-traumatic brain injury: M>35.05 and M<41.05.	1.4120	1.1857	1.0647	0.9746	14	15	13	13
0303	Non-traumatic brain injury: M>26.15 and M<35.05.	1.6938	1.4224	1.2772	1.1691	17	17	16	15
0304	Non-traumatic brain injury: M<26.15.	2.3130	1.9424	1.7441	1.5966	27	23	21	20
0401	Traumatic spinal cord injury: M>48.45.	0.9255	0.7883	0.7732	0.6566	12	12	11	9
0402	Traumatic spinal cord injury: M>30.35 and M<48.45.	1.3933	1.1868	1.1640	0.9886	17	15	16	13
0403	Traumatic spinal cord injury: M>16.05 and M<30.35.	2.2823	1.9440	1.9067	1.6194	28	23	23	21
0404	Traumatic spinal cord injury: M<16.05 and A>63.5.	3.9766	3.3872	3.3222	2.8215	53	40	37	34
0405	Traumatic spinal cord injury: M<16.05 and A<63.5.	.0347	2.5850	2.5354	2.1532	42	30	29	27
0501	Non-traumatic spinal cord injury: M>51.35.	0.8107	0.6397	0.5945	0.5245	9	9	8	8
0502	Non-traumatic spinal cord injury: M>40.15 and M<51.35.	1.0994	0.8675	0.8062	0.7113	13	11	11	10
0503	Non-traumatic spinal cord injury: M>31.25 and M<40.15.	1.4315	1.1296	1.0497	0.9261	16	14	13	13
0504	Non-traumatic spinal cord injury: M>29.25 and M<31.25.	1.7229	1.3596	1.2634	1.1147	21	17	16	15
0505	Non-traumatic spinal cord injury: M>23.75 and M<29.25.	2.0360	1.6066	1.4930	1.3173	23	21	19	17
0506	Non-traumatic spinal cord injury: M<23.75.	2.8325	2.2351	2.0770	1.8325	32	27	25	23
0601	Neurological: M>47.75	0.9245	0.7546	0.7174	0.6542	11	9	10	9
0602	Neurological: M>37.35 and M<47.75.	1.2366	1.0094	0.9596	0.8750	12	13	12	12
0603	Neurological: M>25.85 and M<37.35.	1.5763	1.2866	1.2232	1.1154	16	16	15	14
0604	Neurological: M<25.85	2.0887	1.7049	1.6208	1.4780	24	21	20	18
0701	Fracture of lower extremity: M>42.15.	0.9187	0.7742	0.7300	0.6563	11	10	10	9
0702	Fracture of lower extremity: M>34.15 and M<42.15.	1.2116	1.0209	0.9627	0.8655	14	14	12	12
0703	Fracture of lower extremity: M>28.15 and M<34.15.	1.4846	1.2510	1.1797	1.0606	16	16	15	14
0704	Fracture of lower extremity: M<28.15.	1.8994	1.6005	1.5093	1.3569	20	20	19	17
0801	Replacement of lower extremity joint: M>49.55.	0.7000	0.5704	0.5172	0.4714	8	7	8	7
0802	Replacement of lower extremity joint: M>37.05 and M<49.55.	0.9380	0.7643	0.6931	0.6317	10	10	9	9
0803	Replacement of lower extremity joint: M>28.65 and M<37.05 and A>83.5.	1.3383	1.0905	0.9889	0.9013	14	13	13	12
0804	Replacement of lower extremity joint: M>28.65 and M<37.05 and A<83.5.	1.1745	0.9571	0.8679	0.7910	13	12	11	10
0805	Replacement of lower extremity joint: M>22.05 and M<28.65.	1.4661	1.1947	1.0833	0.9874	16	16	13	13
0806	Replacement of lower extremity joint: M<22.05.	1.8139	1.4780	1.3403	1.2215	18	18	17	15
0901	Other orthopedic: M>44.75	0.8584	0.7574	0.6829	0.6041	10	10	9	9
0902	Other orthopedic: M>34.35 and M<44.75.	1.1473	1.0122	0.9127	0.8074	13	13	12	11

TABLE 1—RELATIVE WEIGHTS AND AVERAGE LENGTHS OF STAY FOR CASE-MIX GROUPS—Continued

CMG	CMG description (M=motor, C=cognitive, A=age)	Relative weight				Average length of stay			
		Tier 1	Tier 2	Tier 3	None	Tier 1	Tier 2	Tier 3	None
0903	Other orthopedic: M>24.15 and M<34.35.	1.4840	1.3093	1.1806	1.0443	16	16	15	14
0904	Other orthopedic: M<24.15	1.9620	1.7310	1.5608	1.3807	22	22	19	18
1001	Amputation, lower extremity: M>47.65.	0.9356	0.9061	0.7797	0.7137	11	12	11	10
1002	Amputation, lower extremity: M>36.25 and M<47.65.	1.2522	1.2127	1.0435	0.9552	14	15	13	12
1003	Amputation, lower extremity: M<36.25.	1.8193	1.7619	1.5161	1.3877	19	21	19	17
1101	Amputation, non-lower extremity: M>36.35.	1.1846	0.9851	0.9851	0.8558	12	12	13	11
1102	Amputation, non-lower extremity: M<36.35.	1.7288	1.4377	1.4377	1.2490	17	18	17	15
1201	Osteoarthritis: M>37.65	1.0319	0.9668	0.8483	0.7541	11	12	11	10
1202	Osteoarthritis: M>30.75 and M<37.65.	1.3034	1.2212	1.0715	0.9525	14	15	13	13
1203	Osteoarthritis: M<30.75	1.6379	1.5346	1.3465	1.1969	16	18	17	15
1301	Rheumatoid, other arthritis: M>36.35.	1.0983	0.9874	0.8499	0.7648	12	12	11	10
1302	Rheumatoid, other arthritis: M>26.15 and M<36.35.	1.4790	1.3296	1.1445	1.0299	15	16	14	13
1303	Rheumatoid, other arthritis: M<26.15.	1.9140	1.7208	1.4812	1.3329	24	22	18	17
1401	Cardiac: M>48.85	0.8003	0.7221	0.6388	0.5667	10	11	9	8
1402	Cardiac: M>38.55 and M<48.85.	1.1095	1.0010	0.8856	0.7856	13	13	12	11
1403	Cardiac: M>31.15 and M<38.55.	1.3578	1.2251	1.0838	0.9615	15	15	13	13
1404	Cardiac: M<31.15	1.7628	1.5905	1.4071	1.2483	20	20	17	16
1501	Pulmonary: M>49.25	0.9603	0.8386	0.7413	0.7038	11	12	10	9
1502	Pulmonary: M>39.05 and M<49.25.	1.2297	1.0739	0.9494	0.9013	13	13	12	11
1503	Pulmonary: M>29.15 and M<39.05.	1.5640	1.3658	1.2074	1.1463	16	17	14	14
1504	Pulmonary: M<29.15	1.9525	1.7051	1.5073	1.4310	22	19	17	17
1601	Pain syndrome: M>37.15	1.1094	0.8968	0.7667	0.7068	13	13	10	10
1602	Pain syndrome: M>26.75 and M<37.15.	1.4978	1.2108	1.0351	0.9543	16	16	13	13
1603	Pain syndrome: M<26.75	1.9287	1.5590	1.3328	1.2287	22	19	17	16
1701	Major multiple trauma without brain or spinal cord injury: M>39.25.	1.0454	0.9189	0.8461	0.7419	11	12	11	10
1702	Major multiple trauma without brain or spinal cord injury: M>31.05 and M<39.25.	1.3777	1.2110	1.1151	0.9778	14	15	14	13
1703	Major multiple trauma without brain or spinal cord injury: M>25.55 and M<31.05.	1.6566	1.4561	1.3408	1.1757	18	17	16	15
1704	Major multiple trauma without brain or spinal cord injury: M<25.55.	2.0776	1.8261	1.6815	1.4744	23	24	21	19
1801	Major multiple trauma with brain or spinal cord injury: M>40.85.	1.2189	0.9629	0.9044	0.7757	15	13	13	10
1802	Major multiple trauma with brain or spinal cord injury: M>23.05 and M<40.85.	1.8398	1.4533	1.3651	1.1708	19	17	16	15
1803	Major multiple trauma with brain or spinal cord injury: M<23.05.	3.1442	2.4838	2.3329	2.0009	37	31	26	24
1901	Guillian Barre: M>35.95	1.1582	0.9288	0.9288	0.8782	15	11	11	12
1902	Guillian Barre: M>18.05 and M<35.95.	2.3408	1.8772	1.8772	1.7749	26	22	25	22
1903	Guillian Barre: M<18.05	3.5944	2.8825	2.8825	2.7254	33	35	41	31
2001	Miscellaneous: M>49.15	0.8820	0.7282	0.6614	0.5928	11	9	9	8

TABLE 1—RELATIVE WEIGHTS AND AVERAGE LENGTHS OF STAY FOR CASE-MIX GROUPS—Continued

CMG	CMG description (M=motor, C=cognitive, A=age)	Relative weight				Average length of stay			
		Tier 1	Tier 2	Tier 3	None	Tier 1	Tier 2	Tier 3	None
2002	Miscellaneous: M>38.75 and M<49.15.	1.1873	0.9803	0.8904	0.7980	12	13	11	11
2003	Miscellaneous: M>27.85 and M<38.75.	1.5231	1.2575	1.1422	1.0237	16	16	14	13
2004	Miscellaneous: M<27.85	2.0363	1.6812	1.5271	1.3686	22	20	19	17
2101	Burns: M>0	2.3666	2.3666	2.1481	1.7454	25	25	25	17
5001	Short-stay cases, length of stay is 3 days or fewer.				0.1476				3
5101	Expired, orthopedic, length of stay is 13 days or fewer.				0.6783				8
5102	Expired, orthopedic, length of stay is 14 days or more.				1.5432				19
5103	Expired, not orthopedic, length of stay is 15 days or fewer.				0.7086				9
5104	Expired, not orthopedic, length of stay is 16 days or more.				1.9586				23

V. FY 2009 IRF PPS Federal Prospective Payment Rates

A. Increase Factor and Labor-Related Share for FY 2009

Section 1886(j)(3)(C) of the Act requires the Secretary to establish an increase factor that reflects changes over time in the prices of an appropriate mix of goods and services included in the covered IRF services, which is referred to as a market basket index. According to section 1886(j)(3)(A)(i) of the Act, the increase factor shall be used to update the IRF Federal prospective payment rates for each FY. However, section 115 of the MMSEA, amended section 1886(j)(3)(C) of the Act to apply a zero percent increase factor for FYs 2008 and 2009, effective for IRF discharges occurring on or after April 1, 2008. Thus, we are applying an increase factor of zero percent to update the IRF Federal prospective payment rates for FY 2009 in this final rule.

We continue to use the methodology described in the FY 2006 IRF PPS final rule to update the IRF labor-related share for FY 2009 (70 FR 47880, 47908 through 47917). The IRF labor-related share for FY 2009 is the sum of the FY 2009 relative importance of each labor-related cost category, and reflects the different rates of price change for these cost categories between the base year (FY 2002) and FY 2009. Consistent with our proposal to update the labor-related share with the most recent available data, the labor-related share for this final rule reflects Global Insight's second quarter 2008 forecast. (Global Insight is a nationally recognized economic and financial forecasting firm that contracts with CMS to forecast the components of providers' market baskets.) As shown in Table 2, the total FY 2009 Rehabilitation, Psychiatric, and Long-Term Care Hospital Market Basket (RPL) labor-related share in this final rule is 75.464 percent.

TABLE 2—FY 2009 IRF RPL LABOR-RELATED SHARE RELATIVE IMPORTANCE

Cost category	FY 2009 IRF labor-related share relative importance
Wages and salaries	52.552
Employee benefits	13.982
Professional fees	2.890
All other labor intensive services	2.120
Subtotal	71.544
Labor-related share of capital costs (.46)	3.920
Total	75.464

SOURCE: GLOBAL INSIGHT, INC, 2nd QTR, 2008; @USMACRO/CONTROL0508 @CISSIM/TL0508.SIM Historical Data through 1st QTR, 2008.

We received five comments on the increase factor and labor-related share for FY 2009, which are summarized below.

Comment: Two commenters expressed concern that the zero percent increase factor that we are applying to the IRF Federal prospective payment rates for FY 2009, would impose a financial burden on IRFs. These commenters noted that the zero percent increase factor for FY 2009 was required by section 115 of the MMSEA, which also made revisions to the 60 percent rule. The commenters requested that any future legislative changes to the 60 percent rule also be considered in combination with updates to the IRF Federal prospective payment rates.

Response: As we discussed in the FY 2009 IRF PPS proposed rule (73 FR 22674, 22680 through 22681), section 115 of the MMSEA amended section 1886(j)(3)(C) of the Act to apply a zero percent increase factor for FYs 2008 and 2009, effective for IRF discharges occurring on or after April 1, 2008. While we understand that the effect of the zero percent increase factor is to maintain FY 2009 IRF PPS payment rates at FY 2008 levels, the statute does not give CMS the discretion to implement an increase factor other than zero percent for FY 2009. We will respond to any future legislative changes to the 60 percent rule accordingly.

Comment: One commenter requested that CMS calculate the IRF PPS market basket estimates using more current market basket data. This commenter stated that the FY 2009 market basket estimate is based on data from FY 2002, and that the FY 2002 data underestimate the increase in costs, especially labor costs, that IRFs have experienced. The commenter suggested that CMS use Medicare cost report data to compute the market basket estimate, rather than data from the Bureau of Labor Statistics, in order to make the estimate more current.

Response: The IRF PPS market basket, which is a fixed weight, Laspeyres-type price index, is constructed in three

steps. First, a base period is selected (FY 2002 in the current market basket) and total base period expenditures are estimated for a set of mutually exclusive and exhaustive spending categories based upon type of expenditure. The proportion of total operating costs that each category represents is called a cost or expenditure weight.

Medicare Cost Report (MCR) data are used to derive the primary cost weights for the market basket. We monitor the stability of these cost weights and have determined that they do not tend to fluctuate over short periods of time (such as a period of less than 5 years). In general, we have typically rebased (recalculated market basket cost weights) approximately every 5 years. We note that we last revised and rebased the market basket in the FY 2006 IRF PPS final rule (70 FR 47880, 47915 through 47917).

Second, the FY 2002 expenditure weight for each cost category is matched to an appropriate price or wage variable, referred to as a price proxy. These price proxies are selected to reflect the rate-of-price change for each expenditure category and are primarily obtained from the Bureau of Labor Statistics (BLS).

Finally, each FY 2002 cost weight is multiplied by the level of its respective price proxy. The sum of these products (that is, the expenditure weights multiplied by their price levels) for all cost categories yields the composite index level of the market basket in a given period. Repeating this step for other periods produces a series of market basket levels over time.

The final IRF market basket update for FY 2009 is calculated using the market basket levels from the second quarter of 2008 (2008Q2) forecast prepared by Global Insight, Inc. (GII). These levels reflect the most recent price data available (historical price data through 2008Q1 and forecasted price data for 2008Q2 and beyond).

Given the methodology described above, the current market basket estimate is not based solely on FY 2002 data, but rather is calculated by applying the most recent available price data for each quarter to the FY 2002 cost weights. Thus, the current FY 2009 market basket estimate does in fact reflect recent price increases experienced by IRFs.

Comment: Several commenters expressed concern about the methodology for computing the labor-related share. One commenter requested that we begin updating the labor-related share more frequently using the most recent available data. The commenter stated that the current calculation of the labor-related share is based on 2002 data. Another commenter said that the methodology does not adequately reflect the difficulty IRFs have in recruiting a skilled labor force.

Response: The FY 2009 labor-related share is intended to reflect those costs that are related to, influenced by, or vary with the local labor market. Accordingly, the share is calculated as the sum of the relative importance of the appropriate categories which include wages and salaries, fringe benefits, professional fees, labor-intensive services, and a portion of capital costs. We calculate this share based on the RPL market basket, which we believe adequately captures the current cost structures of Medicare-participating IRFs.

By following a four-step process to estimate the labor-related relative importance for FY 2009, we are making use of up-to-date data that reflect current trends. As a result, the labor-related share appropriately reflects current labor market price pressures experienced by IRFs. The process is as follows: First, we compute the FY 2009 price index level for the total market basket and each cost category of the market basket. Second, we calculate a ratio for each cost category by dividing the FY 2009 price index level for that cost category by the total market basket price index level. Third, we determine the FY 2009 relative importance for each cost category by multiplying this ratio by the base year (FY 2002) weight. Finally, we sum the FY 2009 relative importance for each of the labor-related categories to produce the FY 2009 labor-related relative importance.

The price proxies that move the different cost categories in the market basket do not necessarily change at the same rate, and the relative importance captures these potential differential growth rates. Accordingly, the relative importance figure more closely reflects the cost share weights for FY 2009 when compared to the base year weights from the 2002-based RPL market basket. We revised and rebased the market basket and labor-related share in FY 2006 and expect to conduct additional updates on a regular basis.

Final Decision: We will continue to apply a zero percent increase factor to the IRF Federal prospective payment rates for FY 2009, in accordance with section 115 of the MMSEA. Further, we will continue to update the IRF labor-related share using our current methodology, which reflects the most recent available data. Thus, for this final rule, the labor-related share is 75.464 percent. This is based on the GII's forecast for the second quarter of 2008 (2008Q2) with historical data through the first quarter of 2008 (2008Q1).

B. Area Wage Adjustment

Section 1886(j)(6) of the Act requires the Secretary to adjust the proportion (as estimated by the Secretary from time to time) of rehabilitation facilities' costs attributable to wages and wage-related costs by a factor (established by the Secretary) reflecting the relative hospital wage level in the geographic area of the rehabilitation facility compared to the national average wage level for those facilities. The Secretary is required to update the IRF PPS wage index on the basis of information available to the Secretary on the wages and wage-related costs to furnish rehabilitation services. Any adjustments or updates made under section 1886(j)(6) of the Act for a FY are made in a budget neutral manner.

In the FY 2008 IRF PPS final rule (72 FR 44284 at 44299), we maintained the methodology described in the FY 2006 IRF PPS final rule to determine the wage index, labor market area definitions, and hold harmless policy consistent with the rationale outlined in the FY 2006 IRF PPS final rule (70 FR 47880, 47917 through 47933).

For FY 2009, we proposed to and will maintain the policies and methodologies described in the FY 2008 IRF PPS final rule relating to the labor market area definitions and the wage index methodology for areas with wage data. Therefore, this final rule continues to use the Core-Based Statistical Area (CBSA) labor market area definitions and the pre-reclassification and pre-floor hospital wage index data based on 2004 cost report data.

When adopting new labor market designations made by the Office of Management and Budget (OMB), we identified some geographic areas where there were no hospitals and, thus, no hospital wage index data on which to base the calculation of the IRF PPS wage index. We continue to use the same methodology discussed in the FY 2008 IRF PPS final rule (72 FR 44284 at 44299) to address those geographic areas where there are no hospitals and, thus, no hospital wage index data on which to base the calculation of the FY 2009 IRF PPS wage index.

Additionally, this final rule incorporates the CBSA changes published in the most recent OMB bulletin that applies to the hospital wage data used to determine the current IRF PPS wage index. The changes were nomenclature and did not represent substantive changes to the CBSA-based designations. Specifically, OMB added or deleted certain CBSA numbers and revised certain titles. The OMB bulletins

are available online at *http://www.whitehouse.gov/omb/bulletins/index.html.*

1. Clarification of New England Deemed Counties

We are taking this opportunity to address the change in the treatment of ''New England deemed counties'' (that is, those counties in New England listed in § 412.64(b)(1)(ii)(B) of the regulations that were deemed to be parts of urban areas under section 601(g) of the Social Security Amendments of 1983) that was made in the FY 2008 Inpatient Prospective Payment System (IPPS) final rule with comment period (72 FR 47337). These counties include the following: Litchfield County, CT; York County, ME; Sagadahoc County, ME; Merrimack County, NH; and Newport County, RI. Of these five ''New England deemed counties,'' three (York County, ME, Sagadahoc County, ME, and Newport County, RI) are also included in metropolitan statistical areas (MSAs) defined by OMB and are considered urban under both the current IPPS and IRF PPS labor market area definitions in § 412.64(b)(1)(ii)(A). The remaining two, Litchfield County, CT and Merrimack County, NH, are *geographically* located in areas that are considered rural under the current IPPS (and IRF PPS) labor market area definitions, but have been previously deemed urban under the IPPS in certain circumstances, as discussed below.

In the FY 2008 IPPS final rule with comment period, (72 FR 47337 through 47338), § 412.64(b)(1)(ii)(B) was revised that the two ''New England deemed counties'' that are still considered rural under the OMB definitions (Litchfield County, CT and Merrimack County, NH), are no longer considered urban, effective for discharges occurring on or after October 1, 2007, and, therefore, are considered rural in accordance with § 412.64(b)(1)(ii)(C). However, for purposes of payment under the IPPS, acute care hospitals located within those areas are treated as being reclassified to their deemed urban area effective for discharges occurring on or after October 1, 2007 (see 72 FR 47337 through 47338). We note that the IRF PPS does not provide for geographic reclassification. Also, in the FY 2008 IPPS final rule with comment period (72 FR 47338), we explained that we limited this policy change for the ''New England deemed counties'' only to IPPS hospitals, and any change to non-IPPS provider wage indexes would be addressed in the respective payment system rules.

Accordingly, as stated above, we are taking this opportunity to clarify the treatment of ''New England deemed counties'' under the IRF PPS in this final rule.

As discussed above, the IRF PPS has consistently used the IPPS definition of ''urban'' and ''rural'' with regard to the wage index used in the IRF PPS. Under existing § 412.602, an IRF's wage index is determined based on the location of the IRF in an urban or rural area as defined in §§ 412.64(b)(1)(ii)(A) through (C).

Historical changes to the labor market area/geographic classifications and annual updates to the wage index values under the IRF PPS are made effective October 1 each year. When we established the most recent IRF PPS payment rate update, effective for discharges occurring on or after October 1, 2007 through September 30, 2008, we considered the ''New England deemed counties'' (including Litchfield County, CT and Merrimack County, NH) as urban for FY 2008, as evidenced by the inclusion of Litchfield County, CT as one of the constituent counties of urban CBSA 25540 (Hartford-West Hartford-East Hartford, CT), and the inclusion of Merrimack County, NH as one of the constituent counties of urban CBSA 31700 (Manchester-Nashua, NH).

As noted above, § 412.602 indicates that the terms ''rural'' and ''urban'' are defined according to the definitions of those terms in §§ 412.64(b)(1)(ii)(A) through (C). Applying the IPPS definitions, Litchfield County, CT and Merrimack County, NH are not considered ''urban'' under §§ 412.64(b)(1)(ii)(A) and (B) as revised under the FY 2008 IPPS final rule and, therefore, are considered ''rural'' under § 412.64(b)(1)(ii)(C). Accordingly, reflecting our policy to use the IPPS definitions of ''urban'' and ''rural'', these two counties would be considered ''rural'' under the IRF PPS effective with the next update of the IRF PPS payment rates, October 1, 2008, and would no longer be included in urban CBSA 25540 (Hartford-West Hartford-East Hartford, CT) and urban CBSA 31700 (Manchester-Nashua, NH), respectively. We note that this policy is consistent with our policy of not taking into account IPPS geographic reclassifications in determining payments under the IRF PPS. We do not need to make any changes to our regulations to effectuate this change.

There is one IRF (in Merrimack County, NH) that greatly benefits from treating these counties as rural. This IRF would begin to receive a higher wage index value and the 21.3 percent adjustment that is applied to IRF PPS payments for rural facilities. Currently, there are no IRFs in the following areas: Litchfield County, CT; rural Connecticut; or rural New Hampshire.

2. Multi-Campus Hospital Wage Index Data

In the FY 2008 IRF PPS final rule (72 FR 44284, August 7, 2007), we established IRF PPS wage index values for FY 2008 calculated from the same data (collected from cost reports submitted by hospitals for cost reporting periods beginning during FY 2003) used to compute the FY 2007 acute care hospital inpatient wage index, without taking into account geographic reclassification under sections 1886(d)(8) and (d)(10) of the Act. The IRF PPS wage index values applicable for discharges occurring on or after October 1, 2007 through September 30, 2008 are shown in Table 1 (for urban areas) and Table 2 (for rural areas) in the addendum to the FY 2008 IRF PPS final rule (72 FR 44284, 44312 through 44335).

We are continuing to use IPPS wage data for the FY 2009 IRF PPS Wage Index, because we believe that using the hospital inpatient wage data is appropriate and reasonable for the IRF PPS. We note that the IPPS wage data used to determine the FY 2009 IRF wage index values reflect our policy that was adopted under the IPPS beginning in FY 2008. The wage data for multi-campus hospitals located in different labor market areas (CBSAs) are apportioned to each CBSA where the campuses are located (see the FY 2008 IPPS final rule with comment period (72 FR 47317 through 47320)). We computed the FY 2009 IRF PPS wage index values presented in this final rule consistent with our pre-reclassified IPPS wage index policy (that is, our historical policy of not taking into account IPPS geographic reclassifications in determining payments under the IRF PPS).

For the FY 2009 IRF PPS, we computed the wage index from IPPS wage data (submitted by hospitals for cost reporting periods beginning in FY 2004 and used in the FY 2008 IPPS wage index), which allocated salaries and hours to the campuses of two multi-campus hospitals with campuses that are located in different labor areas, one in Massachusetts and another in Illinois. Thus, the FY 2009 IRF PPS wage index values for the following CBSAs are affected by this policy: Boston-Quincy, MA (CBSA 14484), Providence-New Bedford-Falls River, RI-MA (CBSA 39300), Chicago-Naperville-Joliet, IL (CBSA 16974) and Lake County-Kenosha County, IL-WI (CBSA 29404) (please refer to Table 1 in the addendum of this final rule).

3. Methodology for Applying the Revisions to the Area Wage Adjustment for FY 2009 in a Budget-Neutral Manner

To calculate the wage-adjusted facility payment for the payment rates set forth in this final rule, we multiply the unadjusted Federal prospective payment by the FY 2009 RPL labor-related share (75.464 percent) to determine the labor-related portion of the Federal prospective payments. We then multiply this labor-related portion by the applicable IRF wage index shown in Table 1 for urban areas and Table 2 for rural areas in the addendum.

Adjustments or updates to the IRF wage index made under section 1886(j)(6) of the Act must be made in a budget neutral manner; therefore, we calculated a budget neutral wage adjustment factor as established in the FY 2004 IRF PPS final rule (68 FR 45674 at 45689), codified at § 412.624(e)(1), and described in the steps below. We proposed to use (and have used for this final rule) the following steps to ensure that the FY 2009 IRF standard payment conversion factor reflects the update to the proposed wage indexes (based on the FY 2004 pre-reclassified and pre-floor hospital wage data) and the labor-related share in a budget neutral manner:

Step 1. Determine the total amount of the estimated FY 2008 IRF PPS rates, using the FY 2008 standard payment conversion factor and the labor-related share and the wage indexes from FY 2008 (as published in the FY 2008 IRF PPS final rule (72 FR 44284 at 44301, 44298, and 44312 through 44335, respectively)).

Step 2. Calculate the total amount of estimated IRF PPS payments, using the FY 2008 standard payment conversion factor and the FY 2009 labor-related share and CBSA urban and rural wage indexes.

Step 3. Divide the amount calculated in step 1 by the amount calculated in step 2, which equals the final FY 2009 budget neutral wage adjustment factor of 1.0003. (Note that this final budget neutral wage adjustment factor differs from the one we proposed in the proposed rule (1.0004) because of the use of updated data to calculate the labor-related share for this final rule and the use of updated FY 2007 IRF claims data for this final rule.)

Step 4. Apply the FY 2009 budget neutral wage adjustment factor from step 3 to the FY 2008 IRF PPS standard payment conversion factor after the application of the estimated market basket update to determine the FY 2009 standard payment conversion factor.

We received 4 comments on the proposed FY 2009 IRF PPS wage index, which are summarized below.

Comment: Several commenters recommended that we consider wage index policies under the acute IPPS because IRFs compete in a similar labor pool as acute care hospitals. The IPPS wage index policies would allow IRFs to benefit from the IPPS reclassification and/or floor policies. Several commenters also recommended that CMS conduct further analysis of the wage index methodology to ensure that fluctuations in the annual wage index for hospitals are minimized, that all future updates match the costs of labor in the market, that IRF's occupational mix is appropriately recognized, and that payments are ''smoothed'' across geography and across time. Further, one provider requested that the same wage index policies be used for all healthcare providers, to maintain consistency.

Response: We do not believe IPPS wage index policies should be applied to IRFs. We note the IRF PPS does not account for geographic reclassification under sections 1886(d)(8) and (d)(10) of the Act and does not apply the ''rural floor'' under section 4410 of Public Law 105–33(BBA). Because we do not have an IRF specific wage index we are unable to determine at this time the degree, if any, to which a geographic reclassification adjustment under the IRF PPS is appropriate. Furthermore, we believe the ''rural floor'' is applicable only to the acute care hospital payment system. The rationale for our current wage index policies is fully described in the FY 2006 final rule (70 FR 47880, 47926 through 47928).

In addition, we reviewed the Medicare Payment Advisory Commission's (MedPAC) wage index recommendations as discussed in MedPAC's June 2007 report titled, ''Report to Congress: Promoting Greater Efficiency in Medicare.'' Although some commenters recommended that we adopt the IPPS wage index policies such as reclassification and floor policies, we note that MedPAC's June 2007 report to Congress recommends that Congress ''repeal the existing hospital wage index statute, including reclassification and exceptions, and give the Secretary authority to establish new wage index systems.'' We believe that adopting the IPPS wage index policies, such as reclassification or floor, would not be prudent at this time because MedPAC suggests that the reclassification and exception policies in the IPPS wage index alters the wage index values for one-third of IPPS hospitals. In addition, MedPAC found that the exceptions may lead to anomalies in the wage index. By adopting the IPPS reclassification and exceptions at this time, the IRF PPS wage index may be vulnerable to similar issues that MedPAC identified in their June 2007 Report to Congress. However, we will continue to review and consider MedPAC's recommendations on a refined or an alternative wage index methodology for the IRF PPS in future years.

We would also like to inform the commenter about our current research with respect to wage index methodology, including the issues the commenter mentioned about ensuring that the wage index minimizes fluctuations, matches the costs of labor in the market, and provides for a single wage index policy. Section 106(b)(2) of the MIEA–TRHCA instructed the Secretary of Health and Human Services, to take into account MedPAC's recommendations on the Medicare wage index classification system, to include in the FY 2009 IPPS proposed rule one or more proposals to revise the wage index adjustment applied under section 1886(d)(3)(E) of the Act for purposes of the IPPS. The proposal (or proposals) must consider each of the following:

- Problems associated with the definition of labor markets for the wage index adjustment.
- The modification or elimination of geographic reclassifications and other adjustments.
- The use of Bureau of Labor of Statistics data or other data or methodologies to calculate relative wages for each geographic area.
- Minimizing variations in wage index adjustments between and within MSAs and statewide rural areas.
- The feasibility of applying all components of CMS's proposal to other settings.
- Methods to minimize the volatility of wage index adjustments while maintaining the principle of budget neutrality.
- The effect that the implementation of the proposal would have on health care providers on each region of the country.
- Methods for implementing the proposal(s) including methods to phase in such implementations.
- Issues relating to occupational mix such as staffing practices and any evidence on quality of care and patient safety including any recommendation for alternative calculations to the occupational mix.

To assist us in meeting the requirements of section 106(b)(2) of Public Law 109–432, in February 2008, we awarded a Task Order under its Expedited Research and Demonstration Contract, to Acumen, LLC. A

comparison of the current IPPS wage index and MedPAC's recommendations will be presented in the FY 2009 IPPS final rule. We plan to monitor these efforts and the impact or influence they may have to the IRF PPS wage index.

Comment: One commenter requested that the IRF wage index values for FY 2009 be capped at plus or minus 2 percent of the IRF wage index values for FY 2008 to provide for more stable, and thus more predictable, changes in the IRF wage index between FY 2008 and FY 2009.

Response: We will take the commenter's suggestion into account for the future. However, we do not believe that the IRF wage index would accurately reflect geographic variations in the costs of labor, which is the purpose of the IRF wage index, if we were to constrain changes in the wage index adjustment from year to year. Thus, we believe it is best at this point to continue the analysis of the wage index methodology, as described above, and to consider developing wage index policies that are consistent across settings as noted in the previous response.

Final Decision: We will continue to use the policies and methodologies described in the FY 2008 IRF PPS final rule relating to the labor market area definitions and the wage index methodology for areas with wage data. Therefore, this final rule continues to use the Core-Based Statistical Area (CBSA) labor market area definitions and the pre-reclassification and pre-floor hospital wage index data based on 2004 cost report data. We discuss the final standard payment conversion factor for FY 2009 in the next section below.

C. Description of the IRF Standard Payment Conversion Factor and Payment Rates for FY 2009

To calculate the standard payment conversion factor for FY 2009, as illustrated in Table 4 below, we begin with the standard payment conversion factor for FY 2008. To explain how we determined the standard payment conversion factor for FY 2008, we include Table 3 below. The final FY 2008 IRF standard payment conversion factor that we show in Tables 3 and 4 below is different than the IRF standard payment conversion factor that we published in the FY 2008 IRF PPS final rule (72 FR 44284 at 44301) due to a legislative change. We adjusted the IRF standard payment conversion factor for IRF discharges occurring on or after April 1, 2008 to reflect the changes codified in section 115 of the MMSEA that require the Secretary to apply a zero percent increase factor for FYs 2008 and 2009, effective for discharges occurring on or after April 1, 2008.

In the FY 2008 IRF PPS final rule (72 FR 44284, 44300 through 44301), we used the RPL market basket estimate described in that final rule (3.2 percent) to update the IRF standard payment conversion factor. As shown in Table 3 of the FY 2008 IRF PPS final rule (72 FR 44284 at 44301), applying this market basket estimate to the standard payment amount resulted in a final standard payment conversion factor for FY 2008 of $13,451.

However, section 115 of the MMSEA had the effect of changing the increase factor for FY 2008 from 3.2 percent to zero percent for discharges occurring on or after April 1, 2008. This, in turn, had the effect of decreasing the IRF standard payment conversion factor for discharges occurring on or after April 1, 2008.

As shown in Table 3 below, to develop the FY 2008 standard payment conversion factor for discharges beginning on or after April 1, 2008, we started with the FY 2007 standard payment conversion factor that was finalized in the FY 2007 IRF PPS final rule (71 FR 48354 at 48378). We then multiplied this by the zero percent increase factor, as described above. Then, we applied the same FY 2008 budget neutrality factor (1.0041) for the Wage Index, Labor-Related Share, and the Hold Harmless Provision that was published in the FY 2008 IRF PPS Final Rule (72 FR 44284 at 44301). This resulted in the final FY 2008 standard payment conversion factor, effective for discharges occurring on or after April 1, 2008, of $13,034.

TABLE 3—CALCULATIONS TO DETERMINE THE FY 2008 IRF STANDARD PAYMENT CONVERSION FACTOR FOR DISCHARGES BEGINNING ON OR AFTER APRIL 1, 2008

Explanation for adjustment	Calculations
FY 2007 Standard Payment Conversion Factor (published in the FY 2007 IRF PPS Final Rule (71 FR 48354))	$12,981
Zero Percent Increase Factor for Discharges Occurring on or after April 1, 2008	× 1.0000
Budget Neutrality Factor for the Wage Index, Labor-Related Share, and the Hold Harmless Provision that was published in the FY 2008 IRF PPS Final Rule (72 FR 44284)	× 1.0041
Standard Payment Conversion Factor for Discharges Occurring on or after April 1, 2008	= $13,034

As a result, the IRF standard payment conversion factor changed from $13,451 for discharges occurring on or after October 1, 2007 to $13,034 for discharges occurring on or after April 1, 2008.

Further, as required by section 115 of the MMSEA, we apply an increase factor of zero percent to the standard payment conversion factor for FY 2009, meaning that it does not change from the current value of $13,034. Next, we apply the combined final budget neutrality factor for the FY 2009 wage index and labor related share of 1.0003, which results in a standard payment amount of $13,038. Finally, we apply the final budget neutrality factor for the revised CMG relative weights of 0.9939, which results in the final FY 2009 standard payment conversion factor of $12,958.

As stated previously, we note that the budget neutrality factor for the FY 2009 wage index and labor related share changed from 1.0004 in the proposed rule to 1.0003 in this final rule due to the use of updated FY 2007 IRF claims data in this final rule and the update to the FY 2009 labor-related share for this final rule using the most recent available data. Similarly, the budget neutrality factor used to update the CMG relative weights and average length of stay values changed from 0.9969 in the proposed rule to 0.9939 in this final rule due to the use of updated FY 2007 IRF claims data in this final rule. Furthermore, the methodology that we used to compute the final budget neutrality factors for this final rule is the same methodology (as discussed above and in section IV of this final rule) that we used to compute the proposed budget neutrality factors in the proposed rule (73 FR 22674 at 22677 and 22683).

TABLE 4—CALCULATIONS TO DETERMINE THE FY 2009 STANDARD PAYMENT CONVERSION FACTOR

Explanation for adjustment	Calculations
Standard Payment Conversion Factor for Discharges Occurring on or after April 1, 2008	$13,034
Zero Percent Increase Factor for FY 2009	× 1.0000
Budget Neutrality Factor for the Wage Index and Labor-Related Share	× 1.0003
Budget Neutrality Factor for the Revisions to the CMG Relative Weights	× 0.9939
FY 2009 Standard Payment Conversion Factor	= $12,958

After the application of the CMG relative weights described in section IV of this final rule, the resulting unadjusted IRF prospective payment rates for FY 2009 are shown below in Table 5, ''FY 2009 Payment Rates.''

TABLE 5—FY 2009 PAYMENT RATES

CMG	Payment rate tier 1	Payment rate tier 2	Payment rate tier 3	Payment rate no comorbidity
0101	$9,993.21	$9,210.55	$8,268.50	$7,851.25
0102	12,561.49	11,579.27	10,393.61	9,870.11
0103	14,873.19	13,709.56	12,304.92	11,685.52
0104	15,798.39	14,562.20	13,070.73	12,412.47
0105	18,555.86	17,103.26	15,352.64	14,579.05
0106	21,551.75	19,864.61	17,831.50	16,932.22
0107	24,581.33	22,657.06	20,337.58	19,312.60
0108	29,537.76	27,226.05	24,438.79	23,207.78
0109	28,230.30	26,020.96	23,356.80	22,180.21
0110	35,267.79	32,507.73	29,178.82	27,709.39
0201	9,791.06	8,376.05	7,538.96	6,861.26
0202	13,353.22	11,425.07	10,282.17	9,358.27
0203	14,884.85	12,735.12	11,462.65	10,432.49
0204	16,759.88	14,339.32	12,904.87	11,745.13
0205	20,394.60	17,449.24	15,703.80	14,292.67
0206	25,306.97	21,651.52	19,487.54	17,735.61
0207	34,088.61	29,165.87	26,249.02	23,890.66
0301	14,362.65	12,061.31	10,830.30	9,912.87
0302	18,296.70	15,364.30	13,796.38	12,628.87
0303	21,948.26	18,431.46	16,549.96	15,149.20
0304	29,971.85	25,169.62	22,600.05	20,688.74
0401	11,992.63	10,214.79	10,019.13	8,508.22
0402	18,054.38	15,378.55	15,083.11	12,810.28
0403	29,574.04	25,190.35	24,707.02	20,984.19
0404	51,528.78	43,891.34	43,049.07	36,561.00
0405	39,323.64	33,496.43	32,853.71	27,901.17
0501	10,505.05	8,289.23	7,703.53	6,796.47
0502	14,246.03	11,241.07	10,446.74	9,217.03
0503	18,549.38	14,637.36	13,602.01	12,000.40
0504	22,325.34	17,617.70	16,371.14	14,444.28
0505	26,382.49	20,818.32	19,346.29	17,069.57
0506	36,703.54	28,962.43	26,913.77	23,745.54
0601	11,979.67	9,778.11	9,296.07	8,477.12
0602	16,023.86	13,079.81	12,434.50	11,338.25
0603	20,425.70	16,671.76	15,850.23	14,453.35
0604	27,065.37	22,092.09	21,002.33	19,151.92
0701	11,904.51	10,032.08	9,459.34	8,504.34
0702	15,699.91	13,228.82	12,474.67	11,215.15
0703	19,237.45	16,210.46	15,286.55	13,743.25
0704	24,612.43	20,739.28	19,557.51	17,582.71
0801	9,070.60	7,391.24	6,701.88	6,108.40
0802	12,154.60	9,903.80	8,981.19	8,185.57
0803	17,341.69	14,130.70	12,814.17	11,679.05
0804	15,219.17	12,402.10	11,246.25	10,249.78
0805	18,997.72	15,480.92	14,037.40	12,794.73
0806	23,504.52	19,151.92	17,367.61	15,828.20
0901	11,123.15	9,814.39	8,849.02	7,827.93
0902	14,866.71	13,116.09	11,826.77	10,462.29
0903	19,229.67	16,965.91	15,298.21	13,532.04
0904	25,423.60	22,430.30	20,224.85	17,891.11
1001	12,123.50	11,741.24	10,103.35	9,248.12
1002	16,226.01	15,714.17	13,521.67	12,377.48
1003	23,574.49	22,830.70	19,645.62	17,981.82
1101	15,350.05	12,764.93	12,764.93	11,089.46
1102	22,401.79	18,629.72	18,629.72	16,184.54

TABLE 5—FY 2009 PAYMENT RATES—Continued

CMG	Payment rate tier 1	Payment rate tier 2	Payment rate tier 3	Payment rate no comorbidity
1201	13,371.36	12,527.79	10,992.27	9,771.63
1202	16,889.46	15,824.31	13,884.50	12,342.50
1203	21,223.91	19,885.35	17,447.95	15,509.43
1301	14,231.77	12,794.73	11,013.00	9,910.28
1302	19,164.88	17,228.96	14,830.43	13,345.44
1303	24,801.61	22,298.13	19,193.39	17,271.72
1401	10,370.29	9,356.97	8,277.57	7,343.30
1402	14,376.90	12,970.96	11,475.60	10,179.80
1403	17,594.37	15,874.85	14,043.88	12,459.12
1404	22,842.36	20,609.70	18,233.20	16,175.47
1501	12,443.57	10,866.58	9,605.77	9,119.84
1502	15,934.45	13,915.60	12,302.33	11,679.05
1503	20,266.31	17,698.04	15,645.49	14,853.76
1504	25,300.50	22,094.69	19,531.59	18,542.90
1601	14,375.61	11,620.73	9,934.90	9,158.71
1602	19,408.49	15,689.55	13,412.83	12,365.82
1603	24,992.09	20,201.52	17,270.42	15,921.49
1701	13,546.29	11,907.11	10,963.76	9,613.54
1702	17,852.24	15,692.14	14,449.47	12,670.33
1703	21,466.22	18,868.14	17,374.09	15,234.72
1704	26,921.54	23,662.60	21,788.88	19,105.28
1801	15,794.51	12,477.26	11,719.22	10,051.52
1802	23,840.13	18,831.86	17,688.97	15,171.23
1803	40,742.54	32,185.08	30,229.72	25,927.66
1901	15,007.96	12,035.39	12,035.39	11,379.72
1902	30,332.09	24,324.76	24,324.76	22,999.15
1903	46,576.24	37,351.44	37,351.44	35,315.73
2001	11,428.96	9,436.02	8,570.42	7,681.50
2002	15,385.03	12,702.73	11,537.80	10,340.48
2003	19,736.33	16,294.69	14,800.63	13,265.10
2004	26,386.38	21,784.99	19,788.16	17,734.32
2101	30,666.40	30,666.40	27,835.08	22,616.89
5001	0.00	0.00	0.00	1,912.60
5101	0.00	0.00	0.00	8,789.41
5102	0.00	0.00	0.00	19,996.79
5103	0.00	0.00	0.00	9,182.04
5104	0.00	0.00	0.00	25,379.54

We received 3 comments on the proposed standard payment conversion factor and the proposed unadjusted IRF prospective payment rates for FY 2009, which are summarized below.

Comment: One commenter recommended that CMS use the most recent available data in computing the FY 2009 CMG relative weights, because these have an impact on the FY 2009 IRF prospective payment rates and the budget neutrality factors used in computing the FY 2009 standard payment conversion factor.

Response: We agree that we should use the most recent available data in computing the FY 2009 CMG relative weights. We typically update the data we use in our analysis each year between the proposed and final rules in order to ensure that we are using the most current available data. Specifically, in the proposed rule (73 FR 22674 at 22677), we proposed to update our analysis for this final rule using more current data. Thus, we updated our data analysis using FY 2007 IRF claims data for the final rule, whereas we had used FY 2006 IRF claims data in conducting the analysis for the FY 2009 IRF PPS proposed rule (73 FR 22674 at 22677). As discussed in detail in section IV of this final rule, we did not use IRF-PAI data for this final rule because the CMG information on the FY 2007 IRF claims data incorporated all of the most recent changes to the IRF classification system that were implemented in the FY 2007 IRF PPS final rule (71 FR 48354). Moreover, we did not implement any changes to the IRF classification system in the FY 2008 IRF PPS final rule (72 FR 44284).

The revised final budget neutrality factors for FY 2009 reflect the updated FY 2009 IRF labor-related share and the revised CMG relative weights and average length of stay values described above.

Comment: Several commenters requested that we keep the same standard payment conversion factor of $13,034 for FY 2009 that was used for determining IRF PPS payments in FY 2008, for discharges occurring on or after April 1, 2008. In effect, we believe that these commenters were asking us not to apply the combined budget neutrality factor for the wage index and labor-related share or the budget neutrality factor for the revisions to the CMG relative weights to the FY 2008 standard payment conversion factor in determining the FY 2009 standard payment conversion factor. Another commenter asked us to provide a more extensive explanation of the methodology that we use to compute the budget neutrality factors, including any background studies on the methodology and calculations for the budget neutrality factors.

Response: Section 1886(j)(6) of the Act requires CMS to make any adjustments or updates to the IRF wage index in a budget neutral manner. To do this, we ensure that estimated aggregate payments to IRFs in the FY are not greater or less than estimated aggregate payments would have been without such adjustments or updates to the wage index. Thus, in accordance with the statute and using the same general methodology that was described and

finalized in the FY 2004 IRF PPS final rule (68 FR 45674 at 45689), we are required to adjust the FY 2008 standard payment conversion factor of $13,034 by the combined final budget neutrality factor for the FY 2009 wage index and labor related share of 1.0003, which results in a standard payment amount of $13,038.

Further, in accordance with the regulations at § 412.624(d)(4), as discussed in the FY 2006 IRF PPS final rule (70 FR 47880 at 47937), we apply an additional budget neutrality factor to make the updates to the CMG relative weights and average length of stay values budget neutral. The final budget neutrality factor used to update the CMG relative weights and average length of stay values for this final rule is 0.9939, which results in a standard payment amount of $12,958. As discussed above, the budget neutrality factor used to update the CMG relative weights and average length of stay values changed from 0.9969 in the proposed rule to 0.9939 in this final rule due to the use of updated FY 2007 IRF claims data in this final rule. Although the standard payment conversion factor for FY 2009 of $12,958 is lower than the standard payment conversion factor applicable for discharges occurring on or after April 1, 2008, of $13,034, estimated aggregate IRF payments for FY 2009, excluding outlier payments, are the same. This is because we estimate that aggregate IRF payments would have increased by about $37 million, due to the update to the CMG relative weights for FY 2009, if we had not applied the budget-neutrality factor used to update the CMG relative weights and average length of stay values.

We have consistently implemented any revisions to the IRF classification and weighting factors in a budget-neutral manner, such that estimated aggregate payments to IRFs remain the same with and without the revisions. The methodology for computing the budget neutrality factor is the same general methodology that we have consistently used to ensure that the changes to the classification and weighting factors that we implemented in the FY 2006 IRF PPS final rule (70 FR 47880) and in the FY 2007 IRF PPS final rule (71 FR 48354) were done in a budget-neutral manner. (Note that we did not implement any changes to the IRF classification or weighting factors in the FY 2008 IRF PPS final rule (72 FR 44284)). The methodology that we are using in this final rule to compute the budget neutrality factor for the updates to the CMG relative weights is the same general methodology that we have used to ensure that updates to the IRF wage index are implemented in a budget-neutral manner, as discussed above and as finalized in the FY 2004 IRF PPS final rule (68 FR 45674 at 45689). The methodology, as proposed in the FY 2009 IRF PPS proposed rule (73 FR 22674 at 22677) and finalized in this final rule, applied to the update to the CMG relative weights for FY 2009 involves the following steps:

Step 1. Calculate the estimated total amount of IRF PPS payments for FY 2009 (with no changes to the CMG relative weights).

Step 2. Apply the changes to the CMG relative weights (as discussed in section IV of this final rule) to calculate the estimated total amount of IRF PPS payments for FY 2009 (with the changes).

Step 3. Divide the amount calculated in step 1 ($6,003,947,007) by the amount calculated in step 2 ($6,040,824,839) to determine the factor (0.9939) that maintains the same total estimated aggregate payments in FY 2009 with and without the changes to the CMG relative weights.

Step 4. Apply the final budget neutrality factor (0.9939) to the FY 2008 IRF PPS standard payment amount after the application of the budget-neutral wage adjustment factor.

The FY 2004 IRF PPS final rule (68 FR 45674 at 45689) contains additional information on the methodology for computing the budget neutrality factor for the IRF wage index and labor-related share, and the FY 2006 IRF PPS final rule (70 FR 47880, 47937 through 47938) contains additional information on the methodology for computing the budget neutrality factor for the updates to the CMG relative weights and average length of stay values.

Final Decision: After reviewing the comments that we received on the proposed methodology for calculating the budget neutrality factors for the wage index and labor-related share and for the CMG relative weights and average length of stay values, we are finalizing the proposed methodology. We are also finalizing the FY 2009 standard payment conversion factor at $12,958. This differs from the standard payment conversion factor of $12,999 that we had proposed in the proposed rule because of the use of updated FY 2007 IRF claims data for analyzing the final CMG relative weights and average length of stay values for this final rule, as discussed in section IV of this final rule.

D. Example of the Methodology for Adjusting the Federal Prospective Payment Rates

Table 6 illustrates the methodology for adjusting the Federal prospective payments (as described in sections III.A through III.C of the FY 2009 proposed rule (73 FR 22674, 22680 through 22685)). The examples below are based on two hypothetical Medicare beneficiaries, both classified into CMG 0110 (without comorbidities). The unadjusted Federal prospective payment rate for CMG 0110 (without comorbidities) appears in Table 5 above.

One beneficiary is in Facility A, an IRF located in rural Spencer County, Indiana, and another beneficiary is in Facility B, an IRF located in urban Harrison County, Indiana. Facility A, a non-teaching hospital, has a disproportionate share hospital (DSH) percentage of 5 percent (which results in a low-income percentage (LIP) adjustment of 1.0309), a wage index of 0.8576, and an applicable rural adjustment of 21.3 percent. Facility B, a teaching hospital, has a DSH percentage of 15 percent (which results in a LIP adjustment of 1.0910), a wage index of 0.9065, and an applicable teaching status adjustment of 0.109.

To calculate each IRF's labor and non-labor portion of the Federal prospective payment, we begin by taking the unadjusted Federal prospective payment rate for CMG 0110 (without comorbidities) from Table 5 above. Then, we multiply the estimated labor-related share (75.464) described in section V.A of this final rule by the unadjusted Federal prospective payment rate. To determine the non-labor portion of the Federal prospective payment rate, we subtract the labor portion of the Federal payment from the unadjusted Federal prospective payment.

To compute the wage-adjusted Federal prospective payment, we multiply the result of the labor portion of the Federal payment by the appropriate wage index found in the addendum in Tables 1 and 2, which would result in the wage-adjusted amount. Next, we compute the wage-adjusted Federal payment by adding the wage-adjusted amount to the non-labor portion.

Adjusting the Federal prospective payment by the facility-level adjustments involves several steps. First, we take the wage-adjusted Federal prospective payment and multiply it by the appropriate rural and LIP adjustments (if applicable). Second, to determine the appropriate amount of additional payment for the teaching

status adjustment (if applicable), we multiply the teaching status adjustment (0.109, in this example) by the wage-adjusted and rural-adjusted amount (if applicable). Finally, we add the additional teaching status payments (if applicable) to the wage, rural, and LIP-adjusted Federal prospective payment rates. Table 6 illustrates the components of the adjusted payment calculation.

TABLE 6—EXAMPLE OF COMPUTING AN IRF FY 2009 FEDERAL PROSPECTIVE PAYMENT

Steps	Rural facility A (Spencer Co., IN)	Urban Facility B (Harrison Co., IN)
1. Unadjusted Federal Prospective Payment	$27,709.39	$27,709.39
2. Labor Share	× 0.75464	× 0.75464
3. Labor Portion of Federal Payment	= $20,910.61	= $20,910.61
4. CBSA Based Wage Index (shown in the Addendum, Tables 1 and 2)	× 0.8576	× 0.9065
5. Wage-Adjusted Amount	= $17,932.94	= $18,955.47
6. Non-labor Amount	+ $6,798.78	+ $6,798.78
7. Wage-Adjusted Federal Payment	= $24,731.72	= $25,754.25
8. Rural Adjustment	× 1.213	× 1.000
9. Wage- and Rural-Adjusted Federal Payment	= $29,999.57	= $25,754.25
10. LIP Adjustment	× 1.0309	× 1.0910
11. FY 2009 Wage-, Rural- and LIP-Adjusted Federal Prospective Payment Rate	= $30,926.56	= $28,097.88
12. FY 2009 Wage- and Rural-Adjusted Federal Prospective Payment	$29,999.57	$25,754.25
13. Teaching Status Adjustment	× 0.000	× 0.109
14. Teaching Status Adjustment Amount	= $0.00	= $2,807.21
15. FY 2009 Wage-, Rural-, and LIP-Adjusted Federal Prospective Payment Rate	+ $30,926.56	+ $28,097.88
16. Total FY 2009 Adjusted Federal Prospective Payment	= $30,926.56	= $30,905.10

Thus, the adjusted payment for Facility A would be $30,926.56 and the adjusted payment for Facility B would be $30,905.10.

VI. Update to Payments for High-Cost Outliers Under the IRF PPS

A. Update to the Outlier Threshold Amount for FY 2009

Section 1886(j)(4) of the Act provides the Secretary with the authority to make payments in addition to the basic IRF prospective payments for cases incurring extraordinarily high costs. A case qualifies for an outlier payment if the estimated cost of the case exceeds the adjusted outlier threshold. We calculate the adjusted outlier threshold by adding the IRF PPS payment for the case (that is, the CMG payment adjusted by all of the relevant facility-level adjustments) and the adjusted threshold amount (also adjusted by all of the relevant facility-level adjustments). Then, we calculate the estimated cost of a case by multiplying the IRF's overall CCR by the Medicare allowable covered charge. If the estimated cost of the case is higher than the adjusted outlier threshold, we make an outlier payment for the case equal to 80 percent of the difference between the estimated cost of the case and the outlier threshold.

In the FY 2002 IRF PPS final rule (66 FR 41316, 41362 through 41363), we discussed our rationale for setting the outlier threshold amount for the IRF PPS so that estimated outlier payments would equal 3 percent of total estimated payments. Subsequently, we updated the IRF outlier threshold amount in the FYs 2006, 2007, and 2008 IRF PPS final rules (70 FR 47880, 70 FR 57166, 71 FR 48354, and 72 FR 44284, respectively) to maintain estimated outlier payments at 3 percent of total estimated payments. We also stated that we would continue to analyze the estimated outlier payments for subsequent years and adjust the outlier threshold amount as appropriate to maintain the 3 percent target.

As was proposed, for this final rule, we used updated data for calculating the high-cost outlier threshold amount. Specifically, we performed an updated analysis using FY 2007 claims data using the same methodology that we used to set the initial outlier threshold amount in the FY 2002 IRF PPS final rule (66 FR 41316, 41362 through 41363), which is also the same methodology that we used to update the outlier threshold amounts for FYs 2006, 2007, and 2008. (Note: the methodology that we use to calculate the appropriate outlier threshold amount for each FY requires us to simulate Medicare payments for that FY, using the most recent available IRF claims data from a previous FY. If the previous FY's data that we are using for the analysis does not contain exactly the same CMGs as the future FY for which we are calculating the update to the outlier threshold, then we cannot rely on the CMGs from the previous FY's IRF claims data and must instead use IRF–PAI data to assign the appropriate CMG for each IRF claim.) The CMGs and tiers in effect for FY 2009 would be slightly different than those that were in effect for FY 2006, due to revisions that were implemented in the FY 2007 IRF PPS final rule (71 FR 48354, 48360 through 48370). Use of the IRF–PAI data was no longer necessary when we used the updated FY 2007 IRF claims data for this final rule because the CMG information on the FY 2007 IRF claims data incorporated all of the changes to the IRF classification system that were implemented in the FY 2007 IRF PPS final rule (71 FR 48354, 48360 through 48370). We did not implement any changes to the IRF classification system in the FY 2008 IRF PPS final rule (72 FR 44284).

For FY 2009, based on an analysis of updated FY 2007 claims data, we estimate that IRF outlier payments as a percentage of total estimated payments would be 4.2 percent without the change to the outlier threshold amount. The need to revise the high-cost outlier

threshold is discussed in detail in section IV.A of the FY 2009 proposed rule (73 FR 22674, 22686 through 22687). Generally, we note that the zero percent IRF increase factor for FYs 2008 and 2009, for discharges occurring on or after April 1, 2008, implemented by section 115 of the MMSEA resulted in lower IRF PPS payments for FYs 2008 and 2009 than would otherwise have been implemented. In addition, IRF charges found in the FY 2007 IRF claims data were higher than those in the FY 2006 IRF claims data, resulting in higher estimated outlier payments for FY 2009.

Based on the updated analysis of FY 2007 claims data (for the reasons discussed previously, IRF–PAI data was not needed in this analysis), we are updating the outlier threshold amount to $10,250 to maintain estimated outlier payments at 3 percent of total estimated aggregate IRF payments for FY 2009.

B. Update to the IRF Cost-to-Charge Ratio Ceilings

In accordance with the methodology stated in the FY 2004 IRF PPS final rule (68 FR 45674, 45692 through 45694), we apply a ceiling to IRFs' CCRs. Using the methodology described in that final rule, as discussed in more detail in section IV.B of the FY 2009 proposed rule (73 FR 22674 at 22687), we are updating the national urban and rural CCRs for IRFs. As was proposed, the national average rural and urban CCRs and our estimate of the national CCR ceiling are changing in this final rule based on the analysis of updated data. We apply the national urban and rural CCRs in the following situations:

- New IRFs that have not yet submitted their first Medicare cost report.
- IRFs whose overall CCR is in excess of the national CCR ceiling for FY 2009, as discussed below.
- Other IRFs for which accurate data to calculate an overall CCR are not available.

Specifically, for FY 2009, we estimate a national average CCR of 0.619 for rural IRFs and 0.490 for urban IRFs based on the most recent available IRF cost report data. For this final rule, we have used FY 2006 IRF cost report data, updated through March 31, 2008. If, for any IRF, the FY 2006 cost report was missing or had an ''as submitted'' status, we use data from a previous fiscal year's report for that IRF. However, we do not use cost report data from before FY 2003 for any IRF. For new IRFs, we use these national CCRs until the facility's actual CCR can be computed using the first settled cost report (either tentative or final, whichever is earlier).

In addition, we estimate the national CCR ceiling at 1.60 for FY 2009. This means that, if an individual IRF's CCR exceeds this ceiling of 1.60 for FY 2009, we would replace the IRF's CCR with the appropriate national average CCR (either rural or urban, depending on the geographic location of the IRF). For a complete description of the methodology used to calculate the national CCR ceiling for this final rule, see section IV.B of the FY 2009 proposed rule (73 FR 22674 at 22687).

We received seven comments on the proposed high-cost outlier updates under the IRF PPS, which are summarized below.

Comment: Most commenters supported our proposal to increase the outlier threshold amount to maintain estimated outlier payments at 3 percent of total estimated payments. However, several other commenters expressed concerns that the change would mean that fewer cases would qualify for outlier payments and that it would affect IRFs' ability to provide care to Medicare beneficiaries. Several commenters asked that we further explain the reasons behind the increase in the IRF outlier threshold amount and provide proof that we would be paying more than 3 percent in outliers without the change. Finally, one commenter said that the increases in the outlier threshold amount in recent years appear excessive and recommended that CMS look more closely to determine if there are anomalies in the IRF outlier data or institutional practices that may be causing the changes.

Response: Based on our analysis of FY 2007 IRF claims and FY 2006 IRF cost report data (as previously discussed, we did not need to use IRF–PAI data in conjunction with the FY 2007 IRF claims data), we need to increase the IRF outlier threshold amount to maintain estimated outlier payments at 3 percent of total estimated payments for FY 2009 for the following reasons. First, as discussed in detail in the FY 2009 IRF PPS proposed rule (73 FR 22674, 22686 through 22687), section 115 of the MMSEA, which amended section 1886(j)(3)(C) of the Social Security Act, required the Secretary to apply a zero percent increase factor for FYs 2008 and 2009, effective for discharges occurring on or after April 1, 2008. The effect of this change was to decrease projected IRF PPS payments. As a direct result of a zero percent update, we would exceed our projected 3 percent target for the proportion of estimated IRF outlier payment to estimated IRF total payments.

Second, because the average charges per case in the FY 2007 data are significantly higher than the average charges per case in the FY 2006 data, we believe that our increase to the outlier threshold amount for FY 2009 is warranted. Specifically, higher charges directly result in more cases being estimated to qualify for outlier payments and higher estimated outlier payments, which in turn lead to higher estimates of outlier payments as a percentage of total estimated payments. In this case, higher charges result in estimated outlier payments as a percentage of total estimated payments in FY 2009 of 4.2 percent, well above the 3 percent target. To decrease estimated outlier payments as a percentage of total estimated payments from 4.2 percent to 3 percent, we must increase the outlier threshold.

The higher charges in the FY 2007 may be due to several factors, including the ''75 percent'' rule and the IRF medical review activities, which have led to declines in the number of IRF discharges and may have led to increases in the complexity of IRF cases. Thus, based on our analysis of updated data (that is, FY 2007 IRF claims data), we now project that estimated IRF outlier payments as a percentage of total estimated payments for FY 2008 increased from 3.0 percent to 3.7 percent.

Thus, given the recent changes in IRF aggregate payments resulting from section 115 of the MMSEA and recent increases in IRFs' charges that are being reflected in the IRF claims data for FY 2007, we believe that it is necessary to adjust the outlier threshold amount for FY 2009 to maintain estimated IRF outlier payments equal to 3 percent of estimated total payments.

As several of the commenters suggested, increasing the outlier threshold amount for FY 2009 would mean that fewer cases would qualify for IRF outlier payments. As discussed above, this is necessary to maintain estimated IRF outlier payments at 3 percent of estimated total payments. However, we do not believe that this will affect IRFs' ability to provide care to Medicare beneficiaries because the IRF outlier policy is designed to reduce the financial risk to IRFs, which could be substantial for many smaller IRFs, of admitting unusually high-cost cases. The additional IRF outlier payments reduce the financial losses caused by treating these patients and, therefore, reduce the incentives to underserve these patients. As discussed at length in the FY 2002 IRF PPS final rule (66 FR 41316 at 41362), we considered various options for setting the target percentage of estimated outlier payments as a percentage of total payments. In that

final rule, we finalized our proposal to set an outlier policy of 3 percent of total estimated payments because we believed (and continue to believe) that this option optimizes the extent to which we protect vulnerable IRFs for treating unusually high-cost cases, while still providing adequate payment for all other IRF cases. If we were to increase the percentage of total estimated IRF payments that we paid in IRF outlier payments, then we would have to reduce IRF PPS payments for all other IRF cases in order to implement this change in a budget neutral manner. This could negatively affect the adequacy of IRF PPS payments for other, non-outlier IRF cases. Thus, we continue to believe that the 3 percent outlier policy ensures that all IRF cases, outlier and non-outlier, continue to be reimbursed appropriately.

As one of the commenters suggested, we will continue to analyze IRF outliers to determine if there are any anomalies in the IRF outlier data or any institutional practices which may be affecting our analysis of IRF outliers. To the extent that we find any such anomalies, we would propose to implement future refinements to the IRF outlier policies to ensure that IRF outlier payments continue to fulfill their intended purpose of reducing the risks to IRFs of treating unusually high-cost cases and ensuring access to care for all patients who require and can benefit from an IRF level of care.

Comment: One commenter recommended that we continue to refine our methodology for calculating the outlier threshold amount, and that we use the most accurate CCR data available.

Response: The CCR data that we use in our analyses comes directly from the Medicare cost reports submitted to Medicare by IRFs and is continually updated each time a more recent cost report is tentatively settled. Therefore, we believe that it is the most accurate and most recent CCR data available. However, we agree with the commenter about the need to continually examine our methodology and the CCR data to ensure that we are setting the IRF outlier threshold at the appropriate level to maintain estimated outlier payments at 3 percent of total estimated payments.

Comment: One commenter requested that we conduct an analysis of IRF outlier payments to ensure that we are not rewarding IRFs with outlier payments for the ''wrong'' reasons, such as the cost effects of declines in patient volume. This commenter suggested that we should either ''hold back'' outlier payments from facilities if we find that the outlier payments were paid for the ''wrong'' reasons, or that we should reduce the outlier pool from 3 percent to 1.5 percent.

Response: We are continuing to analyze IRF outlier payments to ensure that they continue to compensate IRFs for treating unusually high-cost patients and promote access to care for patients who are likely to require unusually high-cost care. At this time, we do not have indications to suggest that any IRF outlier payments are being paid for the ''wrong'' reasons. Further, we do not have indications to suggest that the outlier pool would be better set at 1.5 percent than at 3 percent. However, we will carefully consider this commenter's suggestions, and will consider proposing additional refinements to the IRF outlier policies in the future if we find that such refinements are necessary.

Comment: Several commenters requested that CMS provide additional data and information to the public to allow the IRF industry and external researchers to conduct a more thorough review of CMS's proposed updates to the outlier threshold amount and to verify our estimates of outlier payments as a percentage of total payments for FY 2009. Specifically, one commenter asked that we provide information on actual charge increases and CCR declines that have been utilized in the outlier threshold calculation, a discussion of the data sources and time periods used in computing the outlier threshold, an IRF Medpar file (including total payments, outlier payments, and actual, estimated, and proposed CMGs), historical information on IRF facility-level payment factors (specifically CCRs), and actual levels and percentages of outlier payments. The commenter also asked that we provide data on actual outlier payments and the percentage of outlier payments by FY.

Response: We will carefully consider all of the commenter's suggestions in updating the IRF rate setting files that we post on the IRF PPS Web site in conjunction with each IRF PPS proposed and final rule. These files are available for download from the IRF PPS Web site at *http://www.cms.hhs.gov/InpatientRehabFacPPS/07_DataFiles.asp#TopOfPage*. These files already contain much of the facility-level payment data requested by the commenter, including the CCRs used to compute the IRF outlier threshold amount. For this final rule, we used FY 2007 IRF claims data to conduct patient-level payment simulations to estimate the outlier threshold amount for FY 2009. This data file contains information that can be used to identify individual Medicare beneficiaries and is therefore not publicly available. We obtained the provider-level CCR data used in this analysis from the Provider-Specific Files, which contain historical CCR data and are available for download from the CMS Web site at *http://www.cms.hhs.gov/ProspMedicareFeeSvcPmtGen/03_psf.asp*.

The modified Medpar data files that CMS provides to IPPS hospitals already contain IRF stay data. However, we have recently discovered that these files do not include the CMGs, and we recognize that there may be other limitations to the usefulness of these files for analyzing IRF payments. Based on the commenters' requests, we will carefully consider the usefulness and feasibility of including additional variables, such as actual IRF outlier payments and the percentage of outlier payments, on the Medpar file in the future to facilitate IRF analyses.

Comment: One commenter suggested that CMS utilize the same concepts that the IPPS uses for modeling charge increases and cost-to-charge ratio (CCR) changes in estimating the outlier threshold amount, as noted in the methodology implemented for IPPS hospitals in the FY 2007 IPPS final rule (71 FR 47870, 48150 through 48151).

Response: We considered proposing the same methodology described in the FY 2007 IPPS final rule (71 FR 47870, 48150 through 48151) for projecting cost and charge growth in estimating the FY 2008 and FY 2009 IRF outlier threshold amount. However, we discovered that the accuracy of the projections depends on the case mix of patients in the facilities remaining similar from year to year, as it does in IPPS hospitals. With the recent phase in of the enforcement of the 75 percent rule criteria and increases in IRF medical review activities, we find evidence of relatively large changes in the case mix of patients in IRFs, especially in recent years (FYs 2004 through 2007). In performing our analysis, we noted that, if we based future projections of cost and charge growth on data from years in which IRFs were experiencing abnormal fluctuations in case mix, the results appeared dramatically skewed. Rather than implementing an outlier threshold amount for FY 2009 based on such skewed results, we thought a better approach would be to wait until we could further analyze the interactions between case mix changes and IRF cost and charge growth.

We are encouraged that IRF case mix may stabilize in the near future now that the IRF compliance percentage is set at

60 percent for FY 2009. However, as recently as FY 2007, we are still observing large shifts in IRFs' patient populations, and we believe it is prudent at this time to defer adopting a methodology for projecting cost and charge growth in IRFs until the patient populations have stabilized.

Final Decision: Based on careful consideration of the comments that we received on the proposed update to the outlier threshold amount for FY 2009 and based on updated analysis of the FY 2007 data explained previously in this section and for the reasons explained in the proposed rule (73 FR 22674, 22686 through 22687), we are finalizing our decision to update the outlier threshold amount for FY 2009. Based on our proposed policy, the outlier threshold amount for FY 2009 is $10,250. In addition, we did not receive any comments on the IRF cost-to-charge ratio ceiling. Based on our proposed policy and the reasons set forth in the proposed rule (73 FR 22674 at 22687), we are finalizing the national average urban CCR at 0.490 and the national average rural CCR at 0.619. We are also finalizing our estimate of the IRF national CCR ceiling at 1.60 for FY 2009.

VII. Revisions to the Regulation Text in Response to the Medicare, Medicaid, and SCHIP Extension Act of 2007

Section 115 of the MMSEA amended section 5005 of the Deficit Reduction Act of 2005 (DRA, Pub. L. 109–171) to revise the following elements of the 75 percent rule that are used to classify IRFs:

- The compliance rate that IRFs must meet to be excluded from the IPPS and to be paid under the IRF PPS shall be no greater than the 60 percent compliance rate that became effective for cost reporting periods beginning on or after July 1, 2006.
- Patient comorbidities that satisfy the criteria specified in 42 CFR 412.23(b)(2)(i) shall be included in the calculations used to determine whether an IRF meets the 60 percent compliance percentage for cost reporting periods beginning on or after July 1, 2007.

Although section 115 of the MMSEA grants the Secretary broad discretion to implement compliance criteria up to 60 percent, we are setting the compliance rate at 60 percent, the highest level possible within current statutory authority, for the reasons discussed in detail in the proposed rule (73 FR 22674, 22687 through 22688). Generally, we are setting the compliance rate at 60 percent because we believe that it implements the provisions of the statute with minimal disruption to IRF operations, thus allowing us to more effectively analyze changes in IRF operations and admissions patterns over time as well as helping us to ensure that IRFs predominantly treat patients who benefit most from this level of care.

Specifically, we proposed the following revisions to the regulation text in § 412.23(b). We proposed to remove the following phrases from the first sentence of § 412.23(b)(2)(i):

- ''and before July 1, 2007;'' and
- ''and for cost reporting periods beginning on or after July 1, 2007 and before July 1, 2008, the hospital has served an inpatient population of whom at least 65 percent,''

We also proposed to remove § 412.23(b)(2)(ii) in its entirety, redesignate the existing § 412.23(b)(2)(iii) to § 412.23(b)(2)(ii), and revise all references to the previously numbered § 412.23(b)(2)(iii) accordingly.

We received 3 comments on the proposed revisions to the regulation text in response to section 115 of the MMSEA, which are summarized below.

Comment: Although several commenters supported the revisions to the regulation text in response to section 115 of the MMSEA, one commenter was concerned that CMS was confusing the 75 percent rule policies, hereinafter referred to as the 60 percent rule policies, and the IRF medical necessity policies.

Response: We agree with the commenter that the IRF 60 percent rule policies and the IRF medical necessity policies are different.

While both policies relate to ensuring that patients who need the intensive rehabilitation services provided in IRFs have access to this level of care, the two policies serve different functions and are applied differently.

The Medicare statute excludes payment for services that ''* * * are not reasonable and necessary'' (see section 1862(a) of the Social Security Act). This applies to all Medicare settings of care, including IRFs, and it applies to all Medicare beneficiaries receiving treatment in those settings. Thus, all IRF discharges for which providers seek payment from Medicare must meet the criteria for establishing the medical necessity of the treatment, regardless of whether the patient's condition is one of the conditions listed in § 412.23(b)(2)(iii), herein redesignated as § 412.23(b)(2)(ii), or not. CMS has specifically instructed its contractors to make medical review determinations based on reviews of individual medical records by qualified clinicians, not on the basis of diagnosis alone. In addition, we do not believe that the 60 percent rule should be used to make individual medical review claim determinations.

Conversely, the IRF 60 percent rule is intended to distinguish IRFs from other inpatient hospital settings of care, including acute care hospitals and traditional post-acute care settings (such as skilled nursing facilities). The 60 percent rule specifies that an IRF's patient population must consist of at least 60 percent of the patients who need intensive rehabilitation services for one or more of 13 specified conditions. The remaining 40 percent of patients in an IRF may be admitted for treatment of conditions not included on the list of qualifying conditions. We recognize that the list of 13 conditions does not identify all possible conditions for which it would generally be considered reasonable and necessary for a patient to be treated in an IRF, and thus we believe that it is appropriate to allow some percentage of an IRF's patient population to be made up of patients with other conditions. However, every patient must meet the medical necessity criteria.

We believe that it is particularly important to ensure that all patients being treated in IRFs meet the medical necessity criteria, so that the data on which we base IRF PPS payments is as accurate as possible.

Comment: One commenter expressed a number of concerns about Medicare's policies concerning IRF medical necessity. This commenter indicated that IRFs are confused about the interpretation of the medical necessity policies. The commenter also expressed concerns that the data that CMS uses to analyze and update IRF PPS payment rates may not be as accurate as it could be because it may include patients who do not meet medical necessity requirements for receiving care in IRFs. The commenter suggested that this could lead to inaccuracies in CMS's rate setting for IRFs.

Response: We note that we did not propose anything regarding the IRF medical necessity policies in the proposed rule. However, we will carefully consider the commenter's concerns and suggestions and will consider refinements to the IRF medical necessity criteria in the future.

Comment: Several commenters requested that CMS implement changes to the operational policies used in determining IRFs' compliance with the 60 percent rule, to correspond with the statutory changes to the compliance percentage and the continued use of comorbidites. For example, several commenters asked CMS to revise its policies to include Medicare Advantage patients in determining whether at least

50 percent of an IRF's patient population is made up of Medicare patients. In addition, one commenter asked that CMS revise its policies to allow individual IRFs to view the same IRF–PAI database information that the fiscal intermediaries use in determining the IRFs' compliance using the presumptive methodology.

Response: We appreciate the suggestions provided by the commenters and are considering making future changes to some of the operational policies for determining compliance with the 60 percent rule, including changes to some of the policies mentioned by the commenters. We are currently evaluating whether we could include Medicare Advantage patients in determining whether 50 percent of an IRF's patient population is made up of Medicare patients, including our statutory authority for doing so. We are also currently evaluating whether modifications to the current system for collecting and compiling IRF–PAI data could be made to allow individual IRFs to view copies of the reports that the Medicare contractors use in determining the individual IRF's compliance using the presumptive methodology. Our goal is to continue to ensure that the 60 percent rule compliance determinations are as transparent and equitable as possible both for providers and for Medicare contractors. We are continuing to work toward this end.

Comment: One commenter suggested that we remove the phrase ''(b)(2)(ii)'' from the end of the paragraph in the regulations at § 412.23(b)(2), as the original § 412.23(b)(2)(ii) to which the paragraph referred will no longer exist.

Response: We agree with the commenter's suggestion and will make the suggested revision.

Final Decision: As all of the commenters supported the proposed revisions to the regulation text, we are finalizing our revisions to the regulation text at § 412.23(b) by removing the following phrases from the first sentence of § 412.23(b)(2)(i):

- ''and before July 1, 2007;'' and
- ''and for cost reporting periods beginning on or after July 1, 2007 and before July 1, 2008, the hospital has served an inpatient population of whom at least 65 percent,''

We are also removing § 412.23(b)(2)(ii) in its entirety, redesignating the existing § 412.23(b)(2)(iii) to § 412.23(b)(2)(ii), and revising all references to the previously numbered § 412.23(b)(2)(iii) accordingly. In response to a comment, we are also deleting the phrase ''or (b)(2)(ii)'' from the end of the paragraph in section § 412.23(b)(2).

VIII. Post Acute Care Payment Reform

In the proposed rule, we discussed our ongoing examination of possible steps toward achieving a more seamless system for the delivery and payment of post-acute care (PAC) services in various care settings. These include the PAC Payment Reform Demonstration (PAC–PRD) and its standardized patient assessment tool, the Continuity Assessment Record and Evaluation (CARE) tool. In the related area of value-based purchasing (VBP) initiatives, we described the IPPS preventable hospital-acquired conditions (HAC) payment provision, which is designed to ensure that the occurrence of selected, preventable conditions during hospitalization does not have the unintended effect of generating higher Medicare payments under the IPPS. We then discussed the potential application of this same underlying principle to other care settings in addition to IPPS hospitals. For a full and complete discussion of this issue as it pertains to the IRF setting, please refer to the FY 2009 IRF PPS proposed rule (73 FR 22674, 22688 through 22689).

We received 12 responses to our request for comments on the post acute care payment reform.

Comment: We received several comments concerning the use of the CARE tool. While most of these comments acknowledged that the CARE tool holds long-term promise in terms of potentially facilitating the efficient flow of secure electronic patient information, they also cautioned that it would be far too premature at this point in time to draw any definitive conclusions about its use, given the very early stage of the research currently being conducted in this area.

Response: We agree with the commenters' observations about the CARE tool, both in terms of its significant future potential and the need to await the results of ongoing research before reaching any specific conclusions about its use. We will continue to evaluate the CARE tool closely during the remainder of the current demonstration, and we plan to keep the commenters' concerns in mind as we proceed with our research in this area.

Comment: A number of commenters stressed the need for external research in the area of PAC payment reform, as well as the importance of obtaining input from the stakeholder community.

Response: We agree with the commenters regarding the value of obtaining stakeholder input, and believe that this is, in fact, crucial to the success of our PAC payment reform efforts. We also recognize the importance of obtaining the benefit of findings from research that is currently underway. We note that our own activities in this regard primarily involve applied research through our demonstration projects and internal analysis of changes in program policy. However, while our limited resources in this area preclude us from sponsoring any external research projects on PAC payment reform, we strongly favor such activity and encourage interested parties to engage in it.

Comment: We received a number of comments regarding the HAC payment provision under the IPPS, and the possible adoption of a similar approach in care settings other than IPPS hospitals. The commenters urged us to conduct a thorough evaluation of the HAC policy's implementation under the IPPS to determine its actual impact and efficacy prior to considering whether to adopt this type of approach in other care settings. Some also questioned the legal authority under existing Medicare law to expand the HAC payment provision beyond the IPPS hospital setting. Others raised concerns about the specific implications of applying this type of policy to the IRF setting. They cited ''falls'' as an example of something that might be less appropriately characterized as ''never events'' in the IRF setting than in the acute care hospital setting. They also argued that it would be unfair to penalize an IRF financially for a condition that actually developed during the preceding hospital stay but was not detected until after transfer to the IRF. In addition, they indicated that it might be difficult to differentiate a preventable healthcare-acquired complication from a normal, unavoidable aspect of a terminal illness.

Response: We appreciate the commenters' thoughtful input about application of the principal embodied in the IPPS HAC payment provision to the IRF setting. While we acknowledge that ''falls'' are among the selected HACs in the IPPS acute care setting that potentially have significant implications for the IRF setting, we agree that these and other conditions may have different implications in the IRF setting. We agree with the commenters that it would be unfair to penalize an IRF financially for a condition that developed in another care setting. We note that the IPPS HAC payment provision uses Present on Admission (POA) indicator data to exclude from payment consequences conditions that develop outside of the IPPS acute care stay, and a similar mechanism would be needed to apply this type of payment provision to the IRF setting. Regarding the commenters' concerns about the difficulty in

differentiating a preventable healthcare-acquired complication from a normal, unavoidable aspect of a terminal illness, we would expect to work closely with stakeholders to determine which conditions could reasonably be prevented through the application of evidence-based guidelines. Finally, with regard to the comments that questioned the existing legal authority for expanding the HAC payment provision beyond the IPPS hospital setting, we note that in this final rule, we are not establishing any new Medicare policies in this area. However, we will keep the commenters' concerns in mind as our implementation of value-based purchasing for all Medicare payment systems proceeds, and we look forward to working with stakeholders in continuing to explore possible ways to reduce the occurrence of these preventable conditions in various care settings.

IX. Miscellaneous Comments

Comment: One commenter recommended that CMS update the IRF facility-level adjustments, including the rural adjustment, the low-income percentage adjustment, and the teaching status adjustment, as these adjustments were last updated in FY 2006 based on analysis of FY 2003 data. This commenter also suggested a number of methodological changes to the way that CMS computes the facility-level adjustments, including standardizing cost-per-case by outlier payments and computing three-year moving averages of the adjustments to promote added stability and predictability in the payment system.

Response: We note that we did not propose any refinements to the IRF facility-level adjustment for FY 2009. However, we are in the process of analyzing the data to determine whether future updates to the IRF facility-level adjustments are needed. At the same time, we are also analyzing the commenter's suggested revisions to the methodology for computing these adjustments to determine whether these revisions would improve the precision of our estimates of the appropriate facility-level adjustment parameters. We will consider proposing to update the IRF facility-level adjustments in future rules if our analysis indicates that such updates are necessary to ensure that IRF PPS payments continue to reflect the costs of caring for IRF patients appropriately.

Comment: One commenter recommended that CMS re-examine the weights used to compute the weighted motor score for classifying IRF patients. The weights that are currently being used to compute patients' motor scores were finalized in the FY 2006 IRF PPS final rule (70 FR 47880 at 47900) and were based on FY 2003 data. The commenter expressed concerns that the appropriate weights may change over time and may need to be updated using more recent data.

Response: We did not propose any changes to the weighted motor score in the proposed rule. However, we will consider the commenter's suggestions for future updates to the weighted motor score methodology.

Comment: Several commenters expressed interest in assisting CMS in the development of the IRF Report to Congress that was mandated in section 115 of the MMSEA.

Response: We appreciate the commenters' interest in this important project and, as required by statute, we will consult with interested parties and stakeholders in developing this report.

Comment: Several commenters noted that we reported IRF spending estimates of $6.4 billion for FY 2008 in the proposed rule (73 FR 22674 at 22686) and IRF spending projections of $5.6 billion for FY 2009 in the press release that was issued in conjunction with the proposed rule. We believe that these commenters mistakenly interpreted these spending estimates to mean that a 12.5 percent decrease in IRF PPS payments is estimated to occur between FY 2008 and FY 2009.

Response: The IRF spending estimate of $6.4 billion for FY 2008 that was reported in the proposed rule (73 FR 22674 at 22686) did not account for any changes in IRF utilization that might occur between FYs 2006 and 2008. It was based on an analysis of simulated IRF payments using IRF claims data from FY 2006 (that is, the number and types of patients that were being treated in IRFs in FY 2006) and the policies that were being proposed for FY 2009 with IRF utilization held constant. The $6.4 billion spending estimate should not be compared with the $5.6 billion IRF spending projection developed by the Office of the Actuary for FY 2008, which accounts for expected changes in IRF utilization between FYs 2006 and 2008. The Office of the Actuary projects that total IRF spending for both FY 2008 and FY 2009 will be $5.6 billion under both the FY 2009 IRF PPS proposed and final rules. Thus, for this final rule, we estimate only a $40 million decrease in IRF PPS spending between FY 2008 and FY 2009, which is equal to only 0.7 percent of total estimated IRF PPS payments. We note that this is different than the $20 million decrease in IRF PPS spending that we had estimated for the proposed rule due to the use of updated data (that is, FY 2007 IRF claims data). The estimated $40 million decrease for this final rule is entirely due to the adjustment to the outlier threshold amount for FY 2009 to set estimated IRF outlier payments at 3 percent of total estimated payments, as discussed in detail in section XII of this final rule.

X. Provisions of the Final Rule

In this final rule, we are adopting the provisions as set forth in the FY 2009 IRF PPS proposed rule (73 FR 22674), except as noted elsewhere in the preamble. Specifically:

- We will update the pre-reclassified and pre-floor wage indexes based on the CBSA changes published in the most recent OMB bulletins that apply to the hospital wage data used to determine the current IRF PPS wage index, as discussed in section V.B of this final rule.
- We will update the FY 2009 IRF PPS relative weights and average length of stay values using the most current and complete Medicare claims and cost report data, as discussed in section IV of this final rule.
- We will update the FY 2009 IRF PPS payment rates by the wage index and labor related share in a budget neutral manner, as discussed in section V.A and B of this final rule.
- We will update the outlier threshold amount for FY 2009, as discussed in section VI.A of this final rule.
- We will update the cost-to-charge ratio ceiling and the national average urban and rural cost-to-charge ratios for purposes of determining outlier payments under the IRF PPS, as discussed in section VI.B of this final rule.
- With respect to § 412.23, we will revise the regulation text in paragraph (b)(2) and (b)(2)(i) and remove paragraph (b)(2)(ii) to reflect section 115 of the MMSEA, as discussed in section VII of this final rule.

XI. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995.

XII. Regulatory Impact Statement

We have examined the impact of this final rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA,

September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), Executive Order 13132 on Federalism, and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Order 12866, as amended, directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any one year). This final rule does not reach the $100 million economic threshold and thus is not considered a major rule. We estimate that the total impact of the changes in this final rule would be a decrease of approximately $40 million or 0.7 percent of total IRF PPS payments (this reflects a $40 million decrease due to the update to the outlier threshold amount to decrease estimated outlier payments from approximately 3.7 percent in FY 2008 to 3 percent in FY 2009).

The RFA requires agencies to analyze options for regulatory relief of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most IRFs and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $6.5 million to $31.5 million in any one year. (For details, see the Small Business Administration's final rule that set forth size standards for health care industries, at 65 FR 69432, November 17, 2000.) Because we lack data on individual hospital receipts, we cannot determine the number of small proprietary IRFs or the proportion of IRFs' revenue that is derived from Medicare payments. Therefore, we assume that all IRFs (an approximate total of 1,200 IRFs, of which approximately 60 percent are nonprofit facilities) are considered small entities and that Medicare payment constitutes the majority of their revenues. The Department of Health and Human Services generally uses a revenue impact of 3 to 5 percent as a significance threshold under the RFA. Medicare fiscal intermediaries and carriers are not considered to be small entities. Individuals and States are not included in the definition of a small entity. The Secretary has determined that this final rule (which we estimate will result in a decrease in total estimated payments to IRFs of 0.7 percent) would not have a significant economic impact on a substantial number of small entities and therefore an analysis as outlined by the RFA was not prepared.

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. The Secretary has determined that this final rule would not have a significant impact on the operations of a substantial number of small rural hospitals and therefore an analysis for section 1102(b) of the Act was not prepared.

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any one year of $100 million in 1995 dollars, updated annually for inflation. That threshold level is currently approximately $130 million. This final rule would not mandate any cost requirements on State, local, or tribal governments in the aggregate, or by the private sector, of $130 million.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. As stated above, this final rule would not have a substantial effect on State and local governments.

We received one comment on the regulatory impact statement included in the proposed rule, which is summarized below.

Comment: One commenter expressed concern that the regulatory impact information provided in the proposed rule was not sufficient to calculate the projected impact to individual providers, and that data on FY 2007 actual payments, FY 2008 estimated payments, and FY 2009 proposed payments would be required to fully estimate the effects on individual IRFs. The commenter requested that CMS make information available to allow interested parties to recreate CMS's impact table and to make projections on a facility-specific basis.

Response: As discussed above, we did not prepare a regulatory impact analysis for this final rule (or for the proposed rule) because this final rule does not reach the $100 million economic threshold and thus is not considered a major rule. However, we provided an IRF rate setting file in conjunction with the proposed rule to allow interested parties to calculate the payment effects of the proposed policies for individual IRFs. In addition, we will carefully consider all of the commenter's suggestions in updating the final FY 2009 IRF rate setting file that will be posted on the IRF PPS Web site in conjunction with this final rule. This file will be available for download from the IRF PPS Web site soon after publication of this final rule at *http://www.cms.hhs.gov/InpatientRehabFacPPS/07_DataFiles.asp#TopOfPage*. The IRF rate setting files posted in conjunction with each proposed and final rule already contain much of the facility-level payment data needed to allow interested parties to recreate CMS's analysis and to make projections on a facility-specific basis.

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

List of Subjects in 42 CFR Part 412

Administrative practice and procedure, Health facilities, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR chapter IV as follows:

PART 412—PROSPECTIVE PAYMENT SYSTEMS FOR INPATIENT HOSPITAL SERVICES

■ 1. The authority citation for part 412 continues to read as follows:

Authority: Sections 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart B—Hospital Services Subject to and Excluded From the Prospective Payment Systems for Inpatient Operating Costs and Inpatient Capital—Related Costs

■ 2. Section 412.23 is amended by—

■ A. Revising introductory text of paragraph (b)(2).

■ B. Revising introductory text of paragraph (b)(2)(i).

■ C. Revising paragraphs (b)(2)(i)(A) and (B).

■ D. Removing paragraph (b)(2)(ii).

■ E. Redesignating paragraph (b)(2)(iii) as (b)(2)(ii).

The revision reads as follows:

§ 412.23 Excluded hospitals: Classifications.

* * * * *

(b) * * *

(2) Except in the case of a newly participating hospital seeking classification under this paragraph as a rehabilitation hospital for its first 12-month cost reporting period, as described in paragraph (b)(8) of this section, a hospital must show that during its most recent, consecutive, and appropriate 12-month time period (as defined by CMS or the fiscal intermediary), it served an inpatient population that meets the criteria under paragraph (b)(2)(i) of this section.

(i) For cost reporting periods beginning on or after July 1, 2004 and before July 1, 2005, the hospital has served an inpatient population of whom at least 50 percent, and for cost reporting periods beginning on or after July 1, 2005, the hospital has served an inpatient population of whom at least 60 percent required intensive rehabilitation services for treatment of one or more of the conditions specified at paragraph (b)(2)(ii) of this section. A patient with a comorbidity, as defined at § 412.602, may be included in the inpatient population that counts toward the required applicable percentage if—

(A) The patient is admitted for inpatient rehabilitation for a condition that is not one of the conditions specified in paragraph (b)(2)(ii) of this section;

(B) The patient has a comorbidity that falls in one of the conditions specified in paragraph (b)(2)(ii) of this section; and

* * * * *

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

Dated: July 18, 2008.

Kerry Weems,

Acting Administrator, Centers for Medicare & Medicaid Services.

Approved: July 25, 2008.

Michael O. Leavitt,

Secretary.

The following addendum will not appear in the Code of Federal Regulations.

Addendum

This addendum contains the tables referred to throughout the preamble of this final rule. The tables presented below are as follows:

Table 1.—Inpatient Rehabilitation Facility Wage Index for Urban Areas for Discharges Occurring from October 1, 2008 through September 30, 2009

Table 2.—Inpatient Rehabilitation Facility Wage Index for Rural Areas for Discharges Occurring from October 1, 2008 through September 30, 2009

TABLE 1—INPATIENT REHABILITATION FACILITY WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM OCTOBER 1, 2008 THROUGH SEPTEMBER 30, 2009

CBSA code	Urban area (constituent counties)	Wage index
10180	Abilene, TX	0.7957
	Callahan County, TX	
	Jones County, TX	
	Taylor County, TX	
10380	Aguadilla-Isabela-San Sebastián, PR	0.3448
	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	0.8794
	Portage County, OH	
	Summit County, OH	
10500	Albany, GA	0.8514
	Baker County, GA	
	Dougherty County, GA	
	Lee County, GA	
	Terrell County, GA	
	Worth County, GA	
10580	Albany-Schenectady-Troy, NY	0.8588
	Albany County, NY	
	Rensselaer County, NY	
	Saratoga County, NY	
	Schenectady County, NY	
	Schoharie County, NY	
10740	Albuquerque, NM	0.9554
	Bernalillo County, NM	
	Sandoval County, NM	
	Torrance County, NM	
	Valencia County, NM	
10780	Alexandria, LA	0.7979
	Grant Parish, LA	
	Rapides Parish, LA	
10900	Allentown-Bethlehem-Easton, PA-NJ	0.9865
	Warren County, NJ	
	Carbon County, PA	
	Lehigh County, PA	
	Northampton County, PA	
11020	Altoona, PA	0.8618

TABLE 1—INPATIENT REHABILITATION FACILITY WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM OCTOBER 1, 2008 THROUGH SEPTEMBER 30, 2009—Continued

CBSA code	Urban area (constituent counties)	Wage index
	Blair County, PA	
11100	Amarillo, TX	0.9116
	Armstrong County, TX	
	Carson County, TX	
	Potter County, TX	
	Randall County, TX	
11180	Ames, IA	1.0046
	Story County, IA	
11260	Anchorage, AK	1.1913
	Anchorage Municipality, AK	
	Matanuska-Susitna Borough, AK	
11300	Anderson, IN	0.8827
	Madison County, IN	
11340	Anderson, SC	0.9086
	Anderson County, SC	
11460	Ann Arbor, MI	1.0539
	Washtenaw County, MI	
11500	Anniston-Oxford, AL	0.7926
	Calhoun County, AL	
11540	Appleton, WI	0.9598
	Calumet County, WI	
	Outagamie County, WI	
11700	Asheville, NC	0.9185
	Buncombe County, NC	
	Haywood County, NC	
	Henderson County, NC	
	Madison County, NC	
12020	Athens-Clarke County, GA	1.0517
	Clarke County, GA	
	Madison County, GA	
	Oconee County, GA	
	Oglethorpe County, GA	
12060	Atlanta-Sandy Springs-Marietta, GA	0.9828
	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	1.2198
	Atlantic County, NJ	
12220	Auburn-Opelika, AL	0.8090
	Lee County, AL	
12260	Augusta-Richmond County, GA-SC	0.9645
	Burke County, GA	
	Columbia County, GA	
	McDuffie County, GA	
	Richmond County, GA	
	Aiken County, SC	

TABLE 1—INPATIENT REHABILITATION FACILITY WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM OCTOBER 1, 2008 THROUGH SEPTEMBER 30, 2009—Continued

CBSA code	Urban area (constituent counties)	Wage index
	Edgefield County, SC	
12420	Austin-Round Rock, TX	0.9544
	Bastrop County, TX	
	Caldwell County, TX	
	Hays County, TX	
	Travis County, TX	
	Williamson County, TX	
12540	Bakersfield, CA	1.1051
	Kern County, CA	
12580	Baltimore-Towson, MD	1.0134
	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	0.9978
	Penobscot County, ME	
12700	Barnstable Town, MA	1.2603
	Barnstable County, MA	
12940	Baton Rouge, LA	0.8034
	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	1.0179
	Calhoun County, MI	
13020	Bay City, MI	0.8897
	Bay County, MI	
13140	Beaumont-Port Arthur, TX	0.8531
	Hardin County, TX	
	Jefferson County, TX	
	Orange County, TX	
13380	Bellingham, WA	1.1474
	Whatcom County, WA	
13460	Bend, OR	1.0942
	Deschutes County, OR	
13644	Bethesda-Gaithersburg-Frederick, MD	1.0511
	Frederick County, MD	
	Montgomery County, MD	
13740	Billings, MT	0.8666
	Carbon County, MT	
	Yellowstone County, MT	
13780	Binghamton, NY	0.8949
	Broome County, NY	
	Tioga County, NY	
13820	Birmingham-Hoover, AL	0.8898
	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	0.7225
	Burleigh County, ND	
	Morton County, ND	
13980	Blacksburg-Christiansburg-Radford, VA	0.8192
	Giles County, VA	
	Montgomery County, VA	
	Pulaski County, VA	
	Radford City, VA	
14020	Bloomington, IN	0.8915
	Greene County, IN	
	Monroe County, IN	

TABLE 1—INPATIENT REHABILITATION FACILITY WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM OCTOBER 1, 2008 THROUGH SEPTEMBER 30, 2009—Continued

CBSA code	Urban area (constituent counties)	Wage index
	Owen County, IN	
14060	Bloomington-Normal, IL	0.9325
	McLean County, IL	
14260	Boise City-Nampa, ID	0.9465
	Ada County, ID	
	Boise County, ID	
	Canyon County, ID	
	Gem County, ID	
	Owyhee County, ID	
14484	Boston-Quincy, MA	1.1792
	Norfolk County, MA	
	Plymouth County, MA	
	Suffolk County, MA	
14500	Boulder, CO	1.0426
	Boulder County, CO	
14540	Bowling Green, KY	0.8159
	Edmonson County, KY	
	Warren County, KY	
14740	Bremerton-Silverdale, WA	1.0904
	Kitsap County, WA	
14860	Bridgeport-Stamford-Norwalk, CT	1.2735
	Fairfield County, CT	
15180	Brownsville-Harlingen, TX	0.8914
	Cameron County, TX	
15260	Brunswick, GA	0.9475
	Brantley County, GA	
	Glynn County, GA	
	McIntosh County, GA	
15380	Buffalo-Niagara Falls, NY	0.9568
	Erie County, NY	
	Niagara County, NY	
15500	Burlington, NC	0.8747
	Alamance County, NC	
15540	Burlington-South Burlington, VT	0.9660
	Chittenden County, VT	
	Franklin County, VT	
	Grand Isle County, VT	
15764	Cambridge-Newton-Framingham, MA	1.1215
	Middlesex County, MA	
15804	Camden, NJ	1.0411
	Burlington County, NJ	
	Camden County, NJ	
	Gloucester County, NJ	
15940	Canton-Massillon, OH	0.8935
	Carroll County, OH	
	Stark County, OH	
15980	Cape Coral-Fort Myers, FL	0.9396
	Lee County, FL	
16180	Carson City, NV	1.0003
	Carson City, NV	
16220	Casper, WY	0.9385
	Natrona County, WY	
16300	Cedar Rapids, IA	0.8852
	Benton County, IA	
	Jones County, IA	
	Linn County, IA	
16580	Champaign-Urbana, IL	0.9392
	Champaign County, IL	
	Ford County, IL	
	Piatt County, IL	
16620	Charleston, WV	0.8289
	Boone County, WV	
	Clay County, WV	
	Kanawha County, WV	
	Lincoln County, WV	
	Putnam County, WV	
16700	Charleston-North Charleston, SC	0.9124
	Berkeley County, SC	
	Charleston County, SC	
	Dorchester County, SC	
16740	Charlotte-Gastonia-Concord, NC-SC	0.9520

TABLE 1—INPATIENT REHABILITATION FACILITY WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM OCTOBER 1, 2008 THROUGH SEPTEMBER 30, 2009—Continued

CBSA code	Urban area (constituent counties)	Wage index
	Anson County, NC	
	Cabarrus County, NC	
	Gaston County, NC	
	Mecklenburg County, NC	
	Union County, NC	
	York County, SC	
16820	Charlottesville, VA	0.9277
	Albemarle County, VA	
	Fluvanna County, VA	
	Greene County, VA	
	Nelson County, VA	
	Charlottesville City, VA	
16860	Chattanooga, TN-GA	0.8994
	Catoosa County, GA	
	Dade County, GA	
	Walker County, GA	
	Hamilton County, TN	
	Marion County, TN	
	Sequatchie County, TN	
16940	Cheyenne, WY	0.9308
	Laramie County, WY	
16974	Chicago-Naperville-Joliet, IL	1.0715
	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	1.1290
	Butte County, CA	
17140	Cincinnati-Middletown, OH-KY-IN	0.9784
	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	0.8251
	Christian County, KY	
	Trigg County, KY	
	Montgomery County, TN	
	Stewart County, TN	
17420	Cleveland, TN	0.8052
	Bradley County, TN	
	Polk County, TN	
17460	Cleveland-Elyria-Mentor, OH	0.9339
	Cuyahoga County, OH	
	Geauga County, OH	
	Lake County, OH	
	Lorain County, OH	
	Medina County, OH	
17660	Coeur d'Alene, ID	0.9532
	Kootenai County, ID	
17780	College Station-Bryan, TX	0.9358
	Brazos County, TX	
	Burleson County, TX	
	Robertson County, TX	
17820	Colorado Springs, CO	0.9719
	El Paso County, CO	
	Teller County, CO	

TABLE 1—INPATIENT REHABILITATION FACILITY WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM OCTOBER 1, 2008 THROUGH SEPTEMBER 30, 2009—Continued

CBSA code	Urban area (constituent counties)	Wage index
17860	Columbia, MO	0.8658
	Boone County, MO	
	Howard County, MO	
17900	Columbia, SC	0.8800
	Calhoun County, SC	
	Fairfield County, SC	
	Kershaw County, SC	
	Lexington County, SC	
	Richland County, SC	
	Saluda County, SC	
17980	Columbus, GA-AL	0.8729
	Russell County, AL	
	Chattahoochee County, GA	
	Harris County, GA	
	Marion County, GA	
	Muscogee County, GA	
18020	Columbus, IN	0.9537
	Bartholomew County, IN	
18140	Columbus, OH	1.0085
	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	0.8588
	Aransas County, TX	
	Nueces County, TX	
	San Patricio County, TX	
18700	Corvallis, OR	1.0959
	Benton County, OR	
19060	Cumberland, MD-WV	0.8294
	Allegany County, MD	
	Mineral County, WV	
19124	Dallas-Plano-Irving, TX	0.9915
	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	0.8760
	Murray County, GA	
	Whitfield County, GA	
19180	Danville, IL	0.8957
	Vermilion County, IL	
19260	Danville, VA	0.8240
	Pittsylvania County, VA	
	Danville City, VA	
19340	Davenport-Moline-Rock Island, IA-IL	0.8830
	Henry County, IL	
	Mercer County, IL	
	Rock Island County, IL	
	Scott County, IA	
19380	Dayton, OH	0.9190
	Greene County, OH	
	Miami County, OH	
	Montgomery County, OH	
	Preble County, OH	
19460	Decatur, AL	0.7885
	Lawrence County, AL	
	Morgan County, AL	
19500	Decatur, IL	0.8074
	Macon County, IL	
19660	Deltona-Daytona Beach-Ormond Beach, FL	0.9031
	Volusia County, FL	
19740	Denver-Aurora, CO	1.0718

TABLE 1—INPATIENT REHABILITATION FACILITY WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM OCTOBER 1, 2008 THROUGH SEPTEMBER 30, 2009—Continued

CBSA code	Urban area (constituent counties)	Wage index
	Adams County, CO	
	Arapahoe County, CO	
	Broomfield County, CO	
	Clear Creek County, CO	
	Denver County, CO	
	Douglas County, CO	
	Elbert County, CO	
	Gilpin County, CO	
	Jefferson County, CO	
	Park County, CO	
19780	Des Moines-West Des Moines, IA	0.9226
	Dallas County, IA	
	Guthrie County, IA	
	Madison County, IA	
	Polk County, IA	
	Warren County, IA	
19804	Detroit-Livonia-Dearborn, MI	0.9999
	Wayne County, MI	
20020	Dothan, AL	0.7270
	Geneva County, AL	
	Henry County, AL	
	Houston County, AL	
20100	Dover, DE	1.0099
	Kent County, DE	
20220	Dubuque, IA	0.9058
	Dubuque County, IA	
20260	Duluth, MN-WI	0.9975
	Carlton County, MN	
	St. Louis County, MN	
	Douglas County, WI	
20500	Durham, NC	0.9816
	Chatham County, NC	
	Durham County, NC	
	Orange County, NC	
	Person County, NC	
20740	Eau Claire, WI	0.9475
	Chippewa County, WI	
	Eau Claire County, WI	
20764	Edison, NJ	1.1181
	Middlesex County, NJ	
	Monmouth County, NJ	
	Ocean County, NJ	
	Somerset County, NJ	
20940	El Centro, CA	0.8914
	Imperial County, CA	
21060	Elizabethtown, KY	0.8711
	Hardin County, KY	
	Larue County, KY	
21140	Elkhart-Goshen, IN	0.9611
	Elkhart County, IN	
21300	Elmira, NY	0.8264
	Chemung County, NY	
21340	El Paso, TX	0.8989
	El Paso County, TX	
21500	Erie, PA	0.8495
	Erie County, PA	
21660	Eugene-Springfield, OR	1.0932
	Lane County, OR	
21780	Evansville, IN-KY	0.8662
	Gibson County, IN	
	Posey County, IN	
	Vanderburgh County, IN	
	Warrick County, IN	
	Henderson County, KY	
	Webster County, KY	
21820	Fairbanks, AK	1.1050
	Fairbanks North Star Borough, AK	
21940	Fajardo, PR	0.4375
	Ceiba Municipio, PR	
	Fajardo Municipio, PR	
	Luquillo Municipio, PR	

TABLE 1—INPATIENT REHABILITATION FACILITY WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM OCTOBER 1, 2008 THROUGH SEPTEMBER 30, 2009—Continued

CBSA code	Urban area (constituent counties)	Wage index
22020	Fargo, ND-MN	0.8042
	Cass County, ND	
	Clay County, MN	
22140	Farmington, NM	0.9587
	San Juan County, NM	
22180	Fayetteville, NC	0.9368
	Cumberland County, NC	
	Hoke County, NC	
22220	Fayetteville-Springdale-Rogers, AR-MO	0.8742
	Benton County, AR	
	Madison County, AR	
	Washington County, AR	
	McDonald County, MO	
22380	Flagstaff, AZ	1.1687
	Coconino County, AZ	
22420	Flint, MI	1.1220
	Genesee County, MI	
22500	Florence, SC	0.8249
	Darlington County, SC	
	Florence County, SC	
22520	Florence-Muscle Shoals, AL	0.7680
	Colbert County, AL	
	Lauderdale County, AL	
22540	Fond du Lac, WI	0.9667
	Fond du Lac County, WI	
22660	Fort Collins-Loveland, CO	0.9897
	Larimer County, CO	
22744	Fort Lauderdale-Pompano Beach-Deerfield Beach, FL	1.0229
	Broward County, FL	
22900	Fort Smith, AR-OK	0.7933
	Crawford County, AR	
	Franklin County, AR	
	Sebastian County, AR	
	Le Flore County, OK	
	Sequoyah County, OK	
23020	Fort Walton Beach-Crestview-Destin, FL	0.8743
	Okaloosa County, FL	
23060	Fort Wayne, IN	0.9284
	Allen County, IN	
	Wells County, IN	
	Whitley County, IN	
23104	Fort Worth-Arlington, TX	0.9693
	Johnson County, TX	
	Parker County, TX	
	Tarrant County, TX	
	Wise County, TX	
23420	Fresno, CA	1.0993
	Fresno County, CA	
23460	Gadsden, AL	0.8159
	Etowah County, AL	
23540	Gainesville, FL	0.9196
	Alachua County, FL	
	Gilchrist County, FL	
23580	Gainesville, GA	0.9216
	Hall County, GA	
23844	Gary, IN	0.9224
	Jasper County, IN	
	Lake County, IN	
	Newton County, IN	
	Porter County, IN	
24020	Glens Falls, NY	0.8256
	Warren County, NY	
	Washington County, NY	
24140	Goldsboro, NC	0.9288
	Wayne County, NC	
24220	Grand Forks, ND-MN	0.7881
	Polk County, MN	
	Grand Forks County, ND	
24300	Grand Junction, CO	0.9864
	Mesa County, CO	
24340	Grand Rapids-Wyoming, MI	0.9315

TABLE 1—INPATIENT REHABILITATION FACILITY WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM OCTOBER 1, 2008 THROUGH SEPTEMBER 30, 2009—Continued

CBSA code	Urban area (constituent counties)	Wage index
	Barry County, MI	
	Ionia County, MI	
	Kent County, MI	
	Newaygo County, MI	
24500	Great Falls, MT	0.8675
	Cascade County, MT	
24540	Greeley, CO	0.9658
	Weld County, CO	
24580	Green Bay, WI	0.9727
	Brown County, WI	
	Kewaunee County, WI	
	Oconto County, WI	
24660	Greensboro-High Point, NC	0.9010
	Guilford County, NC	
	Randolph County, NC	
	Rockingham County, NC	
24780	Greenville, NC	0.9402
	Greene County, NC	
	Pitt County, NC	
24860	Greenville-Mauldin-Easley, SC	0.9860
	Greenville County, SC	
	Laurens County, SC	
	Pickens County, SC	
25020	Guayama, PR	0.3064
	Arroyo Municipio, PR	
	Guayama Municipio, PR	
	Patillas Municipio, PR	
25060	Gulfport-Biloxi, MS	0.8773
	Hancock County, MS	
	Harrison County, MS	
	Stone County, MS	
25180	Hagerstown-Martinsburg, MD-WV	0.9013
	Washington County, MD	
	Berkeley County, WV	
	Morgan County, WV	
25260	Hanford-Corcoran, CA	1.0499
	Kings County, CA	
25420	Harrisburg-Carlisle, PA	0.9280
	Cumberland County, PA	
	Dauphin County, PA	
	Perry County, PA	
25500	Harrisonburg, VA	0.8867
	Rockingham County, VA	
	Harrisonburg City, VA	
25540	Hartford-West Hartford-East Hartford, CT	1.0959
	Hartford County, CT	
	Middlesex County, CT	
	Tolland County, CT	
25620	Hattiesburg, MS	0.7366
	Forrest County, MS	
	Lamar County, MS	
	Perry County, MS	
25860	Hickory-Lenoir-Morganton, NC	0.9028
	Alexander County, NC	
	Burke County, NC	
	Caldwell County, NC	
	Catawba County, NC	
25980	Hinesville-Fort Stewart, GA [1]	0.9187
	Liberty County, GA	
	Long County, GA	
26100	Holland-Grand Haven, MI	0.9006
	Ottawa County, MI	
26180	Honolulu, HI	1.1556
	Honolulu County, HI	
26300	Hot Springs, AR	0.9109
	Garland County, AR	
26380	Houma-Bayou Cane-Thibodaux, LA	0.7892
	Lafourche Parish, LA	
	Terrebonne Parish, LA	
26420	Houston-Sugar Land-Baytown, TX	0.9939
	Austin County, TX	

TABLE 1—INPATIENT REHABILITATION FACILITY WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM OCTOBER 1, 2008 THROUGH SEPTEMBER 30, 2009—Continued

CBSA code	Urban area (constituent counties)	Wage index
	Brazoria County, TX	
	Chambers County, TX	
	Fort Bend County, TX	
	Galveston County, TX	
	Harris County, TX	
	Liberty County, TX	
	Montgomery County, TX	
	San Jacinto County, TX	
	Waller County, TX	
26580	Huntington-Ashland, WV-KY-OH	0.9041
	Boyd County, KY	
	Greenup County, KY	
	Lawrence County, OH	
	Cabell County, WV	
	Wayne County, WV	
26620	Huntsville, AL	0.9146
	Limestone County, AL	
	Madison County, AL	
26820	Idaho Falls, ID	0.9264
	Bonneville County, ID	
	Jefferson County, ID	
26900	Indianapolis-Carmel, IN	0.9844
	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	0.9568
	Johnson County, IA	
	Washington County, IA	
27060	Ithaca, NY	0.9630
	Tompkins County, NY	
27100	Jackson, MI	0.9329
	Jackson County, MI	
27140	Jackson, MS	0.8011
	Copiah County, MS	
	Hinds County, MS	
	Madison County, MS	
	Rankin County, MS	
	Simpson County, MS	
27180	Jackson, TN	0.8676
	Chester County, TN	
	Madison County, TN	
27260	Jacksonville, FL	0.9021
	Baker County, FL	
	Clay County, FL	
	Duval County, FL	
	Nassau County, FL	
	St. Johns County, FL	
27340	Jacksonville, NC	0.8079
	Onslow County, NC	
27500	Janesville, WI	0.9702
	Rock County, WI	
27620	Jefferson City, MO	0.8478
	Callaway County, MO	
	Cole County, MO	
	Moniteau County, MO	
	Osage County, MO	
27740	Johnson City, TN	0.7677
	Carter County, TN	
	Unicoi County, TN	
	Washington County, TN	
27780	Johnstown, PA	0.7543
	Cambria County, PA	
27860	Jonesboro, AR	0.7790
	Craighead County, AR	

TABLE 1—INPATIENT REHABILITATION FACILITY WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM OCTOBER 1, 2008 THROUGH SEPTEMBER 30, 2009—Continued

CBSA code	Urban area (constituent counties)	Wage index
	Poinsett County, AR	
27900	Joplin, MO	0.8951
	Jasper County, MO	
	Newton County, MO	
28020	Kalamazoo-Portage, MI	1.0433
	Kalamazoo County, MI	
	Van Buren County, MI	
28100	Kankakee-Bradley, IL	1.0238
	Kankakee County, IL	
28140	Kansas City, MO-KS	0.9504
	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	1.0075
	Benton County, WA	
	Franklin County, WA	
28660	Killeen-Temple-Fort Hood, TX	0.8249
	Bell County, TX	
	Coryell County, TX	
	Lampasas County, TX	
28700	Kingsport-Bristol-Bristol, TN-VA	0.7658
	Hawkins County, TN	
	Sullivan County, TN	
	Bristol City, VA	
	Scott County, VA	
	Washington County, VA	
28740	Kingston, NY	0.9556
	Ulster County, NY	
28940	Knoxville, TN	0.8036
	Anderson County, TN	
	Blount County, TN	
	Knox County, TN	
	Loudon County, TN	
	Union County, TN	
29020	Kokomo, IN	0.9591
	Howard County, IN	
	Tipton County, IN	
29100	La Crosse, WI-MN	0.9685
	Houston County, MN	
	La Crosse County, WI	
29140	Lafayette, IN	0.8869
	Benton County, IN	
	Carroll County, IN	
	Tippecanoe County, IN	
29180	Lafayette, LA	0.8247
	Lafayette Parish, LA	
	St. Martin Parish, LA	
29340	Lake Charles, LA	0.7777
	Calcasieu Parish, LA	
	Cameron Parish, LA	
29404	Lake County-Kenosha County, IL-WI	1.0603
	Lake County, IL	
	Kenosha County, WI	
29420	Lake Havasu City-Kingman, AZ	0.9333
	Mohave County, AZ	
29460	Lakeland, FL	0.8661
	Polk County, FL	
29540	Lancaster, PA	0.9252
	Lancaster County, PA	

TABLE 1—INPATIENT REHABILITATION FACILITY WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM OCTOBER 1, 2008 THROUGH SEPTEMBER 30, 2009—Continued

CBSA code	Urban area (constituent counties)	Wage index
29620	Lansing-East Lansing, MI	1.0119
	Clinton County, MI	
	Eaton County, MI	
	Ingham County, MI	
29700	Laredo, TX	0.8093
	Webb County, TX	
29740	Las Cruces, NM	0.8676
	Dona Ana County, NM	
29820	Las Vegas-Paradise, NV	1.1799
	Clark County, NV	
29940	Lawrence, KS	0.8227
	Douglas County, KS	
30020	Lawton, OK	0.8025
	Comanche County, OK	
30140	Lebanon, PA	0.8192
	Lebanon County, PA	
30300	Lewiston, ID-WA	0.9454
	Nez Perce County, ID	
	Asotin County, WA	
30340	Lewiston-Auburn, ME	0.9193
	Androscoggin County, ME	
30460	Lexington-Fayette, KY	0.9191
	Bourbon County, KY	
	Clark County, KY	
	Fayette County, KY	
	Jessamine County, KY	
	Scott County, KY	
	Woodford County, KY	
30620	Lima, OH	0.9424
	Allen County, OH	
30700	Lincoln, NE	1.0051
	Lancaster County, NE	
	Seward County, NE	
30780	Little Rock-North Little Rock-Conway, AR	0.8863
	Faulkner County, AR	
	Grant County, AR	
	Lonoke County, AR	
	Perry County, AR	
	Pulaski County, AR	
	Saline County, AR	
30860	Logan, UT-ID	0.9183
	Franklin County, ID	
	Cache County, UT	
30980	Longview, TX	0.8717
	Gregg County, TX	
	Rusk County, TX	
	Upshur County, TX	
31020	Longview, WA	1.0827
	Cowlitz County, WA	
31084	Los Angeles-Long Beach-Santa Ana, CA	1.1771
	Los Angeles County, CA	
31140	Louisville-Jefferson County, KY-IN	0.9065
	Clark County, IN	
	Floyd County, IN	
	Harrison County, IN	
	Washington County, IN	
	Bullitt County, KY	
	Henry County, KY	
	Meade County, KY	
	Nelson County, KY	
	Oldham County, KY	
	Shelby County, KY	
	Spencer County, KY	
	Trimble County, KY	
31180	Lubbock, TX	0.8680
	Crosby County, TX	
	Lubbock County, TX	
31340	Lynchburg, VA	0.8732
	Amherst County, VA	
	Appomattox County, VA	
	Bedford County, VA	

TABLE 1—INPATIENT REHABILITATION FACILITY WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM OCTOBER 1, 2008 THROUGH SEPTEMBER 30, 2009—Continued

CBSA code	Urban area (constituent counties)	Wage index
	Campbell County, VA	
	Bedford City, VA	
	Lynchburg City, VA	
31420	Macon, GA	0.9541
	Bibb County, GA	
	Crawford County, GA	
	Jones County, GA	
	Monroe County, GA	
	Twiggs County, GA	
31460	Madera, CA	0.8069
	Madera County, CA	
31540	Madison, WI	1.0935
	Columbia County, WI	
	Dane County, WI	
	Iowa County, WI	
31700	Manchester-Nashua, NH	1.0273
	Hillsborough County, NH	
31900	Mansfield, OH [1]	0.9271
	Richland County, OH	
32420	Mayagüez, PR	0.3711
	Hormigueros Municipio, PR	
	Mayagüez Municipio, PR	
32580	McAllen-Edinburg-Mission, TX	0.9123
	Hidalgo County, TX	
32780	Medford, OR	1.0318
	Jackson County, OR	
32820	Memphis, TN-MS-AR	0.9250
	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	1.2120
	Merced County, CA	
33124	Miami-Miami Beach-Kendall, FL	1.0002
	Miami-Dade County, FL	
33140	Michigan City-La Porte, IN	0.8914
	LaPorte County, IN	
33260	Midland, TX	1.0017
	Midland County, TX	
33340	Milwaukee-Waukesha-West Allis, WI	1.0214
	Milwaukee County, WI	
	Ozaukee County, WI	
	Washington County, WI	
	Waukesha County, WI	
33460	Minneapolis-St. Paul—Bloomington, MN-WI	1.1093
	Anoka County, MN	
	Carver County, MN	
	Chisago County, MN	
	Dakota County, MN	
	Hennepin County, MN	
	Isanti County, MN	
	Ramsey County, MN	
	Scott County, MN	
	Sherburne County, MN	
	Washington County, MN	
	Wright County, MN	
	Pierce County, WI	
	St. Croix County, WI	
33540	Missoula, MT	0.8953
	Missoula County, MT	
33660	Mobile, AL	0.8033
	Mobile County, AL	
33700	Modesto, CA	1.1962
	Stanislaus County, CA	
33740	Monroe, LA	0.7832
	Ouachita Parish, LA	
	Union Parish, LA	

TABLE 1—INPATIENT REHABILITATION FACILITY WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM OCTOBER 1, 2008 THROUGH SEPTEMBER 30, 2009—Continued

CBSA code	Urban area (constituent counties)	Wage index
33780	Monroe, MI	0.9414
	Monroe County, MI	
33860	Montgomery, AL	0.8088
	Autauga County, AL	
	Elmore County, AL	
	Lowndes County, AL	
	Montgomery County, AL	
34060	Morgantown, WV	0.8321
	Monongalia County, WV	
	Preston County, WV	
34100	Morristown, TN	0.7388
	Grainger County, TN	
	Hamblen County, TN	
	Jefferson County, TN	
34580	Mount Vernon-Anacortes, WA	1.0529
	Skagit County, WA	
34620	Muncie, IN	0.8214
	Delaware County, IN	
34740	Muskegon-Norton Shores, MI	0.9836
	Muskegon County, MI	
34820	Myrtle Beach-Conway-North Myrtle Beach, SC	0.8634
	Horry County, SC	
34900	Napa, CA	1.4476
	Napa County, CA	
34940	Naples-Marco Island, FL	0.9487
	Collier County, FL	
34980	Nashville-Davidson-Murfreesboro-Franklin, TN	0.9689
	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	1.2640
	Nassau County, NY	
	Suffolk County, NY	
35084	Newark-Union, NJ-PA	1.1862
	Essex County, NJ	
	Hunterdon County, NJ	
	Morris County, NJ	
	Sussex County, NJ	
	Union County, NJ	
	Pike County, PA	
35300	New Haven-Milford, CT	1.1871
	New Haven County, CT	
35380	New Orleans-Metairie-Kenner, LA	0.8897
	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-White Plains-Wayne, NY-NJ	1.3115
	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	

TABLE 1—INPATIENT REHABILITATION FACILITY WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM OCTOBER 1, 2008 THROUGH SEPTEMBER 30, 2009—Continued

CBSA code	Urban area (constituent counties)	Wage index
	Westchester County, NY	
35660	Niles-Benton Harbor, MI	0.9141
	Berrien County, MI	
35980	Norwich-New London, CT	1.1432
	New London County, CT	
36084	Oakland-Fremont-Hayward, CA	1.5685
	Alameda County, CA	
	Contra Costa County, CA	
36100	Ocala, FL	0.8627
	Marion County, FL	
36140	Ocean City, NJ	1.0988
	Cape May County, NJ	
36220	Odessa, TX	1.0042
	Ector County, TX	
36260	Ogden-Clearfield, UT	0.9000
	Davis County, UT	
	Morgan County, UT	
	Weber County, UT	
36420	Oklahoma City, OK	0.8815
	Canadian County, OK	
	Cleveland County, OK	
	Grady County, OK	
	Lincoln County, OK	
	Logan County, OK	
	McClain County, OK	
	Oklahoma County, OK	
36500	Olympia, WA	1.1512
	Thurston County, WA	
36540	Omaha-Council Bluffs, NE-IA	0.9561
	Harrison County, IA	
	Mills County, IA	
	Pottawattamie County, IA	
	Cass County, NE	
	Douglas County, NE	
	Sarpy County, NE	
	Saunders County, NE	
	Washington County, NE	
36740	Orlando-Kissimmee, FL	0.9226
	Lake County, FL	
	Orange County, FL	
	Osceola County, FL	
	Seminole County, FL	
36780	Oshkosh-Neenah, WI	0.9551
	Winnebago County, WI	
36980	Owensboro, KY	0.8652
	Daviess County, KY	
	Hancock County, KY	
	McLean County, KY	
37100	Oxnard-Thousand Oaks-Ventura, CA	1.1852
	Ventura County, CA	
37340	Palm Bay-Melbourne-Titusville, FL	0.9325
	Brevard County, FL	
37380	Palm Coast, FL	0.8945
	Flagler County, FL	
37460	Panama City-Lynn Haven, FL	0.8313
	Bay County, FL	
37620	Parkersburg-Marietta-Vienna, WV-OH	0.8105
	Washington County, OH	
	Pleasants County, WV	
	Wirt County, WV	
	Wood County, WV	
37700	Pascagoula, MS	0.8647
	George County, MS	
	Jackson County, MS	
37764	Peabody, MA	1.0650
	Essex County, MA	
37860	Pensacola-Ferry Pass-Brent, FL	0.8281
	Escambia County, FL	
	Santa Rosa County, FL	
37900	Peoria, IL	0.9299
	Marshall County, IL	

TABLE 1—INPATIENT REHABILITATION FACILITY WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM OCTOBER 1, 2008 THROUGH SEPTEMBER 30, 2009—Continued

CBSA code	Urban area (constituent counties)	Wage index
	Peoria County, IL	
	Stark County, IL	
	Tazewell County, IL	
	Woodford County, IL	
37964	Philadelphia, PA	1.0925
	Bucks County, PA	
	Chester County, PA	
	Delaware County, PA	
	Montgomery County, PA	
	Philadelphia County, PA	
38060	Phoenix-Mesa-Scottsdale, AZ	1.0264
	Maricopa County, AZ	
	Pinal County, AZ	
38220	Pine Bluff, AR	0.7839
	Cleveland County, AR	
	Jefferson County, AR	
	Lincoln County, AR	
38300	Pittsburgh, PA	0.8525
	Allegheny County, PA	
	Armstrong County, PA	
	Beaver County, PA	
	Butler County, PA	
	Fayette County, PA	
	Washington County, PA	
	Westmoreland County, PA	
38340	Pittsfield, MA	1.0091
	Berkshire County, MA	
38540	Pocatello, ID	0.9465
	Bannock County, ID	
	Power County, ID	
38660	Ponce, PR	0.4450
	Juana Díaz Municipio, PR	
	Ponce Municipio, PR	
	Villalba Municipio, PR	
38860	Portland-South Portland-Biddeford, ME	1.0042
	Cumberland County, ME	
	Sagadahoc County, ME	
	York County, ME	
38900	Portland-Vancouver-Beaverton, OR-WA	1.1498
	Clackamas County, OR	
	Columbia County, OR	
	Multnomah County, OR	
	Washington County, OR	
	Yamhill County, OR	
	Clark County, WA	
	Skamania County, WA	
38940	Port St. Lucie, FL	1.0016
	Martin County, FL	
	St. Lucie County, FL	
39100	Poughkeepsie-Newburgh-Middletown, NY	1.0982
	Dutchess County, NY	
	Orange County, NY	
39140	Prescott, AZ	1.0020
	Yavapai County, AZ	
39300	Providence-New Bedford-Fall River, RI-MA	1.0574
	Bristol County, MA	
	Bristol County, RI	
	Kent County, RI	
	Newport County, RI	
	Providence County, RI	
	Washington County, RI	
39340	Provo-Orem, UT	0.9557
	Juab County, UT	
	Utah County, UT	
39380	Pueblo, CO	0.8851
	Pueblo County, CO	
39460	Punta Gorda, FL	0.9254
	Charlotte County, FL	
39540	Racine, WI	0.9498
	Racine County, WI	
39580	Raleigh-Cary, NC	0.9839

TABLE 1—INPATIENT REHABILITATION FACILITY WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM OCTOBER 1, 2008 THROUGH SEPTEMBER 30, 2009—Continued

CBSA code	Urban area (constituent counties)	Wage index
	Franklin County, NC	
	Johnston County, NC	
	Wake County, NC	
39660	Rapid City, SD	0.8811
	Meade County, SD	
	Pennington County, SD	
39740	Reading, PA	0.9356
	Berks County, PA	
39820	Redding, CA	1.3541
	Shasta County, CA	
39900	Reno-Sparks, NV	1.0715
	Storey County, NV	
	Washoe County, NV	
40060	Richmond, VA	0.9425
	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	1.1100
	Riverside County, CA	
	San Bernardino County, CA	
40220	Roanoke, VA	0.8691
	Botetourt County, VA	
	Craig County, VA	
	Franklin County, VA	
	Roanoke County, VA	
	Roanoke City, VA	
	Salem City, VA	
40340	Rochester, MN	1.0755
	Dodge County, MN	
	Olmsted County, MN	
	Wabasha County, MN	
40380	Rochester, NY	0.8858
	Livingston County, NY	
	Monroe County, NY	
	Ontario County, NY	
	Orleans County, NY	
	Wayne County, NY	
40420	Rockford, IL	0.9814
	Boone County, IL	
	Winnebago County, IL	
40484	Rockingham County, NH	1.0111
	Rockingham County, NH	
	Strafford County, NH	
40580	Rocky Mount, NC	0.9001
	Edgecombe County, NC	
	Nash County, NC	
40660	Rome, GA	0.9042
	Floyd County, GA	
40900	Sacramento—Arden-Arcade—Roseville, CA	1.3505
	El Dorado County, CA	
	Placer County, CA	
	Sacramento County, CA	
	Yolo County, CA	
40980	Saginaw-Saginaw Township North, MI	0.8812

TABLE 1—INPATIENT REHABILITATION FACILITY WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM OCTOBER 1, 2008 THROUGH SEPTEMBER 30, 2009—Continued

CBSA code	Urban area (constituent counties)	Wage index
	Saginaw County, MI	
41060	St. Cloud, MN	1.0549
	Benton County, MN	
	Stearns County, MN	
41100	St. George, UT	0.9358
	Washington County, UT	
41140	St. Joseph, MO-KS	0.8762
	Doniphan County, KS	
	Andrew County, MO	
	Buchanan County, MO	
	DeKalb County, MO	
41180	St. Louis, MO-IL	0.9024
	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	1.0572
	Marion County, OR	
	Polk County, OR	
41500	Salinas, CA	1.4775
	Monterey County, CA	
41540	Salisbury, MD	0.8994
	Somerset County, MD	
	Wicomico County, MD	
41620	Salt Lake City, UT	0.9399
	Salt Lake County, UT	
	Summit County, UT	
	Tooele County, UT	
41660	San Angelo, TX	0.8579
	Irion County, TX	
	Tom Green County, TX	
41700	San Antonio, TX	0.8834
	Atascosa County, TX	
	Bandera County, TX	
	Bexar County, TX	
	Comal County, TX	
	Guadalupe County, TX	
	Kendall County, TX	
	Medina County, TX	
	Wilson County, TX	
41740	San Diego-Carlsbad-San Marcos, CA	1.1492
	San Diego County, CA	
41780	Sandusky, OH	0.8822
	Erie County, OH	
41884	San Francisco-San Mateo-Redwood City, CA	1.5195
	Marin County, CA	
	San Francisco County, CA	
	San Mateo County, CA	
41900	San Germán-Cabo Rojo, PR	0.4729
	Cabo Rojo Municipio, PR	
	Lajas Municipio, PR	
	Sabana Grande Municipio, PR	
	San Germán Municipio, PR	
41940	San Jose-Sunnyvale-Santa Clara, CA	1.5735
	San Benito County, CA	
	Santa Clara County, CA	
41980	San Juan-Caguas-Guaynabo, PR	0.4528
	Aguas Buenas Municipio, PR	

TABLE 1—INPATIENT REHABILITATION FACILITY WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM OCTOBER 1, 2008 THROUGH SEPTEMBER 30, 2009—Continued

CBSA code	Urban area (constituent counties)	Wage index
	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	1.2488
	San Luis Obispo County, CA	
42044	Santa Ana-Anaheim-Irvine, CA	1.1766
	Orange County, CA	
42060	Santa Barbara-Santa Maria-Goleta, CA	1.1714
	Santa Barbara County, CA	
42100	Santa Cruz-Watsonville, CA	1.6122
	Santa Cruz County, CA	
42140	Santa Fe, NM	1.0734
	Santa Fe County, NM	
42220	Santa Rosa-Petaluma, CA	1.4696
	Sonoma County, CA	
42260	Sarasota-Bradenton-Venice, FL	0.9933
	Manatee County, FL	
	Sarasota County, FL	
42340	Savannah, GA	0.9131
	Bryan County, GA	
	Chatham County, GA	
	Effingham County, GA	
42540	Scranton—Wilkes-Barre, PA	0.8457
	Lackawanna County, PA	
	Luzerne County, PA	
	Wyoming County, PA	
42644	Seattle-Bellevue-Everett, WA	1.1572
	King County, WA	
	Snohomish County, WA	
42680	Sebastian-Vero Beach, FL	0.9412
	Indian River County, FL	
43100	Sheboygan, WI	0.8975
	Sheboygan County, WI	
43300	Sherman-Denison, TX	0.8320

TABLE 1—INPATIENT REHABILITATION FACILITY WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM OCTOBER 1, 2008 THROUGH SEPTEMBER 30, 2009—Continued

CBSA code	Urban area (constituent counties)	Wage index
	Grayson County, TX	
43340	Shreveport-Bossier City, LA	0.8476
	Bossier Parish, LA	
	Caddo Parish, LA	
	De Soto Parish, LA	
43580	Sioux City, IA-NE-SD	0.9251
	Woodbury County, IA	
	Dakota County, NE	
	Dixon County, NE	
	Union County, SD	
43620	Sioux Falls, SD	0.9563
	Lincoln County, SD	
	McCook County, SD	
	Minnehaha County, SD	
	Turner County, SD	
43780	South Bend-Mishawaka, IN-MI	0.9617
	St. Joseph County, IN	
	Cass County, MI	
43900	Spartanburg, SC	0.9422
	Spartanburg County, SC	
44060	Spokane, WA	1.0455
	Spokane County, WA	
44100	Springfield, IL	0.8944
	Menard County, IL	
	Sangamon County, IL	
44140	Springfield, MA	1.0366
	Franklin County, MA	
	Hampden County, MA	
	Hampshire County, MA	
44180	Springfield, MO	0.8695
	Christian County, MO	
	Dallas County, MO	
	Greene County, MO	
	Polk County, MO	
	Webster County, MO	
44220	Springfield, OH	0.8694
	Clark County, OH	
44300	State College, PA	0.8768
	Centre County, PA	
44700	Stockton, CA	1.1855
	San Joaquin County, CA	
44940	Sumter, SC	0.8599
	Sumter County, SC	
45060	Syracuse, NY	0.9910
	Madison County, NY	
	Onondaga County, NY	
	Oswego County, NY	
45104	Tacoma, WA	1.1055
	Pierce County, WA	
45220	Tallahassee, FL	0.9025
	Gadsden County, FL	
	Jefferson County, FL	
	Leon County, FL	
	Wakulla County, FL	
45300	Tampa-St. Petersburg-Clearwater, FL	0.9020
	Hernando County, FL	
	Hillsborough County, FL	
	Pasco County, FL	
	Pinellas County, FL	
45460	Terre Haute, IN	0.8805
	Clay County, IN	
	Sullivan County, IN	
	Vermillion County, IN	
	Vigo County, IN	
45500	Texarkana, TX-Texarkana, AR	0.7770
	Miller County, AR	
	Bowie County, TX	
45780	Toledo, OH	0.9431
	Fulton County, OH	
	Lucas County, OH	
	Ottawa County, OH	

TABLE 1—INPATIENT REHABILITATION FACILITY WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM OCTOBER 1, 2008 THROUGH SEPTEMBER 30, 2009—Continued

CBSA code	Urban area (constituent counties)	Wage index
	Wood County, OH	
45820	Topeka, KS	0.8538
	Jackson County, KS	
	Jefferson County, KS	
	Osage County, KS	
	Shawnee County, KS	
	Wabaunsee County, KS	
45940	Trenton-Ewing, NJ	1.0699
	Mercer County, NJ	
46060	Tucson, AZ	0.9245
	Pima County, AZ	
46140	Tulsa, OK	0.8340
	Creek County, OK	
	Okmulgee County, OK	
	Osage County, OK	
	Pawnee County, OK	
	Rogers County, OK	
	Tulsa County, OK	
	Wagoner County, OK	
46220	Tuscaloosa, AL	0.8303
	Greene County, AL	
	Hale County, AL	
	Tuscaloosa County, AL	
46340	Tyler, TX	0.9114
	Smith County, TX	
46540	Utica-Rome, NY	0.8486
	Herkimer County, NY	
	Oneida County, NY	
46660	Valdosta, GA	0.8098
	Brooks County, GA	
	Echols County, GA	
	Lanier County, GA	
	Lowndes County, GA	
46700	Vallejo-Fairfield, CA	1.4666
	Solano County, CA	
47020	Victoria, TX	0.8302
	Calhoun County, TX	
	Goliad County, TX	
	Victoria County, TX	
47220	Vineland-Millville-Bridgeton, NJ	1.0133
	Cumberland County, NJ	
47260	Virginia Beach-Norfolk-Newport News, VA-NC	0.8818
	Currituck County, NC	
	Gloucester County, VA	
	Isle of Wight County, VA	
	James City County, VA	
	Mathews County, VA	
	Surry County, VA	
	York County, VA	
	Chesapeake City, VA	
	Hampton City, VA	
	Newport News City, VA	
	Norfolk City, VA	
	Poquoson City, VA	
	Portsmouth City, VA	
	Suffolk City, VA	
	Virginia Beach City, VA	
	Williamsburg City, VA	
47300	Visalia-Porterville, CA	1.0091
	Tulare County, CA	
47380	Waco, TX	0.8518
	McLennan County, TX	
47580	Warner Robins, GA	0.9128
	Houston County, GA	
47644	Warren-Troy-Farmington Hills, MI	1.0001
	Lapeer County, MI	
	Livingston County, MI	
	Macomb County, MI	
	Oakland County, MI	
	St. Clair County, MI	
47894	Washington-Arlington-Alexandria, DC-VA-MD-WV	1.0855

TABLE 1—INPATIENT REHABILITATION FACILITY WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM OCTOBER 1, 2008 THROUGH SEPTEMBER 30, 2009—Continued

CBSA code	Urban area (constituent counties)	Wage index
	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	0.8519
	Black Hawk County, IA	
	Bremer County, IA	
	Grundy County, IA	
48140	Wausau, WI	0.9679
	Marathon County, WI	
48260	Weirton-Steubenville, WV-OH	0.7924
	Jefferson County, OH	
	Brooke County, WV	
	Hancock County, WV	
48300	Wenatchee, WA	1.1469
	Chelan County, WA	
	Douglas County, WA	
48424	West Palm Beach-Boca Raton-Boynton Beach, FL	0.9728
	Palm Beach County, FL	
48540	Wheeling, WV-OH	0.6961
	Belmont County, OH	
	Marshall County, WV	
	Ohio County, WV	
48620	Wichita, KS	0.9062
	Butler County, KS	
	Harvey County, KS	
	Sedgwick County, KS	
	Sumner County, KS	
48660	Wichita Falls, TX	0.7920
	Archer County, TX	
	Clay County, TX	
	Wichita County, TX	
48700	Williamsport, PA	0.8043
	Lycoming County, PA	
48864	Wilmington, DE-MD-NJ	1.0824
	New Castle County, DE	
	Cecil County, MD	
	Salem County, NJ	
48900	Wilmington, NC	0.9410
	Brunswick County, NC	
	New Hanover County, NC	
	Pender County, NC	
49020	Winchester, VA-WV	0.9913
	Frederick County, VA	
	Winchester City, VA	
	Hampshire County, WV	
49180	Winston-Salem, NC	0.9118
	Davie County, NC	
	Forsyth County, NC	
	Stokes County, NC	
	Yadkin County, NC	
49340	Worcester, MA	1.1287
	Worcester County, MA	
49420	Yakima, WA	1.0267
	Yakima County, WA	

TABLE 1—INPATIENT REHABILITATION FACILITY WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM OCTOBER 1, 2008 THROUGH SEPTEMBER 30, 2009—Continued

CBSA code	Urban area (constituent counties)	Wage index
49500	Yauco, PR	0.3284
	Guánica Municipio, PR	
	Guayanilla Municipio, PR	
	Peñuelas Municipio, PR	
	Yauco Municipio, PR	
49620	York-Hanover, PA	0.9359
	York County, PA	
49660	Youngstown-Warren-Boardman, OH-PA	0.9002
	Mahoning County, OH	
	Trumbull County, OH	
	Mercer County, PA	
49700	Yuba City, CA	1.0756
	Sutter County, CA	
	Yuba County, CA	
49740	Yuma, AZ	0.9488
	Yuma County, AZ	

[1] At this time, there are no hospitals located in this urban area on which to base a wage index.

TABLE 2—INPATIENT REHABILITATION FACILITY WAGE INDEX FOR RURAL AREAS FOR DISCHARGES OCCURRING FROM OCTOBER 1, 2008 THROUGH SEPTEMBER 30, 2009

CBSA code	Nonurban area	Wage index
1	Alabama	0.7533
2	Alaska	1.2109
3	Arizona	0.8479
4	Arkansas	0.7371
5	California	1.2023
6	Colorado	0.9704
7	Connecticut	1.1119
8	Delaware	0.9727
10	Florida	0.8465
11	Georgia	0.7659
12	Hawaii	1.0612
13	Idaho	0.7920
14	Illinois	0.8335
15	Indiana	0.8576
16	Iowa	0.8566
17	Kansas	0.7981
18	Kentucky	0.7793
19	Louisiana	0.7373
20	Maine	0.8476
21	Maryland	0.9034
22	Massachusetts [1]	1.1589
23	Michigan	0.8953
24	Minnesota	0.9079

TABLE 2—INPATIENT REHABILITATION FACILITY WAGE INDEX FOR RURAL AREAS FOR DISCHARGES OCCURRING FROM OCTOBER 1, 2008 THROUGH SEPTEMBER 30, 2009—Continued

CBSA code	Nonurban area	Wage index
25	Mississippi	0.7700
26	Missouri	0.7930
27	Montana	0.8379
28	Nebraska	0.8849
29	Nevada	0.9272
30	New Hampshire	0.0470
31	New Jersey [1]	—
32	New Mexico	0.8940
33	New York	0.8268
34	North Carolina	0.8603
35	North Dakota	0.7182
36	Ohio	0.8714
37	Oklahoma	0.7492
38	Oregon	0.9906
39	Pennsylvania	0.8385
40	Puerto Rico [1]	0.4047
41	Rhode Island [1]	—
42	South Carolina	0.8656
43	South Dakota	0.8549
44	Tennessee	0.7723
45	Texas	0.7968

TABLE 2—INPATIENT REHABILITATION FACILITY WAGE INDEX FOR RURAL AREAS FOR DISCHARGES OCCURRING FROM OCTOBER 1, 2008 THROUGH SEPTEMBER 30, 2009—Continued

CBSA code	Nonurban area	Wage index
46	Utah	0.8116
47	Vermont	0.9919
48	Virgin Islands	0.6830
49	Virginia	0.7896
50	Washington	1.0259
51	West Virginia	0.7454
52	Wisconsin	0.9667
53	Wyoming	0.9287
65	Guam	0.9611

[1] All counties within the State are classified as urban, with the exception of Massachusetts and Puerto Rico. Massachusetts and Puerto Rico have areas designated as rural; however, no short-term, acute care hospitals are located in the area(s) for FY 2009. The rural Massachusetts wage index is calculated as the average of all contiguous CBSAs. The Puerto Rico wage index is the same as FY 2008.

[FR Doc. E8–17797 Filed 7–31–08; 4:15 pm]

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Federal Register

Friday,
August 8, 2008

Part III

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Part 413

Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities for FY 2009; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 413

[CMS–1534–F]

RIN 0938–AP11

Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities for FY 2009

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

ACTION: Final rule.

SUMMARY: This final rule updates the payment rates used under the prospective payment system (PPS) for skilled nursing facilities (SNFs), for fiscal year (FY) 2009. It also discusses our ongoing analysis of nursing home staff time measurement data collected in the Staff Time and Resource Intensity Verification (STRIVE) project. Finally, this final rule makes technical corrections in the regulations text with respect to Medicare bad debt payments to SNFs and the reference to the definition of urban and rural as applied to SNFs.

DATES: *Effective Date:* This final rule becomes effective on October 1, 2008.

FOR FURTHER INFORMATION CONTACT:

Ellen Berry, (410) 786–4528 (for information related to clinical issues).

Jeanette Kranacs, (410) 786–9385 (for information related to the development of the payment rates and case-mix indexes).

Bill Ullman, (410) 786–5667 (for information related to level of care determinations, consolidated billing, and general information).

SUPPLEMENTARY INFORMATION: To assist readers in referencing sections contained in this document, we are providing the following Table of Contents.

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Abbreviations

Because of the many terms to which we refer by abbreviation in this final rule, we are listing these abbreviations and their corresponding terms in alphabetical order below:

AIDS Acquired Immune Deficiency Syndrome
ARD Assessment Reference Date
BBA Balanced Budget Act of 1997, Public Law 105–33
BBRA Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999, Public Law 106–113
BIPA Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000, Public Law 106–554
CAH Critical Access Hospital
CARE Continuity Assessment Record and Evaluation
CBSA Core-Based Statistical Area
CFR Code of Federal Regulations
CMI Case-Mix Index
CMS Centers for Medicare & Medicaid Services
DRA Deficit Reduction Act of 2005, Public Law 109–171
FQHC Federally Qualified Health Center
FR **Federal Register**
FY Fiscal Year
GAO Government Accountability Office
HAC Hospital-Acquired Condition
HCPCS Healthcare Common Procedure Coding System
HIPPS Health Insurance Prospective Payment System
HIT Health Information Technology
IFC Interim Final Rule with Comment Period
IPPS Hospital Inpatient Prospective Payment System
MDS Minimum Data Set
MMA Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Public Law 108–173
MSA Metropolitan Statistical Area
MS-DRG Medicare Severity Diagnosis-Related Group
NRST Non-Resident Specific Time
NTA Non-Therapy Ancillary
OBRA Omnibus Budget Reconciliation Act of 1987, Public Law 100–203
OIG Office of the Inspector General
OMB Office of Management and Budget
OMRA Other Medicare Required Assessment
PAC–PRD Post-Acute Care Payment Reform Demonstration
POA Present on Admission
PPS Prospective Payment System
RAI Resident Assessment Instrument
RAP Resident Assessment Protocol
RAVEN Resident Assessment Validation Entry
RFA Regulatory Flexibility Act, Public Law 96–354
RHC Rural Health Clinic
RIA Regulatory Impact Analysis
RUG–III Resource Utilization Groups, Version III
RUG–53 Refined 53–Group RUG–III Case-Mix Classification System
RST Resident Specific Time
SCHIP State Children's Health Insurance Program
SNF Skilled Nursing Facility
STM Staff Time Measurement
STRIVE Staff Time and Resource Intensity Verification
TEP Technical Expert Panel
UMRA Unfunded Mandates Reform Act, Public Law 104–4
VBP Value-Based Purchasing

I. Background

On May 7, 2008, we published a proposed rule (73 FR 25918) in the **Federal Register** (hereafter referred to as the FY 2009 proposed rule), setting forth updates to the payment rates used under the prospective payment system (PPS) for skilled nursing facilities (SNFs), for fiscal year (FY) 2009. Annual updates to the prospective payment system rates for skilled nursing facilities are required by section 1888(e) of the Social Security Act (the Act), as added by section 4432 of the Balanced Budget Act of 1997 (BBA), and amended by the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999 (BBRA), the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA), and the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA). Our most recent annual update occurred in the August 3, 2007 final rule (72 FR 43412) that set forth updates to the SNF PPS payment rates for FY 2008. We subsequently published two correction notices (72 FR 55085, September 28, 2007, and 72 FR 67652, November 30, 2007) with respect to those payment rate updates.

A. Current System for Payment of Skilled Nursing Facility Services Under Part A of the Medicare Program

Section 4432 of the BBA amended section 1888 of the Act to provide for the implementation of a per diem PPS for SNFs, covering all costs (routine, ancillary, and capital-related) of covered SNF services furnished to beneficiaries under Part A of the Medicare program, effective for cost reporting periods beginning on or after July 1, 1998. In this final rule, we are updating the per diem payment rates for SNFs for FY 2009. Major elements of the SNF PPS include:

- *Rates.* As discussed in section I.F.1. of this final rule, we established per diem Federal rates for urban and rural areas using allowable costs from FY 1995 cost reports. These rates also included an estimate of the cost of services that, before July 1, 1998, had been paid under Part B but were furnished to Medicare beneficiaries in a SNF during a Part A covered stay. We update the rates annually using a SNF market basket index, and we adjust them by the hospital inpatient wage index to account for geographic variation in wages. We also apply a case-mix adjustment to account for the relative resource utilization of different patient types. This adjustment utilizes a refined, 53-group version of the Resource Utilization Groups, version III (RUG-III) case-mix classification system, based on information obtained from the required resident assessments using the Minimum Data Set (MDS) 2.0. Additionally, as noted in sections I.C through I.E of this final rule, the payment rates at various times have also reflected specific legislative provisions, including section 101 of the BBRA, sections 311, 312, and 314 of the BIPA, and section 511 of the MMA.
- *Transition.* Under sections 1888(e)(1)(A) and (e)(11) of the Act, the SNF PPS included an initial, three-phase transition that blended a facility-specific rate (reflecting the individual facility's historical cost experience) with the Federal case-mix adjusted rate. The transition extended through the facility's first three cost reporting periods under the PPS, up to and including the one that began in FY 2001. Thus, the SNF PPS is no longer operating under the transition, as all facilities have been paid at the full Federal rate effective with cost reporting periods beginning in FY 2002. As we now base payments entirely on the adjusted Federal per diem rates, we no longer include adjustment factors related to facility-specific rates for the coming FY.
- *Coverage.* The establishment of the SNF PPS did not change Medicare's fundamental requirements for SNF coverage. However, because the RUG-III classification is based, in part, on the beneficiary's need for skilled nursing care and therapy, we have attempted, where possible, to coordinate claims review procedures with the output of beneficiary assessment and RUG-III classifying activities. This approach includes an administrative presumption that utilizes a beneficiary's initial classification in one of the upper 35 RUGs of the refined 53-group system to assist in making certain SNF level of care determinations, as discussed in greater detail in section III.B.5 of this final rule.
- *Consolidated Billing.* The SNF PPS includes a consolidated billing provision that requires a SNF to submit consolidated Medicare bills to its fiscal intermediary or Medicare Administrative Contractor for almost all of the services that its residents receive during the course of a covered Part A stay. In addition, this provision places with the SNF the Medicare billing responsibility for physical, occupational, and speech-language therapy that the resident receives during a noncovered stay. The statute excludes a small list of services from the consolidated billing provision (primarily those of physicians and certain other types of practitioners), which remain separately billable under Part B when furnished to a SNF's Part A resident. A more detailed discussion of this provision appears in section V. of this final rule.
- *Application of the SNF PPS to SNF services furnished by swing-bed hospitals.* Section 1883 of the Act permits certain small, rural hospitals to enter into a Medicare swing-bed agreement, under which the hospital can use its beds to provide either acute or SNF care, as needed. For critical access hospitals (CAHs), Part A pays on a reasonable cost basis for SNF services furnished under a swing-bed agreement. However, in accordance with section 1888(e)(7) of the Act, these services are paid under the SNF PPS when furnished by non-CAH rural hospitals, effective with cost reporting periods beginning on or after July 1, 2002. A more detailed discussion of this provision appears in section VI. of this final rule.

B. Requirements of the Balanced Budget Act of 1997 (BBA) for Updating the Prospective Payment System for Skilled Nursing Facilities

Section 1888(e)(4)(H) of the Act requires that we publish annually in the **Federal Register**:

1. The unadjusted Federal per diem rates to be applied to days of covered SNF services furnished during the FY.
2. The case-mix classification system to be applied with respect to these services during the FY.
3. The factors to be applied in making the area wage adjustment with respect to these services.

In the July 30, 1999 final rule (64 FR 41670), we indicated that we would announce any changes to the guidelines for Medicare level of care determinations related to modifications in the RUG–III classification structure (see section III.B.5 of this final rule for a discussion of the relationship between the case-mix classification system and SNF level of care determinations).

Along with other revisions outlined later in this preamble, this final rule provides the annual updates to the Federal rates as mandated by the Act.

C. The Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999 (BBRA)

There were several provisions in the BBRA that resulted in adjustments to the SNF PPS. We described these provisions in detail in the SNF PPS final rule for FY 2001 (65 FR 46770, July 31, 2001). In particular, section 101(a) of the BBRA provided for a temporary 20 percent increase in the per diem adjusted payment rates for 15 specified

RUG–III groups. In accordance with section 101(c)(2) of the BBRA, this temporary payment adjustment expired on January 1, 2006, with the implementation of case-mix refinements (see section I.F.1. of this final rule). We included further information on BBRA provisions that affected the SNF PPS in Program Memorandums A–99–53 and A–99–61 (December 1999).

Also, section 103 of the BBRA designated certain additional services for exclusion from the consolidated billing requirement, as discussed in greater detail in section V. of this final rule. Further, for swing-bed hospitals with more than 49 (but less than 100) beds, section 408 of the BBRA provided for the repeal of certain statutory restrictions on length of stay and aggregate payment for patient days, effective with the end of the SNF PPS transition period described in section 1888(e)(2)(E) of the Act. In the SNF PPS final rule for FY 2002 (66 FR 39562, July 31, 2001), we made conforming changes to the regulations at § 413.114(d), effective for services furnished in cost reporting periods beginning on or after July 1, 2002, to reflect section 408 of the BBRA.

D. The Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA)

The BIPA also included several provisions that resulted in adjustments to the SNF PPS. We described these provisions in detail in the SNF PPS final rule for FY 2002 (66 FR 39562, July 31, 2001). In particular:

- Section 203 of the BIPA exempted CAH swing-beds from the SNF PPS. We included further information on this provision in Program Memorandum A–01–09 (Change Request #1509), issued January 16, 2001, which is available online at *http://www.cms.hhs.gov/transmittals/downloads/a0109.pdf.*
- Section 311 of the BIPA revised the statutory update formula for the SNF market basket, and also directed us to conduct a study of alternative case-mix classification systems for the SNF PPS. In 2006, we submitted a report to the Congress on this study, which is available online at *http://www.cms.hhs.gov/SNFPPS/Downloads/RC_2006_PC-PPSSNF.pdf.*
- Section 312 of the BIPA provided for a temporary increase of 16.66 percent in the nursing component of the case-mix adjusted Federal rate for services furnished on or after April 1, 2001, and before October 1, 2002; accordingly, this add-on is no longer in effect. This section also directed the Government Accountability Office (GAO) to conduct an audit of SNF nursing staff ratios and submit a report to the Congress on whether the temporary increase in the nursing component should be continued. The report (GAO–03–176), which GAO issued in November 2002, is available online at *http://www.gao.gov/new.items/d03176.pdf.*
- Section 313 of the BIPA repealed the consolidated billing requirement for services (other than physical, occupational, and speech-language therapy) furnished to SNF residents during noncovered stays, effective January 1, 2001. (A more detailed discussion of this provision appears in section V. of this final rule.)
- Section 314 of the BIPA corrected an anomaly involving three of the RUGs that the BBRA had designated to receive the temporary payment adjustment discussed above in section I.C. of this final rule. (As noted previously, in accordance with section 101(c)(2) of the BBRA, this temporary payment adjustment expired upon the implementation of case-mix refinements on January 1, 2006.)
- Section 315 of the BIPA authorized us to establish a geographic reclassification procedure that is specific to SNFs, but only after collecting the data necessary to establish a SNF wage index that is based on wage data from nursing homes. To date, this has proven to be infeasible due to the volatility of existing SNF wage data and the significant amount of resources that would be required to improve the quality of that data.

We included further information on several of the BIPA provisions in Program Memorandum A–01–08 (Change Request #1510), issued January 16, 2001, which is available online at *http://www.cms.hhs.gov/transmittals/downloads/a0108.pdf.*

E. The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA)

The MMA included a provision that resulted in further adjustment to the SNF PPS. Specifically, section 511 of the MMA amended section 1888(e)(12) of the Act, to provide for a temporary increase of 128 percent in the PPS per diem payment for any SNF resident with Acquired Immune Deficiency Syndrome (AIDS), effective with services furnished on or after October 1, 2004. This special AIDS add-on was to remain in effect until ''* * * such date as the Secretary certifies that there is an appropriate adjustment in the case mix * * *.'' The AIDS add-on is also discussed in Program Transmittal #160 (Change Request #3291), issued on April 30, 2004, which is available online at *http://www.cms.hhs.gov/transmittals/downloads/r160cp.pdf.* As discussed in the SNF PPS final rule for FY 2006 (70 FR 45028, August 4, 2005), the implementation of the case-mix refinements did not address the certification regarding the AIDS add-on, allowing the temporary add-on payment created by section 511 of the MMA to continue in effect.

For the limited number of SNF residents that qualify for the AIDS add-on, implementation of this provision results in a significant increase in payment. For example, using FY 2006 data, we identified less than 2,700 SNF residents with a diagnosis code of 042 (Human Immunodeficiency Virus (HIV) Infection). For FY 2009, an urban facility with a resident with AIDS in RUG group ''SSA'' would have a case-mix adjusted payment of $259.40 (see Table 4) before the application of the MMA adjustment. After an increase of 128 percent, this urban facility would receive a case-mix adjusted payment of $591.43.

In addition, section 410 of the MMA contained a provision that excluded from consolidated billing certain practitioner and other services furnished to SNF residents by rural health clinics (RHCs) and Federally Qualified Health Centers (FQHCs). (Further information on this provision appears in section V. of this final rule.)

F. Skilled Nursing Facility Prospective Payment—General Overview

We implemented the Medicare SNF PPS effective with cost reporting periods beginning on or after July 1, 1998. This PPS pays SNFs through prospective, case-mix adjusted per diem payment rates applicable to all covered SNF services. These payment rates cover all costs of furnishing covered skilled nursing services (routine, ancillary, and capital-related costs) other than costs associated with approved educational activities. Covered SNF services include post-hospital services for which benefits are provided under Part A and all items and services that, before July 1, 1998, had been paid under Part B (other than physician and certain other services specifically excluded under the BBA) but furnished to Medicare beneficiaries in a SNF during a covered Part A stay. A comprehensive discussion of these provisions appears in the May 12, 1998 interim final rule (63 FR 26252).

1. Payment Provisions—Federal Rate

The PPS uses per diem Federal payment rates based on mean SNF costs in a base year updated for inflation to the first effective period of the PPS. We

developed the Federal payment rates using allowable costs from hospital-based and freestanding SNF cost reports for reporting periods beginning in FY 1995. The data used in developing the Federal rates also incorporated an estimate of the amounts that would be payable under Part B for covered SNF services furnished to individuals during the course of a covered Part A stay in a SNF.

In developing the rates for the initial period, we updated costs to the first effective year of the PPS (the 15-month period beginning July 1, 1998) using a SNF market basket index, and then standardized for the costs of facility differences in case-mix and for geographic variations in wages. In compiling the database used to compute the Federal payment rates, we excluded those providers that received new provider exemptions from the routine cost limits, as well as costs related to payments for exceptions to the routine cost limits. Using the formula that the BBA prescribed, we set the Federal rates at a level equal to the weighted mean of freestanding costs plus 50 percent of the difference between the freestanding mean and weighted mean of all SNF costs (hospital-based and freestanding) combined. We computed and applied separately the payment rates for facilities located in urban and rural areas. In addition, we adjusted the portion of the Federal rate attributable to wage-related costs by a wage index.

The Federal rate also incorporates adjustments to account for facility case-mix, using a classification system that accounts for the relative resource utilization of different patient types. The RUG–III classification system uses beneficiary assessment data from the Minimum Data Set (MDS) completed by SNFs to assign beneficiaries to one of 53 RUG–III groups. The original RUG–III case-mix classification system included 44 groups. However, under refinements that became effective on January 1, 2006, we added nine new groups—comprising a new Rehabilitation plus Extensive Services category—at the top of the RUG hierarchy. The May 12, 1998 interim final rule (63 FR 26252) included a detailed description of the original 44-group RUG–III case-mix classification system. A comprehensive description of the refined 53-group RUG–III case-mix classification system (RUG–53) appeared in the proposed rule for FY 2006 (70 FR 29070, May 19, 2005) and in the final rule for FY 2006 (70 FR 45026, August 4, 2005).

Further, in accordance with section 1888(e)(4)(E)(ii)(IV) of the Act, the Federal rates in this final rule reflect an update to the rates that we published in the final rule for FY 2008 (72 FR 43412, August 3, 2007) and the associated correction notices published on September 28, 2007 (72 FR 55085) and November 30, 2007 (72 FR 67652), equal to the full change in the SNF market basket index. A more detailed discussion of the SNF market basket index and related issues appears in sections I.F.2. and IV. of this final rule.

2. Rate Updates Using the Skilled Nursing Facility Market Basket Index

Section 1888(e)(5) of the Act requires us to establish a SNF market basket index that reflects changes over time in the prices of an appropriate mix of goods and services included in covered SNF services. We use the SNF market basket index to update the Federal rates on an annual basis. In the FY 2008 SNF PPS final rule (72 FR 43425 through 43430, August 3, 2007), we revised and rebased the market basket, which included updating the base year from FY 1997 to FY 2004. The proposed FY 2009 market basket increase was 3.1 percent. The final FY 2009 market basket increase is 3.4 percent.

In addition, as explained in the SNF PPS final rule for FY 2004 (66 FR 46058, August 4, 2003) and in section IV.B. of this final rule, the annual update of the payment rates includes, as appropriate, an adjustment to account for market basket forecast error. As described in the SNF PPS final rule for FY 2008 (72 FR 43425, August 3, 2007), the threshold percentage that serves to trigger an adjustment to account for market basket forecast error is 0.5 percentage point effective for FY 2008 and subsequent years. This adjustment takes into account the forecast error from the most recently available FY for which there is final data, and applies whenever the difference between the forecasted and actual change in the market basket exceeds a 0.5 percentage point threshold. For FY 2007 (the most recently available FY for which there is final data), the estimated increase in the market basket index was 3.1 percentage points, while the actual increase was 3.1 percentage points, resulting in no difference. Accordingly, as the difference between the estimated and actual amount of change does not exceed the 0.5 percentage point threshold, the payment rates for FY 2009 do not include a forecast error adjustment. Table 1 below shows the forecasted and actual market basket amounts for FY 2007.

TABLE 1—DIFFERENCE BETWEEN THE FORECASTED AND ACTUAL MARKET BASKET INCREASES FOR FY 2007

Index	Forecasted FY 2007 increase *	Actual FY 2007 increase **	FY 2007 difference ***
SNF	3.1	3.1	0.0

* Published in **Federal Register**; based on second quarter 2006 Global Insight Inc. forecast (97 index).
** Based on the second quarter 2008 Global Insight forecast (97 index).
*** The FY 2007 forecast error correction will be applied to the FY 2009 PPS update recommendations. Any forecast error less than 0.5 percentage points will not be reflected in the update recommendation.

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 proposed in the May 7, 2008 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. Summary of the Provisions of the FY 2009 Proposed Rule

In the FY 2009 proposed rule (73 FR 25918, May 7, 2008), we proposed to update the Federal payment rates used

under the SNF PPS for FY 2009. We also proposed to recalibrate the case-mix indexes so that they would more accurately reflect parity in expenditures related to the implementation of case-mix refinements in January 2006. In addition, we discussed our ongoing analysis of nursing home staff time measurement data collected in the Staff Time and Resource Intensity Verification (STRIVE) project. We also proposed to make technical corrections in the regulations text with respect to Medicare bad debt payments to SNFs and the reference to the definition of urban and rural as applied to SNFs.

III. Analysis and Response to Public Comments on the FY 2009 Proposed Rule

In response to the publication of the FY 2009 proposed rule, we received over 100 timely items of correspondence from the public. The comments originated primarily from various trade associations and major organizations, but also from individual providers, corporations, government agencies, and private citizens.

Brief summaries of each proposed provision, a summary of the public comments that we received, and our responses to the comments appear below.

A. General Comments on the FY 2009 Proposed Rule

In addition to the comments that we received on the proposed rule's discussion of specific aspects of the SNF PPS (which we address later in this final rule), commenters also submitted the following, more general observations on the payment system.

Comment: We received comments similar to those discussed previously in the SNF PPS final rule for FY 2008 (72 FR 43415 through 43416, August 3, 2007) regarding the need to address certain perceived inadequacies in payment for non-therapy ancillary (NTA) services, including those services relating to the provision of ventilator care in SNFs. We also received comments recommending that we continue to monitor ongoing research, and that we consider alternative case-mix methodologies such as the recent MedPAC proposal that appears on the MedPAC Web site (see *http://www.MedPAC.gov*.)

Response: As we noted in the August 3, 2007 FY 2008 final rule (72 FR 43416), we anticipate that the findings from our current Staff Time and Resource Intensity Verification (STRIVE) project will assist us in reviewing and addressing these types of concerns. However, as noted in our December 2006 Report to Congress, our analysis of NTA utilization has been hindered by a lack of data. All Medicare institutional providers *except* SNFs are required to submit detailed line item billing that shows each ancillary service furnished during a Part A stay. SNFs currently submit summary data that shows total dollar amounts for each ancillary service category, such as radiology and pharmacy. As we examine the data collected through the STRIVE project, we will be evaluating whether our current data requirements are sufficient to move forward with additional program enhancements. We will also consider whether collecting more detailed claims information on a regular basis will allow us to establish more accurate payment rates for NTA services.

We also believe it is important to monitor ongoing research activities, and work with all stakeholders, including MedPAC, to identify opportunities for future program enhancements. At the same time, we note that the SNF PPS reimbursement structure will be completely examined as part of the Post Acute Care Payment Reform Demonstration (PAC–PRD) project. Under this major CMS initiative, we intend to analyze the payment structure currently used for all post-acute care providers, and establish an integrated payment model centered on beneficiary needs and service utilization (including the use of non-therapy ancillaries) across settings. In considering future changes to the SNF PPS, it will be important to evaluate how shorter term enhancements contribute to our integrated post acute care strategy.

A discussion of the public comments that we received on the STRIVE project itself appears in section III.B.7.a of this final rule.

B. Annual Update of Payment Rates Under the Prospective Payment System for Skilled Nursing Facilities

1. Federal Prospective Payment System

This final rule sets forth a schedule of Federal prospective payment rates applicable to Medicare Part A SNF services beginning October 1, 2008. The schedule incorporates per diem Federal rates that provide Part A payment for all costs of services furnished to a beneficiary in a SNF during a Medicare-covered stay.

a. Costs and Services Covered by the Federal Rates

In accordance with section 1888(e)(2)(B) of the Act, the Federal rates apply to all costs (routine, ancillary, and capital-related) of covered SNF services other than costs associated with approved educational activities as defined in § 413.85. Under section 1888(e)(2)(A)(i) of the Act, covered SNF services include post-hospital SNF services for which benefits are provided under Part A (the hospital insurance program), as well as all items and services (other than those services excluded by statute) that, before July 1, 1998, were paid under Part B (the supplementary medical insurance program) but furnished to Medicare beneficiaries in a SNF during a Part A covered stay. (These excluded service categories are discussed in greater detail in section V.B.2. of the May 12, 1998 interim final rule (63 FR 26295 through 26297).)

b. Methodology Used for the Calculation of the Federal Rates

The FY 2009 rates reflect an update using the full amount of the latest market basket index. The FY 2009 market basket increase factor is 3.4 percent. A complete description of the multi-step process used to calculate Federal rates initially appeared in the May 12, 1998 interim final rule (63 FR 26252), as further revised in subsequent rules. We note that in accordance with section 101(c)(2) of the BBRA, the previous temporary increases in the per diem adjusted payment rates for certain designated RUGs, as specified in section 101(a) of the BBRA and section 314 of the BIPA, are no longer in effect due to the implementation of case-mix refinements as of January 1, 2006. However, the temporary increase of 128 percent in the per diem adjusted payment rates for SNF residents with AIDS, enacted by section 511 of the MMA (and discussed previously in section I.E of this final rule), remains in effect.

We used the SNF market basket to adjust each per diem component of the Federal rates forward to reflect cost increases occurring between the midpoint of the Federal FY beginning October 1, 2007, and ending September 30, 2008, and the midpoint of the Federal FY beginning October 1, 2008, and ending September 30, 2009, to which the payment rates apply. In accordance with section 1888(e)(4)(E)(ii)(IV) of the Act, we update the payment rates for FY 2009 by a factor equal to the full market basket index percentage increase. (We note, that the FY 2009 President's Budget includes a provision that would establish a zero percent market basket update for FYs 2009 through 2011, contingent upon the enactment of legislation by the Congress to adopt that proposal.) We further adjust the rates by

a wage index budget neutrality factor, described later in this section. Tables 2 and 3 below reflect the updated components of the unadjusted Federal rates for FY 2009.

TABLE 2—FY 2009 UNADJUSTED FEDERAL RATE PER DIEM—URBAN

Rate component	Nursing—case-mix	Therapy—case-mix	Therapy—non-case-mix	Non-case-mix
Per diem amount	$151.74	$114.30	$15.05	$77.44

TABLE 3—FY 2009 UNADJUSTED FEDERAL RATE PER DIEM—RURAL

Rate component	Nursing—case-mix	Therapy—case-mix	Therapy—non-case-mix	Non-case-mix
Per diem amount	$144.97	$131.80	$16.08	$78.87

2. Case-Mix Adjustments

a. Background

Section 1888(e)(4)(G)(i) of the Act requires the Secretary to make an adjustment to account for case-mix. The statute specifies that the adjustment is to reflect both a resident classification system that the Secretary establishes to account for the relative resource use of different patient types, as well as resident assessment and other data that the Secretary considers appropriate. In first implementing the SNF PPS (we refer readers to the May 12, 1998 interim final rule (63 FR 26252)), we developed the Resource Utilization Groups, version III (RUG–III) case-mix classification system, which tied the amount of payment to resident resource use in combination with resident characteristic information. Staff time measurement (STM) studies conducted in 1990, 1995, and 1997 provided information on resource use (time spent by staff members on residents) and resident characteristics that enabled us not only to establish RUG–III, but also to create case-mix indexes.

Under the BBA, each update of the SNF PPS payment rates must include the case-mix classification methodology applicable for the coming Federal FY. As indicated previously in section I.F.1, the payment rates set forth in this final rule reflect the use of the refined RUG–53 system that we discussed in detail in the proposed and final rules for FY 2006.

When we introduced a new refined RUG–53 classification model in January 2006, we used our authority for establishing an appropriate case-mix structure to construct a new case-mix index for use with the RUG–53 model. We calculated the new case-mix indexes using the STM study data that were collected during the 1990s and originally used in creating the SNF PPS case-mix classification system and case-mix indexes. As explained in greater detail below, we then performed a budget neutrality analysis, and increased the RUG–53 case-mix weights so that overall payments under the two models (the original 44-group model and the refined 53-group model) could be expected to be equal.

In the following section of this final rule, we discuss the adjustments to the RUG–53 case-mix indexes structure that we proposed in our FY 2009 proposed rule.

b. Development of the Case-Mix Indexes

In the August 4, 2005 SNF PPS final rule for FY 2006 (70 FR 45032), we introduced two refinements to the SNF PPS: (1) Nine new case-mix groups to account for the care needs of beneficiaries requiring both extensive medical and rehabilitation services; and (2) an adjustment to reflect the variability in the use of non-therapy ancillaries (NTAs). We made these refinements by using the resource minute data from the original 44-group model to create a new set of relative weights, or case-mix indexes (CMIs), for the refined 53-group model. We then compared the two models to ensure that estimated total payments under the 53-group model would not be greater or less than the aggregate payments that would have been made under the 44-group model.

As explained in the FY 2009 proposed rule (73 FR 25923), in conducting this analysis for the FY 2006 final rule, we used FY 2001 claims data (the most current data available at the time) to compare estimated aggregate payments under the 44-group and 53-group models. For each model, we multiplied the estimated case-mix adjusted base rate by the number of Medicare paid days attributable to each RUG group. For the 44-group RUG model, we used the actual 2001 paid claims data to determine the distribution of paid days. For the 53-group RUG model, we did not have any actual claims data, and had to estimate the number of days that would be distributed across the 53 groups. Using our estimated distribution, we found that payments under the new 53-group model would be lower than under the original 44-group model. As the purpose of the refinement was to better allocate payment and not to reduce overall expenditures, we adjusted the new CMIs upward by applying a parity adjustment factor. In this way, we attempted to ensure that the RUG–III model was expanded in a budget-neutral manner (that is, one that would not cause any change in the overall level of expenditures). We then applied a second adjustment to the CMIs to account for the variability in the use of NTA services. These two adjustments resulted in a combined 17.9 percent increase in the CMIs that went into effect on January 1, 2006, as part of the case-mix refinement implementation. A detailed description of the methods used to make these two adjustments to the CMIs appears in the SNF PPS proposed rule for FY 2006 (70 FR 29077 through 29078, May 19, 2005).

While we took all reasonable precautions to establish an appropriate, budget neutral conversion from the 44-group to the 53-group classification model, we recognized that the analyses we used to compute the budget neutrality adjustment were based solely on estimated data and that actual experience could be significantly different. For this reason, in the SNF PPS final rule for FY 2006 (70 FR 45031, August 4, 2005), we committed to monitoring the accuracy and effectiveness of the CMIs used in the 53-group model.

In monitoring recent claims data, we observed that actual expenditures were significantly higher than what we had projected using the 2001 data. In

particular, the proportion of dollars paid for patients who grouped in the highest paying RUG categories—combining high therapy with extensive services—greatly exceeded our projections. To determine why expenditures so greatly exceeded our projections, we repeated the budget neutrality analyses described earlier in this section (and as described in the FY 2006 SNF PPS proposed rule (70 FR 29077 through 29078, May 19, 2005)), using actual 2006 claims data to determine the distribution of paid days across the 53-group RUG model. For this analysis, we compared simulated calendar year (CY) 2006 payments (the first time period for which RUG–53 paid days data were available) to payments that would have been made under the RUG–44 model. As the introduction of the 9 new groups had not required a change to the MDS used to classify beneficiaries, we also had all of the data necessary to calculate accurately the distribution of paid days under the RUG–44 model. We found that estimated payments under the RUG–44 model were still higher than under the RUG–53 model, but that our original projections had overstated the difference. In addition, as the original budget neutrality adjustment was overestimated, the percentage adjustment made to the case-mix weights (after the budget neutrality adjustment was made) to account for NTA variability also needed to be recalibrated. Using the actual 2006 data, we found that the adjustment necessary to achieve budget neutrality was an increase of 9.68 percent rather than the 17.9 percent increase that had been in effect since January 2006. Thus, from January 2006 to the present, using the 17.9 percent adjustment to the case-mix weights resulted in overpayments far exceeding our intention of paying in a budget neutral manner. For FY 2009, we estimate the amount of overpayment at $780 million.

Although the 2001 data were the best source available at the time the FY 2006 refinements were introduced, the distribution of paid days, a key component in adjusting the RUG–53 case-mix weights, was based solely on estimated utilization. The 2006 data provide a more recent and a more accurate source of RUG–53 utilization based on actual utilization, and are an appropriate source to use for case-mix adjustment.

We received a number of comments questioning our legal authority to recalibrate the case-mix weights, as well as questions on the methodology used to make the case-mix weight adjustments. In the following discussion, we present the concerns that the commenters raised on this issue, and we also take the opportunity to address a number of misconceptions about the proposed recalibration that the comments reflected. However, in view of the potential ramifications of this proposal and the complexity of the issues involved, we believe that it would be prudent to take additional time to evaluate the proposal in order to further consider consequences that may result from it. Accordingly, we are not proceeding with the proposed recalibration at this time, pending further analysis. We note that as we continue to evaluate this issue, we fully expect to implement such an adjustment in the future. The comments that we received on this issue, and our responses, are as follows:

Comment: Several commenters stated that the need for the recalibration arose because CMS initial projections of utilization under the refined case-mix system proved to be inaccurate once actual utilization data became available. They then asserted that in view of this, the proposed recalibration represents a ''forecast error adjustment'' that is not covered under the statutory authority to provide for an appropriate adjustment to account for case mix (section 1888(e)(4)(G)(i) of the Act).

Response: It would be incorrect to characterize the proposed recalibration as a ''forecast error adjustment,'' as that term refers solely to an adjustment that compensates for an inaccurate forecast of the annual inflation factor in the SNF market basket. By contrast, the proposed recalibration would serve to ensure that the 2006 case-mix refinements are implemented as intended. As such, it would be integral to the process of providing ''* * * for an appropriate adjustment to account for case mix'' that is based upon appropriate data in accordance with section 1888(e)(4)(G)(i) of the Act.

Comment: A number of comments included references to the discussion of the 2006 case-mix refinements in the SNF PPS proposed rule for FY 2006 (70 FR 29079, May 19, 2005), in which we explained that we were ''* * * advancing these proposed changes under our authority in section 101(a) of the BBRA to establish case-mix refinements, and that the changes we are hereby proposing will represent the final adjustments made under this authority'' (emphasis added). The commenters stated that this earlier description of the 2006 case-mix refinements as ''final'' effectively precludes CMS from proceeding with a recalibration, which they characterized as representing a further refinement. Similarly, several commenters also questioned our authority to recalibrate the case-mix system prior to the completion of the STRIVE staff time measurement (STM) project. In addition, several commenters questioned whether CMS has the authority to impose a budget neutrality requirement on the introduction of a new classification model.

Response: We wish to clarify that the actual ''refinement'' that we proposed and implemented in the FY 2006 rulemaking cycle consisted of our introduction of the 9 new Rehabilitation plus Extensive Services groups at the top of the previous, 44-group RUG hierarchy, along with the adjustment recognizing the variability of NTA use, which together fulfilled the provisions of section 101(a) of the BBRA. The accompanying adjustment to the case-mix indexes (CMIs) was merely a vehicle through which we implemented that refinement. Rather than representing a new or further ''refinement'' in itself, the proposed recalibration merely serves to ensure that we correctly accomplish a revision to the CMIs that accompanied the FY 2006 case-mix refinements.

In the FY 2006 final rule (70 FR 45033, August 4, 2005), we addressed the introduction of the refinements within the broader context of ensuring payment accuracy and beneficiary access to care. We pointed out that

> * * * this incremental change is part of this ongoing process that will also include update activities such as the upcoming STM study and investigation of potential alternatives to the RUG system itself. However, the commitment to long term analysis and refinement should not preclude the introduction of more immediate methodological and policy updates.

Finally, the budget neutrality factor was applied to the unadjusted RUG 53 case-mix weights that were introduced in January 2006. As stated above, our initial analyses indicated that payments would be lower under the RUG–53 model. As the purpose of the refinement was to reallocate payments, and not to reduce expenditures, we believe that increasing the case-mix weights to equalize payments under the two models is an appropriate exercise of our broad authority to establish an appropriate case-mix system. We further note that the FY 2006 refinement to the case-mix classification system using adjusted CMIs was implemented through the rulemaking process, and we received no comments on the use of a budget neutrality adjustment at that time.

We also received a number of technical comments on the potential effects of implementing this

recalibration proposal on beneficiaries, providers, and the overall economy. These comments are summarized below.

Comment: Some commenters opposed the recalibration of the budget neutrality adjustment, believing that the change to the case-mix weights would ''take back'' payments to providers that had increased due to changes in case mix between 2001 and 2006. Specifically, several commenters expressed the belief that by proposing to recalibrate the case-mix weights put into place for the RUG–53 system, we are incorrectly identifying increased payments related to treatment of higher case-mix patients with an overpayment related to the use of an incorrect budget neutrality adjustment factor applied in January 2006. Another commenter believed that the proposed recalibration could be more accurately calculated using either 2005 data or a combination of 2005 and 2006 data.

Response: We agree that, on average, the case-mix indexes for current SNF patients are higher than they were in 2001. However, we believe this concern erroneously equates the introduction of a new classification model with the regular SNF PPS annual update process. Normally, changes in case mix are accommodated as the classification model identifies changes in case mix and assigns the appropriate RUG group. Actual payments will typically vary from projections since case-mix changes, which occur for a variety of reasons, cannot be anticipated in an impact analysis.

However, in January 2006, we did more than just update the payment rates; we introduced a new classification model, the RUG–53 case-mix system. As discussed above, the purpose of this refined model was to redistribute payments across the 53 groups while maintaining the same total expenditure level that we would have incurred had we retained the original 44-group RUG model.

In testing the two models, we used 2001 data because it was the best data we had available, and found that using the raw weights calculated for the RUG–53 model, we could expect aggregate payments to decrease as a result of introducing the refinement. To prevent this expected reduction in Medicare expenditures, we applied an adjustment to the RUG–53 case-mix weights as described in detail earlier in this section. Later analysis using actual 2006 data showed that, rather than achieving budget neutrality between the two models, expenditures were significantly higher than intended. For FY 2009, expenditures are estimated to be $780 million higher than intended.

We do not agree that updating our analysis using CY 2006 data captured payments related to increased case mix rather than establishing budget neutrality between the two models. First, by using 2006 data to estimate expenditures under both models, the same case-mix changes are incorporated into the estimated expenditure levels for RUG–44 as well as for RUG–53. Second, we believe it is appropriate to standardize the new model for the time period in which it is being introduced. The only reason we used 2001 data in the original calculation is that it was the best data available at the time. The CY 2006 data allowed us to calibrate the RUG–53 model more precisely for its first year of operation.

One commenter recommended using alternative time periods in calculating the budget neutrality adjustment. However, while it might be possible to use CY 2005 rather than CY 2006 data, using CY 2005 data still requires us to use a projection of the distributional shift to the nine new groups in the RUG–53 group model. We also looked at a second recommended alternative, which involved comparing quarterly data periods directly before and after implementation of the RUG–53 model; that is, October through December 2005 for the RUG–44 model and January through March 2006 for the RUG–53 model. Our preliminary analyses confirmed that the proposed recalibration would serve to ensure that the 2006 case-mix refinements are implemented as actually intended. However, we believe that using actual utilization data for CY 2006 is more accurate, since actual case mix during the calibration year is the basis for computing the case-mix adjustment. We have determined that using the 2006 data instead of the suggested alternatives are the most appropriate to adopt.

It is important to stress that this recalibration was not designed to adjust for aggregate payment differences that result from changes in the coding or classification of residents not reflective of real changes in case mix; that is, case-mix creep. Monitoring the changes in case mix under RUG–53 over the years since RUG–53 has been in place is part of a longer-term effort. If we find that a pattern of coding or the classification of residents does not reflect real changes in case mix over several years, we would propose a documentation and coding adjustment, pursuant to § 1888(e)(4)(F) of the Act. By contrast, the original application of a budget neutrality factor and the recalibration of that factor discussed in this final rule represented the mechanism that we used to establish the appropriate baseline for expenditures under the refined classification model (that is, the change from RUG–44 to RUG–53).

Comment: Some commenters argued against implementing the proposed recalibration, asserting that it is important to maintain Medicare SNF payments at their current levels in order to cross-subsidize what they characterized as inadequate payment rates for nursing facilities under the Medicaid program. Other commenters asserted that a shift in patients from Inpatient Rehabilitation Facilities (IRFs) to SNFs results in savings to the Medicare Trust Fund and that the current SNF spending levels are needed to treat the types of patients SNFs are now receiving.

Response: Even though we are not moving forward at this time with the proposed recalibration, we wish to be clear that it is not the appropriate role of the Medicare SNF benefit to cross-subsidize nursing home payments made under the Medicaid program. We note that MedPAC stated it is inappropriate for the Medicare program's SNF payments to cross-subsidize Medicaid nursing facility rates. Specifically, on page 152 of its March 2008 Report to the Congress on Medicare Payment Policy (which is available online at *http://medpac.gov/documents/Mar08_EntireReport.pdf*), MedPAC stated:

> There are several reasons why Medicare cross-subsidization is not advisable policy for the Medicare program. On average, Medicare payments accounted for 21 percent of revenues to freestanding SNFs in 2006. As a result, the policy would use a minority of Medicare payments to subsidize a majority of Medicaid payments. If Medicare were to pay still higher rates, facilities with high shares of Medicare payments—presumably the facilities that need revenues the least—would receive the most in subsidies from the higher Medicare payments. In other words, the subsidy would be poorly targeted. Given the variation among states in the level and method of nursing home payments, the impact of the subsidy would be highly variable; in states where Medicaid payments were adequate, it would have no positive impact. In addition, increasing Medicare's payment rates could encourage states to reduce Medicaid payments further and, in turn, result in pressure to again raise Medicare rates. It could also encourage providers to select patients based on payer source or to rehospitalize dual-eligible patients so that they qualified for a Medicare-covered, and higher payment, stay.

We agree with MedPAC and, therefore, do not agree with the commenters that cited cross-subsidizing Medicaid as a justification for maintaining Medicare SNF payments at any specific level.

Regarding the comments about a shift of patients from IRFs to SNFs producing savings to the Medicare Trust Fund, and the need to maintain current SNF spending levels to treat the types of patients SNFs are now receiving, we note that a basic principle of the SNF PPS is to pay appropriately for the services provided. CMS data are consistent with the commenters' assertions that many patients formerly being treated in IRFs are now being treated in SNFs or Home Health Agencies. In fact, the CY 2006 distribution used to recalibrate the case-mix adjustments indicates that there are more patients in the 9 new RUGs than we originally anticipated and patients shifting from IRFs could be a partial explanation.

Patients who shifted to SNFs or other settings from IRFs due to ''75 Percent Rule'' compliance percentage requirements represent a population that was not appropriate for IRF care, and CMS payments for those IRF stays would represent an overpayment to IRFs. For those former IRF patients who are appropriate for SNF care, we must pay the appropriate rate for the SNF services provided, and cannot use a reduction in IRF overpayments as a reason to increase payments under the SNF PPS. SNF patients with more intensive therapy and extensive service needs will be paid the higher amounts associated with the 9 new groups. While we are not moving forward with the proposed recalibration at this time, it is still important to understand that recalibrating CMIs would not change the relative nature of higher payments for patients using more staff resources and services.

Comment: One commenter claimed that CMS did not make the data and analysis underlying the proposed recalibration of the budget neutrality adjustment publicly available.

Response: We do not agree with the commenter's assertion. The methodology used to establish the case-mix adjustments is the same as that described in detail in the FY 2006 SNF PPS proposed rule (70 FR 29077 through 29078, May 19, 2005). In addition, the data used to calculate the adjustments are publicly available on the CMS Web site. We used the CY 2006 days of service (available in the downloads section of our Web site at *http://www.cms.hhs.gov/SNFPPS/02_Highlights.asp#TopOfPage*) for both the RUG–44 and RUG–53 systems. We multiplied the CY 2006 days of service by the FY 2008 unadjusted Federal per diem payment rate components (72 FR 43416) multiplied by the unadjusted case-mix indexes (available in the Downloads section of our Web site at *http://www.cms.hhs.gov/SNFPPS/09_RUGRefinement.asp#TopOfPage*) to establish expenditures under the RUG–44 and RUG–53 systems. The budget neutrality adjustment was determined as the percentage increase necessary for the nursing CMIs to generate estimated expenditure levels under the RUG–53 system that were equal to estimated expenditure levels under the RUG–44 system. We then calculated a second adjustment factor to increase the baseline by an amount that served to offset the variability in NTA utilization.

As discussed above, we are confident that we employed the correct methodology to evaluate the accuracy with which we implemented the 2006 refinements. However, in view of the widespread industry concern that a recalibration could potentially have adverse effects on beneficiaries and SNF clinical staff, and could negatively affect the quality of SNF care, we believe that the most prudent course is to continue to evaluate these issues carefully before proceeding. Thus, we will not proceed with the recalibration for FY 2009, but will instead continue to evaluate the data, and further consider consequences that may result from the recalibration. We note that as we continue to evaluate this issue, we fully expect to implement such an adjustment in the future. Therefore, for FY 2009, the case-mix indexes shown in Tables 4 and 5 below remain the same as those adopted in FY 2006. As always, we list the case-mix adjusted payment rates separately for urban and rural SNFs, with the corresponding case-mix values. We note that these tables do not reflect the AIDS add-on enacted by section 511 of the MMA, which we apply only after making all other adjustments (wage and case-mix).

TABLE 4—RUG–53 CASE-MIX ADJUSTED FEDERAL RATES AND ASSOCIATED INDEXES—URBAN

RUG–III category	Nursing index	Therapy index	Nursing component	Therapy component	Non-case mix therapy comp	Non-case mix component	Total rate
RUX	1.9	2.25	288.31	257.18		77.44	622.93
RUL	1.4	2.25	212.44	257.18		77.44	547.06
RVX	1.54	1.41	233.68	161.16		77.44	472.28
RVL	1.33	1.41	201.81	161.16		77.44	440.41
RHX	1.42	0.94	215.47	107.44		77.44	400.35
RHL	1.37	0.94	207.88	107.44		77.44	392.76
RMX	1.93	0.77	292.86	88.01		77.44	458.31
RML	1.68	0.77	254.92	88.01		77.44	420.37
RLX	1.31	0.43	198.78	49.15		77.44	325.37
RUC	1.28	2.25	194.23	257.18		77.44	528.85
RUB	0.99	2.25	150.22	257.18		77.44	484.84
RUA	0.84	2.25	127.46	257.18		77.44	462.08
RVC	1.23	1.41	186.64	161.16		77.44	425.24
RVB	1.09	1.41	165.40	161.16		77.44	404.00
RVA	0.82	1.41	124.43	161.16		77.44	363.03
RHC	1.22	0.94	185.12	107.44		77.44	370.00
RHB	1.11	0.94	168.43	107.44		77.44	353.31
RHA	0.94	0.94	142.64	107.44		77.44	327.52
RMC	1.15	0.77	174.50	88.01		77.44	339.95
RMB	1.09	0.77	165.40	88.01		77.44	330.85
RMA	1.04	0.77	157.81	88.01		77.44	323.26
RLB	1.14	0.43	172.98	49.15		77.44	299.57
RLA	0.85	0.43	128.98	49.15		77.44	255.57
SE3	1.86		282.24		15.05	77.44	374.73
SE2	1.49		226.09		15.05	77.44	318.58
SE1	1.26		191.19		15.05	77.44	283.68
SSC	1.23		186.64		15.05	77.44	279.13

TABLE 4—RUG–53 CASE-MIX ADJUSTED FEDERAL RATES AND ASSOCIATED INDEXES—URBAN—Continued

RUG–III category	Nursing index	Therapy index	Nursing component	Therapy component	Non-case mix therapy comp	Non-case mix component	Total rate
SSB	1.13		171.47		15.05	77.44	263.96
SSA	1.1		166.91		15.05	77.44	259.40
CC2	1.22		185.12		15.05	77.44	277.61
CC1	1.06		160.84		15.05	77.44	253.33
CB2	0.98		148.71		15.05	77.44	241.20
CB1	0.91		138.08		15.05	77.44	230.57
CA2	0.9		136.57		15.05	77.44	229.06
CA1	0.8		121.39		15.05	77.44	213.88
IB2	0.74		112.29		15.05	77.44	204.78
IB1	0.72		109.25		15.05	77.44	201.74
IA2	0.61		92.56		15.05	77.44	185.05
IA1	0.56		84.97		15.05	77.44	177.46
BB2	0.73		110.77		15.05	77.44	203.26
BB1	0.69		104.70		15.05	77.44	197.19
BA2	0.6		91.04		15.05	77.44	183.53
BA1	0.52		78.90		15.05	77.44	171.39
PE2	0.85		128.98		15.05	77.44	221.47
PE1	0.82		124.43		15.05	77.44	216.92
PD2	0.78		118.36		15.05	77.44	210.85
PD1	0.76		115.32		15.05	77.44	207.81
PC2	0.71		107.74		15.05	77.44	200.23
PC1	0.69		104.70		15.05	77.44	197.19
PB2	0.55		83.46		15.05	77.44	175.95
PB1	0.54		81.94		15.05	77.44	174.43
PA2	0.53		80.42		15.05	77.44	172.91
PA1	0.5		75.87		15.05	77.44	168.36

TABLE 5—RUG–53 CASE-MIX ADJUSTED FEDERAL RATES AND ASSOCIATED INDEXES—RURAL

RUG–III category	Nursing index	Therapy index	Nursing component	Therapy component	Non-case mix therapy comp	Non-case mix component	Total rate
RUX	1.9	2.25	275.44	296.55		78.87	650.86
RUL	1.4	2.25	202.96	296.55		78.87	578.38
RVX	1.54	1.41	223.25	185.84		78.87	487.96
RVL	1.33	1.41	192.81	185.84		78.87	457.52
RHX	1.42	0.94	205.86	123.89		78.87	408.62
RHL	1.37	0.94	198.61	123.89		78.87	401.37
RMX	1.93	0.77	279.79	101.49		78.87	460.15
RML	1.68	0.77	243.55	101.49		78.87	423.91
RLX	1.31	0.43	189.91	56.67		78.87	325.45
RUC	1.28	2.25	185.56	296.55		78.87	560.98
RUB	0.99	2.25	143.52	296.55		78.87	518.94
RUA	0.84	2.25	121.77	296.55		78.87	497.19
RVC	1.23	1.41	178.31	185.84		78.87	443.02
RVB	1.09	1.41	158.02	185.84		78.87	422.73
RVA	0.82	1.41	118.88	185.84		78.87	383.59
RHC	1.22	0.94	176.86	123.89		78.87	379.62
RHB	1.11	0.94	160.92	123.89		78.87	363.68
RHA	0.94	0.94	136.27	123.89		78.87	339.03
RMC	1.15	0.77	166.72	101.49		78.87	347.08
RMB	1.09	0.77	158.02	101.49		78.87	338.38
RMA	1.04	0.77	150.77	101.49		78.87	331.13
RLB	1.14	0.43	165.27	56.67		78.87	300.81
RLA	0.85	0.43	123.22	56.67		78.87	258.76
SE3	1.86		269.64		16.08	78.87	364.59
SE2	1.49		216.01		16.08	78.87	310.96
SE1	1.26		182.66		16.08	78.87	277.61
SSC	1.23		178.31		16.08	78.87	273.26
SSB	1.13		163.82		16.08	78.87	258.77
SSA	1.1		159.47		16.08	78.87	254.42
CC2	1.22		176.86		16.08	78.87	271.81
CC1	1.06		153.67		16.08	78.87	248.62
CB2	0.98		142.07		16.08	78.87	237.02
CB1	0.91		131.92		16.08	78.87	226.87
CA2	0.9		130.47		16.08	78.87	225.42
CA1	0.8		115.98		16.08	78.87	210.93
IB2	0.74		107.28		16.08	78.87	202.23
IB1	0.72		104.38		16.08	78.87	199.33
IA2	0.61		88.43		16.08	78.87	183.38

TABLE 5—RUG–53 CASE-MIX ADJUSTED FEDERAL RATES AND ASSOCIATED INDEXES—RURAL—Continued

RUG–III category	Nursing index	Therapy index	Nursing component	Therapy component	Non-case mix therapy comp	Non-case mix component	Total rate
IA1	0.56		81.18		16.08	78.87	176.13
BB2	0.73		105.83		16.08	78.87	200.78
BB1	0.69		100.03		16.08	78.87	194.98
BA2	0.6		86.98		16.08	78.87	181.93
BA1	0.52		75.38		16.08	78.87	170.33
PE2	0.85		123.22		16.08	78.87	218.17
PE1	0.82		118.88		16.08	78.87	213.83
PD2	0.78		113.08		16.08	78.87	208.03
PD1	0.76		110.18		16.08	78.87	205.13
PC2	0.71		102.93		16.08	78.87	197.88
PC1	0.69		100.03		16.08	78.87	194.98
PB2	0.55		79.73		16.08	78.87	174.68
PB1	0.54		78.28		16.08	78.87	173.23
PA2	0.53		76.83		16.08	78.87	171.78
PA1	0.5		72.49		16.08	78.87	167.44

3. Wage Index Adjustment to Federal Rates

Section 1888(e)(4)(G)(ii) of the Act requires that we adjust the Federal rates to account for differences in area wage levels, using a wage index that we find appropriate. Since the inception of a PPS for SNFs, we have used hospital wage data in developing a wage index to be applied to SNFs. In the FY 2009 proposed rule, we proposed to continue that practice, as we continue to believe that in the absence of SNF-specific wage data, using the hospital inpatient wage index is appropriate and reasonable for the SNF PPS. As explained in the SNF PPS update notice for FY 2005 (69 FR 45786, July 30, 2004), the SNF PPS does not use the hospital area wage index's occupational mix adjustment, as this adjustment serves specifically to define the occupational categories more clearly in a hospital setting; moreover, the collection of the occupational wage data also excludes any wage data related to SNFs. Therefore, we believe that using the updated wage data exclusive of the occupational mix adjustment continues to be appropriate for SNF payments.

Since the implementation of the SNF PPS, as set forth in § 413.337(a)(1)(ii), a SNF's wage index is determined based on the location of the SNF in an urban or rural area as defined in § 413.333 and further defined in § 412.62(f)(1)(ii) and § 412.62(f)(1)(iii) as urban and rural areas, respectively. In the SNF PPS final rule for FY 2006 (70 FR 45041, August 4, 2005), we adopted revised labor market area definitions based on Core-Based Statistical Area (CBSAs). At the time, we noted that these were the same labor market area definitions (based on OMB's new CBSA designations) implemented under the Hospital Inpatient Prospective Payment System (IPPS) at § 412.64(b), which were effective for those hospitals beginning October 1, 2004, as discussed in the IPPS final rule for FY 2005 (69 FR at 49026 through 49034, August 11, 2004). In the FY 2006 SNF PPS final rule, we inadvertently omitted making a conforming regulation text change to § 413.333. However, this did not alter our decision to follow the IPPS definitions of urban and rural. In the FY 2009 proposed rule, we proposed to make that conforming regulation text change to revise the definitions for rural and urban areas effective for services provided on or after October 1, 2005, to reference the regulations at §§ 412.64(b)(1)(ii)(A) through (C), consistent with the revision under the IPPS.

Comments on the wage index adjustment to the Federal rates, and our responses to those comments, are as follows:

Comment: A few commenters recommended that CMS develop a SNF-specific wage index. Other commenters asked CMS to consider adopting certain wage index policies in use under the acute IPPS, because SNFs compete in a similar labor pool as acute care hospitals. The commenters indicated that adoption of these measures under the SNF PPS would allow SNFs to benefit from the IPPS geographic reclassification and/or rural floor policies. (A discussion of the IPPS reclassification and floor policies appears on our Web site at *http://www.cms.hhs.gov/AcuteInpatientPPS/01_overview.asp.*)

Response: The regulations that govern the SNF PPS currently do not provide a mechanism for allowing providers to seek geographic reclassification. Moreover, as we have explained in the past (most recently, in the SNF PPS final rule for FY 2008 (72 FR 43420, August 3, 2007)), while section 315 of the Benefits Improvement and Protection Act of 2000 (BIPA, Pub. L. 106–554) does authorize us to establish such a reclassification methodology under the SNF PPS, it additionally stipulates that such reclassification cannot be implemented until we have collected the data necessary to establish a SNF-specific wage index. This, in turn, has proven to be infeasible due to ''* * * the volatility of existing SNF wage data and the significant amount of resources that would be required to improve the quality of that data'' (72 FR 43420, August 3, 2007). We continue to believe that these factors make it unlikely for such an approach to yield meaningful improvements in our ability to determine facility payments, or to justify the significant increase in administrative resources as well as burden on providers that this type of data collection would involve.

In addition, we reviewed the Medicare Payment Advisory Commission's (MedPAC) wage index recommendations as discussed in MedPAC's June 2007 report entitled, ''Report to Congress: Promoting Greater Efficiency in Medicare.'' Although some commenters recommend that we adopt the IPPS wage index policies such as reclassification and floor policies, we note that MedPAC's June 2007 report to Congress recommends that Congress ''repeal the existing hospital wage index statute, including reclassification and exceptions, and give the Secretary authority to establish new wage index systems.'' We believe that adopting the IPPS wage index policies (such as reclassification or floor) would not be prudent at this time, because MedPAC suggests that the reclassification and exception policies in the IPPS wage index alters the wage index values for one-third of IPPS hospitals. In addition, MedPAC found that the exceptions may

lead to anomalies in the wage index. By adopting the IPPS reclassification and exceptions at this time, the SNF PPS wage index could become vulnerable to problems similar to those that MedPAC identified in their June 2007 Report to Congress. However, we will continue to review and consider MedPAC's recommendations on a refined or alternative wage index methodology for the SNF PPS in future years.

We also note that section 106(b)(2) of the Medicare Improvements and Extension Act (MIEA) of 2006 (which is Division B of the Tax Relief and Health Care Act (TRHCA) of 2006, Pub. L. 109–432, collectively referred to as ''MIEA–TRHCA'') required the Secretary of Health and Human Services, taking into account MedPAC's recommendations on the Medicare wage index classification system, to include in the FY 2009 IPPS proposed rule one or more proposals to revise the wage index adjustment applied under section 1886(d)(3)(E) of the Act for purposes of the IPPS. To assist CMS in meeting the requirements of section 106(b)(2) of MIEA–TRHCA, in February 2008, CMS awarded a Task Order under its Expedited Research and Demonstration Contract, to Acumen, LLC. A comparison of the current IPPS wage index and MedPAC's are presented in the FY 2009 IPPS final rule. We plan to continue monitoring wage index research efforts and the impact or influence they may have for the SNF PPS wage index. Moreover, in light of all of the pending research and review of wage index issues in general, we believe that it would be premature at this time to initiate review of a SNF-specific wage index.

a. Clarification of New England Deemed Counties

As we discussed in the SNF PPS proposed rule for FY 2009 (73 FR 25926, May 7, 2008), two New England counties (Litchfield County, CT and Merrimack County, NH) are deemed to be urban areas under section 601(g) of the Social Security Amendments of 1983, yet are considered rural by OMB definitions. We proposed to clarify the treatment of these two New England counties in accordance with the FY 2008 IPPS final rule with comment period (72 FR 47337 through 47338, August 22, 2007), which revised the regulations at § 412.64(b)(1)(ii)(B) so that these counties are no longer considered urban, effective for discharges occurring on or after October 1, 2007. A more detailed discussion of this proposal appears in the SNF PPS proposed rule for FY 2009 (73 FR 24926). We note that all post-acute care payment systems are clarifying this policy to create consistency among provider types.

We received no comments on this aspect of the proposed rule, and we are proceeding with this technical clarification as proposed with no change. Therefore, we are treating these counties as rural for purposes of the SNF PPS.

b. Multi-Campus Hospital Wage Index Data

When a multi-campus hospital has campuses located in different labor market areas, wages and hours are reported in a single labor market area (CBSA) even though the hospital's staff is working at campuses in more than one labor market area. Currently, the wage data are reported in the labor market area of the hospital campus associated with the provider number. In the SNF PPS proposed rule for FY 2009 (73 FR 25926, May 7, 2008), we described a change in the way wage data for multi-campus hospitals located in different labor market areas (CBSAs) would be apportioned, consistent with a FY 2008 change in the IPPS rule. The IPPS wage data used to determine the FY 2009 SNF wage index apportion the wage data for multi-campus hospitals located in different labor market areas (CBSAs) to each CBSA where the campuses are located (72 FR 47317 through 47320, August 22, 2007). A more detailed discussion of this proposal appears in the SNF PPS proposed rule for FY 2009 (73 FR 24926). Adopting the treatment of this data is consistent with our use of the pre-floor, pre-reclassified IPPS wage data.

We received no comments on this aspect of the proposed rule and we are adopting this policy as proposed without change, consistent with our use of IPPS wage data. The wage index values for the FY 2009 SNF PPS are affected by this policy.

We also proposed to continue using the same methodology discussed in the SNF PPS final rule for FY 2008 (72 FR 43423) to address those geographic areas in which there are no hospitals and, thus, no hospital wage index data on which to base the calculation of the FY 2009 SNF PPS wage index. For rural geographic areas that do not have hospitals and, therefore, lack hospital wage data on which to base an area wage adjustment, we would use the average wage index from all contiguous CBSAs as a reasonable proxy. This methodology is used to construct the wage index for rural Massachusetts. However, as discussed in the FY 2008 SNF PPS proposed rule (72 FR 25539, May 4, 2007), we are not applying this methodology to rural Puerto Rico due to the distinct economic circumstances that exist there, but instead will continue using the most recent wage index previously available for that area. For urban areas without specific hospital wage index data, we will use the average wage indexes of all of the urban areas within the State to serve as a reasonable proxy for the wage index of that urban CBSA. The only urban area without wage index data available is CBSA (25980) Hinesville-Fort Stewart, GA. We received no comments on this issue and are finalizing our policy as proposed without change.

In summary, in the FY 2009 proposed rule, we proposed to use the FY 2009 wage index data (collected from cost reports submitted by hospitals for cost reporting periods beginning during FY 2005) to adjust SNF PPS payments beginning October 1, 2008. We also proposed to continue our policies for calculating wage indexes for areas without hospitals. We are finalizing the wage index and associated policies as proposed for the SNF PPS for FY 2009 without change. These data reflect the multi-campus and New England deemed counties policies discussed above.

To calculate the SNF PPS wage index adjustment, we apply the wage index adjustment to the labor-related portion of the Federal rate, which is 69.783 percent of the total rate. This percentage reflects the labor-related relative importance for FY 2009, using the revised and rebased FY 2004-based market basket. The labor-related relative importance for FY 2008 was 70.249, as shown in Table 11. We calculate the labor-related relative importance from the SNF market basket, and it approximates the labor-related portion of the total costs after taking into account historical and projected price changes between the base year and FY 2009. The price proxies that move the different cost categories in the market basket do not necessarily change at the same rate, and the relative importance captures these changes. Accordingly, the relative importance figure more closely reflects the cost share weights for FY 2009 than the base year weights from the SNF market basket.

We calculate the labor-related relative importance for FY 2009 in four steps. First, we compute the FY 2009 price index level for the total market basket and each cost category of the market basket. Second, we calculate a ratio for each cost category by dividing the FY 2009 price index level for that cost category by the total market basket price index level. Third, we determine the FY 2009 relative importance for each cost

category by multiplying this ratio by the base year (FY 2004) weight. Finally, we add the FY 2009 relative importance for each of the labor-related cost categories (wages and salaries, employee benefits, non-medical professional fees, labor-intensive services, and a portion of capital-related expenses) to produce the FY 2009 labor-related relative importance. Tables 6 and 7 below show the Federal rates by labor-related and non-labor-related components.

TABLE 6—RUG–53 CASE-MIX ADJUSTED FEDERAL RATES FOR URBAN SNFS BY LABOR AND NON-LABOR COMPONENT

RUG–III category	Total rate	Labor portion	Non-labor portion
RUX	622.93	434.70	188.23
RUL	547.06	381.75	165.31
RVX	472.28	329.57	142.71
RVL	440.41	307.33	133.08
RHX	400.35	279.38	120.97
RHL	392.76	274.08	118.68
RMX	458.31	319.82	138.49
RML	420.37	293.35	127.02
RLX	325.37	227.05	98.32
RUC	528.85	369.05	159.80
RUB	484.84	338.34	146.50
RUA	462.08	322.45	139.63
RVC	425.24	296.75	128.49
RVB	404.00	281.92	122.08
RVA	363.03	253.33	109.70
RHC	370.00	258.20	111.80
RHB	353.31	246.55	106.76
RHA	327.52	228.55	98.97
RMC	339.95	237.23	102.72
RMB	330.85	230.88	99.97
RMA	323.26	225.58	97.68
RLB	299.57	209.05	90.52
RLA	255.57	178.34	77.23
SE3	374.73	261.50	113.23
SE2	318.58	222.31	96.27
SE1	283.68	197.96	85.72
SSC	279.13	194.79	84.34
SSB	263.96	184.20	79.76
SSA	259.40	181.02	78.38
CC2	277.61	193.72	83.89
CC1	253.33	176.78	76.55
CB2	241.20	168.32	72.88
CB1	230.57	160.90	69.67
CA2	229.06	159.84	69.22
CA1	213.88	149.25	64.63
IB2	204.78	142.90	61.88
IB1	201.74	140.78	60.96
IA2	185.05	129.13	55.92
IA1	177.46	123.84	53.62
BB2	203.26	141.84	61.42
BB1	197.19	137.61	59.58
BA2	183.53	128.07	55.46
BA1	171.39	119.60	51.79
PE2	221.47	154.55	66.92
PE1	216.92	151.37	65.55
PD2	210.85	147.14	63.71
PD1	207.81	145.02	62.79
PC2	200.23	139.73	60.50
PC1	197.19	137.61	59.58
PB2	175.95	122.78	53.17
PB1	174.43	121.72	52.71
PA2	172.91	120.66	52.25
PA1	168.36	117.49	50.87

TABLE 7—RUG–53 CASE-MIX ADJUSTED FEDERAL RATES FOR RURAL SNFS BY LABOR AND NON-LABOR COMPONENT

RUG–III category	Total rate	Labor portion	Non-labor portion
RUX	650.86	454.19	196.67
RUL	578.38	403.61	174.77
RVX	487.96	340.51	147.45
RVL	457.52	319.27	138.25
RHX	408.62	285.15	123.47
RHL	401.37	280.09	121.28

TABLE 7—RUG–53 CASE-MIX ADJUSTED FEDERAL RATES FOR RURAL SNFS BY LABOR AND NON-LABOR COMPONENT—Continued

RUG–III category	Total rate	Labor portion	Non-labor portion
RMX	460.15	321.11	139.04
RML	423.91	295.82	128.09
RLX	325.45	227.11	98.34
RUC	560.98	391.47	169.51
RUB	518.94	362.13	156.81
RUA	497.19	346.95	150.24
RVC	443.02	309.15	133.87
RVB	422.73	294.99	127.74
RVA	383.59	267.68	115.91
RHC	379.62	264.91	114.71
RHB	363.68	253.79	109.89
RHA	339.03	236.59	102.44
RMC	347.08	242.20	104.88
RMB	338.38	236.13	102.25
RMA	331.13	231.07	100.06
RLB	300.81	209.91	90.90
RLA	258.76	180.57	78.19
SE3	364.59	254.42	110.17
SE2	310.96	217.00	93.96
SE1	277.61	193.72	83.89
SSC	273.26	190.69	82.57
SSB	258.77	180.58	78.19
SSA	254.42	177.54	76.88
CC2	271.81	189.68	82.13
CC1	248.62	173.49	75.13
CB2	237.02	165.40	71.62
CB1	226.87	158.32	68.55
CA2	225.42	157.30	68.12
CA1	210.93	147.19	63.74
IB2	202.23	141.12	61.11
IB1	199.33	139.10	60.23
IA2	183.38	127.97	55.41
IA1	176.13	122.91	53.22
BB2	200.78	140.11	60.67
BB1	194.98	136.06	58.92
BA2	181.93	126.96	54.97
BA1	170.33	118.86	51.47
PE2	218.17	152.25	65.92
PE1	213.83	149.22	64.61
PD2	208.03	145.17	62.86
PD1	205.13	143.15	61.98
PC2	197.88	138.09	59.79
PC1	194.98	136.06	58.92
PB2	174.68	121.90	52.78
PB1	173.23	120.89	52.34
PA2	171.78	119.87	51.91
PA1	167.44	116.84	50.60

Section 1888(e)(4)(G)(ii) of the Act also requires that we apply this wage index in a manner that does not result in aggregate payments that are greater or less than would otherwise be made in the absence of the wage adjustment. For FY 2009 (Federal rates effective October 1, 2008), we apply an adjustment to fulfill the budget neutrality requirement. We meet this requirement by multiplying each of the components of the unadjusted Federal rates by a budget neutrality factor equal to the ratio of the weighted average wage adjustment factor for FY 2008 to the weighted average wage adjustment factor for FY 2009. For this calculation, we use the same 2006 claims utilization data for both the numerator and denominator of this ratio. We define the wage adjustment factor used in this calculation as the labor share of the rate component multiplied by the wage index plus the non-labor share of the rate component. The final budget neutrality factor for this year is 1.0009. The wage index applicable to FY 2009 appears in Tables 8 and 9, which are included in the Addendum of this final rule.

In the FY 2006 SNF PPS final rule (70 FR 45026, August 4, 2005), we adopted the changes discussed in the Office of Management and Budget (OMB) Bulletin No. 03–04 (June 6, 2003), available online at *http://www.whitehouse.gov/omb/bulletins/b03-04.html*, which announced revised definitions for Metropolitan Statistical Areas (MSAs), and the creation of Micropolitan Statistical Areas and Combined Statistical Areas. In addition, OMB published subsequent bulletins regarding CBSA changes, including changes in CBSA numbers and titles. As indicated in the FY 2008 SNF PPS final rule (72 FR 43423, August 3, 2007), this and all subsequent SNF PPS rules and notices are considered to incorporate the CBSA changes published in the most recent OMB bulletin that applies to the hospital wage data used to determine the current SNF PPS wage index. The OMB bulletins may be

accessed online at *http://www.whitehouse.gov/omb/bulletins/index.html.*

In adopting the OMB CBSA geographic designations, we provided for a 1-year transition with a blended wage index for all providers. For FY 2006, the wage index for each provider consisted of a blend of 50 percent of the FY 2006 MSA-based wage index and 50 percent of the FY 2006 CBSA-based wage index (both using FY 2002 hospital data). We referred to the blended wage index as the FY 2006 SNF PPS transition wage index. As discussed in the SNF PPS final rule for FY 2006 (70 FR 45041), subsequent to the expiration of this 1-year transition on September 30, 2006, we used the full CBSA-based wage index values, as now presented in Tables 8 and 9 in the Addendum to this final rule.

4. Updates to the Federal Rates

In accordance with section 1888(e)(4)(E) of the Act, as amended by section 311 of the BIPA, the payment rates in this final rule reflect an update equal to the full SNF market basket, estimated at 3.4 percentage points. We continue to disseminate the rates, wage index, and case-mix classification methodology through the **Federal Register** before the August 1 that precedes the start of each succeeding FY.

5. Relationship of RUG-III Classification System to Existing Skilled Nursing Facility Level-of-Care Criteria

As discussed in § 413.345, we include in each update of the Federal payment rates in the **Federal Register** the designation of those specific RUGs under the classification system that represent the required SNF level of care, as provided in § 409.30. This designation reflects an administrative presumption under the refined RUG–53 classification system that beneficiaries who are correctly assigned to one of the upper 35 of the RUG–53 groups on the initial 5-day, Medicare-required assessment are automatically classified as meeting the SNF level of care definition up to and including the assessment reference date on that assessment.

A beneficiary assigned to any of the lower 18 groups is not automatically classified as either meeting or not meeting the definition, but instead receives an individual level of care determination using the existing administrative criteria. This presumption recognizes the strong likelihood that beneficiaries assigned to one of the upper 35 groups during the immediate post-hospital period require a covered level of care, which would be significantly less likely for those beneficiaries assigned to one of the lower 18 groups.

In this final rule, we are continuing the designation of the upper 35 groups for purposes of this administrative presumption, consisting of the following RUG–53 classifications: All groups within the Rehabilitation plus Extensive Services category; all groups within the Ultra High Rehabilitation category; all groups within the Very High Rehabilitation category; all groups within the High Rehabilitation category; all groups within the Medium Rehabilitation category; all groups within the Low Rehabilitation category; all groups within the Extensive Services category; all groups within the Special Care category; and, all groups within the Clinically Complex category.

6. Example of Computation of Adjusted PPS Rates and SNF Payment

Using the hypothetical SNF XYZ described in Table 10 below, the following shows the adjustments made to the Federal per diem rate to compute the provider's actual per diem PPS payment. SNF XYZ's 12-month cost reporting period begins October 1, 2008. SNF XYZ's total PPS payment would equal $30,968. The Labor and Non-labor columns are derived from Table 6.

TABLE 10—RUG–53 SNF XYZ: LOCATED IN CEDAR RAPIDS, IA (URBAN CBSA 16300) WAGE INDEX: 0.8924

RUG group	Labor	Wage index	Adj. labor	Non-labor	Adj. rate	Percent adj	Medicare days	Payment
RVX	$329.57	0.8919	$293.94	$142.71	$436.65	$436.65	14	$6,113.00
RLX	227.05	0.8919	202.51	98.32	300.83	300.83	30	9,025.00
RHA	228.55	0.8919	203.84	98.97	302.81	302.81	16	4,845.00
CC2	193.72	0.8919	172.78	83.89	256.67	* 585.21	10	5,852.00
IA2	129.13	0.8919	115.17	55.92	171.09	171.09	30	5,133.00
							100	30,968.00

* Reflects a 128 percent adjustment from section 511 of the MMA.

7. Other Issues

In the SNF PPS proposed rule for FY 2009 (73 FR 25930, May 7, 2008), we discussed several issues that relate to the SNF PPS for which we made no specific proposals, but solicited comments. These issues are noted below.

a. Staff Time and Resource Intensity Verification (STRIVE) Project

The SNF PPS proposed rule for FY 2009 (73 FR 25930, May 7, 2008) included a more detailed discussion of the current status of the STRIVE project. Specific comments on this issue, and our responses to those comments, are as follows:

Comment: Specifically referencing the STRIVE Technical Expert Panel (TEP) described in the proposed rule, one commenter expressed concern about whether registered nurses (RNs) have been adequately represented in the STRIVE process.

Response: We understand that nurses have been well represented as the STRIVE contractor has sought input from a variety of individual stakeholders. Two RNs directly representing nursing associations have attended STRIVE TEPs as observers, who not only observe the proceedings, but can also offer comments and ask questions of the STRIVE team. Other people with backgrounds as RNs constitute a significant percentage of TEP attendees overall. In fact, the STRIVE contractor has received insights from RNs attending not only as observers, but as participants, who directly interact with the STRIVE team during TEP presentations.

Comment: One commenter voiced concerns regarding whether STRIVE collected the RN staff time associated with residents separately from that of other personnel; for example, LPNs and nursing aides.

Response: STRIVE collected all nursing staff time over 2 days using personal digital assistants (PDAs). In each PDA, the name of each nursing staff member was linked to his or her

individual job title (including RN, LPN, and CNA). STRIVE does not represent the first instance in which CMS (or, rather, its predecessor, HCFA) has separately tracked different nursing staff positions as it collected time data. In the FY 2006 refinements that added nine new RUG categories, CMS calculated case-mix indexes based on nursing staff time collected in the prior time studies. That data accounted for three different disciplines: RNs, LPNs, and Aides. In fact, CMS published on its Web site a spreadsheet containing population-weighted time for each of those three positions. These data appear on the RUG refinement page of the SNF PPS Web site: *http://www.cms.hhs.gov/SNFPPS/09_RUG Refinement.asp#TopOfPage.* Under ''Downloads'' near the bottom of the page, that data can be unzipped after linking to *Unadjusted nursing weights [Zip, 15kb].*

b. Minimum Data Set (MDS) 3.0

The SNF PPS proposed rule for FY 2009 (73 FR 25931, May 7, 2008) included a more detailed discussion of the new version (3.0) of the MDS that is currently under development. Specific comments, and our responses to those comments, are as follows:

Comment: One commenter was concerned that because CMS does not currently require a resident assessment instrument to be completed at admission and at discharge, the changes in a patient's condition cannot be accurately measured and outcomes assessed, making it more difficult to tie Medicare's payments to patient outcomes.

Response: We note that the current SNF PPS is based upon the amount of resources used by a particular patient due to their unique clinical needs, and that it is not an outcome-based system. However, as noted in section III.B.7.c. of this final rule, we are currently evaluating the appropriateness of introducing certain pay for performance initiatives in the SNF setting. In the interim, although the current SNF PPS design does not provide for the completion of an assessment at admission and then again at discharge, the current Post Acute Care Payment Reform Demonstration (PAC–PRD) does provide for this. It is our intention to monitor this particular aspect of the PAC–PRD to determine both its administrative and financial impact, in order to understand the effect it could have on SNFs should it be adopted under the SNF PPS.

Comment: A commenter recommended revising the MDS to gather information solely about services furnished during the SNF stay, so that payments to SNFs are not based on services provided during the preceding hospital stay. Another stated that the draft MDS 3.0 represents an excellent modification of the current MDS, and applauded CMS for retaining the critically necessary look-back periods that, in their view, help clinicians more thoroughly evaluate and follow-up on conditions and treatments related to the hospital stay.

Response: The development of the MDS 3.0 has been and will continue to be a collaborative effort designed to maximize the quality of care provided to Medicare beneficiaries and to ensure proper payment under the SNF PPS. Under the STRIVE project, we are currently assessing each of the data elements used in the payment methodology, as well as other items that may affect resource utilization. We appreciate the commenter's concern and also recognize the role of clinicians in ensuring proper care, and will take these comments into consideration as we finalize the design of the MDS 3.0.

Comment: One commenter recommended that CMS change the look back period for therapies in section O on the MDS 3.0 from 5 days to 7 days, as it is currently on the MDS 2.0. The same commenter suggested that we continue to collect minutes for respiratory therapy on the MDS 3.0.

Response: We note that, contrary to the commenter's impression, CMS did not change the look back for therapy services on the MDS 3.0 to 5 days. In fact, the instructions for Section O4—Therapies states ''Record the *number of days each of the following therapies was administered* for at least 15 minutes a day in the last 7 Days'' (emphasis added). The January draft version of the MDS 3.0 appears at the following link: *http://www.cms.hhs.gov/NursingHomeQualityInits/Downloads/MDS30DraftVersion.pdf.* We will post the CMS Draft MDS 2.0/3.0 Crosswalk on the CMS web site. This draft version contains all of the items that potentially may appear in the final version of the MDS 3.0. We have added an item to collect the minutes of respiratory therapy services, as well as other items. The CMS Draft MDS 2.0/3.0 Crosswalk (July 2008) will be available on the MDS 3.0 Web site, which appears at the following link: *http://www.cms.hhs.gov/NursingHomeQualityInits/25_NHQIMDS30.asp.*

c. Integrated Post Acute Care Payment

In the proposed rule, we discussed our ongoing examination of possible steps toward achieving a more seamless system for the delivery and payment of post-acute care (PAC) services in various care settings. These include the PAC Payment Reform Demonstration (PAC–PRD) and its standardized patient assessment tool, the Continuity Assessment Record and Evaluation (CARE) tool. In the related area of value-based purchasing (VBP) initiatives, we described the IPPS preventable hospital-acquired conditions (HAC) payment provision, which is designed to ensure that the occurrence of selected, preventable conditions during hospitalization does not have the unintended effect of generating higher Medicare payments under the IPPS. We then discussed the potential application of this same underlying principle to other care settings in addition to IPPS hospitals. For a more detailed discussion of this issue as it pertains to the SNF setting, we refer readers to the SNF PPS proposed rule for FY 2009 (73 FR 25932, May 7, 2008).

The comments that we received, and our responses to those comments, are as follows:

Comment: We received several comments concerning the use of the CARE tool. While most of these comments acknowledged that the CARE tool holds long-term promise in terms of potentially facilitating the efficient flow of secure electronic patient information, they also cautioned that it would be far too premature at this point in time to draw any definitive conclusions about its use, given the very early stage of the research currently being conducted in this area.

Response: We agree with the commenters' observations about the CARE tool, both in terms of its significant future potential and the need to await the results of ongoing research before reaching any specific conclusions about its use. We will continue to evaluate the CARE tool closely during the remainder of the current demonstration, and we plan to keep the commenters' concerns in mind as we proceed with our research in this area.

Comment: A number of commenters stressed the need for external research in the area of PAC payment reform, as well as the importance of obtaining input from the stakeholder community.

Response: We agree with the commenters regarding the value of obtaining stakeholder input, and believe that this is, in fact, crucial to the success of our PAC payment reform efforts. We also recognize the importance of obtaining the benefit of all available findings from any research that is currently underway. We note that our own activities in this regard primarily involve applied research through our demonstration projects and internal

analysis of changes in program policy. However, we also encourage interested parties to engage in external research projects on PAC payment reform.

Comment: We received a number of comments regarding the HAC payment provision under the IPPS, and the possible adoption of a similar approach in care settings other than IPPS hospitals. The commenters recommended that CMS conduct a thorough evaluation of the HAC policy's implementation under the IPPS to determine its actual impact and efficacy before considering whether to adopt this type of approach in other care settings. Some commenters also questioned the legal authority under existing Medicare law to expand the HAC payment provision beyond the IPPS hospital setting. Other commenters raised concerns about the specific implications of applying this type of policy to the SNF setting. They cited hospital-acquired infections, dementia, and falls as examples of things that might be less appropriately characterized as ''never events'' in long-term care settings than in the acute setting. These commenters also observed that it would be unfair to penalize a SNF financially for a condition that actually developed during the preceding hospital stay but was not detected until after transfer to the SNF.

One commenter specifically noted that a SNF should not be expected to assume the financial liability for the care of a resident's decubitus ulcer if it was acquired during the preceding hospital stay. In addition, the commenters indicated that it may be difficult to differentiate a preventable healthcare-acquired complication from a normal, unavoidable aspect of a terminal illness, and also asserted that it is difficult to define the extent to which an adverse event is ''reasonably preventable.''

Response: We appreciate the commenters' thoughtful input about application of the principal embodied in the IPPS HAC payment provision to the SNF setting. While we acknowledge that infections, dementia, and falls are among the selected HACs in the IPPS acute care setting that potentially have relevance for the SNF setting as well, we agree that these and other conditions may have different implications in the SNF setting. We agree with the commenters that it would be unfair to penalize a SNF financially for a condition that developed in another care setting. We note that the IPPS HAC payment provision uses Present on Admission (POA) indicator data to exclude from payment those conditions that develop outside of the IPPS acute care stay, and a similar mechanism would be needed to apply this type of payment provision to the SNF setting should such an approach be adopted there. Regarding the commenters' concerns about the difficulty of determining which adverse events are ''reasonably preventable,'' we would expect to work closely with stakeholders to determine which conditions could reasonably be prevented through the application of evidence-based guidelines. With regard to the comments that questioned the existing legal authority for expanding the HAC payment provision beyond the IPPS hospital setting, we note that in this final rule, we are not establishing any new Medicare policies in this area. However, we will keep the commenters' concerns in mind as our implementation of VBP for all Medicare payment systems proceeds. We look forward to working with stakeholders in continuing to explore possible ways to reduce the occurrence of these preventable conditions in various care settings. Finally, we note that in addition to the comments on those aspects of PAC payment reform and VBP that we discussed in the proposed rule, we also received some comments on the current Nursing Home VBP Demonstration (referenced previously in the SNF PPS update notice for FY 2007 (71 FR 43172, July 31, 2006); however, those comments, which offered specific suggestions about the design and conduct of the demonstration, are beyond the scope of this rulemaking.

8. Miscellaneous Technical Corrections and Clarifications

In the FY 2009 proposed rule, we set forth certain technical corrections and clarifications, as discussed below.

a. Bad Debt Payments

In the SNF PPS proposed rule for FY 2009 (73 FR 25932, May 7, 2008), we proposed to make a technical revision in the regulations text at § 413.335(b), in order to reflect our longstanding policy regarding Medicare bad debt payments to SNFs.

We received no comments on this aspect of the proposed rule. We are proceeding with this technical correction as proposed with no change.

b. Additional Clarifications

In the FY 2009 proposed rule (73 FR 25932 through 25933, May 7, 2008), we also discussed the following clarifications in two other areas:

- The circumstances under which a SNF is paid at the ''default rate,'' a reduced payment made in lieu of the full SNF PPS rate that would have been payable had the SNF's resident been assessed in a timely manner; and
- The role of rehabilitation services evaluations in SNFs.

The comments that we received, and our responses, are as follows:

Comment: One commenter asserted that in some of the circumstances that we specified as triggering payment of the default rate (for example, when the SNF does not receive timely notification of a Medicare Secondary Payer denial, or of the revocation of a payment ban), the SNF is not at fault and, accordingly, should be permitted to complete an assessment retroactively.

Response: We note that SNFs are not permitted to backdate any portion of the medical record, including the resident assessment. It is for precisely this reason that we strongly encourage SNFs to follow the Medicare-required assessment schedule in any instance where there is even a possibility of Medicare payment; otherwise, the SNF risks being paid at the default rate. We also note that if a SNF has performed an ''OBRA'' assessment (that is, one conducted to meet the basic assessment schedule prescribed in the nursing home reform provisions of OBRA 1987 rather than the supplemental SNF PPS schedule for Medicare-required assessments) during this period which also happens to fall within the window for a Medicare-required assessment, the OBRA assessment can be used for Medicare payment purposes as well.

Comment: One commenter was concerned that CMS did not allow the billing of the default code when a SNF PPS assessment is inadvertently omitted, referring to an instruction in the Resident Assessment Instrument (RAI) regarding the use of the default code when an assessment was not completed. The commenter also asked whether there is a time limit on the filing of a late assessment.

Response: To bill for Part A services provided under the SNF PPS, the SNF is required to submit a HIPPS rate code and the assessment reference date (ARD) associated with the applicable RAI on the claim, except as provided in the five specific circumstances described in the FY 2009 proposed rule (73 FR 25933), under which payment is available at the default rate. In order to obtain the HIPPS code, the SNF is required to submit the RAI to the State RAI database, and to receive a Final Validation Report prior to filing the claim in order to establish the correct RUG code for billing purposes. For these reasons, the SNF cannot simply bill the default code if it misses a Medicare-required assessment. Instead, we have always provided for payment at the

default rate for what is referred to as a ''late assessment.'' A late assessment occurs when the ARD for the Medicare-required assessment is set outside of the prescribed assessment window. In order to bill the default code, the SNF must prepare a late assessment that is completed prior to the date of discharge from Medicare Part A. If no assessment is completed prior to discharge from Medicare Part A, no payment is made. The statement in the RAI that the commenter cited is more fully described in the situations set forth in Chapter 2, Section 2.9 of the RAI. We are currently in the process of revising the RAI instructions to ensure greater clarity.

Comment: One commenter expressed the belief that CMS was further penalizing SNFs for not completing Medicare-required assessments by having the SNF absorb all of the liability for SNF-level care provided to their beneficiaries, by limiting the use of the default code (outside of a late assessment) to the following situations:

- When the stay is less than 8 days within a spell of illness (that is, benefit period);
- The SNF is notified on an untimely basis or is unaware of a Medicare Secondary Payer denial;
- The SNF is notified on an untimely basis of the revocation of a payment ban;
- The beneficiary requests a demand bill; or,
- The SNF is notified on an untimely basis or is unaware of a beneficiary's disenrollment from a Medicare Advantage program.

Response: As we stated in the FY 2009 proposed rule (73 FR 25933), program instructions have been issued through the Provider Reimbursement Manual and the Medicare Claims Processing Manual since the inception of the SNF PPS to allow for the use of the default code in the first four situations described above. The proposed rule simply reiterated these policies in order to remind providers of the procedures on the use of the default code in circumstances other than that of a late assessment. We also took this opportunity to clarify that in those situations where a beneficiary was enrolled in a Medicare Advantage (MA) plan and the SNF was subsequently unaware or notified untimely of a beneficiary's disenrollment from an MA plan, the SNF could use the default code to receive payment for services provided.

Comment: One commenter asked that CMS explain why the default code is allowed to be billed when the stay is less than 8 days within a spell of illness (that is, benefit period) when the beneficiary dies or is discharged.

Response: In those situations where the beneficiary dies or is discharged before day 8 of the covered stay upon initial admission to the SNF following the qualifying three-day hospital stay, CMS has instructed SNFs either to complete an assessment to the best of their ability or to submit a claim using the default rate without the necessity of completing an assessment. The decision to allow for payment at the default rate without the completion of an assessment in this case is predicated on the administrative presumption that the beneficiary meets the SNF level of care requirements through the ARD on the Medicare-required 5-day assessment completed upon initial admission following the qualifying three-day hospital stay. The ARD on a Medicare-required 5-day assessment must be set no later than the eighth day of the covered stay.

Comment: A commenter asked that CMS explain why the default code is allowed to be billed when a beneficiary requests that the SNF submit a demand bill.

Response: As stated above, a HIPPS rate code must be present on the claim in order to receive payment under the SNF PPS. However, a SNF is not required to assess a beneficiary to classify that beneficiary into a RUG using the RAI when the SNF determines that the care is noncovered, or where the beneficiary has not met the technical requirements for a SNF stay. Therefore, a SNF may submit a claim using the default code in order to ensure payment in the event that the SNF's determination of noncoverage is subsequently reversed.

Comment: A commenter requested clarification of the term ''most recent clinical assessment,'' in the context of current program instructions that provide for payment at other than the default rate when the SNF is notified untimely or is unaware of a Medicare secondary payer (MSP) denial or the revocation of a payment ban. The commenter also requested guidance on how to handle an untimely notification of a beneficiary's disenrollment from a Medicare Advantage program. The commenter additionally requested clear instructions on the proper way to use clinical assessments in place of Medicare PPS assessments when the ''most recent clinical assessment'' does not accurately represent the level of resources currently being utilized by the beneficiary (including the number of days that can be billed using the ''most recent clinical assessment'').

Response: A SNF that finds itself in these circumstances had no reason to expect payment under the SNF PPS and is generally not required to perform Medicare-required assessments; as a result, the SNF is left without a HIPPS code that would be required to bill for payment under the SNF PPS. Instructions relating to MSP denials in the Provider Reimbursement Manual and revocation of payment bans in the Medicare Claims Processing Manual have allowed SNFs to use the most recent assessment that was completed in accordance with the schedule outlined in 42 CFR 483.20(b)(4) in order to receive payment under the Medicare program. However, the commenter makes a valid point in asking whether it is proper to submit an MDS that does not reflect the level of resources currently being utilized by beneficiaries.

After careful consideration of this question, we are revising our policy to allow the 14-day assessment required under 42 CFR 483.20(b)(4) to be used to bill for all days of covered care associated with a Medicare-required 5-day and 14-day assessment. This is the case even if the beneficiary is no longer receiving therapy services that were identified under the most recent clinical assessment. For covered days associated with the Medicare-required 30-, 60-, or 90-day assessment, the SNF must have an assessment that falls within the window of the Medicare-required assessment in order to receive full payment at the RUG level in which the resident grouped. If no assessment was completed, the SNF may submit a claim requesting payment at the default rate.

This revision recognizes that the level of resources used by a resident changes throughout the stay, and that the 14-day assessment required under § 483.20(b)(4) is less likely to represent the beneficiary's clinical status later in the stay.

We will also apply this policy to situations where the SNF is notified on an untimely basis or is unaware of a beneficiary's disenrollment from a Medicare Advantage program.

Comment: A commenter asked if guidance involving the ''special payment modifiers'' was forthcoming, noting that it was overdue.

Response: Instructions are currently being revised to provide for the proper use of the ''special payment modifiers.''

Comment: One commenter wanted to know, if a SNF can demonstrate that an ARD was determined on a document other than the MDS, whether the SNF could use such documentation to ''set'' the ARD in order to avoid payment at the default rate.

Response: It is not acceptable to backdate an MDS or to use any documentation other than the MDS itself to establish the ARD.

Comment: In a situation where the SNF receives no payment under Part A because it fails to do Medicare-required assessment before the date of discharge from Medicare Part A, a commenter questioned whether the SNF could bill Medicare Part B for services rendered, as the SNF would receive no Part A reimbursement.

Response: In situations where the SNF fails to assess the beneficiary and fails to issue the proper Notification of Non-Coverage, the SNF is liable for all services normally covered under the Medicare Part A benefit. Since the beneficiary is receiving benefits, the days will be considered Part A days and charged against the beneficiary's benefit period. The SNF may collect any applicable copayment amounts. Services that would have been payable to the SNF as Part A benefits cannot be billed to either the FI or the carrier as Part B services.

Comment: A commenter questioned why CMS was issuing a technical clarification regarding the requirement for a therapy evaluation before therapy minutes can be counted in Section P and Section T of the MDS. The commenter was concerned that while the proposed change appears to be consistent with the practices of its therapy members, questions have been raised as to whether in making this clarification, CMS inadvertently may be changing the instructions for Subpart T as they relate to projected therapy services.

Response: Due to several recent inquiries on the need for therapy evaluations, we sought to ensure that SNFs and other non-therapy ancillary providers are clear as to the requirement for a therapy evaluation for each discipline before minutes can be included on the MDS on Section P and Section T. Moreover, in the case of Section T, the projection must be based upon the evaluation performed for each discipline that reflects the needs of the patient.

IV. The Skilled Nursing Facility Market Basket Index

Section 1888(e)(5)(A) of the Act requires us to establish a SNF market basket index (input price index) that reflects changes over time in the prices of an appropriate mix of goods and services included in the SNF PPS. In the FY 2009 proposed rule, we stated that the proposed rule incorporated the latest available projections of the SNF market basket index. In this final rule, we are updating projections based on the latest available projections at the time of publication. Accordingly, we have developed a SNF market basket index that encompasses the most commonly used cost categories for SNF routine services, ancillary services, and capital-related expenses.

Each year, we calculate a revised labor-related share based on the relative importance of labor-related cost categories in the input price index. Table 11 below summarizes the final updated labor-related share for FY 2009.

TABLE 11—LABOR-RELATED RELATIVE IMPORTANCE, FY 2008 AND FY 2009

	Relative importance, labor-related, FY 2008 (04 index) 07:2 forecast	Relative importance, labor-related, FY 2009 (04 index) 08:2 forecast
Wages and salaries	51.218	51.003
Employee benefits	11.720	11.547
Nonmedical professional fees	1.333	1.331
Labor-intensive services	3.456	3.434
Capital-related (.391)	2.522	2.468
Total	70.249	69.783

Source: Global Insight, Inc., formerly DRI–WEFA.

A. Use of the Skilled Nursing Facility Market Basket Percentage

Section 1888(e)(5)(B) of the Act defines the SNF market basket percentage as the percentage change in the SNF market basket index from the average of the previous FY to the average of the current FY. For the Federal rates established in this final rule, we use the percentage increase in the SNF market basket index to compute the update factor for FY 2009. We use the Global Insight, Inc. (GII, formerly DRI–WEFA), 2nd quarter 2008 (2008q2) forecasted percentage increase in the FY 2004-based SNF market basket index for routine, ancillary, and capital-related expenses, described in the previous section, to compute the update factor. Finally, as discussed previously in section I.A. of this final rule, we no longer compute update factors to adjust a facility-specific portion of the SNF PPS rates because the initial three-phase transition period from facility-specific to full Federal rates that started with cost reporting periods beginning in July 1998 has expired.

B. Market Basket Forecast Error Adjustment

As discussed in the FY 2004 supplemental proposed rule (68 FR 34768, June 10, 2003) and finalized in the FY 2004 final rule (68 FR 46067, August 4, 2003), regulations at § 413.337(d)(2) provide for an adjustment to account for market basket forecast error. The initial adjustment applied to the update of the FY 2003 rate for FY 2004, and took into account the cumulative forecast error for the period from FY 2000 through FY 2002. Subsequent adjustments in succeeding FYs take into account the forecast error from the most recently available FY for which there is final data, and apply whenever the difference between the forecasted and actual change in the market basket exceeds a specified threshold. We originally used a 0.25 percentage point threshold for this purpose; however, for the reasons specified in the FY 2008 SNF PPS final rule (72 FR 43425, August 3, 2007), we adopted a 0.5 percentage point threshold effective with FY 2008. As discussed previously in section I.F.2. of this final rule, as the difference between the estimated and actual amounts of increase in the market basket index for FY 2007 (the most recently available FY for which there is final data) does not exceed the 0.5 percentage point threshold, the payment rates for FY 2009 do not include a forecast error adjustment.

The following is a specific comment that we received on the market basket forecast error adjustment, and our response:

Comment: A few commenters suggested that CMS apply a cumulative forecast error to account for all of the variations in the market basket forecasts since FY 2004 (that is, as of when CMS implemented the market basket forecast error correction policy.)

Response: For FY 2004, CMS applied a one-time, cumulative forecast error correction of 3.26 percent (68 FR 46036). Since that time, the forecast errors have been relatively small and clustered near zero. We believe the forecast error correction should be applied only when the forecast error in any given year reflects a percentage such that the SNF PPS base payment rate does not adequately reflect the historical price changes faced by SNFs. We continue to believe that the forecast error adjustment mechanism should appropriately be reserved for the type of major, unexpected change that initially gave rise to this policy, rather than the minor variances that are a routine and inherent aspect of this type of statistical measurement.

C. Federal Rate Update Factor

Section 1888(e)(4)(E)(ii)(IV) of the Act requires that the update factor used to establish the FY 2009 Federal rates be at a level equal to the full market basket percentage change. Accordingly, to establish the update factor, we determined the total growth from the average market basket level for the period of October 1, 2007 through September 30, 2008 to the average market basket level for the period of October 1, 2008 through September 30, 2009. Using this process, the market basket update factor for FY 2009 SNF Federal rates is 3.4 percent. We used this update factor to compute the Federal portion of the SNF PPS rate shown in Tables 2 and 3.

We received one comment expressing support for our proposed full market basket increase for FY 2009. We thank the commenter and again note that the final update factor for FY 2009 is 3.4 percent.

V. Consolidated Billing

Section 4432(b) of the BBA established a consolidated billing requirement that places with the SNF itself the Medicare billing responsibility for virtually all of the services that the SNF's residents receive, except for a small number of services that the statute specifically identifies as being excluded from this provision. Section 103 of the BBRA amended this provision by further excluding a number of individual ''high-cost, low-probability'' services, identified by the Healthcare Common Procedure Coding System (HCPCS) codes, within several broader categories (chemotherapy and its administration, radioisotope services, and customized prosthetic devices) that otherwise remained subject to the provision. We discuss this BBRA amendment in greater detail in the FY 2001 SNF PPS proposed rule (65 FR 19231 through 19232, April 10, 2000), and the FY 2001 SNF PPS final rule (65 FR 46790 through 46795, July 31, 2000), as well as in Program Memorandum AB–00–18 (Change Request #1070), issued March 2000, which is available online at *http://www.cms.hhs.gov/transmittals/downloads/ab001860.pdf*.

Section 313 of the BIPA further amended this provision by repealing its Part B aspect; that is, its applicability to services furnished to a resident during a SNF stay that Medicare does not cover. (However, physical, occupational, and speech-language therapy remain subject to consolidated billing, regardless of whether the resident who receives these services is in a covered Part A stay.) We discuss this BIPA amendment in greater detail in the FY 2002 SNF PPS proposed rule (66 FR 24020 through 24021, May 10, 2001), and the FY 2002 SNF PPS final rule (66 FR 39587 through 39588, July 31, 2001).

In addition, section 410 of the MMA amended this provision by excluding certain practitioner and other services furnished to SNF residents by RHCs and FQHCs. We discuss this MMA amendment in greater detail in the SNF PPS update notice for FY 2005 (69 FR 45818 through 45819, July 30, 2004), as well as in Program Transmittal #390 (Change Request #3575), issued December 10, 2004, which is available online at *http://www.cms.hhs.gov/transmittals/downloads/r390cp.pdf*.

To date, the Congress has enacted no further legislation affecting the consolidated billing provision. However, as noted above and explained in the FY 2001 SNF PPS proposed rule (65 FR 19232, April 10, 2000), the amendments enacted in section 103 of the BBRA not only identified for exclusion from this provision a number of particular service codes within four specified categories (that is, chemotherapy items, chemotherapy administration services, radioisotope services, and customized prosthetic devices), but also gave the Secretary ''* * * the authority to designate additional, individual services for exclusion within each of the specified service categories.'' In the FY 2001 SNF PPS proposed rule, we also noted that the BBRA Conference report (H.R. Rep. No. 106–479 at 854 (1999) (Conf. Rep.)) characterizes the individual services that this legislation targets for exclusion as, ''* * * high-cost, low probability events that could have devastating financial impacts because their costs far exceed the payment [SNFs] receive under the prospective payment system* * *.'' According to the conferees, section 103(a) ''* * * is an attempt to exclude from the PPS certain services and costly items that are provided infrequently in SNFs * * * For example, * * * chemotherapy drugs [that] are not typically administered in a SNF, or are exceptionally expensive, or are given as infusions, thus requiring special staff expertise to administer.'' By contrast, we noted that the Congress declined to designate for exclusion any of the remaining services within those four categories (thus leaving all of those services subject to SNF consolidated billing), because they ''* * * are relatively inexpensive and are administered routinely in SNFs''.

As we further explained in the FY 2001 SNF PPS final rule (65 FR 46790, July 31, 2000), any additional service codes that we might designate for exclusion under our discretionary authority must meet the same criteria that the Congress used in identifying the original codes excluded from consolidated billing under section 103(a) of the BBRA: Our longstanding policy is that they must fall within one of the four service categories specified in the BBRA, and they also must meet the same standards of high cost and low probability in the SNF setting. Accordingly, we characterized this statutory authority to identify additional service codes for exclusion '' * * * as essentially affording the flexibility to revise the list of excluded codes in response to changes of major significance that may occur over time (for example, the development of new medical technologies or other advances in the state of medical practice)'' (65 FR 46791). In the FY 2009 proposed rule (73 FR 25934, May 7, 2008), we specifically invited public comments identifying codes in any of these four service categories (chemotherapy items, chemotherapy administration services, radioisotope services, and customized prosthetic devices) representing recent medical advances that might meet our criteria for exclusion from SNF consolidated billing.

Specific comments on this issue and our responses to those comments are as follows:

Comment: Several commenters submitted additional chemotherapy codes that they recommended for exclusion from consolidated billing.

Response: We note that the law (at section 1888(e)(2)(A)(iii)(II) of the Act) describes the chemotherapy code ranges that the BBRA identified for exclusion in terms of the version of the HCPCS codes that was in existence ''as of July 1, 1999.'' In the SNF PPS final rule for FY 2006 (70 FR 45048, August 4, 2005), we reiterated our belief that the authority granted by the BBRA to identify additional codes for exclusion within this category was ''* * * essentially affording the flexibility to revise the list of excluded codes in response to changes of major significance *that may occur over time* (for example, the development of new medical technologies or other advances in the state of medical practice)'' (emphasis added). Accordingly, we view this discretionary authority as applying *only* to codes that were created subsequent to that point, and not to those codes that were in existence as of July 1, 1999.

A review of the particular chemotherapy codes that commenters submitted in response to the proposed rule's solicitation for comment revealed that many of them were codes that had already been submitted for consideration in previous years, and that we had previously decided not to exclude. Other codes that commenters submitted were themselves already in existence as of July 1, 1999, but did not fall within the specific code ranges statutorily designated for exclusion in the BBRA. As the statute does not specifically exclude these already-existing codes, we are not adding them to the exclusion list. Most of the other codes submitted represent services that, for various reasons, do not meet the statutory criteria for exclusion. For example, some represent oral medications that can be administered routinely in SNFs and are not reasonably characterized as ''requiring special staff expertise to administer.'' Others represent drugs that are administered *in conjunction with* chemotherapy to address side effects such as nausea; however, as such drugs are not in themselves inherently chemotherapeutic in nature, they do not fall within the excluded chemotherapy category designated in the BBRA. Finally, some other codes that were submitted represent services that, in fact, are *already excluded* from consolidated billing under existing instructions.

Comment: Although the FY 2008 SNF PPS proposed rule specifically invited comments on possible exclusions within the particular service categories identified in the BBRA legislation, a number of commenters took this opportunity to reiterate concerns about other aspects of consolidated billing. For example, some commenters reiterated past suggestions that CMS unbundle additional service categories such as specialized wound care procedures (including hyperbaric oxygen therapy) and ambulance services. Another commenter advocated the exclusion of custom fabricated orthotics, stating that in the absence of such an exclusion SNFs might deny access to needed orthotic treatments during the Medicare-covered portion of the stay.

Response: As we have consistently stated (most recently, in the SNF PPS final rule for FY 2008 (72 FR 43431, August 3, 2007)), the BBRA authorizes us to identify additional services for exclusion *only within* those particular service categories—chemotherapy and its administration; radioisotope services; and, customized prosthetic devices (a term which *does not* encompass orthotics)—that it has designated for this purpose, and does not give us the authority to create additional categories of excluded services beyond those specified in the law. Accordingly, as the particular services that these commenters recommended for exclusion do not fall within one of the specific service categories designated for this purpose in the statute itself, these services remain subject to consolidated billing. Regarding the concern about the possibility of a SNF withholding access to a needed item or service during the covered portion of a stay because it is bundled, we note that the requirements for program participation at § 483.25 require participating SNFs to provide the necessary care and services to attain or maintain each resident's ''* * * highest practicable state of physical, mental, and psychosocial well-being * * *.'' Thus, a SNF which delays or denies access to needed care could jeopardize its Medicare program certification.

Comment: One commenter stated that the existing exclusion of certain customized prosthetic devices should be expanded to encompass *all* prosthetics that are designated by an L code.

Response: When the Congress enacted the selective consolidated billing exclusion (by HCPCS code) of certain customized prosthetic devices in section 103 of the BBRA, it specifically identified certain designated L codes for exclusion, while omitting others from the exclusion list. Accordingly, we believe it is clear that the assignment of an L code to a particular prosthetic does not, in itself, automatically serve to qualify that item for exclusion from consolidated billing.

Comment: Several commenters took this opportunity to revisit the existing set of administrative exclusions for certain high-intensity outpatient hospital services under the regulations in 42 CFR § 411.15(p)(3)(iii), and expressed the view that these exclusions should not be limited to only those services that actually occur in the hospital setting, but rather, should also encompass services performed in other, non-hospital settings as well. As examples, they cited services such as magnetic resonance imaging (MRIs) and computerized axial tomography (CT) scans furnished in freestanding imaging centers, and radiation therapy furnished in physicians' clinics or ambulatory care centers, all of which may be less expensive and more accessible in certain particular localities (such as rural areas) than those furnished by hospitals.

Response: We believe the comments that reflect previous suggestions for expanding this administrative exclusion to encompass services furnished in non-hospital settings indicate a continued misunderstanding of the underlying purpose of this provision. As we have consistently noted in response to comments on this issue in previous years (most recently, in the SNF PPS final rule for FY 2008 (72 FR 43431, August 3, 2007), and as also explained in Medicare Learning Network (MLN) Matters article SE0432 (available online at *http://www.cms.hhs.gov/MLNMattersArticles/downloads/SE0432.pdf*), the rationale for establishing this exclusion was to address those types of services that are so far beyond the normal scope of SNF care that they *require the intensity of the hospital setting* in order to be furnished safely and effectively.

Moreover, we note that when the Congress enacted the consolidated billing exclusion for certain RHC and FQHC services in section 410 of the MMA, the accompanying legislative history's description of present law acknowledged that the existing exclusions for exceptionally intensive outpatient services are specifically limited to ''* * * certain outpatient services *from a Medicare-participating hospital or critical access hospital* * * *'' (emphasis added). (See the House Ways and Means Committee Report (H. Rep. No. 108–178, Part 2 at 209), and the Conference Report (H. Conf. Rep. No. 108–391 at 641).) Therefore, these services are excluded from SNF consolidated billing *only* when furnished in the outpatient hospital or CAH setting, and not when furnished in other, freestanding (non-hospital or non-CAH) settings.

Accordingly, establishing a categorical exclusion for these services that would apply irrespective of the setting in which they are furnished would require the enactment of legislation by the Congress to amend the law itself.

Comment: Other commenters reiterated previous suggestions on expanding the existing chemotherapy exclusion to encompass related drugs that are commonly administered in conjunction with chemotherapy in order to treat the side effects of the chemotherapy drugs. The commenters cited examples such as anti-emetics (anti-nausea drugs), erythropoietin (EPO), and Reclast, an osteoporosis drug administered via a once-yearly infusion.

Response: As we have noted previously in this final rule and in response to comments on this issue in the past (most recently, in the SNF PPS final rule for FY 2008 (72 FR 43432, August 3, 2007), the BBRA authorizes us to identify additional services for exclusion *only within* those particular service categories—chemotherapy and its administration; radioisotope services; and, customized prosthetic devices—that it has designated for this purpose, and does not give us the authority to exclude other services which, though they may be related, fall outside of the specified service categories themselves. Thus, while anti-emetics, for example, are commonly administered *in conjunction with* chemotherapy, they are not themselves inherently chemotherapeutic in nature and, consequently, do not fall within the excluded chemotherapy category designated in the BBRA. In the case of Reclast, in the FY 2008 SNF PPS final rule (72 FR 43432, August 3, 2007), we discussed the specific rationale for our decision not to exclude this particular drug, explaining that such an exclusion could not be accomplished administratively under our existing authority. We also explained in the FY 2008 final rule that the existing statutory exclusion from consolidated billing for EPO is effectively defined by the scope of coverage under the Part B EPO benefit at section 1861(s)(2)(O) of the Act; that benefit, in turn, specifically limits EPO coverage to dialysis patients, and does not provide for such coverage in any other, non-dialysis situations such as chemotherapy (72 FR 43432).

VI. Application of the SNF PPS to SNF Services Furnished by Swing-Bed Hospitals

In accordance with section 1888(e)(7) of the Act, as amended by section 203 of the BIPA, Part A pays CAHs on a reasonable cost basis for SNF services furnished under a swing-bed agreement. However, effective with cost reporting periods beginning on or after July 1, 2002, the swing-bed services of non-CAH rural hospitals are paid under the SNF PPS. As explained in the FY 2002 SNF PPS final rule (66 FR 39562, July 31, 2001), we selected this effective date consistent with the statutory provision to integrate swing-bed rural hospitals into the SNF PPS by the end of the SNF transition period, June 30, 2002.

Accordingly, all non-CAH swing-bed rural hospitals have come under the SNF PPS as of June 30, 2003. Therefore, all rates and wage indexes outlined in earlier sections of this final rule, also apply to all non-CAH swing-bed rural hospitals. A complete discussion of assessment schedules, the MDS and the transmission software (RAVEN–SB for Swing Beds) appears in the final rule for FY 2002 (66 FR 39562, July 31, 2001). The latest changes in the MDS for swing-bed rural hospitals appear on our SNF PPS Web site, *http://www.cms.hhs.gov/snfpps.*

We received no comments on this aspect of the proposed rule and are making no changes in this final rule.

VII. Provisions of the Final Rule

In this final rule, in addition to accomplishing the required annual update of the SNF PPS payment rates, we are making the following revisions in the regulations text:

- Revise the existing SNF PPS definitions of ''urban'' and ''rural'' areas that appear in § 413.333 to include updated cross-references to the corresponding IPPS definitions in Part 412, subpart D.
- Make a technical revision at § 413.335(b) to reflect Medicare bad debt payments to SNFs.

VIII. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

IX. Regulatory Impact Analysis

A. Overall Impact

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

Executive Order 12866, as amended, directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). This final rule is a major rule, as defined in Title 5, United States Code, section 804(2), because we estimate the FY 2009 impact of the standard update will be to increase payments to SNFS by approximately $780 million dollars. We are also considering this an economically significant rule under Executive Order 12866.

The update set forth in this final rule would apply to payments in FY 2009. Accordingly, the analysis that follows only describes the impact of this single year. In accordance with the requirements of the Act, we will publish a notice for each subsequent FY that will provide for an update to the payment rates and include an associated impact analysis.

The RFA requires agencies to analyze options for regulatory relief of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small government jurisdictions. Most SNFs and most other providers and suppliers are small entities, either by their nonprofit status or by having revenues of $11.5 million or less in any 1 year. For purposes of the RFA, approximately 53 percent of SNFs are considered small businesses according to the Small Business Administration's latest size standards, with total revenues of $11.5 million or less in any 1 year (for further information, see 65 FR 69432, November 17, 2000). Individuals and States are not included in the definition of a small entity. In addition, approximately 29 percent of SNFs are nonprofit organizations.

This final rule updates the SNF PPS rates published in the FY 2008 SNF PPS final rule (72 FR 43412, August 3, 2007) and the associated correction notices published on September 28, 2007 (72 FR 55085) and on November 30, 2007 (72 FR 67652), resulting in a net change in payments of an estimated $780 million for FY 2009. As indicated in Table 12, the effect on facilities will be a net positive impact of 3.4 percent. We note that while all providers will experience

an overall net increase in payments, some providers may experience larger increases than others due to the distributional impact of the FY 2009 wage indexes and the degree of Medicare utilization.

The Department of Health and Human Services generally uses a revenue impact of 3 to 5 percent as a significance threshold under the RFA. While this final rule is considered major, its relative impact on SNFs overall is positive due to the application of the 3.4 percent market basket adjustment. Thus, while the overall impact is positive on the industry as a whole, and on small entities specifically, it is highly variable, with the majority of SNFs having significantly lower Medicare utilization. Therefore, for most facilities, the impact on total facility revenues, considering all payers, should be substantially less than those shown in Table 12. However, in view of the potential economic impact on small entities, we have considered regulatory alternatives.

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. This final rule affects small rural hospitals that furnish SNF services under a swing-bed agreement, or that have a hospital-based SNF. We anticipate that the impact on small rural hospitals will be similar to the impact on SNF providers overall.

Section 202 of the UMRA also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2008, that threshold is approximately $130 million. This final rule will not have a substantial effect on State, local, or tribal governments, or on private sector costs.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates regulations that impose substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. As stated above, this final rule will have no substantial effect on State and local governments.

B. Anticipated Effects

This final rule sets forth updates of the SNF PPS rates contained in the FY 2008 final rule (72 FR 43412, August 3, 2007) and the associated correction notices published on September 28, 2007 (72 FR 55085) and on November 30, 2008 (72 FR 67652). Based on the above, we estimate the FY 2009 impact would be a net increase of $780 million in payments to SNFs. The impact analysis of this final rule represents the projected effects of the changes in the SNF PPS from FY 2008 to FY 2009. 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.

We note that certain events may combine to limit the scope or accuracy of our impact analysis, because an analysis is future-oriented and, thus, very susceptible to changes in provider behavior related to such events as newly-legislated general Medicare program funding changes by the Congress. Although these changes may not be specific to the SNF PPS, the nature of the Medicare program is 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 SNFs.

In accordance with section 1888(e)(4)(E) of the Act, we update the payment rates for FY 2008 by a factor equal to the full market basket index percentage increase plus the FY 2007 forecast error adjustment to determine the payment rates for FY 2009. The special AIDS add-on established by section 511 of the MMA remains in effect until ''* * * such date as the Secretary certifies that there is an appropriate adjustment in the case mix * * *.'' We have not provided a separate impact analysis for this MMA provision. Our latest estimates indicate that there are less than 2,700 beneficiaries who qualify for the AIDS add-on payment. The impact on Medicare is included in the ''total'' column of Table 12. In updating the rates for FY 2009, we made a number of standard annual revisions and clarifications mentioned elsewhere in this final rule (for example, the update to the wage and market basket indexes used for adjusting the Federal rates). These revisions would increase payments to SNFs by approximately $780 million for FY 2009.

The impacts are shown in Table 12. The breakdown of the various categories of data in the table follows.

The first column shows the breakdown of all SNFs by urban or rural status, hospital-based or freestanding status, and census region.

The first row of figures in the first column describes the estimated effects of the various changes on all facilities. The next six rows show the effects on facilities split by hospital-based, freestanding, urban, and rural categories. The urban and rural designations are based on the location of the facility under the CBSA designation. The next twenty-two rows show the effects on urban versus rural status by census region.

The second column in the table shows the number of facilities in the impact database.

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. The total impact of this change is zero percent; however, there are distributional effects of the change.

The fourth column shows the effect of all of the changes on the FY 2009 payments. The market basket increase of 3.4 percentage points is constant for all providers and, though not shown individually, is included in the total column. It is projected that aggregate payments will increase by 3.4 percent, assuming facilities do not change their care delivery and billing practices in response.

As can be seen from this table, the effects of the changes vary by specific types of providers and by location. For example, all facilities experience payment increases, however, some providers (for example, those in the urban Pacific region) show a greater increase. In fact, payment increases for facilities in the urban and rural Pacific areas of the country are the highest for any of the provider categories at 4.9 percent and 4.5 percent, respectively.

TABLE 12—PROJECTED IMPACT TO THE SNF PPS FOR FY 2009

	Number of facilities	Updated wage data (percent)	Total FY 2009 change (percent)
Total	15,373	0.0	3.4
Urban	10,497	0.0	3.4
Rural	4,876	0.0	3.4
Hospital based urban	1,528	−0.1	3.3
Freestanding urban	8,969	0.0	3.4
Hospital based rural	1,154	0.0	3.4
Freestanding rural	3,722	0.0	3.4
Urban by region:			
New England	840	0.2	3.6
Middle Atlantic	1,490	−0.5	2.9
South Atlantic	1,734	−0.3	3.1
East North Central	2,010	−0.5	2.9
East South Central	530	0.0	3.4
West North Central	827	0.6	4.0
West South Central	1,166	0.2	3.6
Mountain	472	0.0	3.4
Pacific	1,420	1.5	4.9
Outlying	8	0.6	4.0
Rural by region:			
New England	150	−1.8	1.6
Middle Atlantic	257	−0.2	3.2
South Atlantic	603	0.0	3.4
East North Central	940	−0.6	2.8
East South Central	552	0.3	3.7
West North Central	1,144	0.5	4.0
West South Central	821	0.5	3.9
Mountain	259	−0.1	3.3
Pacific	148	1.1	4.5
Outlying	2	0.4	3.9
Ownership:			
Government	665	−0.1	3.3
Proprietary	11,286	0.0	3.4
Voluntary	3,422	−0.1	3.3

We received one comment on the regulatory impact section. The comment and our response to the comment is as follows:

Comment: One commenter asserted that the regulatory impact analysis understates the effects of the policy changes associated with the proposed recalibration of the case-mix weights (as discussed in the FY 2009 SNF PPS proposed rule) on state and local governments, as well as small entities. The commenter stated that the loss of tax revenues for State and local governments will be substantial.

Response: As we have decided not to pursue the recalibration of the case-mix weights at this time, SNFs will see an increase of approximately 3.4 percent in their payments. However, should we decide to recalibrate the case-mix weights in the future, we wish to make clear that the law and regulations that govern SNF payment rate updates do not provide for considering indirect effects, induced effects, or ripple effects on economic activity. Moreover, as such secondary effects, if any, would occur within the context of a dynamic, market-based economy, we expect that the market would properly adjust its economic resources in reaction to the appropriately recalibrated SNF PPS payments. For these reasons, we believe that the regulatory impact analysis adequately estimates the proposed rule's economic impact.

C. Alternatives Considered

Section 1888(e) of the Act establishes the SNF PPS for the payment of Medicare SNF services for cost reporting periods beginning on or after July 1, 1998. This section of the statute prescribes a detailed formula for calculating payment rates under the SNF PPS, and does not provide for the use of any alternative methodology. It specifies that the base year cost data to be used for computing the SNF PPS payment rates must be from FY 1995 (October 1, 1994, through September 30, 1995). In accordance with the statute, we also incorporated a number of elements into the SNF PPS (for example, case-mix classification methodology, the MDS assessment schedule, a market basket index, a wage index, and the urban and rural distinction used in the development or adjustment of the Federal rates). Further, section 1888(e)(4)(H) of the Act specifically requires us to disseminate the payment rates for each new FY through the **Federal Register**, and to do so before the August 1 that precedes the start of the new FY. Accordingly, we are not pursuing alternatives with respect to the payment methodology as discussed above.

In finalizing our decision on the proposed FY 2009 recalibration of the case-mix adjustment, we reviewed the options considered in the proposed rule and took into consideration comments received during the public comment period as discussed in the preamble.

Although the 2001 data were the best source available at the time the FY 2006 refinements were introduced, the distribution of paid days, a key component in adjusting the RUG–53 case-mix weights, was based solely on estimated utilization. The 2006 data provide a more recent and a more accurate source of RUG–53 utilization based on actual utilization, and are an appropriate source to use for case-mix adjustment. However, in light of the potential ramifications of this proposal

and the complexity of the issues involved, we believe that it would be prudent to take additional time to evaluate the proposal in order to further consider consequences that may result from it. Accordingly, we are not proceeding with the proposed recalibration at this time, pending further analysis. We note that as we continue to evaluate this issue, we fully expect to implement such an adjustment in the future.

D. Accounting Statement

As required by OMB Circular A–4 (available at *http://www.whitehouse.gov/omb/circulars/a004/a-4.pdf*), in Table 13 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 change in Medicare payments under the SNF PPS as a result of the policies in this final rule based on the data for 15,373 SNFs in our database. All expenditures are classified as transfers to Medicare providers (that is, SNFs).

TABLE 13—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES, FROM THE 2008 SNF PPS FISCAL YEAR TO THE 2009 SNF PPS FISCAL YEAR

[In millions]

Category	Transfers
Annualized Monetized Transfers.	$780 million.
From Whom to Whom?	Federal Government to SNF Medicare Providers.

E. Conclusion

Overall estimated payments for SNFs in FY 2009 are projected to increase by $780 million dollars compared with those in FY 2008. We estimate that SNFs in urban areas will experience a positive change of 3.4 percent in estimated payments compared with FY 2008. We estimate that SNFs in rural areas will experience a 3.4 percent increase in estimated payments compared with FY 2008. Providers in the urban Pacific region and the rural Pacific region show the greatest increases in payments of 4.9 percent and 4.5 percent, respectively.

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

List of Subjects in 42 CFR Part 413

Health facilities, Kidney diseases, 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 follows:

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES; PROSPECTIVELY DETERMINED PAYMENT RATES FOR SKILLED NURSING FACILITIES

■ 1. The authority citation for part 413 continues to read as follows:

Authority: Secs. 1102, 1812(d), 1814(b), 1815, 1833(a), (i), and (n), 1861(v), 1871, 1881, 1883, and 1886 of the Social Security Act (42 U.S.C. 1302, 1395d(d), 1395f(b), 1395g, 1395l(a), (i), and (n), 1395x(v), 1395hh, 1395rr, 1395tt, and 1395ww); and sec. 124 of Public Law 106–133 (113 Stat. 1501A–332).

Subpart J—Prospective Payment for Skilled Nursing Facilities

■ 2. In § 413.333, the definitions of the terms ''rural area'' and ''urban area'' are revised to read as follows:

§ 413.333 Definitions.

* * * * *

Rural area means, for services provided on or after July 1, 1998, but before October 1, 2005, an area as defined in § 412.62(f)(1)(iii) of this chapter. For services provided on or after October 1, 2005, *rural area* means an area as defined in § 412.64(b)(1)(ii)(C) of this chapter.

Urban area means, for services provided on or after July 1, 1998, but before October 1, 2005, an area as defined in § 412.62(f)(1)(ii) of this chapter. For services provided on or after October 1, 2005, *urban area* means an area as defined in § 412.64(b)(1)(ii)(A) and § 412.64(b)(1)(ii)(B) of this chapter.

§ 413.335 [Amended]

■ 3. Section 413.335 is amended by revising paragraph (b) to read as follows:

§ 413.335 Basis of payment.

* * * * *

(b) *Payment in full.* (1) The payment rates represent payment in full (subject to applicable coinsurance as described in subpart G of part 409 of this chapter) for all costs (routine, ancillary, and capital-related) associated with furnishing inpatient SNF services to Medicare beneficiaries other than costs associated with approved educational activities as described in § 413.85.

(2) In addition to the Federal per diem payment amounts, SNFs receive payment for bad debts of Medicare beneficiaries, as specified in § 413.89 of this part.

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

Dated: July 18, 2008.

Kerry Weems,

Acting Administrator, Centers for Medicare & Medicaid Services.

Dated: July 31, 2008.

Michael O. Leavitt,

Secretary.

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

Addendum—FY 2009 CBSA Wage Index Tables

In this addendum, we provide the wage index tables referred to in the preamble to this final rule. Tables 8 and 9 display the CBSA-based wage index values for urban and rural providers.

TABLE 8—FY 2009 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS

CBSA code	Urban area (constituent counties)	Wage index
10180	Abilene, TX	0.8097
	Callahan County, TX	
	Jones County, TX	
	Taylor County, TX	
10380	Aguadilla-Isabela-San Sebastián, PR	0.3399
	Aguada Municipio, PR	
	Aguadilla Municipio, PR	
	Añasco Municipio, PR	
	Isabela Municipio, PR	
	Lares Municipio, PR	

TABLE 8—FY 2009 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
	Moca Municipio, PR	
	Rincón Municipio, PR	
	San Sebastián Municipio, PR	
10420	Akron, OH	0.8917
	Portage County, OH	
	Summit County, OH	
10500	Albany, GA	0.8703
	Baker County, GA	
	Dougherty County, GA	
	Lee County, GA	
	Terrell County, GA	
	Worth County, GA	
10580	Albany-Schenectady-Troy, NY	0.8707
	Albany County, NY	
	Rensselaer County, NY	
	Saratoga County, NY	
	Schenectady County, NY	
	Schoharie County, NY	
10740	Albuquerque, NM	0.9210
	Bernalillo County, NM	
	Sandoval County, NM	
	Torrance County, NM	
	Valencia County, NM	
10780	Alexandria, LA	0.8130
	Grant Parish, LA	
	Rapides Parish, LA	
10900	Allentown-Bethlehem-Easton, PA-NJ	0.9499
	Warren County, NJ	
	Carbon County, PA	
	Lehigh County, PA	
	Northampton County, PA	
11020	Altoona, PA	0.8521
	Blair County, PA	
11100	Amarillo, TX	0.8927
	Armstrong County, TX	
	Carson County, TX	
	Potter County, TX	
	Randall County, TX	
11180	Ames, IA	0.9487
	Story County, IA	
11260	Anchorage, AK	1.1931
	Anchorage Municipality, AK	
	Matanuska-Susitna Borough, AK	
11300	Anderson, IN	0.8760
	Madison County, IN	
11340	Anderson, SC	0.9570
	Anderson County, SC	
11460	Ann Arbor, MI	1.0445
	Washtenaw County, MI	
11500	Anniston-Oxford, AL	0.7927
	Calhoun County, AL	
11540	Appleton, WI	0.9440
	Calumet County, WI	
	Outagamie County, WI	
11700	Asheville, NC	0.9142
	Buncombe County, NC	
	Haywood County, NC	
	Henderson County, NC	
	Madison County, NC	
12020	Athens-Clarke County, GA	0.9591
	Clarke County, GA	
	Madison County, GA	
	Oconee County, GA	
	Oglethorpe County, GA	
12060	Atlanta-Sandy Springs-Marietta, GA	0.9754
	Barrow County, GA	
	Bartow County, GA	
	Butts County, GA	
	Carroll County, GA	
	Cherokee County, GA	
	Clayton County, GA	
	Cobb County, GA	

TABLE 8—FY 2009 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
	Coweta County, GA	
	Dawson County, GA	
	DeKalb County, GA	
	Douglas County, GA	
	Fayette County, GA	
	Forsyth County, GA	
	Fulton County, GA	
	Gwinnett County, GA	
	Haralson County, GA	
	Heard County, GA	
	Henry County, GA	
	Jasper County, GA	
	Lamar County, GA	
	Meriwether County, GA	
	Newton County, GA	
	Paulding County, GA	
	Pickens County, GA	
	Pike County, GA	
	Rockdale County, GA	
	Spalding County, GA	
	Walton County, GA	
12100	Atlantic City-Hammonton, NJ	1.1973
	Atlantic County, NJ	
12220	Auburn-Opelika, AL	0.7544
	Lee County, AL	
12260	Augusta-Richmond County, GA-SC	0.9615
	Burke County, GA	
	Columbia County, GA	
	McDuffie County, GA	
	Richmond County, GA	
	Aiken County, SC	
	Edgefield County, SC	
12420	Austin-Round Rock, TX	0.9536
	Bastrop County, TX	
	Caldwell County, TX	
	Hays County, TX	
	Travis County, TX	
	Williamson County, TX	
12540	Bakersfield, CA	1.1189
	Kern County, CA	
12580	Baltimore-Towson, MD	1.0055
	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	1.0174
	Penobscot County, ME	
12700	Barnstable Town, MA	1.2643
	Barnstable County, MA	
12940	Baton Rouge, LA	0.8163
	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	1.0120
	Calhoun County, MI	
13020	Bay City, MI	0.9248
	Bay County, MI	
13140	Beaumont-Port Arthur, TX	0.8479
	Hardin County, TX	
	Jefferson County, TX	
	Orange County, TX	
13380	Bellingham, WA	1.1640
	Whatcom County, WA	

TABLE 8—FY 2009 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
13460	Bend, OR	1.1375
	Deschutes County, OR	
13644	Bethesda-Frederick-Gaithersburg, MD	1.0548
	Frederick County, MD	
	Montgomery County, MD	
13740	Billings, MT	0.8805
	Carbon County, MT	
	Yellowstone County, MT	
13780	Binghamton, NY	0.8574
	Broome County, NY	
	Tioga County, NY	
13820	Birmingham-Hoover, AL	0.8792
	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	0.7148
	Burleigh County, ND	
	Morton County, ND	
13980	Blacksburg-Christiansburg-Radford, VA	0.8155
	Giles County, VA	
	Montgomery County, VA	
	Pulaski County, VA	
	Radford City, VA	
14020	Bloomington, IN	0.8979
	Greene County, IN	
	Monroe County, IN	
	Owen County, IN	
14060	Bloomington-Normal, IL	0.9323
	McLean County, IL	
14260	Boise City-Nampa, ID	0.9268
	Ada County, ID	
	Boise County, ID	
	Canyon County, ID	
	Gem County, ID	
	Owyhee County, ID	
14484	Boston-Quincy, MA	1.1897
	Norfolk County, MA	
	Plymouth County, MA	
	Suffolk County, MA	
14500	Boulder, CO	1.0302
	Boulder County, CO	
14540	Bowling Green, KY	0.8388
	Edmonson County, KY	
	Warren County, KY	
14600	Bradenton-Sarasota-Venice, FL	0.9900
	Manatee County, FL	
	Sarasota County, FL	
14740	Bremerton-Silverdale, WA	1.0770
	Kitsap County, WA	
14860	Bridgeport-Stamford-Norwalk, CT	1.2868
	Fairfield County, CT	
15180	Brownsville-Harlingen, TX	0.8916
	Cameron County, TX	
15260	Brunswick, GA	0.9567
	Brantley County, GA	
	Glynn County, GA	
	McIntosh County, GA	
15380	Buffalo-Niagara Falls, NY	0.9537
	Erie County, NY	
	Niagara County, NY	
15500	Burlington, NC	0.8736
	Alamance County, NC	
15540	Burlington-South Burlington, VT	0.9254
	Chittenden County, VT	
	Franklin County, VT	
	Grand Isle County, VT	
15764	Cambridge-Newton-Framingham, MA	1.1086
	Middlesex County, MA	

TABLE 8—FY 2009 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
15804	Camden, NJ	1.0346
	Burlington County, NJ	
	Camden County, NJ	
	Gloucester County, NJ	
15940	Canton-Massillon, OH	0.8841
	Carroll County, OH	
	Stark County, OH	
15980	Cape Coral-Fort Myers, FL	0.9396
	Lee County, FL	
16180	Carson City, NV	1.0128
	Carson City, NV	
16220	Casper, WY	0.9579
	Natrona County, WY	
16300	Cedar Rapids, IA	0.8919
	Benton County, IA	
	Jones County, IA	
	Linn County, IA	
16580	Champaign-Urbana, IL	0.9461
	Champaign County, IL	
	Ford County, IL	
	Piatt County, IL	
16620	Charleston, WV	0.8275
	Boone County, WV	
	Clay County, WV	
	Kanawha County, WV	
	Lincoln County, WV	
	Putnam County, WV	
16700	Charleston-North Charleston-Summerville, SC	0.9209
	Berkeley County, SC	
	Charleston County, SC	
	Dorchester County, SC	
16740	Charlotte-Gastonia-Concord, NC-SC	0.9595
	Anson County, NC	
	Cabarrus County, NC	
	Gaston County, NC	
	Mecklenburg County, NC	
	Union County, NC	
	York County, SC	
16820	Charlottesville, VA	0.9816
	Albemarle County, VA	
	Fluvanna County, VA	
	Greene County, VA	
	Nelson County, VA	
	Charlottesville City, VA	
16860	Chattanooga, TN-GA	0.8878
	Catoosa County, GA	
	Dade County, GA	
	Walker County, GA	
	Hamilton County, TN	
	Marion County, TN	
	Sequatchie County, TN	
16940	Cheyenne, WY	0.9276
	Laramie County, WY	
16974	Chicago-Naperville-Joliet, IL	1.0399
	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	1.0897
	Butte County, CA	
17140	Cincinnati-Middletown, OH-KY-IN	0.9687
	Dearborn County, IN	
	Franklin County, IN	
	Ohio County, IN	
	Boone County, KY	
	Bracken County, KY	
	Campbell County, KY	
	Gallatin County, KY	

TABLE 8—FY 2009 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
	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	0.8298
	Christian County, KY	
	Trigg County, KY	
	Montgomery County, TN	
	Stewart County, TN	
17420	Cleveland, TN	0.8010
	Bradley County, TN	
	Polk County, TN	
17460	Cleveland-Elyria-Mentor, OH	0.9241
	Cuyahoga County, OH	
	Geauga County, OH	
	Lake County, OH	
	Lorain County, OH	
	Medina County, OH	
17660	Coeur d'Alene, ID	0.9322
	Kootenai County, ID	
17780	College Station-Bryan, TX	0.9346
	Brazos County, TX	
	Burleson County, TX	
	Robertson County, TX	
17820	Colorado Springs, CO	0.9977
	El Paso County, CO	
	Teller County, CO	
17860	Columbia, MO	0.8540
	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	0.8739
	Russell County, AL	
	Chattahoochee County, GA	
	Harris County, GA	
	Marion County, GA	
	Muscogee County, GA	
18020	Columbus, IN	0.9739
	Bartholomew County, IN	
18140	Columbus, OH	0.9943
	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	0.8598
	Aransas County, TX	
	Nueces County, TX	
	San Patricio County, TX	
18700	Corvallis, OR	1.1304
	Benton County, OR	
19060	Cumberland, MD-WV	0.7816
	Allegany County, MD	
	Mineral County, WV	
19124	Dallas-Plano-Irving, TX	0.9945
	Collin County, TX	
	Dallas County, TX	
	Delta County, TX	
	Denton County, TX	

TABLE 8—FY 2009 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
	Ellis County, TX	
	Hunt County, TX	
	Kaufman County, TX	
	Rockwall County, TX	
19140	Dalton, GA	0.8705
	Murray County, GA	
	Whitfield County, GA	
19180	Danville, IL	0.9374
	Vermilion County, IL	
19260	Danville, VA	0.8395
	Pittsylvania County, VA	
	Danville City, VA	
19340	Davenport-Moline-Rock Island, IA-IL	0.8435
	Henry County, IL	
	Mercer County, IL	
	Rock Island County, IL	
	Scott County, IA	
19380	Dayton, OH	0.9203
	Greene County, OH	
	Miami County, OH	
	Montgomery County, OH	
	Preble County, OH	
19460	Decatur, AL	0.7803
	Lawrence County, AL	
	Morgan County, AL	
19500	Decatur, IL	0.8145
	Macon County, IL	
19660	Deltona-Daytona Beach-Ormond Beach, FL	0.8890
	Volusia County, FL	
19740	Denver-Aurora, CO	1.0818
	Adams County, CO	
	Arapahoe County, CO	
	Broomfield County, CO	
	Clear Creek County, CO	
	Denver County, CO	
	Douglas County, CO	
	Elbert County, CO	
	Gilpin County, CO	
	Jefferson County, CO	
	Park County, CO	
19780	Des Moines-West Des Moines, IA	0.9535
	Dallas County, IA	
	Guthrie County, IA	
	Madison County, IA	
	Polk County, IA	
	Warren County, IA	
19804	Detroit-Livonia-Dearborn, MI	0.9958
	Wayne County, MI	
20020	Dothan, AL	0.7613
	Geneva County, AL	
	Henry County, AL	
	Houston County, AL	
20100	Dover, DE	1.0325
	Kent County, DE	
20220	Dubuque, IA	0.8380
	Dubuque County, IA	
20260	Duluth, MN-WI	1.0363
	Carlton County, MN	
	St. Louis County, MN	
	Douglas County, WI	
20500	Durham, NC	0.9732
	Chatham County, NC	
	Durham County, NC	
	Orange County, NC	
	Person County, NC	
20740	Eau Claire, WI	0.9668
	Chippewa County, WI	
	Eau Claire County, WI	
20764	Edison-New Brunswick, NJ	1.1283
	Middlesex County, NJ	
	Monmouth County, NJ	
	Ocean County, NJ	

TABLE 8—FY 2009 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
	Somerset County, NJ	
20940	El Centro, CA	0.8746
	Imperial County, CA	
21060	Elizabethtown, KY	0.8525
	Hardin County, KY	
	Larue County, KY	
21140	Elkhart-Goshen, IN	0.9568
	Elkhart County, IN	
21300	Elmira, NY	0.8247
	Chemung County, NY	
21340	El Paso, TX	0.8694
	El Paso County, TX	
21500	Erie, PA	0.8713
	Erie County, PA	
21660	Eugene-Springfield, OR	1.1061
	Lane County, OR	
21780	Evansville, IN-KY	0.8690
	Gibson County, IN	
	Posey County, IN	
	Vanderburgh County, IN	
	Warrick County, IN	
	Henderson County, KY	
	Webster County, KY	
21820	Fairbanks, AK	1.1297
	Fairbanks North Star Borough, AK	
21940	Fajardo, PR	0.4061
	Ceiba Municipio, PR	
	Fajardo Municipio, PR	
	Luquillo Municipio, PR	
22020	Fargo, ND-MN	0.8166
	Cass County, ND	
	Clay County, MN	
22140	Farmington, NM	0.8051
	San Juan County, NM	
22180	Fayetteville, NC	0.9340
	Cumberland County, NC	
	Hoke County, NC	
22220	Fayetteville-Springdale-Rogers, AR-MO	0.8970
	Benton County, AR	
	Madison County, AR	
	Washington County, AR	
	McDonald County, MO	
22380	Flagstaff, AZ	1.1743
	Coconino County, AZ	
22420	Flint, MI	1.1425
	Genesee County, MI	
22500	Florence, SC	0.8130
	Darlington County, SC	
	Florence County, SC	
22520	Florence-Muscle Shoals, AL	0.7871
	Colbert County, AL	
	Lauderdale County, AL	
22540	Fond du Lac, WI	0.9293
	Fond du Lac County, WI	
22660	Fort Collins-Loveland, CO	0.9867
	Larimer County, CO	
22744	Fort Lauderdale-Pompano Beach-Deerfield Beach, FL	0.9946
	Broward County, FL	
22900	Fort Smith, AR-OK	0.7697
	Crawford County, AR	
	Franklin County, AR	
	Sebastian County, AR	
	Le Flore County, OK	
	Sequoyah County, OK	
23020	Fort Walton Beach-Crestview-Destin, FL	0.8769
	Okaloosa County, FL	
23060	Fort Wayne, IN	0.9176
	Allen County, IN	
	Wells County, IN	
	Whitley County, IN	
23104	Fort Worth-Arlington, TX	0.9709
	Johnson County, TX	

TABLE 8—FY 2009 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
	Parker County, TX	
	Tarrant County, TX	
	Wise County, TX	
23420	Fresno, CA	1.1009
	Fresno County, CA	
23460	Gadsden, AL	0.7983
	Etowah County, AL	
23540	Gainesville, FL	0.9312
	Alachua County, FL	
	Gilchrist County, FL	
23580	Gainesville, GA	0.9109
	Hall County, GA	
23844	Gary, IN	0.9250
	Jasper County, IN	
	Lake County, IN	
	Newton County, IN	
	Porter County, IN	
24020	Glens Falls, NY	0.8473
	Warren County, NY	
	Washington County, NY	
24140	Goldsboro, NC	0.9143
	Wayne County, NC	
24220	Grand Forks, ND-MN	0.7565
	Polk County, MN	
	Grand Forks County, ND	
24300	Grand Junction, CO	0.9812
	Mesa County, CO	
24340	Grand Rapids-Wyoming, MI	0.9184
	Barry County, MI	
	Ionia County, MI	
	Kent County, MI	
	Newaygo County, MI	
24500	Great Falls, MT	0.8784
	Cascade County, MT	
24540	Greeley, CO	0.9684
	Weld County, CO	
24580	Green Bay, WI	0.9709
	Brown County, WI	
	Kewaunee County, WI	
	Oconto County, WI	
24660	Greensboro-High Point, NC	0.9011
	Guilford County, NC	
	Randolph County, NC	
	Rockingham County, NC	
24780	Greenville, NC	0.9448
	Greene County, NC	
	Pitt County, NC	
24860	Greenville-Mauldin-Easley, SC	0.9961
	Greenville County, SC	
	Laurens County, SC	
	Pickens County, SC	
25020	Guayama, PR	0.3249
	Arroyo Municipio, PR	
	Guayama Municipio, PR	
	Patillas Municipio, PR	
25060	Gulfport-Biloxi, MS	0.9029
	Hancock County, MS	
	Harrison County, MS	
	Stone County, MS	
25180	Hagerstown-Martinsburg, MD-WV	0.8997
	Washington County, MD	
	Berkeley County, WV	
	Morgan County, WV	
25260	Hanford-Corcoran, CA	1.0870
	Kings County, CA	
25420	Harrisburg-Carlisle, PA	0.9153
	Cumberland County, PA	
	Dauphin County, PA	
	Perry County, PA	
25500	Harrisonburg, VA	0.8894
	Rockingham County, VA	
	Harrisonburg City, VA	

TABLE 8—FY 2009 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
25540	Hartford-West Hartford-East Hartford, CT	1.1069
	Hartford County, CT	
	Middlesex County, CT	
	Tolland County, CT	
25620	Hattiesburg, MS	0.7337
	Forrest County, MS	
	Lamar County, MS	
	Perry County, MS	
25860	Hickory-Lenoir-Morganton, NC	0.8976
	Alexander County, NC	
	Burke County, NC	
	Caldwell County, NC	
	Catawba County, NC	
25980	Hinesville-Fort Stewart, GA [1]	0.9110
	Liberty County, GA	
	Long County, GA	
26100	Holland-Grand Haven, MI	0.9008
	Ottawa County, MI	
26180	Honolulu, HI	1.1811
	Honolulu County, HI	
26300	Hot Springs, AR	0.9113
	Garland County, AR	
26380	Houma-Bayou Cane-Thibodaux, LA	0.7758
	Lafourche Parish, LA	
	Terrebonne Parish, LA	
26420	Houston-Sugar Land-Baytown, TX	0.9838
	Austin County, TX	
	Brazoria County, TX	
	Chambers County, TX	
	Fort Bend County, TX	
	Galveston County, TX	
	Harris County, TX	
	Liberty County, TX	
	Montgomery County, TX	
	San Jacinto County, TX	
	Waller County, TX	
26580	Huntington-Ashland, WV-KY-OH	0.9254
	Boyd County, KY	
	Greenup County, KY	
	Lawrence County, OH	
	Cabell County, WV	
	Wayne County, WV	
26620	Huntsville, AL	0.9082
	Limestone County, AL	
	Madison County, AL	
26820	Idaho Falls, ID	0.9080
	Bonneville County, ID	
	Jefferson County, ID	
26900	Indianapolis-Carmel, IN	0.9908
	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	0.9483
	Johnson County, IA	
	Washington County, IA	
27060	Ithaca, NY	0.9614
	Tompkins County, NY	
27100	Jackson, MI	0.9309
	Jackson County, MI	
27140	Jackson, MS	0.8067
	Copiah County, MS	
	Hinds County, MS	
	Madison County, MS	
	Rankin County, MS	
	Simpson County, MS	

TABLE 8—FY 2009 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
27180	Jackson, TN	0.8523
	Chester County, TN	
	Madison County, TN	
27260	Jacksonville, FL	0.8999
	Baker County, FL	
	Clay County, FL	
	Duval County, FL	
	Nassau County, FL	
	St. Johns County, FL	
27340	Jacksonville, NC	0.8177
	Onslow County, NC	
27500	Janesville, WI	0.9662
	Rock County, WI	
27620	Jefferson City, MO	0.8775
	Callaway County, MO	
	Cole County, MO	
	Moniteau County, MO	
	Osage County, MO	
27740	Johnson City, TN	0.7971
	Carter County, TN	
	Unicoi County, TN	
	Washington County, TN	
27780	Johnstown, PA	0.7920
	Cambria County, PA	
27860	Jonesboro, AR	0.7916
	Craighead County, AR	
	Poinsett County, AR	
27900	Joplin, MO	0.9406
	Jasper County, MO	
	Newton County, MO	
28020	Kalamazoo-Portage, MI	1.0801
	Kalamazoo County, MI	
	Van Buren County, MI	
28100	Kankakee-Bradley, IL	1.0485
	Kankakee County, IL	
28140	Kansas City, MO-KS	0.9610
	Franklin County, KS	
	Johnson County, KS	
	Leavenworth County, KS	
	Linn County, KS	
	Miami County, KS	
	Wyandotte County, KS	
	Bates County, MO	
	Caldwell County, MO	
	Cass County, MO	
	Clay County, MO	
	Clinton County, MO	
	Jackson County, MO	
	Lafayette County, MO	
	Platte County, MO	
	Ray County, MO	
28420	Kennewick-Pasco-Richland, WA	0.9911
	Benton County, WA	
	Franklin County, WA	
28660	Killeen-Temple-Fort Hood, TX	0.8765
	Bell County, TX	
	Coryell County, TX	
	Lampasas County, TX	
28700	Kingsport-Bristol-Bristol, TN-VA	0.7743
	Hawkins County, TN	
	Sullivan County, TN	
	Bristol City, VA	
	Scott County, VA	
	Washington County, VA	
28740	Kingston, NY	0.9375
	Ulster County, NY	
28940	Knoxville, TN	0.7881
	Anderson County, TN	
	Blount County, TN	
	Knox County, TN	
	Loudon County, TN	
	Union County, TN	

TABLE 8—FY 2009 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
29020	Kokomo, IN	0.9349
	Howard County, IN	
	Tipton County, IN	
29100	La Crosse, WI-MN	0.9758
	Houston County, MN	
	La Crosse County, WI	
29140	Lafayette, IN	0.9221
	Benton County, IN	
	Carroll County, IN	
	Tippecanoe County, IN	
29180	Lafayette, LA	0.8374
	Lafayette Parish, LA	
	St. Martin Parish, LA	
29340	Lake Charles, LA	0.7556
	Calcasieu Parish, LA	
	Cameron Parish, LA	
29404	Lake County-Kenosha County, IL-WI	1.0389
	Lake County, IL	
	Kenosha County, WI	
29420	Lake Havasu City-Kingman, AZ	0.9797
	Mohave County, AZ	
29460	Lakeland-Winter Haven, FL	0.8530
	Polk County, FL	
29540	Lancaster, PA	0.9363
	Lancaster County, PA	
29620	Lansing-East Lansing, MI	0.9931
	Clinton County, MI	
	Eaton County, MI	
	Ingham County, MI	
29700	Laredo, TX	0.8366
	Webb County, TX	
29740	Las Cruces, NM	0.8929
	Dona Ana County, NM	
29820	Las Vegas-Paradise, NV	1.1971
	Clark County, NV	
29940	Lawrence, KS	0.8343
	Douglas County, KS	
30020	Lawton, OK	0.8211
	Comanche County, OK	
30140	Lebanon, PA	0.8954
	Lebanon County, PA	
30300	Lewiston, ID-WA	0.9465
	Nez Perce County, ID	
	Asotin County, WA	
30340	Lewiston-Auburn, ME	0.9200
	Androscoggin County, ME	
30460	Lexington-Fayette, KY	0.9110
	Bourbon County, KY	
	Clark County, KY	
	Fayette County, KY	
	Jessamine County, KY	
	Scott County, KY	
	Woodford County, KY	
30620	Lima, OH	0.9427
	Allen County, OH	
30700	Lincoln, NE	0.9759
	Lancaster County, NE	
	Seward County, NE	
30780	Little Rock-North Little Rock-Conway, AR	0.8672
	Faulkner County, AR	
	Grant County, AR	
	Lonoke County, AR	
	Perry County, AR	
	Pulaski County, AR	
	Saline County, AR	
30860	Logan, UT-ID	0.8765
	Franklin County, ID	
	Cache County, UT	
30980	Longview, TX	0.8370
	Gregg County, TX	
	Rusk County, TX	
	Upshur County, TX	

TABLE 8—FY 2009 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
31020	Longview, WA	1.1207
	Cowlitz County, WA	
31084	Los Angeles-Long Beach-Santa Ana, CA	1.2208
	Los Angeles County, CA	
31140	Louisville-Jefferson County, KY-IN	0.9249
	Clark County, IN	
	Floyd County, IN	
	Harrison County, IN	
	Washington County, IN	
	Bullitt County, KY	
	Henry County, KY	
	Meade County, KY	
	Nelson County, KY	
	Oldham County, KY	
	Shelby County, KY	
	Spencer County, KY	
	Trimble County, KY	
31180	Lubbock, TX	0.8731
	Crosby County, TX	
	Lubbock County, TX	
31340	Lynchburg, VA	0.8774
	Amherst County, VA	
	Appomattox County, VA	
	Bedford County, VA	
	Campbell County, VA	
	Bedford City, VA	
	Lynchburg City, VA	
31420	Macon, GA	0.9570
	Bibb County, GA	
	Crawford County, GA	
	Jones County, GA	
	Monroe County, GA	
	Twiggs County, GA	
31460	Madera, CA	0.7939
	Madera County, CA	
31540	Madison, WI	1.0967
	Columbia County, WI	
	Dane County, WI	
	Iowa County, WI	
31700	Manchester-Nashua, NH	1.0359
	Hillsborough County, NH	
31900	Mansfield, OH	0.9330
	Richland County, OH	
32420	Mayagüez, PR	0.3940
	Hormigueros Municipio, PR	
	Mayagüez Municipio, PR	
32580	McAllen-Edinburg-Mission, TX	0.9009
	Hidalgo County, TX	
32780	Medford, OR	1.0244
	Jackson County, OR	
32820	Memphis, TN-MS-AR	0.9232
	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	1.2243
	Merced County, CA	
33124	Miami-Miami Beach-Kendall, FL	0.9830
	Miami-Dade County, FL	
33140	Michigan City-La Porte, IN	0.9159
	LaPorte County, IN	
33260	Midland, TX	0.9827
	Midland County, TX	
33340	Milwaukee-Waukesha-West Allis, WI	1.0080
	Milwaukee County, WI	
	Ozaukee County, WI	
	Washington County, WI	
	Waukesha County, WI	

TABLE 8—FY 2009 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
33460	Minneapolis-St. Paul—Bloomington, MN-WI	1.1150
	Anoka County, MN	
	Carver County, MN	
	Chisago County, MN	
	Dakota County, MN	
	Hennepin County, MN	
	Isanti County, MN	
	Ramsey County, MN	
	Scott County, MN	
	Sherburne County, MN	
	Washington County, MN	
	Wright County, MN	
	Pierce County, WI	
	St. Croix County, WI	
33540	Missoula, MT	0.8973
	Missoula County, MT	
33660	Mobile, AL	0.7908
	Mobile County, AL	
33700	Modesto, CA	1.2194
	Stanislaus County, CA	
33740	Monroe, LA	0.7900
	Ouachita Parish, LA	
	Union Parish, LA	
33780	Monroe, MI	0.8941
	Monroe County, MI	
33860	Montgomery, AL	0.8283
	Autauga County, AL	
	Elmore County, AL	
	Lowndes County, AL	
	Montgomery County, AL	
34060	Morgantown, WV	0.8528
	Monongalia County, WV	
	Preston County, WV	
34100	Morristown, TN	0.7254
	Grainger County, TN	
	Hamblen County, TN	
	Jefferson County, TN	
34580	Mount Vernon-Anacortes, WA	1.0292
	Skagit County, WA	
34620	Muncie, IN	0.8489
	Delaware County, IN	
34740	Muskegon-Norton Shores, MI	1.0055
	Muskegon County, MI	
34820	Myrtle Beach-North Myrtle Beach-Conway, SC	0.8652
	Horry County, SC	
34900	Napa, CA	1.4520
	Napa County, CA	
34940	Naples-Marco Island, FL	0.9672
	Collier County, FL	
34980	Nashville-Davidson-Murfreesboro-Franklin, TN	0.9504
	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	1.2453
	Nassau County, NY	
	Suffolk County, NY	
35084	Newark-Union, NJ-PA	1.1731
	Essex County, NJ	
	Hunterdon County, NJ	
	Morris County, NJ	
	Sussex County, NJ	
	Union County, NJ	

TABLE 8—FY 2009 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
	Pike County, PA	
35300	New Haven-Milford, CT	1.1742
	New Haven County, CT	
35380	New Orleans-Metairie-Kenner, LA	0.9103
	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-White Plains-Wayne, NY-NJ	1.2885
	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	0.9066
	Berrien County, MI	
35980	Norwich-New London, CT	1.1398
	New London County, CT	
36084	Oakland-Fremont-Hayward, CA	1.6092
	Alameda County, CA	
	Contra Costa County, CA	
36100	Ocala, FL	0.8512
	Marion County, FL	
36140	Ocean City, NJ	1.1496
	Cape May County, NJ	
36220	Odessa, TX	0.9475
	Ector County, TX	
36260	Ogden-Clearfield, UT	0.9153
	Davis County, UT	
	Morgan County, UT	
	Weber County, UT	
36420	Oklahoma City, OK	0.8724
	Canadian County, OK	
	Cleveland County, OK	
	Grady County, OK	
	Lincoln County, OK	
	Logan County, OK	
	McClain County, OK	
	Oklahoma County, OK	
36500	Olympia, WA	1.1537
	Thurston County, WA	
36540	Omaha-Council Bluffs, NE-IA	0.9441
	Harrison County, IA	
	Mills County, IA	
	Pottawattamie County, IA	
	Cass County, NE	
	Douglas County, NE	
	Sarpy County, NE	
	Saunders County, NE	
	Washington County, NE	
36740	Orlando-Kissimmee, FL	0.9111
	Lake County, FL	
	Orange County, FL	
	Osceola County, FL	
	Seminole County, FL	
36780	Oshkosh-Neenah, WI	0.9474
	Winnebago County, WI	
36980	Owensboro, KY	0.8685
	Daviess County, KY	
	Hancock County, KY	
	McLean County, KY	
37100	Oxnard-Thousand Oaks-Ventura, CA	1.1951
	Ventura County, CA	

TABLE 8—FY 2009 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
37340	Palm Bay-Melbourne-Titusville, FL	0.9332
	Brevard County, FL	
37380	Palm Coast, FL	0.8963
	Flagler County, FL	
37460	Panama City-Lynn Haven, FL	0.8360
	Bay County, FL	
37620	Parkersburg-Marietta-Vienna, WV-OH	0.7867
	Washington County, OH	
	Pleasants County, WV	
	Wirt County, WV	
	Wood County, WV	
37700	Pascagoula, MS	0.8102
	George County, MS	
	Jackson County, MS	
37764	Peabody, MA	1.0747
	Essex County, MA	
37860	Pensacola-Ferry Pass-Brent, FL	0.8242
	Escambia County, FL	
	Santa Rosa County, FL	
37900	Peoria, IL	0.9038
	Marshall County, IL	
	Peoria County, IL	
	Stark County, IL	
	Tazewell County, IL	
	Woodford County, IL	
37964	Philadelphia, PA	1.0979
	Bucks County, PA	
	Chester County, PA	
	Delaware County, PA	
	Montgomery County, PA	
	Philadelphia County, PA	
38060	Phoenix-Mesa-Scottsdale, AZ	1.0379
	Maricopa County, AZ	
	Pinal County, AZ	
38220	Pine Bluff, AR	0.7926
	Cleveland County, AR	
	Jefferson County, AR	
	Lincoln County, AR	
38300	Pittsburgh, PA	0.8678
	Allegheny County, PA	
	Armstrong County, PA	
	Beaver County, PA	
	Butler County, PA	
	Fayette County, PA	
	Washington County, PA	
	Westmoreland County, PA	
38340	Pittsfield, MA	1.0445
	Berkshire County, MA	
38540	Pocatello, ID	0.9343
	Bannock County, ID	
	Power County, ID	
38660	Ponce, PR	0.4289
	Juana Díaz Municipio, PR	
	Ponce Municipio, PR	
	Villalba Municipio, PR	
38860	Portland-South Portland-Biddeford, ME	0.9942
	Cumberland County, ME	
	Sagadahoc County, ME	
	York County, ME	
38900	Portland-Vancouver-Beaverton, OR-WA	1.1456
	Clackamas County, OR	
	Columbia County, OR	
	Multnomah County, OR	
	Washington County, OR	
	Yamhill County, OR	
	Clark County, WA	
	Skamania County, WA	
38940	Port St. Lucie, FL	0.9870
	Martin County, FL	
	St. Lucie County, FL	
39100	Poughkeepsie-Newburgh-Middletown, NY	1.0920
	Dutchess County, NY	

TABLE 8—FY 2009 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
	Orange County, NY	
39140	Prescott, AZ	1.0221
	Yavapai County, AZ	
39300	Providence-New Bedford-Fall River, RI-MA	1.0696
	Bristol County, MA	
	Bristol County, RI	
	Kent County, RI	
	Newport County, RI	
	Providence County, RI	
	Washington County, RI	
39340	Provo-Orem, UT	0.9381
	Juab County, UT	
	Utah County, UT	
39380	Pueblo, CO	0.8713
	Pueblo County, CO	
39460	Punta Gorda, FL	0.8976
	Charlotte County, FL	
39540	Racine, WI	0.9054
	Racine County, WI	
39580	Raleigh-Cary, NC	0.9817
	Franklin County, NC	
	Johnston County, NC	
	Wake County, NC	
39660	Rapid City, SD	0.9598
	Meade County, SD	
	Pennington County, SD	
39740	Reading, PA	0.9242
	Berks County, PA	
39820	Redding, CA	1.3731
	Shasta County, CA	
39900	Reno-Sparks, NV	1.0317
	Storey County, NV	
	Washoe County, NV	
40060	Richmond, VA	0.9363
	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	1.1468
	Riverside County, CA	
	San Bernardino County, CA	
40220	Roanoke, VA	0.8660
	Botetourt County, VA	
	Craig County, VA	
	Franklin County, VA	
	Roanoke County, VA	
	Roanoke City, VA	
	Salem City, VA	
40340	Rochester, MN	1.1214
	Dodge County, MN	
	Olmsted County, MN	
	Wabasha County, MN	
40380	Rochester, NY	0.8811
	Livingston County, NY	
	Monroe County, NY	
	Ontario County, NY	

TABLE 8—FY 2009 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
	Orleans County, NY	
	Wayne County, NY	
40420	Rockford, IL	0.9835
	Boone County, IL	
	Winnebago County, IL	
40484	Rockingham County, NH	0.9926
	Strafford County, NH	
40580	Rocky Mount, NC	0.9031
	Edgecombe County, NC	
	Nash County, NC	
40660	Rome, GA	0.9134
	Floyd County, GA	
40900	Sacramento—Arden-Arcade—Roseville, CA	1.3572
	El Dorado County, CA	
	Placer County, CA	
	Sacramento County, CA	
	Yolo County, CA	
40980	Saginaw-Saginaw Township North, MI	0.8702
	Saginaw County, MI	
41060	St. Cloud, MN	1.0976
	Benton County, MN	
	Stearns County, MN	
41100	St. George, UT	0.9021
	Washington County, UT	
41140	St. Joseph, MO-KS	1.0380
	Doniphan County, KS	
	Andrew County, MO	
	Buchanan County, MO	
	DeKalb County, MO	
41180	St. Louis, MO-IL	0.9006
	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	1.0884
	Marion County, OR	
	Polk County, OR	
41500	Salinas, CA	1.4987
	Monterey County, CA	
41540	Salisbury, MD	0.9246
	Somerset County, MD	
	Wicomico County, MD	
41620	Salt Lake City, UT	0.9158
	Salt Lake County, UT	
	Summit County, UT	
	Tooele County, UT	
41660	San Angelo, TX	0.8424
	Irion County, TX	
	Tom Green County, TX	
41700	San Antonio, TX	0.8856
	Atascosa County, TX	
	Bandera County, TX	
	Bexar County, TX	
	Comal County, TX	
	Guadalupe County, TX	
	Kendall County, TX	
	Medina County, TX	
	Wilson County, TX	
41740	San Diego-Carlsbad-San Marcos, CA	1.1538

TABLE 8—FY 2009 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
	San Diego County, CA	
41780	Sandusky, OH	0.8870
	Erie County, OH	
41884	San Francisco-San Mateo-Redwood City, CA	1.5529
	Marin County, CA	
	San Francisco County, CA	
	San Mateo County, CA	
41900	San Germán-Cabo Rojo, PR	0.4756
	Cabo Rojo Municipio, PR	
	Lajas Municipio, PR	
	Sabana Grande Municipio, PR	
	San Germán Municipio, PR	
41940	San Jose-Sunnyvale-Santa Clara, CA	1.6141
	San Benito County, CA	
	Santa Clara County, CA	
41980	San Juan-Caguas-Guaynabo, PR	0.4393
	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	1.2441
	San Luis Obispo County, CA	
42044	Santa Ana-Anaheim-Irvine, CA	1.1993
	Orange County, CA	
42060	Santa Barbara-Santa Maria-Goleta, CA	1.1909
	Santa Barbara County, CA	
42100	Santa Cruz-Watsonville, CA	1.6429
	Santa Cruz County, CA	
42140	Santa Fe, NM	1.0610
	Santa Fe County, NM	
42220	Santa Rosa-Petaluma, CA	1.5528
	Sonoma County, CA	
42340	Savannah, GA	0.9152
	Bryan County, GA	
	Chatham County, GA	

TABLE 8—FY 2009 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
	Effingham County, GA	
42540	Scranton—Wilkes-Barre, PA	0.8333
	Lackawanna County, PA	
	Luzerne County, PA	
	Wyoming County, PA	
42644	Seattle-Bellevue-Everett, WA	1.1755
	King County, WA	
	Snohomish County, WA	
42680	Sebastian-Vero Beach, FL	0.9217
	Indian River County, FL	
43100	Sheboygan, WI	0.8920
	Sheboygan County, WI	
43300	Sherman-Denison, TX	0.9024
	Grayson County, TX	
43340	Shreveport-Bossier City, LA	0.8442
	Bossier Parish, LA	
	Caddo Parish, LA	
	De Soto Parish, LA	
43580	Sioux City, IA-NE-SD	0.8915
	Woodbury County, IA	
	Dakota County, NE	
	Dixon County, NE	
	Union County, SD	
43620	Sioux Falls, SD	0.9354
	Lincoln County, SD	
	McCook County, SD	
	Minnehaha County, SD	
	Turner County, SD	
43780	South Bend-Mishawaka, IN-MI	0.9761
	St. Joseph County, IN	
	Cass County, MI	
43900	Spartanburg, SC	0.9025
	Spartanburg County, SC	
44060	Spokane, WA	1.0559
	Spokane County, WA	
44100	Springfield, IL	0.9102
	Menard County, IL	
	Sangamon County, IL	
44140	Springfield, MA	1.0405
	Franklin County, MA	
	Hampden County, MA	
	Hampshire County, MA	
44180	Springfield, MO	0.8424
	Christian County, MO	
	Dallas County, MO	
	Greene County, MO	
	Polk County, MO	
	Webster County, MO	
44220	Springfield, OH	0.8876
	Clark County, OH	
44300	State College, PA	0.8937
	Centre County, PA	
44700	Stockton, CA	1.2015
	San Joaquin County, CA	
44940	Sumter, SC	0.8257
	Sumter County, SC	
45060	Syracuse, NY	0.9787
	Madison County, NY	
	Onondaga County, NY	
	Oswego County, NY	
45104	Tacoma, WA	1.1241
	Pierce County, WA	
45220	Tallahassee, FL	0.8964
	Gadsden County, FL	
	Jefferson County, FL	
	Leon County, FL	
	Wakulla County, FL	
45300	Tampa-St. Petersburg-Clearwater, FL	0.8852
	Hernando County, FL	
	Hillsborough County, FL	
	Pasco County, FL	
	Pinellas County, FL	

TABLE 8—FY 2009 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
45460	Terre Haute, IN	0.9085
	Clay County, IN	
	Sullivan County, IN	
	Vermillion County, IN	
	Vigo County, IN	
45500	Texarkana, TX-Texarkana, AR	0.8144
	Miller County, AR	
	Bowie County, TX	
45780	Toledo, OH	0.9407
	Fulton County, OH	
	Lucas County, OH	
	Ottawa County, OH	
	Wood County, OH	
45820	Topeka, KS	0.8756
	Jackson County, KS	
	Jefferson County, KS	
	Osage County, KS	
	Shawnee County, KS	
	Wabaunsee County, KS	
45940	Trenton-Ewing, NJ	1.0604
	Mercer County, NJ	
46060	Tucson, AZ	0.9229
	Pima County, AZ	
46140	Tulsa, OK	0.8445
	Creek County, OK	
	Okmulgee County, OK	
	Osage County, OK	
	Pawnee County, OK	
	Rogers County, OK	
	Tulsa County, OK	
	Wagoner County, OK	
46220	Tuscaloosa, AL	0.8496
	Greene County, AL	
	Hale County, AL	
	Tuscaloosa County, AL	
46340	Tyler, TX	0.8804
	Smith County, TX	
46540	Utica-Rome, NY	0.8404
	Herkimer County, NY	
	Oneida County, NY	
46660	Valdosta, GA	0.8027
	Brooks County, GA	
	Echols County, GA	
	Lanier County, GA	
	Lowndes County, GA	
46700	Vallejo-Fairfield, CA	1.4359
	Solano County, CA	
47020	Victoria, TX	0.8124
	Calhoun County, TX	
	Goliad County, TX	
	Victoria County, TX	
47220	Vineland-Millville-Bridgeton, NJ	1.0366
	Cumberland County, NJ	
47260	Virginia Beach-Norfolk-Newport News, VA-NC	0.8884
	Currituck County, NC	
	Gloucester County, VA	
	Isle of Wight County, VA	
	James City County, VA	
	Mathews County, VA	
	Surry County, VA	
	York County, VA	
	Chesapeake City, VA	
	Hampton City, VA	
	Newport News City, VA	
	Norfolk City, VA	
	Poquoson City, VA	
	Portsmouth City, VA	
	Suffolk City, VA	
	Virginia Beach City, VA	
	Williamsburg City, VA	
47300	Visalia-Porterville, CA	1.0144
	Tulare County, CA	

TABLE 8—FY 2009 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
47380	Waco, TX	0.8596
	McLennan County, TX	
47580	Warner Robins, GA	0.8989
	Houston County, GA	
47644	Warren-Troy-Farmington Hills, MI	0.9904
	Lapeer County, MI	
	Livingston County, MI	
	Macomb County, MI	
	Oakland County, MI	
	St. Clair County, MI	
47894	Washington-Arlington-Alexandria, DC-VA-MD-WV	1.0827
	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	0.8490
	Black Hawk County, IA	
	Bremer County, IA	
	Grundy County, IA	
48140	Wausau, WI	0.9615
	Marathon County, WI	
48260	Weirton-Steubenville, WV-OH	0.8079
	Jefferson County, OH	
	Brooke County, WV	
	Hancock County, WV	
48300	Wenatchee, WA	0.9544
	Chelan County, WA	
	Douglas County, WA	
48424	West Palm Beach-Boca Raton-Boynton Beach, FL	0.9757
	Palm Beach County, FL	
48540	Wheeling, WV-OH	0.6955
	Belmont County, OH	
	Marshall County, WV	
	Ohio County, WV	
48620	Wichita, KS	0.9069
	Butler County, KS	
	Harvey County, KS	
	Sedgwick County, KS	
	Sumner County, KS	
48660	Wichita Falls, TX	0.8832
	Archer County, TX	
	Clay County, TX	
	Wichita County, TX	
48700	Williamsport, PA	0.8096
	Lycoming County, PA	
48864	Wilmington, DE-MD-NJ	1.0696
	New Castle County, DE	
	Cecil County, MD	
	Salem County, NJ	
48900	Wilmington, NC	0.9089
	Brunswick County, NC	
	New Hanover County, NC	
	Pender County, NC	
49020	Winchester, VA-WV	0.9801
	Frederick County, VA	
	Winchester City, VA	

TABLE 8—FY 2009 WAGE INDEX FOR URBAN AREAS BASED ON CBSA LABOR MARKET AREAS—Continued

CBSA code	Urban area (constituent counties)	Wage index
	Hampshire County, WV	
49180	Winston-Salem, NC	0.9016
	Davie County, NC	
	Forsyth County, NC	
	Stokes County, NC	
	Yadkin County, NC	
49340	Worcester, MA	1.0836
	Worcester County, MA	
49420	Yakima, WA	0.9948
	Yakima County, WA	
49500	Yauco, PR	0.3432
	Guánica Municipio, PR	
	Guayanilla Municipio, PR	
	Peñuelas Municipio, PR	
	Yauco Municipio, PR	
49620	York-Hanover, PA	0.9518
	York County, PA	
49660	Youngstown-Warren-Boardman, OH-PA	0.8915
	Mahoning County, OH	
	Trumbull County, OH	
	Mercer County, PA	
49700	Yuba City, CA	1.1137
	Sutter County, CA	
	Yuba County, CA	
49740	Yuma, AZ	0.9281
	Yuma County, AZ	

[1] At this time, there are no hospitals located in this urban area on which to base a wage index. We use the average wage index of all of the urban areas within the State to serve as a reasonable proxy.

TABLE 9—FY 2009 WAGE INDEX BASED ON CBSA LABOR MARKET AREAS FOR RURAL AREAS

State code	Nonurban area	Wage index
1	Alabama	0.7587
2	Alaska	1.1898
3	Arizona	0.8453
4	Arkansas	0.7473
5	California	1.2275
6	Colorado	0.9570
7	Connecticut	1.1016
8	Delaware	0.9962
10	Florida	0.8504
11	Georgia	0.7612
12	Hawaii	1.0999
13	Idaho	0.7651
14	Illinois	0.8386
15	Indiana	0.8473
16	Iowa	0.8804
17	Kansas	0.8052
18	Kentucky	0.7803
19	Louisiana	0.7447
20	Maine	0.8644
21	Maryland	0.8883
22	Massachusetts [1]	1.1670
23	Michigan	0.8887
24	Minnesota	0.9059

TABLE 9—FY 2009 WAGE INDEX BASED ON CBSA LABOR MARKET AREAS FOR RURAL AREAS—Continued

State code	Nonurban area	Wage index
25	Mississippi	0.7584
26	Missouri	0.7982
27	Montana	0.8658
28	Nebraska	0.8730
29	Nevada	0.9382
30	New Hampshire	1.0182
31	New Jersey [1]	.....
32	New Mexico	0.8812
33	New York	0.8145
34	North Carolina	0.8576
35	North Dakota	0.7205
36	Ohio	0.8588
37	Oklahoma	0.7732
38	Oregon	1.0218
39	Pennsylvania	0.8365
40	Puerto Rico [1]	0.4047
41	Rhode Island [1]	.....
42	South Carolina	0.8538
43	South Dakota	0.8603
44	Tennessee	0.7789
45	Texas	0.7894

TABLE 9—FY 2009 WAGE INDEX BASED ON CBSA LABOR MARKET AREAS FOR RURAL AREAS—Continued

State code	Nonurban area	Wage index
46	Utah	0.8267
47	Vermont	1.0079
48	Virgin Islands	0.6971
49	Virginia	0.7861
50	Washington	1.0181
51	West Virginia	0.7503
52	Wisconsin	0.9373
53	Wyoming	0.9315
65	Guam	0.9611

[1] All counties within the State are classified as urban, with the exception of Massachusetts and Puerto Rico. Massachusetts and Puerto Rico have areas designated as rural; however, no short-term, acute care hospitals are located in the area(s) for FY 2009. The rural Massachusetts wage index is calculated as the average of all contiguous CBSAs. The Puerto Rico wage index is the same as FY 2008.

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Federal Register

Friday,
August 8, 2008

Part IV

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Part 418

Medicare Program; Hospice Wage Index for Fiscal Year 2009; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 418

[CMS–1548–F]

RIN 0938–AP14

Medicare Program; Hospice Wage Index for Fiscal Year 2009

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

ACTION: Final rule.

SUMMARY: This final rule sets forth the hospice wage index for fiscal year 2009. In addition, this final rule finalizes the policy to phase out the Medicare hospice budget neutrality adjustment factor, and clarifies two wage index issues pertaining to the definition of rural and urban areas and multi-campus hospital facilities.

DATES: *Effective Dates:* These regulations are effective on October 1, 2008.

FOR FURTHER INFORMATION CONTACT: Katie Lucas (410) 786–7723 or Randy Throndset (410) 786–0131.

SUPPLEMENTARY INFORMATION:

I. Background

A. General

1. Hospice Care

Hospice care is an approach to treatment that recognizes that the impending death of an individual warrants a change in the focus from curative care to palliative care for relief of pain and for symptom management. The goal of hospice care is to help terminally ill individuals continue life with minimal disruption to normal activities while remaining primarily in the home environment. A hospice uses an interdisciplinary approach to deliver medical, nursing, social, psychological, emotional, and spiritual services through use of a broad spectrum of professional and other caregivers, with the goal of making the individual as physically and emotionally comfortable as possible. Counseling services and inpatient respite services are available to the family of the hospice patient. Hospice programs consider both the patient and the family as a unit of care.

Section 1861(dd) of the Social Security Act (the Act) provides for coverage of hospice care for terminally ill Medicare beneficiaries who elect to receive care from a participating hospice. Section 1814(i) of the Act provides payment for Medicare participating hospices.

2. Medicare Payment for Hospice Care

Our regulations at 42 CFR part 418 establish eligibility requirements, payment standards and procedures, define covered services, and delineate the conditions a hospice must meet to be approved for participation in the Medicare program. Part 418 subpart G provides for payment in one of four prospectively-determined rate categories (routine home care, continuous home care, inpatient respite care, and general inpatient care) to hospices based on each day a qualified Medicare beneficiary is under a hospice election.

B. Hospice Wage Index

Our regulations at § 418.306(c) require each hospice's labor market to be established using the most current hospital wage data available, including any changes by the Office of Management and Budget (OMB) to the Metropolitan Statistical Areas (MSAs) definitions, which have been superseded by the Core Based Statistical Areas (CBSAs).

The hospice wage index is used to adjust payment rates for hospice agencies under the Medicare program to reflect local differences in area wage levels. The original hospice wage index was based on the 1981 Bureau of Labor Statistics hospital data and had not been updated since 1983. In 1994, because of disparity in wages from one geographical location to another, the Hospice Wage Index Negotiated Rulemaking Committee was formulated to negotiate a wage index methodology to be used for updating the hospice wage index. This Committee, functioning under a process established by the Negotiated Rulemaking Act of 1990, signed an agreement for the methodology to be used for updating the hospice wage index on April 13, 1995.

On August 8, 1997, we published in the **Federal Register** a final rule (62 FR 42860) implementing a new methodology for calculating the hospice wage index based on the recommendations of the negotiated rulemaking committee. The committee statement was included in the appendix of that final rule (62 FR 42883).

The hospice wage index is updated annually. Our most recent annual update final rule (72 FR 50214) published in the **Federal Register** on August 31, 2007, set forth updates to the hospice wage index for fiscal year (FY) 2008.

1. Raw Wage Index Values (Raw Pre-Floor, Pre-Reclassified Hospital Wage Index)

As described in the August 8, 1997 hospice wage index final rule (62 FR 42860), the pre-floor and pre-reclassified hospital wage index is used as the raw wage index for the hospice benefit. These raw wage index values are then subject to either a budget neutrality adjustment or application of the hospice floor to compute the hospice wage index used to determine payments to hospices.

Raw pre-floor, pre-reclassified hospital wage index values of 0.8 or greater are adjusted by the Budget Neutrality Adjustment Factor (BNAF). Raw pre-floor, pre-reclassified hospital wage index values below 0.8 are adjusted by the greater of: (1) The hospice BNAF; or (2) the hospice floor (which is a 15 percent increase) subject to a maximum wage index value of 0.8.

The BNAF has been computed and applied annually to the labor portion of the hospice payment. Currently, the labor portion of the payment rates is as follows: for routine home care, 68.71 percent; for continuous home care, 68.71 percent; for general inpatient care, 64.01 percent; and for respite care, 54.13 percent. The non-labor portion is equal to 100 percent minus the labor portion for each level of care.

2. Changes to Core-Based Statistical Area (CBSA) Designations

The annual update to the hospice wage index is published in the **Federal Register** and is based on the most current available hospital wage data, as well as any changes by the OMB to the definitions of MSAs, which now include CBSA designations.

3. Definition of Rural and Urban Areas

Each hospice'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 42 CFR 412.64(b)(1)(ii)(C), a rural area is defined as any area outside of the urban area. The urban and rural area geographic classifications are defined in § 412.64(b)(1)(ii)(A) through (C), and have been used for the Medicare hospice benefit since implementation.

4. Areas Without Hospital Wage Data

When adopting OMB's new labor market designations in FY 2006, we identified some geographic areas where there were no hospitals, and no hospital wage index data on which to base the calculation of the hospice wage index. Beginning in FY 2006, we adopted a

policy to use the FY 2005 raw pre-floor, pre-reclassified hospital wage index value for rural areas when no hospital wage data were available. Under the CBSA labor market areas, there are no hospitals in rural locations in Massachusetts and Puerto Rico. We also adopted the policy that for urban labor markets without a hospital from which hospital wage index data could be derived, all of the CBSAs within the State would be used to calculate a statewide urban average raw pre-floor, pre-reclassified hospital wage index value to use as a reasonable proxy for these areas. The only affected CBSA is 25980, Hinesville-Fort Stewart, Georgia.

In the FY 2008 final rule (72 FR 50214, 50217), in cases where there was a rural area without rural hospital wage data, we used the average raw pre-floor, pre-reclassified hospital wage index data from all contiguous CBSAs to represent a reasonable proxy for the rural area. This approach does not use rural data; however, the approach uses raw pre-floor, pre-reclassified hospital wage data, and is easy to evaluate, easy to update from year-to-year, and uses the most local data available. In the FY 2008 rule (72 FR at 50217), we noted that in determining an imputed rural raw pre-floor, pre-reclassified hospital wage index, we interpret the term ''contiguous'' to mean sharing a border. For example, 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. Under the adopted methodology, the raw pre-floor, pre-reclassified hospital wage index values for the counties of Barnstable (CBSA 12700, Barnstable Town, MA) and Bristol (CBSA 39300, Providence-New Bedford-Fall River, RI-MA) were averaged, resulting in an imputed raw pre-floor, pre-reclassified rural hospital wage index for FY 2008.

We also noted that we do not believe that this policy would be appropriate for Puerto Rico, as there are sufficient economic differences between hospitals in the United States and those in Puerto Rico, including the payment of hospitals in Puerto Rico using blended Federal/Commonwealth-specific rates. Therefore, we believe that a separate and distinct policy for Puerto Rico is necessary. Any alternative methodology for imputing a raw pre-floor, pre-reclassified hospital wage index for rural Puerto Rico would need to take into account the economic differences between hospitals in the United States and those in Puerto Rico. While we have not yet identified an alternative methodology for imputing a raw pre-floor, pre-reclassified hospital 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. For FY 2008, we used the most recent raw pre-floor, pre-reclassified hospital wage index available for Puerto Rico, which is 0.4047.

5. CBSA Nomenclature Changes

The OMB regularly publishes a bulletin that updates the titles of certain CBSAs. In the FY 2008 final rule (72 FR 50218), we noted that the FY 2008 rule and all subsequent hospice wage index rules and notices would incorporate CBSA changes from the most recent OMB bulletins. The OMB bulletins may be accessed at *http://www.whitehouse.gov/omb/bulletins/index.html*.

6. Hospice Payment Rates

Payment rates have been updated according to section 1814(i)(1)(C)(ii)(VII) of the Act, which states that the update to the payment rates for FYs since 2002 will be the market basket percentage for the fiscal year. According to section 1814(i)(1)(C) of the Act, hospices are to use the inpatient hospital market basket as a proxy for a hospice market basket.

Historically, the rate update has been published through a separate administrative instruction issued annually in the summer to provide adequate time to implement system change requirements. Providers determine their payments by applying the hospice wage index in this final rule to the labor portion of the published hospice rates.

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 OMB, 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 proposed in the May 1, 2008 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 Rule and Analysis of and Responses to Public Comments

On May 1, 2008, we published a proposed rule in the **Federal Register** (73 FR 24000) that set forth the proposed hospice wage index for FY 2009. We received 540 timely items of correspondence. The following is a summary of each of the proposals followed by our responses to these public comments.

A. Clarification of New England Deemed Counties

In the May 1, 2008 proposed rule, we proposed to amend § 418.306(c) to cross-reference to the definitions of urban and rural in the Inpatient Prospective Payment System (IPPS) regulations in 42 CFR Part 412 subpart D. In that proposed rule, we addressed the IPPS change in the designation of ''New England deemed counties,'' which are listed in § 412.64(b)(1)(ii)(B). These counties were deemed to be part of urban areas under section 601(g) of the Social Security Amendments of 1983. However, under the OMB geographic definitions, these counties were considered rural. In the FY 2008 IPPS final rule, CMS adopted a change that resulted in these counties no longer being ''deemed'' urban. The counties include Litchfield County, Connecticut; York County, Maine; Sagadahoc County, Maine; Merrimack County, New Hampshire; and Newport County, Rhode Island. Of these five ''New England deemed counties,'' three (York County, Sagadahoc County, and Newport County) are included in metropolitan statistical areas defined by OMB and are therefore urban under the current IPPS labor market area definitions in § 412.64(b)(1)(ii)(A). The remaining two counties, Litchfield County and Merrimack County, are geographically located in areas that are rural under the current IPPS labor market area definitions.

In the August 22, 2007 FY 2008 IPPS final rule with comment period (72 FR 47130), § 412.64(b)(1)(ii)(B) was revised such that the two ''New England deemed counties'' that are still considered rural under the OMB definitions (Litchfield County, CT and Merrimack County, NH) are no longer considered urban effective for discharges occurring on or after October 1, 2007. Therefore, these two counties are considered rural in accordance with § 412.64(b)(1)(ii)(C). However, for

purposes of payment under the IPPS, acute care hospitals located within those areas are treated as being reclassified to their deemed urban area effective for discharges occurring on or after October 1, 2007 (see 72 FR 47337 through 47338). We also noted that this policy change was limited to the ''New England deemed counties'' IPPS hospitals only, and that any change to non-IPPS provider wage indexes would be addressed in the respective payment system rules. The hospice program does not provide for such geographic reclassification as the IPPS does.

The recommendations to adjust payments to reflect local differences in wages are codified in § 418.306(c) of our regulations; however there is no explicit reference to § 412.64 in § 418.306(c). Although § 412.64 is not explicitly referred to, the hospice program has used the definition of urban in § 412.64(b)(1)(ii)(A) and (B), and the definition of rural as any area outside of an urban area in § 412.64(b)(1)(ii)(C). We proposed to explicitly refer to those provisions in § 412.64 to make it absolutely clear how we define urban and rural for purposes of the hospice wage index. We received no comments on this proposal and will implement it as proposed.

Litchfield county, CT and Merrimack county, NH are considered rural areas for hospital IPPS purposes in accordance with § 412.64. Effective October 1, 2008, Litchfield county, CT will no longer be considered part of urban CBSA 25540 (Hartford-West Hartford-East Hartford, CT), and Merrimack county, NH will no longer be considered part of urban CBSA 31700 (Manchester-Nashua, NH). Rather, these counties will be considered to be rural areas within their respective States under the hospice payment system. When the raw pre-floor, pre-reclassified hospital wage index was adopted for use in deriving the hospice wage, it was decided not to take into account IPPS geographic reclassifications. This proposed policy to follow OMB designations of rural or urban, rather than considering some counties to be ''deemed'' urban, is consistent with our policy of not taking into account IPPS geographic reclassifications in determining payments under the hospice wage index.

We received no comments on this proposal, and will implement it as proposed without change.

B. Wage Data for Multi-Campus Hospitals

Historically, under the Medicare hospice benefit, we have established hospice wage index values calculated from the raw pre-floor, pre-reclassified hospital wage data (also called the IPPS wage index) without taking into account geographic reclassification under sections 1886(d)(8) and (d)(10) of the Act. The wage adjustment established under the Medicare hospice benefit is based on the location where services are furnished without any reclassification.

For FY 2009, the data collected from cost reports submitted by hospitals for cost reporting periods beginning during FY 2004 were used to compute the 2008 raw pre-floor, pre-reclassified hospital wage index data without taking into account geographic reclassification under sections 1886(d)(8) and (d)(10) of the Act. This 2008 raw pre-floor, pre-reclassified hospital wage index was used to derive the applicable wage index values for the hospice wage index because these data (FY 2004) are the most recent complete data (for information on the data used to compute the FY 2008 IPPS wage index, refer to the FY 2008 IPPS final rule with comment period (72 FR 47308 through 47309, 47315)).

Beginning in FY 2008, the IPPS apportioned the wage data for multi-campus hospitals located in different labor market areas (CBSAs) to each CBSA where the campuses are located (see the FY 2008 IPPS final rule with comment period (72 FR 47317 through 47320)). We are continuing to use the raw pre-floor, pre-reclassified hospital wage data as a basis to determine the hospice wage index values for FY 2009 because hospitals and hospices both compete in the same labor markets, and therefore, experience similar wage-related costs. We note that the use of raw pre-floor, pre-reclassified hospital (IPPS) wage data, used to derive the FY 2009 hospice wage index values, reflects the application of our policy to use that data to establish the hospice wage index. The FY 2009 hospice wage index values presented in this final rule were computed consistent with our raw pre-floor, pre-reclassified hospital (IPPS) wage index policy (that is, our historical policy of not taking into account IPPS geographic reclassifications in determining payments for hospice). For the FY 2009 Medicare hospice benefit, the wage index was computed from IPPS wage data (submitted by hospitals for cost reporting periods beginning in FY 2004 (just like the FY 2008 IPPS wage index)), which allocated salaries and hours to the campuses of two multi-campus hospitals with campuses that are located in different labor areas, one in Massachusetts and another in Illinois. Thus, the FY 2009 hospice wage index values for the following CBSAs are affected by this policy: Boston-Quincy, MA (CBSA 14484), Providence-New Bedford-Falls River, RI-MA (CBSA 39300), Chicago-Naperville-Joliet, IL (CBSA 16974), and Lake County-Kenosha County, IL-WI (CBSA 29404).

We received no comments on this proposal, and will implement it as proposed without change.

C. FY 2009 Hospice Wage Index With Phase Out of the Budget Neutrality Adjustment Factor (BNAF)

1. Background

The hospice final rule published in the **Federal Register** on December 16, 1983 (48 FR 56008) provided for adjustment to hospice payment rates to reflect differences in area wage levels. We apply the appropriate hospice wage index value to the labor portion of the hospice payment rates based on the geographic area where hospice care was furnished. As noted earlier, each hospice's labor market area is based on definitions of Metropolitan Statistical Areas (MSAs) issued by the OMB. For FY 2009, we proposed to use a raw pre-floor, pre-reclassified hospital wage index based solely on the CBSA designations.

As noted above, our hospice payment rules utilize the wage adjustment factors used by the Secretary for purposes of section 1886(d)(3)(E) of the Act for hospital wage adjustments. Again, we proposed to use the raw pre-floor and pre-reclassified hospital wage index data to adjust the labor portion of the hospice payment rates based on the geographic area where the beneficiary receives hospice care. We believe the use of the raw pre-floor, pre-reclassified hospital wage index data results in the appropriate adjustment to the labor portion of the costs. For the FY 2009 update to hospice payment rates, we proposed using the most recent raw pre-floor, pre-reclassified hospital wage index available at the time of publication.

Comment: A few commenters were unhappy with CMS' use of the raw pre-floor, pre-reclassified hospital wage index as the input for the hospice wage index, and suggested it is flawed. Some commenters noted that the hospital-based wage index has undergone multiple changes over the past 10 years and that providers were not invited to provide comment for CMS to consider when formalizing these changes. One commenter added that the existence of exceptions to the hospital wage index system in the form of reclassifications demonstrates the unfairness and inadequacy of the hospital-based wage index system.

Several commenters mentioned that a 2007 MedPAC report on the hospital wage index suggested that CMS repeal the existing hospital wage index, and develop a new one. The commenter stated that MedPAC recommended that CMS evaluate the use of the revised wage index in other Medicare payment systems, which includes hospice. A commenter asked CMS to devise a hospice-specific reimbursement system, rather than using the hospital-based wage index. Several of these commenters offered to work with CMS in reforming the wage index, and recommended use of the collaborative negotiated rulemaking process. They suggested that CMS use the established wage index methodology, including the BNAF, until a viable alternative is found.

In addition, a commenter wrote that hospices compete in the same labor market as hospitals for staff but hospitals do not use the same wage index, and that the wage index does not reflect the reality of wages in a healthcare community.

Response: The raw pre-floor, pre-reclassified hospital wage index was adopted in 1998 as the wage index from which the hospice wage index is derived. The Negotiated Rulemaking Committee considered several wage index options: (1) Continuing with Bureau of Labor Statistics data; (2) using updated hospital wage data; (3) using hospice-specific data; and (4) using data from the physician payment system. The Committee determined that the raw pre-floor, pre-reclassified hospital wage index was the best option for hospice. The raw pre-floor, pre-reclassified hospital wage index is updated annually, and reflects the wages of highly skilled hospital workers.

We agree that the hospital-based wage index has undergone some changes in the past 10 years. Those changes were put forward through rulemaking, which provided the public an opportunity to provide comments. Therefore, we disagree that hospice providers have not had an opportunity to comment on hospital wage index changes.

The reclassification provision provided at section 1886(d)(10) of the Act is specific to hospitals. We believe the use of the most recent available raw pre-floor and pre-reclassified hospital wage index results in the most appropriate adjustment to the labor portion of hospice costs as required in 42 CFR 418.306(c). Additionally, use of the unadjusted hospital wage data avoids further reductions in certain rural statewide wage index values that result from reclassification. We also note that the wage index adjustment is based on the geographic area where the beneficiary is located, and not where the hospice is located.

We continue to believe that the unadjusted hospital wage index, which is updated yearly and is used by many other CMS payments systems including home health, appropriately accounts for geographic variances in labor costs for hospices. Home health agencies and hospices are Medicare's only home-based benefits, and home health agencies and hospices share labor pools. In the future, when looking into reforming the hospice payment system, we will consider wage index alternatives, to include those recommended by MedPAC.

We are implementing as final the proposal to continue to use the raw pre-floor, pre-reclassified hospital wage index.

2. Areas Without Hospital Wage Data

In adopting the CBSA designations, we identified some geographic areas where there are no hospitals, and thus no hospital wage data on which to base the calculation of the hospice wage index. These areas were described in section I.B.4 of the proposed rule (73 FR 24004). Beginning in FY 2006, we adopted a policy that, for urban labor markets without an urban hospital from which a raw pre-floor, pre-reclassified hospital wage index can be derived, all of the urban CBSA raw pre-floor, pre-reclassified hospital wage index values within the State would be used to calculate a statewide urban average raw pre-floor, pre-reclassified hospital wage index to use as a reasonable proxy for these areas. Currently, the only CBSA that would be affected by this policy is CBSA 25980, Hinesville-Fort Stewart, Georgia. We proposed to continue this policy for FY 2009.

Currently, the only rural areas where there are no hospitals from which to calculate a raw pre-floor, pre-reclassified hospital wage index are in Massachusetts and Puerto Rico. In August 2007 (72 FR 50217) we adopted the following methodology for imputing rural raw pre-floor, pre-reclassified hospital wage index values for areas where no hospital wage data are available as an acceptable proxy. We imputed an average raw pre-floor, pre-reclassified hospital wage index value by averaging the raw pre-floor, pre-reclassified hospital wage index values from contiguous CBSAs as a reasonable proxy for rural areas with no hospital wage data from which to calculate a raw pre-floor, pre-reclassified hospital wage index. In determining an imputed rural raw pre-floor, pre-reclassified hospital wage index, we define ''contiguous'' as sharing a border. In the proposed rule, we proposed to apply this methodology for imputing a rural raw pre-floor, pre-reclassified hospital wage index for those rural areas without rural hospital wage data in FY 2009. For Massachusetts, rural Massachusetts currently consists of Dukes and Nantucket Counties. We determined that the borders of Dukes and Nantucket counties are ''contiguous'' with Barnstable and Bristol counties. We did not receive any comments on this proposal, and are implementing it as proposed.

As we noted in our proposed rule, we do not believe that this methodology for imputing a rural raw pre-floor, pre-reclassified hospital wage index value is appropriate for Puerto Rico. We noted that 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, to make a separate distinct policy for Puerto Rico necessary.

We did not receive any comments on this proposal, and are implementing it as proposed without change. Therefore, in this final rule, for FY 2009, we are continuing to use the most recent raw pre-floor, pre-reclassified hospital wage index value available for Puerto Rico, which is 0.4047. This raw pre-floor, pre-reclassified hospital wage index value is then adjusted upward by the hospice floor in the computing of the final FY 2009 hospice wage index.

3. Phase Out of the Budget Neutrality Adjustment Factor (BNAF)

As previously stated, the current hospice wage index methodology was developed through a negotiated rulemaking process and implemented in 1997. The rulemaking committee sought to address the inaccuracies in the original Bureau of Labor Statistics (BLS)-based hospice wage index, account better for disparities from one geographic location to another, and develop a wage index that would be as accurate, reliable and equitable as possible. The resulting hospice wage index reflects a special adjustment (a BNAF) to ensure payments in the aggregate are budget neutral to payments using the original 1983 hospice wage index. The adjustment, which is still in place today, results in providers currently receiving about 4 percent more in payments than they would have received if the adjustment factor were not applied. We believe the rationale for maintaining this adjustment is outdated, as explained in detail below, particularly given the

amount of time that has elapsed since it was first put into place and the continuing growth that is occurring in the hospice benefit. In the proposed rule, we proposed to phase out this adjustment over 3 years, reducing it by 25 percent in FY 2009, by an additional 50 percent for a total of 75 percent in FY 2010, and eliminating it completely in FY 2011. Additionally, from a parity perspective, because hospices and home health agencies have a similar labor mix, we believe that adjusting for geographic variances in both of these Medicare home-based benefits with the raw pre-floor and pre-reclassified hospital wage index is appropriate.

The original hospice wage index that was used when the benefit was first implemented was based on the 1981 BLS hospital data and had not been updated from 1983 until the current raw pre-floor and pre-reclassified hospital wage index was adopted. During earlier attempts to update the original hospice wage index, the hospice industry raised concerns over the adverse financial impact of a new wage index on individual hospices and a possible overall reduction in Medicare payments. Thus, the result was that in the absence of agreement on a new wage index, we continued to use the original wage index that was clearly obsolete for geographically adjusting Medicare hospice payments (see ''Medicare Program; Notice Containing the Statement Drafted by the Committee Established to Negotiate the Wage Index to Be Used to Adjust Hospice Payment Rates Under Medicare'', November 29, 1995, 60 FR 61264).

Changing to a new, more accurate wage index would result in some areas gaining as their wage index value would increase, but other areas would see declines in payments as their wage index value dropped. In 1994, we noted that a majority of hospices would have their wage index reduced with the new wage index that is based on using the raw pre-floor, pre-reclassified hospital wage index. These reductions would have occurred for two key reasons: (1) Hospices were located in areas where the original hospice wage index was artificially high due to flaws in the 1981 BLS data; and (2) hospices were located in areas where wages had gone down relative to other geographic areas (see ''Hospice Services Under Medicare Program: Intent to Form Negotiated Rulemaking Committee'', October 14, 1994, 59 FR 52130).

Because of the negative impact to certain areas that was expected with the change to a new wage index, a committee (the Committee) was formulated in 1994, under the process established by the Negotiated Rulemaking Act of 1990 (Pub. L. 101–648). The Committee was established to negotiate the hospice wage index methodology rather than to go through the usual rulemaking process. On September 4, 1996, we published a proposed rule (61 FR 46579) in which we proposed a methodology to update the hospice wage index used to adjust Medicare hospice payment rates. This proposed methodology contained the negotiated rule making committee's recommendations.

In formulating the provisions of that proposed rule, the Committee considered criteria in evaluating the available data sources. These criteria included the need for fundamental equity of the wage index, data that reflected actual work performed by hospice personnel, compatibility with wage indexes used by CMS for other Medicare providers, and availability of the data for timely implementation.

The Committee agreed that the hospice wage index be derived from the 1993 hospital cost report data and that these data, prior to reclassification, would form the basis for the FY 1998 hospice wage index. That is the raw pre-floor, pre-reclassified hospital wage index would not be adjusted to take into account the geographic reclassification of hospitals in accordance with sections 1886(d)(8)(B) and 1886(d)(10) of the Act. The methodology is codified in § 418.306(c). The hospice wage index for subsequent years would be based on raw pre-floor, pre-reclassified hospital wage index data.

The Committee was also concerned that while some hospices would see increases in their payments, use of the raw pre-floor, pre-reclassified hospital wage index as the wage index for hospices would result in a net reduction in aggregate Medicare payments for hospices. As noted above, a majority of hospices would have had their wage index lowered by using the new wage index because the prior hospice wage indices were based on outdated data which were artificially high due to flaws in the 1981 BLS data, and because some hospices were located in areas where wages had gone down relative to other geographic areas. The reduction in overall Medicare payments if a new wage index were adopted was noted in the November 29, 1995 final rule (60 FR 61264). Therefore, the Committee also decided that for each year in updating the hospice wage index, aggregate Medicare payments to hospices would remain budget neutral to payments as if the 1983 wage index had been used.

As decided upon by the Committee, budget neutrality means that, in a given year, estimated aggregate payments for Medicare hospice services using the updated hospice values will equal estimated payments that would have been made for these services if the 1983 hospice wage index values had remained in effect, after adjusting the payment rates for inflation. Therefore, although payments to individual hospice programs may change each year, the total payments each year to hospices would not be affected by using the updated hospice wage index because total payments would be budget neutral as if the 1983 wage index had been used. To implement this policy, a BNAF would be computed and applied annually.

The BNAF is calculated by computing estimated payments using the most recent completed year of hospice claims data. The units (days or hours) from those claims are multiplied by the updated hospice payment rates to calculate estimated payments. The updated hospice wage index values are then applied to the labor portion of the payments. For this final rule, that means estimating payments for FY 2009 using FY 2007 hospice claims data as of March 2008, and applying the estimated updated FY 2009 hospice payment rates (updating the FY 2008 rates by the FY 2009 market basket update). The final FY 2009 hospice wage index values are then applied to the labor portion only. The procedure is repeated using the same claims data and payment rates, but using the 1983 BLS-based wage index instead of the updated raw pre-floor, pre-reclassified hospital wage index. The total payments are then compared, and the adjustment required to make total payments equal is computed; that adjustment factor is the BNAF.

All raw pre-floor, pre-reclassified hospital wage index values of 0.8 or greater would be adjusted by the BNAF, which would be calculated and applied annually. Also, all raw pre-floor, pre-reclassified hospital wage index values below 0.8 would receive the greater of the following: (1) A 15-percent increase subject to a maximum hospice wage index value of 0.8; or (2) an adjustment by the BNAF.

While the Committee sought to adopt a wage index methodology that would be as accurate, reliable, and equitable as possible, the Committee also decided to incorporate a BNAF into the calculation of the hospice wage index that would otherwise apply in order to mitigate adverse financial impacts some hospices would experience through a decrease in their wage index value by transitioning to a raw pre-floor, pre-reclassified hospital wage index.

In the August 8, 1997, final rule (62 FR 42860), we indicated that the annual updates of the hospice wage index values would be made in accordance with the methodology agreed to by the Committee. We also noted that in the event that we decide to change this methodology by which the hospice wage index is computed, we would propose to do so in the **Federal Register**. In the May 2008 proposed rule, we proposed to change this methodology.

In FY 1998, the BNAF was 1.020768 and in FY 2008, the BNAF was 1.066671. Any raw pre-floor, pre-reclassified hospital wage index value greater than 0.8 was increased by over 2 percent in FY 1998 and increased by almost 7 percent in FY 2008. In FY 2008, this adjustment resulted in hospice providers receiving about 4 percent more in payments than they would have received if the BNAF had not been applied.

The Committee also recommended that the transition to the new hospice wage index occur over 3-years, from FY 1998 to FY 2001. The intent of both the 3-year transition and the budget neutrality adjustment was to mitigate the negative financial impact to many hospices resulting from the wage index change. Additionally, the committee sought to ensure that access to hospice care was not jeopardized as a result of the wage index change.

We believe that the rationale for maintaining the BNAF is outdated for several reasons.

First, the original purpose of the BNAF was to prevent reductions in payments to the majority of hospices whose wage index was based on the original hospice wage index which was artificially high due to flaws in the 1981 BLS data. Additionally, the BNAF was adopted to ensure that aggregate payments made to the hospice industry would not be decreased or increased as a result of the wage index change. While incorporating a BNAF into hospice wage indices could be rationalized in 1997 as a way to smooth the transition from an old wage index to a new one, since hospices have had plenty of time to adjust to the then new wage index, it is difficult to justify maintaining in perpetuity a BNAF which was in part compensating for artificially high data to begin with.

Second, the new wage index adopted in 1997 resulted in increases in wage index values for hospices in certain areas. The BNAF applies to hospices in all areas. Thus, hospices in areas that would have had increases without the BNAF received an artificial boost in the wage index for the past 11 years. We believe that continuation of this excess payment can no longer be justified.

Third, an adjustment factor that is based on 24-year-old wage index values is not in keeping with our goal of using a hospice wage index that is as accurate, reliable, and equitable as possible in accounting for geographic variation in wages. We believe that those goals can be better achieved by using the raw pre-floor, pre-reclassified hospital wage index, without the outdated BNAF, consistent with other providers. For instance, Medicare payments to home health agencies, that utilize a similar labor mix, are adjusted by the raw pre-floor, pre-reclassified hospital wage index without any budget neutrality adjustment. We believe that using the raw pre-floor, pre-reclassified hospital wage index provides a good measure of area wage differences for both these home-based reimbursement systems.

Fourth, in the 13 years since concerns about the impact of switching from an old to a new wage index were voiced, the hospice industry and hospice payments have grown substantially. Hospice expenditures in 2006 were $9.2 billion, compared to about $2.2 billion in 1998. Aggregate hospice expenditures are increasing at a rate of about $1 billion per year. MedPAC reports that expenditures are expected to grow at a rate of 9 percent per year through 2015, outpacing the growth rate of projected expenditures for hospitals, skilled nursing facilities, and physician and home health services. We believe that this growth in Medicare spending for hospice indicates that the original rationale of the BNAF, to cushion the impact of using the new wage index, is no longer justified. These spending growth figures also indicate that any negative financial impact to the hospice industry as a result of eliminating the BNAF is no longer present, and thus the need for a transitional adjustment has passed.

Fifth, 13 years ago the industry also voiced concerns about the negative financial impact on individual hospices that could occur by adopting a new wage index. In August 1994 there were 1,602 hospices; currently there are 3,111 hospices. Clearly any negative financial impact from adopting a new wage index in 1997 is no longer present, or we would not have seen this growth in the industry. The number of Medicare-certified hospices has continued to increase, with a 26 percent increase in the number of hospice providers from 2001 to 2005. This ongoing growth in the industry also suggests that phasing out the BNAF would not have a negative impact on access to care. Therefore, for these reasons, we believe that continuing to apply a BNAF for the purpose of mitigating any adverse financial impact on hospices or negative impact on access to care is no longer necessary.

Finally, we proposed to phase out the BNAF over a 3-year period, reducing the BNAF by 25 percent in FY 2009, by 75 percent in FY 2010, and eliminating it in FY 2011. We believe that the proposed 3-year phase-out period will reduce any adverse financial impact that the industry might experience if we eliminated the BNAF in a single year. We also proposed to maintain the hospice floor, which offers protection to hospices with raw pre-floor, pre-reclassified hospital wage index values less than 0.8, noting that the steps in the calculation which involve the BNAF will become unnecessary. We are implementing the BNAF phase-out as proposed, and maintaining the hospice floor as proposed.

We received several comments on the phase-out of the BNAF. Specific comments and our responses to these comments are as follows:

Comment: Several commenters disputed CMS' description of the purpose of the BNAF in the proposed rule. The commenters stated CMS asserted that the purpose was to smooth the transition from an outdated BLS-based wage index to the hospital-based wage index in 1998, the language in several payment rules suggested that the BNAF was not a time-limited adjustment and was to be applied annually, during and after the transition to the hospital-based wage index. One comment supported keeping the BNAF, stating that a payment reduction for FY 2009 to FY 2011 is no less disruptive than any payment reduction which occurred through the wage index transition in 1997. Another commenter stated that the hospice negotiated wage index rule that was finalized by CMS in 1997 recognized the need to include a budget neutrality adjustment to offset the flaws in the hospital wage index, and therefore protect the viability of hospices. The commenter also stated that reason remains as valid today as eleven years ago. Another commenter said CMS' rationale for phasing out the BNAF suggested that eliminating the BNAF would restore fairness to the hospice wage index, when in reality no wage index methodology is perfect. Other commenters stated that CMS has previously recognized that BNAF protects hospices from inadequacies in the hospital wage index, and inadequacies in the hospice payment rates. Another commenter stated that the BNAF was put into place because of the dramatic changes triggered by

implementation of the new wage index, so that access to care was protected.

In addition, a commenter asserted that the fundamental reason for the BNAF was that no component of the current reimbursement system accurately replicates hospice costs. A commenter also indicated that CMS stated that hospice payments and providers had increased over the past 10 years, and that the hospice wage index methodology is dated. The commenter further stated that by those standards, the wage index model used by every Medicare provider type would need revision. Furthermore, a commenter asked why, other than time passing, is the BNAF outdated. Commenters indicated that the rationale for applying the BNAF originally is still valid.

Response: We continue to believe that the hospice wage index negotiating committee intended the BNAF to mitigate the negative financial impact of the 1998 hospice wage index change. We continue to believe that because of the growth in the industry and the amount of time that has passed since the transition, the rationale for maintaining the BNAF is no longer justified. In addition, from a parity perspective, we believe that an raw pre-floor, pre-reclassified hospital wage index is appropriate for use in adjusting rates for geographic variances in both of our home-based benefits, hospice and home health. Nothing in our data analysis has shown us that hospice labor costs differ substantially from home health labor costs. Therefore, we believe we can no longer justify the 6 percent increase in the hospice wage index, which results from the BNAF. We agree with the commenter that BNAF was put into place so that beneficiary access to hospice care would be protected. We believe the Committee was primarily concerned about those areas of the country that would see their payments reduced as a result of the wage index change. The Committee was concerned that the payment reductions might affect the viability of hospices in these areas, thus ultimately risking access to care. The Committee intended that aggregate payments to hospices not be reduced as a result of the wage index change. We do not believe that the Committee foresaw the amount of growth in the number of new hospices that would occur over the following decade. While we agree with the commenter that our regulations describe that the BNAF be applied during and after the transition to the new wage index, we continue to believe that those decisions were made as part of the negotiations to address transitional issues, and do not negate our ability to make future policy changes. We believe that our regulations, the negotiating committee statement, and the negotiating committee workgroup notes support these beliefs. We also believe that given the current industry climate, it is appropriate that a policy change now occur.

The decision to transition from the BLS-based wage index to the hospital-based wage index was a long process. In the October 14, 1994, proposed rule (59 FR 52130), we noted that both CMS (formally HCFA) and industry projections indicated that most hospices would have their wage indices lowered if a new wage index were based on unadjusted hospital data. The preamble of the final rule stated that, ''During the discussions preliminary to developing a new wage index, the industry voiced concerns over the adverse financial impact of a new wage index on individual hospices and a possible reduction in overall Medicare hospice care payments'' (59 FR 52130). There were also concerns that access to hospice care could be affected. We noted that as a result of the impact of the lower payments to hospices in the aggregate, the new wage index would have to be at least budget neutral (59 FR 52131). The Committee Statement of April 13, 1995, which was published in a notice on November 29, 1995 (60 FR 61265), said that we would apply a factor to achieve budget neutrality, and noted that budget neutrality meant that aggregate Medicare hospice payments using the new hospital-based wage index would have to equal estimated payments that would have been made under the original hospice wage index.

We do not believe that the Committee foresaw the tremendous growth in the industry. As a result of this growth, the surge of new entrants into the industry over the past 10 years has benefited from this adjustment. We continue to believe that the committee adopted the BNAF to help existing hospices transition to the 1998 wage index change, and did not expect that the BNAF would result in these payment increases to new providers in perpetuity. Impact analysis performed by participants in the negotiating process showed pockets of the country where the migration to the new hospital wage index would result in wage index values decreasing nearly 30 percent. The committee was clearly concerned about hospice viability in those areas of the country, with a corresponding concern about access to care. We continue to believe that the unique BNAF methodology, coupled with the 3-year transition period, served to address those transitional concerns. It also continues to be our belief that because of the growth in the number of hospices, and the growth in the beneficiaries served that has occurred during the last decade, the committee's goal to ensure that access to hospice care not be reduced as a result of the wage index change has been achieved. Therefore, we believe that this unique methodology for achieving budget neutrality has served its purpose and is no longer necessary to be continued.

We disagree with the commenters who wrote that the BNAF was intended to offset flaws in the hospital wage index or address inadequacy of the hospice payment rates. None of our hospice regulations or notices from 1994 to 1998 which deal with the transition to a new wage index indicated that the BNAF was put into place because of flaws in the hospital-based wage index, rate inadequacies, or because of any inaccurate replication of hospice costs under the current reimbursement system. We continue to believe, as the Committee did, that the raw pre-floor, pre-reclassified hospital wage index is currently the best choice for use in deriving the hospice wage index.

We agree with the commenter that the language in the August 8, 1997 final rule indicated that the BNAF would be applied during and after the transition period (62 FR 42862), however this language did not imply that the BNAF could not be changed or eliminated. That same final rule also included a provision for us to change the wage index methodology, through notice and comment rulemaking (62 FR 42863).

In our rationale for the BNAF phase-out, we noted the increase in payments and in the number of providers to show that the hospice industry was growing. Growth such as this, rather than industry contraction, typically occurs in a favorable business climate. The presence of a favorable business climate suggests that concerns about the financial impact of changing to a new wage index had passed. Finally, we did not state that all hospice wage index methodology was outdated, but only that the BNAF was outdated, and we continue to believe that is the case.

Given that the impact of the BNAF phase-out is relatively small (1.1 percent payment reduction for FY 2009), and is being offset by a 3.6 percent market basket update, we do not feel that the phase-out will be disruptive to the hospice industry. However, we will monitor the impact as the phase-out occurs.

Comment: A commenter wrote that CMS justified phasing out the BNAF in part because the combination of increases in the wage index in certain

areas with the BNAF led to an artificial boost in the wage index for the past 11 years, which CMS concluded was an excess payment. The commenter also stated that CMS said that if there had been no wage index change in 1997, the total payments to hospices would be greater than the payments that will be made if the proposal is implemented. The commenter concludes that there is no excess spending triggered by the BNAF, but instead there is an unauthorized reduction under the CMS proposal.

Another commenter felt that CMS is singling out the BNAF because some hospices benefited more from it than others. The commenter also suggested that CMS change the methodology for the limited number of hospices that benefited unduly from the ''artificial boost'' given by the BNAF.

In addition, a commenter stated that CMS had indicated one reason for the BNAF phase-out was because the growth in hospice expenditures indicates that any negative financial impact from the transition to the hospital-based wage index in 1998 was no longer present. The commenter indicated that CMS assumed this growth in spending was excess spending, and that CMS had put forward no evidence that there was excess spending in hospice versus appropriate increases in spending.

Response: We continue to believe that applying the BNAF to the raw hospital-based wage index does not, as accurately as possible, account for geographic variances in hospice labor costs. When the hospice industry changed from the BLS-based wage index to the raw pre-floor, pre-reclassified hospital wage index, it began using more accurate, more current data which are updated annually. When that transition occurred, there were hospices whose wage index value increased, but many hospices saw their wage index value decrease. This is because the BLS-based wage index values, which were applied to hospice payments, were artificially high in some areas of the country. The Committee itself acknowledged that the BLS data were ''inaccurate and outdated'' in its Committee Statement (62 FR 42883). The hospital-based wage index was considered more accurate, even though its wage index values were lower for many hospices. Therefore before the transition to the hospital-based wage index, many hospices were receiving payments that were inflated due to the artificially high BLS-based wage index.

In addition, the BNAF was put into place to mitigate the adverse financial impact to hospice providers of changing wage indices, since the change would lead to a reduction in payments, which could threaten access to care. However, as we previously described in the comment above, the BNAF has been applied not only to those hospices that were in existence at the time of the wage index change, but also to those new hospices that were established after 1998. We continue to believe that these new entrants have received an artificial boost to their payments as a result of the BNAF, which was not the intent of the negotiating committee.

The commenter is correct that if the hospice industry had not adopted the hospital-based wage index, but had remained with the BLS-based data, each year's total Medicare hospice payments would be higher than they will be when the BNAF is phased out. However, as noted above, because of the inaccuracy and outdatedness of the BLS-based wage data, those payments would also be inaccurate, and CMS must do its best to ensure the accuracy of Medicare payments.

The commenter correctly noted that we feel that the growth in hospice expenditures indicates that the need to mitigate any adverse financial impact from the change to a hospital-based wage index has passed. However we did not assume that this growth was due to excess spending associated with the BNAF. We recognize that many factors contribute to expected and appropriate growth in spending, including increased numbers of Medicare beneficiaries eligible for hospice care; increased awareness of the benefit by beneficiaries, their families, and physicians; some longer lengths of stay; etc.

We believe that the growth in Medicare hospice expenditures indicates the overall good financial health of the hospice industry and that this further demonstrates that the BNAF has outlived its usefulness and is no longer appropriate. As stated previously, we believe that given the current industry climate, it is appropriate that a policy change to phase out the BNAF be implemented.

Comment: A commenter wrote that CMS had justified the BNAF phase-out by noting that there had been an 86 percent increase in growth in the number of hospices. The commenter maintained that growth in the number of hospice providers does not demonstrate that hospices can absorb the payment reduction triggered by the BNAF phase-out. The commenter also stated that CMS does not know the financial status of those hospices or the level of demand for their services.

Several commenters stated that CMS has concluded that the growth in the hospice benefit was due to the BNAF, thereby justifying its elimination. The commenters noted a number of factors that have contributed to the hospice industry's growth, including an increased number of beneficiaries using the benefit, longer lengths of stay, increased acceptance of hospices for end-of-life care by the physician and patient/family communities, changes in the mix of patients using hospice, and educational efforts by providers and by CMS to beneficiaries and health care providers.

Several commenters felt that the proposed BNAF reduction is a reaction to increasing hospice reimbursements overall. Another commenter stated that hospice is a small portion of all Medicare spending.

Response: We appreciate these comments. As we indicated in our responses, the FY 2009 financial impact of the BNAF phase-out is no more than a 1.1 percent reduction in payments. Therefore, with a 3.6 percent market basket update factor for FY 2009, we do not believe that there will be a significant adverse effect on the new providers, or on long-standing providers. We agree that demand for hospice services is growing as the U.S. population ages, and as the baby boomer generation begins to be eligible for Medicare.

We disagree with the commenter's suggestion that CMS does not know the financial status of hospices. In fact, the Medicare Payment Advisory Commission (MedPAC) has performed extensive analysis on various aspects of hospice financial performance and utilization trends over the last few years, including an assessment of growth trends in the hospice industry. We believe that both the growth in hospice expenditures and the growth in the number of hospices are indicators of financial stability in the industry, especially given the growth surge in the number of for-profit providers. MedPAC noted that hospice care has changed considerably since the benefit's implementation. In 1983 most providers were nonprofits affiliated with religious or community organizations, but now for-profit hospices constitute the majority of providers and the vast majority of new entrants into the program since 2000 (MedPAC, p. 206). In 1998, for-profit providers comprised 26.9 percent of the industry (63 FR 53456), while in 2007, for-profits comprised 51 percent (MedPAC, p. 216). The growth in not-for-profit hospices since 1998 has remained relatively flat.

MedPAC has also provided some information about the financial health of hospices, particular those who are new entrants into the market. MedPAC noted that hospices that began participating in the market in 2000 or after had consistently and substantially higher margins than those participating in Medicare before 2000. In addition, these higher margins are consistent with the growth in the number of for-profit providers (MedPAC, p. 223–224). Therefore, we do not believe that the newer entrants will be more affected by the BNAF reduction than older hospices.

We disagree with the comment that we asserted that the growth in the hospice industry was due to the BNAF or that the BNAF reduction is a reaction to the growth in hospice reimbursements. However, the commenters correctly noted several factors that have contributed to industry growth. We indicated that the BNAF phase-out was not a reaction to that growth—in the proposed rule, rather we stated that the BNAF was put in place to mitigate any adverse financial impact that individual hospices might experience as a result of transitioning to the new hospital-based wage index in 1998. We note that industries do not typically expand and grow during times of financial adversity; often there is industry contraction instead. We stated that the growth in the industry is an indication that any adverse financial effects of transitioning to a new wage index had ended.

We agree that relative to all Medicare spending, hospice spending is a small portion accounting for an expected 2.3 percent of spending overall in FY 2009. However, we estimate that hospice spending will more than double in the next 10 years. The growth in hospice spending has outpaced the rate of growth for other Medicare provider types. Furthermore, CMS has a responsibility to safeguard trust fund dollars by paying accurately and appropriately for all Medicare services. Finally, we disagree with the commenter that the proposed reduction in the BNAF is simply a reaction to increasing hospice reimbursements. Rather, as we have stated in the previous responses, we believe that the purpose of the BNAF was to mitigate the negative financial impact of a 1998 wage index change. We believe this mitigation for the transition to a ''new'' wage index is no longer necessary. We also believe that phasing out the BNAF places both Medicare home-based benefits on a more equal footing in terms of recruiting staff.

Comment: A commenter stated that cutting hospice payments disregards the significant, collaborative progress made in the Medicare hospice program over the last decade. A few commenters stated that CMS circumvented Congress by going through rulemaking to propose and possibly finalize a BNAF phase-out. Several commenters suggested CMS should use negotiated rulemaking to refine payment policy such as the BNAF. Another commenter stated that the wage index calculation is not and never has been intended to be used as a method to form payment policy. This commenter stated that role historically has been reserved for Congress. Another commenter stated that the BNAF phase-out was an administrative proposal put forward in the President's budget, and therefore should be enacted by Congress rather than effectuated through CMS rulemaking. Another commenter stated that the Secretary of the Department of Health and Human Services is required to propose reforms to the wage index calculations. One commenter stated that the proposed rulemaking process administratively circumvented the legislative intent to maintain and ensure adequate hospice funding levels.

Response: We appreciate these comments, but respectfully disagree with the commenters. The BNAF was put into place through use of a Negotiated Rulemaking Committee. We recognized that the wage index methodology, including the BNAF, could be changed when we included the following statement in Section IV (B) of the August 8, 1997 Final Rule entitled ''Medicare Program; Hospice Wage Index'' (62 FR 42863):

> The annual updates will update the hospice wage index values according to the methodology agreed to by the rulemaking committee and implemented by this final rule. In the event that we decide to change the methodology by which the wage index is computed, this will be reflected in a proposed rule published in the **Federal Register**.

The ''we'' in this paragraph refers to CMS (formally HCFA), which published the final rule in 1997. It is clear from this statement that the wage index methodology, including the BNAF, is subject to changes by CMS, and that any such changes do not have to go through negotiated rulemaking, but rather through our rulemaking process of publishing proposed and final rules in the **Federal Register**. There is no statutory requirement that requires wage adjustment methodology changes to go through Congress. While legislative proposals in the President's Budget require Congressional action, administrative proposals in the budget simply indicate intended administrative action, and do not require any Congressional action.

We believe that the intent of the BNAF was to protect hospice payments during the transition to the hospital-based wage index. The growth in the industry and in payments suggests that the industry has adequate funding levels, and is one reason for our proposal to phase out the adjustment.

We value the collaborative process, but do not feel that it is limited to Negotiated Rulemaking. The notice and comment rulemaking process, which we are following, allows for industry input and comment and is the general process by which changes to Medicare payment policy most often occur. We look forward to continuing to work with the industry in the future.

Comment: Many commenters stated that achieving budget neutrality was always a goal of the negotiated rulemaking process. A commenter disputed CMS' assertion that the BNAF was intended to prevent reductions in payments to the majority of hospices whose wage index was based on the original hospice wage index, which was artificially high due to flaws in the BLS data, and stated that the BNAF was never a point of contention during the Negotiated Rulemaking Process. The commenter stated that before the Negotiated Rulemaking Committee began its negotiations, CMS (formally HCFA) indicated that the wage index could not be used as a tool to increase payments to hospices, nor would it be used as a tool to lower aggregate payments to hospices. The commenter quoted our regulation (59 FR 52131), which stated that ''We [HCFA] consider it a given of negotiation that any revised wage index would have to be at least budget neutral; that is, total aggregate payments for the same services could not be more using the revised wage index than if such payments were made using the current index.''

Response: We stand by our assertion that the BNAF was intended to prevent reductions in payment, and point to the quote from the 1994 proposed rule (59 FR 52131), which the commenter included that the BNAF was designed to protect aggregate payments. We did not state or imply that the adoption of the BNAF was a point of contention during Negotiated Rulemaking. Rather, we said that the BNAF was now outdated, and is no longer needed for the reasons given in the proposed rule (73 FR 24006).

It is clear that we have the authority to make changes to the hospice wage index methodology, as noted in the August 8, 1997 final rule (62 FR 42862):

''In the event we decide to change the methodology by which the wage index is computed, this will be reflected in a proposed rule published in the **Federal Register**.

a. Effects of Phasing Out the BNAF Using the Published FY 2008 Hospice Wage Index

In the proposed rule, we used the August 31, 2007 FY 2008 hospice wage index (72 FR 50214) to illustrate the effects of phasing out the BNAF over 3 years. This analysis and discussion is for illustrative purposes only and does not affect any of the hospice wage index values for FY 2008.

The BNAF that was calculated and applied to the 2007 raw pre-floor, pre-reclassified hospital wage index values was 6.6671 percent. We will reduce the BNAF by 25 percent for FY 2009, by 75 percent for FY 2010, and eliminate it altogether for FY 2011 and beyond. A 25 percent reduction in the BNAF can be accomplished by blending 75 percent of the FY 2008 hospice wage index that applied the full 6.6671 percent BNAF with 25 percent of the FY 2008 hospice wage index that used no BNAF. This is mathematically equivalent to taking 75 percent of the full BNAF value, or multiplying 0.066671 by 0.75, which equals 0.050003, or 5.0003 percent. The BNAF of 5.0003 percent reflects a 25 percent reduction in the full BNAF. The 25 percent reduction in the BNAF of 5.0003 percent would be applied to the raw pre-floor, pre-reclassified hospital wage index values of 0.8 or greater used in the published FY 2008 hospice wage index.

The hospice floor calculation will still apply to any raw pre-floor, pre-reclassified hospital wage index values less than 0.8. Currently, the floor calculation has 4 steps—(1) Raw pre-floor, pre-reclassified hospital wage index values that are less than 0.8 are first multiplied by 1.15; (2) the minimum of 0.8 or the raw pre-floor, pre-reclassified hospital wage index value times 1.15 is chosen as the preliminary hospice wage index value; (3) the raw pre-floor, pre-reclassified hospital wage index value is multiplied by BNAF; and (4) the greater result of either step 2 or step 3 is chosen as the final hospice wage index value. We left the hospice floor calculation unchanged, noting that steps 3 and 4 will become unnecessary once the BNAF is eliminated.

For the simulations of the BNAF phase-out for FY 2010 and FY 2011, we used the same raw pre-floor, pre-reclassified hospital wage index values and claims data as the example above, and simply changed the value of the BNAF to reflect either a 75 percent reduction for FY 2010 or a 100 percent reduction for FY 2011. In both cases we started with the full BNAF of 6.6671 percent. We changed the calculation to take 25 percent of the full BNAF to reflect a 75 percent reduction for FY 2010, or eliminated the BNAF altogether to reflect a 100 percent reduction for FY 2011. For FY 2010, the reduced BNAF or the hospice floor was then applied to the 2007 raw pre-floor, pre-reclassified hospital wage index as described previously. For FY 2011 and subsequent years, the raw pre-floor, pre-reclassified hospital wage index values would be unadjusted unless they are less than 0.8, in which case the hospice floor calculation would be applied. Again, we note that the steps in the calculation that involve the BNAF will become unnecessary once the BNAF is phased out.

For our simulations, the calculations of the BNAF are as follows:

- A 75 percent reduction to the BNAF in FY 2010 would be $0.066671 \times 0.25 = 0.016668$ or 1.6668 percent.
- A 100 percent reduction or elimination of the BNAF in FY 2011 would be $0.066671 \times 0.0 = 0.0$ or 0 percent.

We examined the effects of phasing-out the BNAF versus using the full BNAF of 6.6671 percent on the FY 2008 hospice wage index. The FY 2009 BNAF reduction of 25 percent resulted in approximately a 1.55 to 1.57 percent reduction in the hospice wage index values. The FY 2010 BNAF reduction of 75 percent would result in an estimated additional 3.12 to 3.13 percent reduction from the FY 2009 hospice wage index values. The elimination of the BNAF in FY 2011 would result in an estimated final reduction of the FY 2011 hospice wage index values of approximately 1.55 to 1.57 percent compared to FY 2010 hospice wage index values.

Those CBSAs whose raw pre-floor, pre-reclassified hospital wage index values had the hospice floor calculation applied before any change to the BNAF would not be affected by the phase-out of the BNAF. These CBSAs, which typically include rural areas, are protected by the hospice floor calculation. Additionally, those CBSAs, which were eligible for the hospice floor calculation, but whose hospice wage index values were previously 0.8 or greater after the calculation was applied, but which would have values less than 0.8 after the calculation using a reduced BNAF was applied, would see a smaller reduction in their hospice wage index values. We have estimated the number of CBSAs that would have their raw pre-floor, pre-reclassified hospital wage index value eligible for the floor calculation after applying the 25, 75, and 100 percent reductions in the BNAF. Three CBSAs would be affected by the 25 percent reduction, 12 would be affected by the 75 percent reduction, and 22 would be affected by the 100 percent reduction. Because of the protection given by the hospice floor calculation, these CBSAs would see smaller percentage decreases in their hospice wage index values than those CBSAs that are not eligible for the floor calculation. This will benefit those hospices with lower hospice wage index values, which are typically in rural areas.

Finally, the hospice wage index values only apply to the labor portion of the payment rates; the labor portion was described in section I.B.1 of the proposed rule (73 FR 24002). Therefore, the estimated reduction in payments due to the phase-out of the BNAF would be less than the percentage reductions to the hospice wage index values that would result from reducing or eliminating the BNAF. In addition, the effects of the phase-out of the BNAF will also be mitigated by a hospital market basket update in payments, which in FY 2008 was a 3.3 percent increase in payment rates. The hospital market basket update for FY 2009 will be 3.6 percent. This update and the FY 2009 payment rates will be officially communicated through an administrative instruction and not through rulemaking. The estimated effects on payment described in column 5 of Table 2 in section V of this final rule include the projected effect of a FY 2009 3.6 percent hospital market basket update.

b. Effects of Phasing Out the BNAF Using the Updated Raw Pre-Floor, Pre-Reclassified Hospital Wage Index Data (FY 2009 Proposal)

In this final rule, for FY 2009, we are updating the hospice wage index using the 2008 raw pre-floor, pre-reclassified hospital wage index and the most complete claims data available (FY 2007 claims as of March 2008). Using these data, we computed a full BNAF of 6.6255 percent. For the first year of the BNAF phase-out (FY 2009), the BNAF will be reduced by 25 percent, or $0.066255 \times 0.75 = 0.049691$, to 4.9691 percent. This will decrease hospice wage index values by approximately 1.55 to 1.56 percent from wage index values with the full BNAF applied. As noted in the previous discussion on the effects of the BNAF reduction in the published FY 2008 hospice wage index, those CBSAs which already have raw

pre-floor, pre-reclassified hospital wage index values that have the hospice floor applied before implementing a BNAF reduction will be completely unaffected by this BNAF reduction (for example, rural West Virginia, and CBSA 13900, Bismarck, ND). Those CBSAs which are eligible for the hospice floor, and which previously had hospice wage index values above 0.8 after applying the full BNAF (as part of the floor calculation), but which now are below 0.8 with the 25 percent reduction in the BNAF, will be less affected by the BNAF reduction than those CBSAs which are 0.8 or above after applying the BNAF. They are protected by the hospice floor calculation (for example, rural Alabama would realize a decrease in its wage index value of only 0.40 percent, and CBSA 27780, Johnstown, PA, would realize a decrease in its wage index value of only 0.53 percent). Additionally, the final hospice wage index is only applied to the labor portion of the payment rates, so the actual effect on estimated payment will be less than the anticipated percent reduction in the hospice wage index value. Furthermore, that effect will be mitigated by a market basket update. The final market basket update for FY 2009 will be 3.6 percent rather than the 3.0 percent estimated in the proposed rule.

Column 3 of Table 2 (section V of this final rule) shows the impact of using the most recent wage index data (the 2008 raw pre-floor, pre-reclassified hospital wage index not including any reclassification under section 1886(d)(8)(B) of the Act) compared to the 2007 raw pre-floor, pre-reclassified hospital wage index data which was used to derive the FY 2008 hospice wage index. Column 4 of Table 2 in Section V of this final rule shows the impact of incorporating the 25 percent reduction in the BNAF in the FY 2009 hospice wage index along with using the most recent wage index data (2008 raw pre-floor, pre-reclassified hospital wage index). Finally, column 5 of Table 2 shows the combined effects of using the updated raw pre-floor, pre-reclassified hospital wage index, the 25 percent reduced BNAF, and a FY 2009 market basket update of 3.6 percent. The FY 2009 rural and urban hospice wage indexes can be found in Addenda A and B of this final rule. The raw pre-floor, pre-reclassified hospital wage index values were adjusted by the 25 percent reduced BNAF or by the hospice floor.

Comment: Many commenters stated that the impact of the phased elimination of the budget neutrality provision is much greater than the 1.1 percent reduction in payment that was described in the proposed rule. These commenters stated that some providers will experience reductions ranging from 5 percent to in excess of 14 percent over the 3 years as a result of the BNAF phase-out, and stated that the cuts would create hardship for hospices. Several commenters gave specific examples of CBSAs where wage index values decreased more than 1.1 percent, or of wage index values in contiguous CBSAs which decreased, but by differing amounts. The commenters stated that they cannot match pay scales with such a disparity in wage index values, and that there are no differences in medical costs between adjoining CBSAs.

Response: We appreciate the comments about the financial impact of the proposed rule, but are very concerned that incorrect percentage impacts on payments from the BNAF reduction are being cited in many of the comments. Some commenters may have confused the effect of the BNAF reduction with the effect of fluctuations in the wage index values from the raw pre-floor, pre-reclassified hospital wage index. This hospital wage index is used to derive the hospice wage index. We emphasize that the BNAF reduction will result in a payment reduction to hospices of no more than 1.1 percent in FY 2009. The large payment cuts which hospices repeatedly cited are not due to the BNAF reduction. The impact table in the proposed rule shows the effects of using the updated wage index values, the combined effects of using updated wage index values and the 25 percent reduction in the BNAF, and the combined effects of the updated wage index values, the 25 percent BNAF reduction, and the market basket update. Given the apparent confusion, we will clarify our methodology for calculating the FY 2009 hospice wage index to include the BNAF reduction, and we will expand our explanation of the associated impacts.

In the proposed rule, using the most current data available, we first calculated the unreduced BNAF for FY 2009, which was 6.5357 percent. We reduced that number by 25 percent, to arrive at 4.9018 percent. The raw wage index values from the raw pre-floor, pre-reclassified hospital wage index were increased by 4.9018 percent instead of by 6.5357 percent for every CBSA or rural area with a wage index value of 0.8 or greater (if the raw wage index value was less than 0.8, the hospice floor applied). The difference in the wage index value was 6.5357 percent − 4.9018 percent = 1.6339 percent. However, the wage index value only applies to the labor portion of payments, so the effect on payments is less. The labor percentages do not vary by hospice or by CBSA; they are the same for every provider. Therefore the impact of the BNAF reduction on payments does not and cannot vary from one location to another.

In the proposed rule, our impacts showed the effect of the 25 percent BNAF reduction (not including the effect of using the updated wage index) on total payments to be a 1.0 percent reduction (1.1 percent in this final rule), compared to what hospices would have received if the full BNAF had been used. We noted in the proposed rule that this reduction would be offset by a market basket update that was estimated at 3.0 percent. Because the BNAF reduction is applied across the board to the raw pre-floor, pre-reclassified hospital wage index values as a percentage reduction, all hospices (except those subject to the floor) are affected the same in that this final rule's estimated reduction in payments to all hospices is approximately 1.1 percent. Over the course of the 3-year phase-out, the elimination of the BNAF will reduce payments by about 4 percent: We estimated a 1.1 percent reduction in FY 2009, an additional 2 percent reduction in FY 2010, and an additional 1 percent reduction in FY 2011. However those reductions do not include 3 years of market basket updates for FY 2009, FY 2010, and FY 2011. Therefore, assuming market basket updates' inclusion in FY 2010 and FY 2011, hospices will still have a net gain in payments over the 3 years. While we do not know what the market basket updates will be for FY 2010 and FY 2011, hospices received market basket updates ranging from 3.3 percent to 3.7 percent from FY 2005 to FY 2008. The market basket update for FY 2009 is 3.6 percent. Because we do not know how the commenters calculated the percentage reductions they cited, it is unclear whether they accounted for market basket updates in their analyses. Therefore, not knowing the details of the analysis, we are unable to comment further on, or substantiate, the commenters' analysis.

As with the estimated reduction for FY 2009, the reductions in FY 2010 and FY 2011 payments will apply uniformly to all hospices with wage index values ≥0.8. Therefore, for hospices with raw pre-floor, pre-reclassified hospital wage index values ≥0.8, the reductions over the 3 years will not be larger for one hospice versus another. As noted in the proposed rule, those with raw pre-floor, pre-reclassified wage index values <0.8 will be less affected or unaffected by the BNAF phase-out.

In this final rule, we calculated the BNAF using updated claims data (2007 claims as of March 2008). The full BNAF was slightly higher at 6.6255 percent; the 25 percent reduced BNAF was 4.9691 percent, which is slightly higher than the BNAF in the proposed rule. Therefore, the raw pre-floor, pre-reclassified hospital wage index values used to derive the hospice wage index were increased by 4.9691. Because of the increase in the BNAF itself from the proposed rule to the final rule, the hospice wage index values in this final rule are slightly higher than those that were in the proposed rule.

Additionally, the final market basket update for FY 2009 is 3.6 percent rather than the 3.0 percent estimated in the proposed rule. That means the total impact of using an updated wage index, of reducing the BNAF by 25 percent, and of the market basket update is estimated to be a 2.5 percent increase in payments to hospices in FY 2009.

The impact of the BNAF reduction does not vary from hospice to hospice (except for those subject to the floor) as the same adjustment was applied across the board to the raw pre-floor, pre-reclassified hospital wage index values. Likewise, the impact of the market basket update does not vary from hospice to hospice, as the 3.6 percent increase is applied to the same base rates across the board. Therefore our impacts do not and cannot mask the effects of the BNAF reduction by presenting aggregate data.

The only place for variation in payment at the individual hospice level is within the raw pre-floor, pre-reclassified hospital wage index values themselves. These raw wage index values are the input values which are adjusted by either the BNAF or the hospice floor calculation to derive the hospice wage index. To show the changes from FY 2008 to FY 2009 in the raw pre-floor, pre-reclassified hospital wage index, from which the hospice wage index is derived, see Addendum C in this final rule.

Addendum C shows that large fluctuations in some wage index values exist from year to year, some positive and some negative. These fluctuations are the source of negative and positive effects on payment to hospices beyond the 1.1 percent reduction due to the BNAF and the 3.6 percent increase due to the market basket update. Between FY 2008 and FY 2009, there were 21 CBSAs or rural areas with raw pre-floor, pre-reclassified hospital wage index values which decreased 5 percent or more, and 16 CBSAs or rural areas with raw pre-floor, pre-reclassified hospital wage index values which increased 5 percent or more. We have also included Addendum D, comparing FY 2008 raw pre-floor, pre-reclassified hospital wage index values with those from FY 2007 to demonstrate that fluctuations in raw wage index values occur every year. Addendum D shows that there were actually more fluctuations between FY 2007 and FY 2008 than between FY 2008 and FY2009; Addendum D also shows that between FY 2007 and FY 2008, 23 CBSAs or rural areas had raw pre-floor, pre-reclassified hospital wage index values that decreased by 5 percent or more, and 17 CBSAs or rural areas that increased by 5 percent or more. We remind commenters that these raw pre-floor, pre-reclassified hospital wage index values are adjusted upward by the hospice floor if the value is below 0.8. These fluctuations do not translate into an equivalent increase or decrease in payments, as the wage index value only applies to the labor portion of payments. Additionally, in considering the total impact on payments, commenters would need to account for the market basket increase that applies to hospice payment rates.

The raw pre-floor, pre-reclassified hospital wage index originates from data provided on each hospital's cost reports. Hospitals must report their wages paid; Medicare takes those data for the hospitals in each CBSA and computes a CBSA average hourly rate. It also takes the data for all hospitals and computes a national average hourly rate, which becomes the standard. The raw pre-floor, pre-reclassified wage index values for each CBSA are computed by dividing the CBSA's average hourly rate by the national average hourly rate. Therefore, if a wage index value is increasing or decreasing, it is because hospital wages within that CBSA are increasing or decreasing relative to the national average.

CMS performs an intensive review of the hospital wage data, mostly through use of edits to identify aberrant data. The Fiscal Intermediary/MAC then revises or verifies the data elements that resulted in specific edit failures.

Table 1 below shows calculation of the hospice wage index for both FY 2008 and FY 2009, beginning with the raw pre-floor, pre-reclassified wage index value (the input), and applying the BNAF or hospice floor for 3 CBSAs. For the first CBSA (31020), the raw pre-floor/pre-reclassified hospital wage index for FY 2009 is greater than it was in FY 2008. Conversely, the raw pre-floor/pre-reclassified hospital wage index values for CBSAs 41780 and 48540 are less in FY 2009 than in FY 2008. Table 1 shows the computation of the hospice wage index values for these CBSAs for FY 2008 and for FY 2009 (using proposed rule BNAF values). The table also demonstrates that the hospice floor protects values <0.8 from the effects of the BNAF reduction. In this case (CBSA 48540), the FY 2009 proposed wage index value is unchanged from the final wage index value for FY 2008. Therefore, as we noted in the proposed rule, the BNAF reduction had no effect in this circumstance.

The cities and counties which make up CBSAs are not determined by CMS, but instead are set by the OMB. Information about CBSA designations is available at the following Web site: *http://www.whitehouse.gov/omb/bulletins/fy2008/b08-01.pdf*. 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 the purposes of determining wage index values.

Currently there are limited data available for analysis of the impact of the phase-out of the BNAF on quality. The new claims data (with visit reporting beginning July 1st, 2008) and the new Conditions of Participation will provide data related to quality of care. We will monitor these data for any unanticipated effects of the BNAF phase-out.

TABLE 1—EXAMPLES OF HOW THE PROPOSED FY 2009 WAGE INDEX VALUES WERE DERIVED

CBSA	FY08 input—raw pre-floor pre-reclassified hospital wage index for FY08	FY 08 BNAF—Full BNAF = 0.066671 increases input value for all providers w/WI values ≥ 0.8; or apply hospice floor	Output—FY 2008 final hospice wage index value	FY09 input—raw pre-floor pre-reclassified hospital wage index for FY09	FY 09 proposed BNAF—25% reduced BNAF = 0.049018 increases input value for all providers w/WI values ≥ 0.8; or apply hospice floor	Output—FY 2009 NPRM hospice wage index value
31020	1.0011	× 1.066671	1.0678	1.0827	× 1.049018	1.1358
41780	0.9302	× 1.066671	0.9922	0.8822	× 1.049018	0.9254
		FY08 input < 0.8; hospice floor applies			FY09 input < 0.8; hospice floor applies	
		0.7010 × 1.15 = 0.8062; (Subject to 0.8000 max)			0.6961 × 1.15 = 0.8005; (Subject to 0.8000 max)	
		0.7010 × 1.066671 = 0.7477			0.6961 × 1.049018 = 0.7302	
48540	0.7010	Take greater of 15% increase (subject to 0.8 maximum) or BNAF increase	0.8000	0.6961	Take greater of 15% increase (subject to 0.8 maximum) or BNAF increase	0.8000

Comment: A number of commenters referred to the BNAF phase-out as a ''rate reduction'' or stated that CMS was cutting rates. In addition, a commenter asked CMS to publish the rate updates as part of the rule in the **Federal Register**, rather than in an administrative notice such as a Change Request.

Response: The BNAF is an adjustment which increases the raw pre-floor, pre-reclassified hospital wage index values that are 0.8 or greater, with the result being the hospice wage index. Raw pre-floor, pre-reclassified hospital wage index values <0.8 have the hospice floor calculation applied instead.

The hospice payment rates are per diems for routine home care, continuous home care, respite care, and general inpatient care. They were put into place by Congress, and are updated annually by the market basket update. We have not proposed any cut to the payment rates. In the proposed rule, we estimated that the per diems would increase due to a 3.0 percent market basket update; for the final FY 2009 rule the market basket update to be applied to the per diems increased to 3.6 percent. Therefore, we are not cutting hospice payment rates. Conversely, hospice payment rates for FY 2009 will be increased by the hospital market basket update of 3.6 percent, and will be communicated through a separate administrative instruction/issuance this summer.

We appreciate the comment about where payment rate updates are published. Historically, the payment rate updates have been issued through a separate administrative instruction or administrative issuance in the summer of each year to provide adequate time to implement the necessary system changes. In previous years, the hospice wage regulation was often published after August 1st, which does not allow sufficient time for system changes to be made to accommodate the October 1st implementation of payment updates. We will look into including the updated payment rates in the **Federal Register** in the future.

Comment: CMS received a number of comments suggesting that a BNAF phase-out would limit access to hospice care. Multiple commenters noted that costs were rising, including gasoline, wages, pharmacy costs, medical supplies, insurance, utilities, and food, and that hospices cannot absorb these costs in addition to the BNAF reduction without adversely affecting Medicare beneficiary hospice care. One commenter mentioned the high cost of converting to electronic health records. Many commenters stated that the BNAF reduction exacerbates the financial strain that CMS has already imposed on hospices this year, noting new hospice costs resulting from CMS's requirements to implement new Hospice Conditions of Participation (CoPs), and CMS's new visit data collection requirements (CR 5567). A few commenters stated that agencies are having difficulty soliciting donations in this economic downturn. Some rural providers commented that their staff may drive 100 miles each way to visit patients, and that they cannot afford the rising cost of gasoline. Rural and urban commenters stated that they could not survive a reduction in payments in the face of rising costs. These commenters stated that as a result of the BNAF reduction, they would have to limit the geographic areas they service, thus limiting hospice access to beneficiaries, especially in rural areas.

In addition, few commenters stated that there was anecdotal evidence that an increasing number of hospices had ceased operations or were in danger of closing, due to rising gas prices and to cap overpayments. Other commenters stated that they may have to delay expansion. Some commenters stated that they would have to discontinue programs, including bereavement programs, outreach programs, programs to specific underserved groups (for example, to inner city beneficiaries), complementary treatments (that is, acupuncture and art therapy) or comfort items such as overlay airflow mattresses, and charity care. Several commenters mentioned that hospices would be forced to limit access by restricting admissions, limiting the number of admissions for costly, medically complex patients such as cancer patients needing expensive palliative treatments. There was concern among many commenters that the BNAF phase-out would lead to cost-cutting within hospices, including staff reductions that would jeopardize quality patient care. Commenters stated that quality care takes time, but if staffing is reduced, the nurse-to-patient ratio will be unfavorable, and hospice workers will spend less time with patients. One commenter stated that hospices may cut the number of visits they make, and use phone contact instead. Another stated that the reduction disproportionately punishes best practices which hold true to the hospice concept. A commenter felt that the BNAF reduction punishes high quality, high quantity providers.

Response: We appreciate the commenters' concerns about rising costs and about access to hospice care. We agree that costs are rising and that it is vital to preserve access to hospice care for Medicare beneficiaries. As noted in our response to a previous comment, it appears that the changes in payments to individual hospices have been

misunderstood as being due to the BNAF reduction. For FY 2009, the BNAF reduction cannot affect any hospice by more than 1.1 percent. As stated in an earlier response, it is worth noting that while it is true that, in a given year, some areas will see what could be considered a significant decrease in their raw pre-floor, pre-reclassified hospital wage index value, other areas will see significant increases in their raw pre-floor, pre-reclassified hospital wage index value. These fluctuations in the raw pre-floor, pre-reclassified hospital wage index occur every year (Addenda C and D of this final rule show fluctuations from FY 2007 to FY 2008 and from FY 2008 to FY 2009). These fluctuations are not related to the BNAF reduction, and we believe the 1.1 percent impact of the BNAF, which is offset by the 3.6 percent FY 2009 market basket update, will not force hospices to close their doors or otherwise affect access to the quality, compassionate care which beneficiaries expect and deserve.

We agree that rising gas prices are a concern for hospices, and note that the hospital market basket update which is used by hospices includes an energy component that is sensitive to petroleum costs. It is reasonable to expect that future market basket updates will continue to account for any continuation of rising fuel costs. The FY 2009 market basket update increased from 3.0 percent in the proposed rule to 3.6 percent in this final rule, partly due to rising energy costs. We refer the reader to the comment about the market basket update later in this section for more details on the market basket update.

In addition, we believe that the requirements associated with the CoPs and CR5567 are part of the cost of doing business, and that the industry has had ample time to plan and budget for these changes. We do not believe that these requirements will have adverse affects on admissions or services, but instead expect that the emphasis on quality and the increased awareness of visits provided could enhance services.

We believe that in a time of inflationary pressure, all businesses, including hospices, will seek to operate more efficiently. We do not believe that the BNAF reduction will lead to the type of cost-cutting that would jeopardize quality care. However, we plan to monitor the effect of the BNAF reduction to assess whether unanticipated effects occur.

Comment: Several commenters mentioned the Medicare Payment Advisory Commission's (MedPAC's) June 2008 report which includes a discussion of hospice margins. Commenters stated that MedPAC reports hospice margins for the period 2001 through 2005 averaged 3.4 percent, and margins for some categories of providers were even lower. For example, commenters stated that MedPAC reported margins for not-for-profit hospices that were −2.8 percent during this period. Commenters stated that hospices cannot withstand the payment reductions resulting from the BNAF phase-out, stating that complete elimination of the BNAF would result in negative margins for all hospice provider types. Commenters were especially concerned about the effect any BNAF reduction would have on not-for-profit hospices, stating that the reduction will further reduce margins which are already in the negative range. Commenters were concerned that the BNAF reduction will reduce profitability and increases losses such that hospices will close.

Response: In June 2008, MedPAC published a report entitled ''Evaluating Medicare's Hospice Benefit'' (MedPAC, pp. 203–237). This is the first time margins have been analyzed for hospices. MedPAC estimated Medicare hospice margins using Medicare claims and cost report data for the period from 2001 to 2005. Their report stated, ''These margins may not provide a full picture of hospices' financial status. Nonprofit hospices derive revenues from philanthropic donations, which are an integral part of their operations and mission; these revenues are not consistently reported on Medicare cost reports. These revenues may help offset the generally negative margins we observe for nonprofit hospice providers. Additionally * * * hospitals may find it desirable to operate hospices, even in light of negative hospice margins. Harrison and colleagues (2005) found that hospitals that operated hospice programs had higher return on assets and higher hospital occupancy rates, as well as shorter lengths of stay, than hospitals without hospices'' (MedPAC, p. 224).

As noted above, the margins that MedPAC showed in its report may not tell the full story of hospice profitability. MedPAC noted that financial analysts have estimated margins of 6 to 15 percent for 2006 for the 3 largest publicly traded hospice chains. Further, MedPAC noted that Security and Exchange Commission (SEC) filings on publicly traded hospices estimated margins based on all revenues and costs (not just Medicare, which accounts for more than 90 percent hospice revenues). Two major for-profit chains had 7 percent and 7.8 percent margins in CY 2006. A third chain showed a loss of 3 percent for FY 2007, but attributed it partly to corporate restructuring costs and their cap liability (they have since reduced their cap exposure). MedPAC noted that the chain with the 7.8 percent margin was seeking to acquire the chain with the loss. In addition, analysts project that the prospective buyer's margins will be 11 to 12 percent over the next several years.

We will continue to work with MedPAC to assess the appropriateness of future enhancements to the Hospice payment system. We will work closely with them as they review and refine their margin analysis and assess the impact of the BNAF reduction on margins. Phasing out the BNAF rather than eliminating it all at once enables us to iteratively assess the impact of the reduction.

Comment: Many commenters wrote about the financial hardship to hospices as a result of rising fuel costs. Two commenters said they do not reimburse volunteers for mileage, and that they were losing volunteers because of high gasoline prices, with rural areas being particularly hard hit. Several providers, particularly rural ones, noted that their staff may drive 100 miles each way to see a patient or that their service area may cover over 1,000 square miles. A commenter also asked that we develop a hospice-specific reimbursement system that would entail developing a hospice-specific market basket. A commenter noted that the per diems are updated by an index which is not hospice specific, and that the assumptions in the per diem components had changed. Pharmacy costs, travel costs, and salaries have risen at rates that are not provided for in the subsequent market basket updates. Several noted that using the hospital market basket was disadvantageous to hospices because of differences in the way hospices and hospitals operate; some mentioned that hospice providers have been adversely impacted by the tremendous rise in gasoline prices far more than hospitals, because hospice services are provided where the patient resides rather than in a single facility. A commenter added that the market basket updates are not driven by an objective analysis of hospice costs.

Response: Section 1814(i)(1)(C)(ii)(I) of the Act requires that the hospice PPS market basket update factor be based on the IPPS hospital market basket (as defined in Section 1886(b)(3)(B)(iii) of the Act). The IPPS market basket reflects the operating cost structures of IPPS hospitals and the inflationary pressures

facing these providers. The market basket update factor includes any associated price changes with labor, energy, insurance, food, pharmacy, and other IPPS hospital operating costs.

Hospitals and hospice facilities both hire staff from the same healthcare worker labor pool; however, hospitals tend to have a higher skill occupation mix compared to hospice facilities. The IPPS market basket update factor reflects the inflationary pressures on these highly skilled healthcare occupations.

The hospice per diems are updated using the hospital market basket, which we agree is not hospice-specific. While the hospital market basket does not have a specific transportation factor, it does include energy costs. It also includes pharmacy costs and wage costs. To see the components in the hospital market basket, we refer the reader to: *http://www.cms.hhs.gov/MedicareProgramRatesStats/downloads/mktbskt-pps-hospital-2002.pdf.* To better understand the market baskets and how they are constructed, we also refer the reader to: *http://www.cms.hhs.gov/MedicareProgramRatesStats/downloads/info.pdf.*

Regarding the development of a hospice-specific market basket, CMS will investigate the cost structures specific to hospice facilities and how they compare to IPPS hospitals. However, we believe that Congress intended us to use the hospital market basket to adjust for hospice inflationary pressures, and therefore, the authority to create and use a hospice-specific market basket is determined by Congress.

Comment: Several commenters stated that there were likely to be major revisions to the hospital wage index in the future and that CMS should not remove the BNAF when the wage index is fluctuating. A few commenters indicated that CMS has not studied the impact on the hospice payment system of hospital wage index changes which occurred over the past 10 years. These commenters also stated that CMS justified the application of hospital-specific changes to the hospice payment system by application of the BNAF, which serves as a ''cushion'' for hospice. They also indicated that hospice providers were never given an opportunity to study the impact of these changes. Finally, these commenters stated that eliminating the BNAF now would subject hospices to multiple, significant changes over a short period of time. One commenter stated that CMS proposal to phase-out the BNAF is not reform. Another commenter indicated that wage index is as important to the stability of hospice care as are base payment rates, the annual inflation rate update, and the aggregate annual hospice cap, and suggested that stability would be lost if the BNAF were phased-out.

Furthermore, a commenter indicated that the current hospital-based wage index was not accurate, reliable, or equitable. The commenter stated that some hospices are part of health systems that have wage indices lower than a hospital in the same system and the same geographic area. Therefore, the commenter asserts, CMS cannot reason that the BNAF phase-out is needed for accuracy, reliability, and equity.

Response: In the May 1, 2008 proposed rule, we proposed phasing out the BNAF over 3 years because this adjustment has served its purpose, which was to mitigate the adverse financial impact of transitioning to a new wage index in 1998. The need for the BNAF has passed for a variety of reasons, as stated in section II.C.3 of this final rule. We did not propose to reform the raw pre-floor, pre-reclassified hospital wage index or the hospice payment system, but only to phase out the BNAF. We did not propose to phase out the hospice floor calculation, which continues to apply when raw pre-floor, pre-reclassified hospital wage index values are < 0.8, though we noted that the steps involving the BNAF would become unnecessary once the phase-out is complete.

The raw pre-floor, pre-reclassified hospital wage index is the same wage index used by the other home-based Medicare benefit, home health, which draws from the same labor pool as hospices. Home health agencies experience the same wage index fluctuations, but do not receive an adjustment such as the BNAF; therefore, we do not believe that phasing out the hospice BNAF in the presence of normal wage index fluctuation will be detrimental to the industry or threaten stability.

Our purpose in phasing out the BNAF is not to reform the wage index, but rather to phase out an adjustment which served its purpose. The BNAF helped hospices adjust to the negative financial impact of changing from the Bureau of Labor Statistics-based wage index to the raw pre-floor, pre-reclassified hospital wage index. There is no longer a need for this adjustment given that the transition occurred over 10 years ago and the growth that has occurred in the industry.

In our proposed rule, we stated that one reason for phasing out the BNAF is that it is not as accurate, reliable, and equitable as possible in accounting for geographic variation. The BNAF ties payments back to an outdated 1981 BLS-based wage index that the Negotiated Rulemaking Committee called ''inaccurate'' in its Committee Statement (62 FR 42883). We are unable to respond to the comment about one health system's wage index being different from that of a hospital in the same area as it is outside the scope of this rule.

Comment: One commenter suggested that CMS conduct a study to determine the appropriate per diems for rural hospices, asserting that rural costs are not adequately addressed in the current payment system. This commenter suggested CMS include an additional time and distance factor for rural hospices to align the per diem with rural costs.

Response: Medicare pays one of four daily rates to hospice providers, based on the intensity level of care the patient requires. These per diem payment rates are the same, regardless of whether the services are provided in an urban area or a rural area. The hospice wage index, which includes a floor calculation which benefits many rural providers, is the vehicle we use to adjust for geographic variances in labor costs. In a time of high gasoline costs, we are sensitive to concerns from rural hospices that the additional time and distance required to visit a rural patient adds significantly to their costs, and their assertion that payments are not adequate. However, we believe that an additional payment for rural providers, which is sometimes called a rural add-on payment, would have to be legislated.

Comment: Several commenters indicated that hospices sometimes care for high cost patients such as those who require more expensive palliative radiation or chemotherapy, and that hospice reimbursements are not sufficient to provide quality care to these complex patients. Another commenter stated that the original hospice per diems were arbitrarily set by CMS (formally HCFA) and had to be raised by Congress. A commenter stated that increased case mix and new treatment options have also affected hospice costs. A commenter recommended that CMS study the real costs of hospice care and devise a 21st century, hospice-specific reimbursement system. One commenter recommended that CMS raise the wage-related per diem.

Several commenters asked CMS not to decrease payments because they are already providing services above the level of reimbursement that is presently provided in the daily rate. Another

commenter stated that Medicare does not pay for staff consultations, pre-admission consults, travel time to patients' homes, or the cost of fuel. A few commenters stated that hospices now provide an ever-expanding array of costly palliative treatments.

Response: While these comments addressed issues that are beyond the scope of this final rule because they concern issues about which we did not make any proposals, we will address them briefly since they pertain to overall hospice reimbursement. In its June 2008 report, MedPAC wrote that hospice payments are generally adequate in the aggregate, but noted that individual hospices' performance varies (MedPAC, p. 205).

The hospice per diems were designed to cover hospice costs and were developed based on cost information gathered from a demonstration project that began in October, 1980 and which included 26 hospices. The per diems include costs of the services hospices provide, plus overhead costs such as maintenance, depreciation, general accounting, capital, and other administrative costs in the calculation of the individual service components (that is, nursing services and aide services). A cost component is included for hospital outpatient charges for palliative radiation and chemotherapy, based on a sample of Medicare patients who died from cancer in 1980, and adjusted for inflation. In the future, we plan to perform analyses on hospice resource utilization, in the hopes of refining our hospice payment system. We will consider the high cost of certain palliative treatments in future payment refinements analyses.

As some commenters stated there have been changes in hospice case mix, with proportionally fewer cancer patients and more patients with other diagnoses such as dementia and congestive heart failure. At this time, we do not have the data on services provided to patients with specific diagnoses, and therefore cannot easily determine the adequacy of Medicare payments relative to the cost of care. However, hospices were required to begin reporting visits for nurses, physicians, social workers, and aides as of July 1, 2008 (This is just a beginning in data collection efforts that should provide the information needed to refine payments in the future). We note that because hospice rates are currently described in statute, any hospice payment refinements which affect those rates would need to be enacted by Congress.

Comment: Many commenters praised the benefits of hospice, which provides care to the most vulnerable Medicare beneficiaries for example, the dying and does so in a cost-effective fashion that saves Medicare money. They suggested that if hospice utilization declines, beneficiaries would be forced to use more costly medical care, driving up Medicare costs in the long run. Others commented on the quality, compassionate care and comfort that hospice provides to patients and their families. Another commenter stated that hospice provides tremendous aid at end of life, serving the dying equally, regardless of color and economic status. These commenters and others asked that CMS not reduce payments. Several commenters also questioned the timing of CMS' proposal to eliminate the BNAF. They felt CMS should not be cutting hospice benefits at a time when the demand for services is growing. One commenter stated that the industry growth is a testament to the service gap that hospice fills, the growing awareness of hospice, and preference for a hospice death. A few mentioned that CMS has encouraged hospice usage. One commenter indicated that studies show that patients live longer on hospice, but there is still a need for earlier referrals to the benefit. The commenters stated that the population is aging and the baby boomer generation is getting older.

Response: We agree that the Medicare hospice benefit has been of tremendous benefit to those at end-of-life and to their families, and applaud those who serve the dying as hospice staff and volunteers. We also agree that the hospice benefit often saves Medicare money, and appreciate the studies which have highlighted the areas where it provides costs savings to the Medicare program. However, hospice care does not save money in every instance. MedPAC has noted that ''hospice's net reduction in Medicare spending decreases the longer the patient is enrolled and beneficiaries with very long hospice stays may incur higher Medicare spending than those who do not elect hospice.'' (MedPAC, p. 209). We do not believe that hospice utilization will decline due to the BNAF phase-out, and therefore, do not believe that Medicare costs will be shifted from hospice to more expensive forms of care. As noted in our response to a previous comment, the FY 2009 impact of the BNAF phase-out is, at most, 1.1 percent for every provider, and is being offset by a 3.6 percent FY 2009 market basket update, resulting in a 2.5 percent increase in payments to hospice providers in FY 2009.

We agree that the hospice industry is growing and that the demand for hospice services is likely to grow in the future, particularly with an aging population. We also agree that CMS has encouraged hospice usage. We have not cut Medicare hospice benefits in any way—terminally ill Medicare patients are still eligible to receive the same quality, compassionate end-of-life care that has been the hallmark of hospice. We expect the hospice benefit to continue to grow: CMS' Office of the Actuary projects that Medicare hospice spending will more than double in the next 10 years. However, we will monitor the impact of the BNAF phase-out for any unintended impact.

Comment: Several commenters recommended that CMS delay any BNAF reduction or phase-out. They suggested waiting for better and more reliable data, for time to evaluate the impact of the requirements from the new Conditions of Participation and from CR 5567. A commenter stated that CMS lacks the data to conduct a reasoned analysis, citing MedPAC's June 2008 report which stated that CMS needs substantially more data. One commenter recommended that CMS consider a 1-year freeze on any reductions and wait for more available data. Another commenter recommended that CMS delay until we had gathered data on the potential impact on hospice operations and quality of care of eliminating the BNAF. A commenter stated that there was not enough time to prepare for a change due to a BNAF phase-out. Other commenters asked CMS to wait until MedPAC completes its hospice analysis and CMS updates its hospice payment system, before eliminating the BNAF. Several other commenters recommended phasing out the BNAF more gradually. Some recommended a gradual phase-out that would help minimize the economic impact of such a change, particularly at a time of rising gas prices. One commenter recommended a 5-year phase-out, and another recommended a 7-year phase-out, with a 25 percent reduction in FY 2009, a 15 percent reduction in FY 2010, and a 10 percent reduction through FY 2016. Another commenter recommended that implementing the BNAF reduction on a more gradual schedule would allow hospices time to evaluate the impact of the reduction of the new CoPs, hospital versus hospice costs, and of the June 2008 MedPAC report. Even with the proposed schedule for reducing, and ultimately eliminating the BNAF, commenters suggested that by CMS not providing impacts for the 2nd and 3rd year of reducing the BNAF, the industry was not afforded information as to the impact on hospices beyond the

proposed first year's reduction of the BNAF.

Response: We appreciate the commenters' input. However, we continue to believe that our phase-out approach as described in the proposed rule is appropriate. One reason we decided to implement a phased-out approach to reducing the BNAF was to ensure we would have the ability to assess the impact of the BNAF reduction iteratively. We plan to monitor the impact of the BNAF reduction for unintended effects. The financial impact of the phase-out is very clear; in FY 2009 it is estimated to affect hospices by no more than negative 1.1 percent. We continue to believe that because the FY 2009 market basket update is 3.6 percent, and hospices will receive 2.5 percent more in payments in FY 2009 than they received in FY 2008, the FY 2009 reduction should not have an adverse impact on hospice operations or quality.

The hospice CoPs were developed with input from the industry. The CoPs have been in development for 9 years and have widespread support from the industry. Hospices have been expecting these since the Conditions of Participation proposed rule was published in May of 2005, providing time to plan and budget for these changes accordingly. Hospices were required to report certain visit data as of July 1, 2008. This requirement was implemented through CR 5567 after MedPAC, the General Accounting Office, and the Office of the Inspector General recommended that CMS gather data on Medicare hospice service utilization. While the most recent revision of CR 5567 occurred on April 29, 2008, the initial issuance of the CR occurred on July 20, 2007, providing ample time for hospices to plan and budget for these requirements. CR 5567 requires reporting of visit data that many hospice software programs already track. We do not feel it will cause undue burden, especially since we recently revised the CR 5567 requirements to suspend a subset of the reporting requirements to address an industry concern. Additionally, we believe the industry has ample time to prepare for the BNAF phase-out. The FY 2009 President's budget was published in February, 2008 and contained a provision to phase out the BNAF. In the interest of transparency, we made public our intent to propose the BNAF reduction via FY 2009 rulemaking shortly after publication of the budget, over 2 months in advance of our proposed rule publication.

We agree that MedPAC recommended that CMS collect additional data to better understand what services we are paying for, and for use in future payment refinements. We did not propose to reform the payment system, but simply to remove an outdated adjustment.

We acknowledge that the impacts reflected in this rule are for FY 2009 only. The purpose of this final rule, so far as impacts, is to show the estimated impacts on hospice providers for FY 2009. We have, in the proposed rule (72 FR 24005, 24006) and in a response to a previous comment, communicated that over the course of the three-year phase-out, the elimination of the BNAF will reduce payments by about 4 percent: We estimated a 1.1 percent reduction in FY 2009, an additional 2 percent reduction for a cumulative reduction of 3.1 percent in FY 2010, and an additional 1 percent reduction for a cumulative reduction of 4.1 percent in FY 2011. However those reductions do not include 3 years of market basket updates for FY 2009, FY 2010, and FY 2011. Therefore, assuming market basket updates' inclusion in FY 2010 and FY 2011, hospices will still have a net gain in payments over the 3 years. While we do not know what the market basket updates will be for FY 2010 and FY 2011, hospices received market basket updates ranging from 3.3 percent to 3.7 percent from FY 2005 to FY 2008. The market basket update for FY 2009 is 3.6 percent. We will provide similar impacts for FY 2010 and FY 2011 in future rulemaking.

For all of these reasons, we do not feel that there is a reason to delay the phase-out of an outdated adjustment. While we believe that a 3-year phase-out is fair and appropriate, we will monitor the effects of the phase-out as it occurs.

Comment: A commenter wrote that hospitals and home health agencies receive the BNAF. The commenter said that since hospices compete with home health agencies and hospitals for staff, phasing out the BNAF for hospice creates an uneven playing field for recruiting and retaining staff. A few commenters stated that CMS should not justify removing the BNAF so that the hospice and home health wage indices were consistent. One commenter stated that the new CoPs recognized the differences between hospice and home care patients, noting that hospice patients are more fragile. Additionally, other aspects of the hospice and home health payment systems differ. These commenters indicated that the rules regarding hospice payment should remain unique, and do not need to mirror those for home health.

Response: We agree that there should be a level playing field for recruiting and retaining staff for home-based benefits such as hospice and home health. As we described in our proposed rule, because hospices and home health agencies share labor pools, we believe that there should be consistency in the wage index used by both these home-based benefits. Nothing in our data analysis has shown us that hospice labor costs differ substantially from home health labor costs, making it difficult to justify a 6 percent increase in the hospice wage index. We continue to believe that the raw pre-floor, pre-reclassified hospital wage index provides a good measure to account for geographic variances in labor costs for both these home-based benefits. Phasing-out the BNAF enables us to achieve this consistency.

The other commenters noted the differences between services provided in hospice care and home health care, citing the hospice CoPs. We agree that hospice patients can be more fragile and that hospice care is unique, and it is appropriate for hospice and home health to have different payment systems. However, the purpose of a wage index is to account for geographic variances in labor costs. We believe that the use of a consistent wage index in both these home-based benefits enables hospices and home health agencies to compete for staff on a level playing field.

Comment: One commenter stated that hospice reimbursement does not consider the higher cost of hospice care in the home versus in a nursing home. Hospice patients in the home require more staff visits, increased on-call expense, and increased mileage expense. The commenter stated that hospice patients in nursing homes do not need the same intensity of care as hospice patients who are residing in their own homes.

Response: While these comments address issues that are beyond the scope of this final rule, we will address them briefly since they generally relate to hospice reimbursement. The hospice benefit was designed as a home-based benefit, and the per diems were set up assuming that most care was routine care given in the home. Rather than considering the per diem inadequate because home care is more costly, we view the per diem as adequate for home care but possibly more than adequate for hospice patients residing in a nursing home. The routine home care per diem was built assuming costs for aides, and hospices do not have to provide the personal care that aides normally give to their patients who reside in nursing homes, because the nursing home staff is required to provide that care.

Likewise, if the hospice has multiple patients in the same nursing home, then hospice patients in nursing homes are less costly in terms of mileage and driving time. Hospice patients in nursing homes may require an equal intensity of service as patients in the home, and hospices should be prepared to provide all necessary services for their patients who reside in nursing homes.

Comment: A few commenters felt that CMS had not provided the sufficient data analysis to justify the elimination of the BNAF. They felt CMS's decision to eliminate it was arbitrary and capricious, and recommended that CMS withdraw the proposal. A few commenters stated that CMS did not follow the Administrative Procedures Act in proposing the BNAF phase-out. Another commenter stated that CMS advanced the proposal to phase out the BNAF because it offers the potential for reducing hospice payments quickly, to meet short term budget goals, without the need to collect and analyze data.

Response: We believe we complied fully with the Administrative Procedures Act in proposing to phase out the BNAF, by fully describing our proposals and rationale for our proposals, by providing the full impact of the proposal, and by providing opportunity for public comment. The effect of the BNAF is clearly illustrated in the impact analysis presented in the proposed rule, and in the updated impacts presented in this final rule. For FY 2009, the BNAF will not affect any hospice's estimated payments by more than 1.1 percent, and either has no effect on hospices with raw pre-floor, pre-reclassified wage index values <0.8, or affects them less than 1.1 percent. We believe that through misunderstanding, some in the hospice industry have shifted the focus of the impacts from the BNAF phase-out to the impact of fluctuations which occur in the raw pre-floor, pre-reclassified hospital wage index every year. We have added Addenda C and D to show the hospital-based wage index fluctuations for the last 2 years to demonstrate that they are a regular occurrence, and that there are fewer fluctuations from the prior year in FY 2009 than in FY 2008.

We believe the rationale for phasing out the BNAF which we discussed in the proposed rule (72 FR 24006), highlights data that justify our adoption of our proposal. Specifically, we described our analysis which we believe shows that the negotiating committee adopted the BNAF to mitigate the negative financial impact of the 1998 hospice wage index change. Our rationale in the proposed rule also describes our analysis of the growth in aggregate expenditures, the growth surge in the number of for-profit hospices, and the growth in the beneficiaries served that has occurred during the last decade. Our rationale also indicates a desire for parity between hospices and home health agencies since nothing in our data analyses indicates that hospice labor costs differ substantially from home health labor costs. We believe that these data, in conjunction with the impact analysis, show that this unique methodology for achieving wage index budget neutrality has served its purpose and is no longer necessary. We will continue to monitor the impact of the BNAF phase-out for any unanticipated effects.

Comment: A commenter stated that the BNAF phase-out discriminates against rural providers.

Response: We disagree that the BNAF phase-out discriminates against rural providers. As noted in our impacts, providers with raw pre-floor, pre-reclassified hospital wage index values of 0.8 or more are affected equally. These providers are estimated to experience a 1.1 percent reduction in payments in FY 2009. Providers with raw pre-floor, pre-reclassified wage index values <0.8 are protected by the hospice floor calculation and will either be less affected, or totally unaffected by the BNAF phase-out. Since many rural providers have lower raw pre-floor, pre-reclassified hospital wage index values, and therefore are eligible for the hospice floor calculation, we disagree that those rural providers eligible for the floor are actually less impacted on net.

Comment: A commenter stated that CMS was ''phasing out of the hospice wage index''.

Response: We appreciate this comment, as it provides the opportunity to clear up a misunderstanding. We are not phasing out the wage index, but rather are phasing out the BNAF, which is an adjustment that increases the wage index values.

Comment: A commenter stated that CMS is focusing on that small percentage of hospices that have long lengths of stay and a surplus of reimbursement over expense.

Response: The BNAF reduction is applied equally to every wage index value not subject to the hospice floor. It does not disproportionately affect hospices with long lengths of stay or with high margins. While there were good reasons for putting the adjustment into place, those reasons are no longer valid (see the proposed rule (72 FR 24006) for a discussion of the rationale behind phasing out the BNAF).

Comment: A few commenters stated that Congress has rejected the Administration's request to reduce the hospice reimbursement rate, understanding correctly that any reduction in rate must necessarily reduce either quality of care or access to care.

Response: We are unclear about what the commenter is referring to. Congress has reduced hospice reimbursements in the past, cutting market basket updates by as much as 2.5 percent.

Comment: A commenter stated that the budget neutrality does not take into account the market basket update.

Response: We appreciate this comment, as it allows us to clarify the above statement. The calculation to derive the BNAF takes the market basket update into account as it uses updated payment rates to calculate aggregate payments. Since we calculate aggregate payments using the same payment rates and the same utilization, and only vary the wage index used (the 1983 BLS-based wage index or the current raw pre-floor, pre-reclassified hospital wage index), the market basket update has no effect on the BNAF that results.

Comment: A commenter recommended that CMS consider an alternative to the BNAF phase-out. The commenter recommended that CMS establish minimum staffing patterns, as a better staffing ratio would lead to a reduction in patient pain, symptom crises, after-hours calls, 911 calls, trips to the emergency room, and revocations. In addition, the commenter stated that it would reduce staff turnover and improve retention.

Response: We thank the commenter for this recommendation. The new data reporting requirements from CR 5567, which began July 1, 2008, will enable us to investigate staffing patterns as part of any future hospice payment refinements analysis. However, we are not considering establishing minimum staffing patterns as an alternative to the BNAF phase-out.

Comment: A commenter stated that reporting for CR 5567 does not include all disciplines. In addition, the commenter stated that promoting quality hinges on recognizing differences between routine home care and hospice care, which CR 5567 seems to question. The episodic nature of home care lends itself to per-visit reimbursement, while the holistic hospice approach is better suited to the current per diem reimbursement.

Response: We appreciate the comment, but it is outside the scope of this final rule. We will, however, consider the comment when examining

visit reporting requirements in the future.

Comment: A commenter stated that phasing out the BNAF amounted to ''taxation without representation''.

Response: We followed the requirements of the Administrative Procedures Act in proposing and finalizing this policy change, including providing rationale for the BNAF phase-out and the opportunity for public comment (73 FR 24006).

Comment: A commenter did not want CMS to cut hospice payments. The commenter stated that Medicare was to help those without other sources of income.

Response: We thank the commenter for his or her input. Medicare is a health insurance benefit available to people 65 and older, some disabled people under age 65, and people of all ages with End Stage Renal Disease. While Medicare is certainly a help to those without much income, eligibility for Medicare is not related to income. Those who are Medicare beneficiaries fall into all income categories, from the lowest to the highest.

Comment: A commenter stated that non-hospice care is given at end-of-life, and asked that CMS change physician practice and enhance public awareness rather than reducing hospice payments. The commenter suggested that we allow only the attending physician to order non-emergency tests and treatments in hospitals; that we increase physician oversight of hospice patients; that we publicize actual success rates for various technologies; and that we restructure the physician payment system so that doctors are paid by diagnosis rather than by days in hospital or by procedures done.

Another commenter stated that CMS should evaluate the skilled benefits, as people that are hospice-appropriate are being sent to skilled facilities first, even though they are not rehab potentials.

One commenter stated that the federal government recognizes and uses a wage index in determining the salaries of their employees.

A different commenter recommended that CMS seek to limit the growth in the hospice benefit by requiring survey agencies to establish or enhance needs methodologies.

Several comments recommended other methods of saving federal dollars rather than phasing out the BNAF. One commenter stated that CMS should cut extreme farm subsidies. Another commenter stated that CMS should cut programs that reward illegal status in the U.S. A third commenter stated that CMS should stop those who are using Medicare dollars to buy expensive vehicles.

A commenter also stated that since Medicaid payments for hospice services are based on the Medicare payment methodology and rates, the BNAF phase-out will have an even greater effect on, and impinge on the provision of hospice services to Medicaid recipients.

Response: We appreciate these comments, but they are outside the scope of this final rule. References to literature cited in this section: Medicare Payment Advisory Commission (MedPAC), Report to Congress: Reforming the Delivery System, June 2008: 203–237.

III. Provisions of the Final Regulations

This final rule incorporates the provisions of the proposed rule. None of the provisions of this final rule differs from the proposed rule.

IV. Collection of Information Requirements

This document does not impose any information collection and recordkeeping requirements. Consequently, it does not need to be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 35).

V. 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), Executive Order 13132 on Federalism, and the Congressional Review Act (5 U.S.C. 804(2)). We estimated the impact on hospices, as a result of the changes to the proposed FY 2009 hospice wage index and of reducing the BNAF by 25 percent. As discussed previously, the methodology for computing the hospice wage index was determined through a negotiated rulemaking committee and implemented in the August 8, 1997 final rule (62 FR 42860). This rule updates to the hospice wage index in accordance with our regulation but proposes to revise the Negotiated Rulemaking Committee methodology of including a BNAF.

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). We have determined that this final rule is an economically significant rule under this Executive Order.

Column 4 of Table 2 shows the combined effects of the 25 percent reduction in the BNAF and of the updated wage data, comparing estimated payments for FY 2009 to estimated payments for FY 2008. We estimate that the total hospice payments for FY 2009 will decrease by $100 million as a result of the application of the 25 percent reduction in the BNAF and the updated wage data. This estimate does not take into account the FY 2009 market basket update, which is 3.6 percent, and which will be communicated through an administrative instruction. The estimated impact of a 3.6 percent FY 2009 market basket update on payments to hospices is approximately $330 million. If we were to take into account the 3.6 percent FY 2009 market basket update, in addition to the 25 percent reduction in the BNAF and the updated wage data, it is estimated that hospice payments would increase by approximately $230 million ($330 million − $100 million = $230 million). The percent change in payments to hospices due to the combined effects of the 25 percent reduction in the BNAF, the updated wage data, and the FY 2009 market basket update of 3.6 percent is reflected in column 5 of the impact table (Table 2).

The RFA requires agencies to analyze options for regulatory relief of small businesses, if a rule has a significant impact on a substantial number of small entities. The great majority of hospices and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of less than $6.5 million to $31.5 million in any 1 year (for details, see the Small Business Administration's regulation at 65 FR 69432, that sets forth size standards for health care industries). As indicated in Table 2 below, there are 3,111 hospices. Approximately 50.9 percent of Medicare certified hospices are identified as voluntary, government, or other agencies and, therefore, are considered small entities. Most of these and most of the remainder are also small hospice entities because their revenues fall

below the SBA size thresholds. We note that the hospice wage index methodology was previously guided by consensus, through a negotiated rulemaking committee that included representatives of national hospice associations, rural, urban, large and small hospices, multi-site hospices, and consumer groups. Based on all of the options considered, the Committee agreed on the methodology described in the Committee Statement, and after notice and comment, it was adopted into regulation in the August 8, 1997 final rule. In developing the process for updating the hospice wage index in the 1997 final rule, we considered the impact of this methodology on small hospice entities and attempted to mitigate any potential negative effects. Small hospice entities are more likely to be in rural areas, which are less affected by the BNAF reduction than entities in urban areas. Generally, hospices in rural areas are protected by the hospice floor, which mitigates the effect of the BNAF reduction. The effects of this rule on hospices, as illustrated in Table 2, are small. Overall, Medicare payments to all hospices will decrease by an estimated 1.1 percent, reflecting the combined effects of the 25 percent reduction in the BNAF and the updated wage data. Within the hospice subgroups, Medicare payments will decrease by no more than 1.6 percent. Furthermore, when including the FY 2009 market basket update of 3.6 percent into these figures, the combined effects of Medicare payment changes to all hospices will result in an increase of approximately 2.5 percent. Overall average hospice revenue effects will be slightly less than these estimates since according to the National Hospice and Palliative Care Organization, about 16 percent of hospice caseload is non-Medicare. Longstanding HHS practice in interpreting the RFA is to consider effects economically ''significant'' only if they reach a threshold of 3 to 5 percent or more. Accordingly, we have determined that this final rule does not create a significant economic impact on a substantial number of small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside a CBSA and has fewer than 100 beds. We have determined that this final rule will not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of about $130 million or more (the threshold in the statute, updated for inflation through 2008). This final rule will not have an effect on State, local, or tribal governments or on the private sector of $130 million or more.

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 final rule under the threshold criteria of Executive Order 13132, Federalism, and have determined that it will not have an impact on the rights, roles, and responsibilities of State, local, or tribal governments.

B. Anticipated Effects

This section discusses the impact of the final rule, including the estimated effects of the 3.6 percent FY 2009 market basket update that will be communicated separately through an administrative instruction. The final rule includes continuing to use the CBSA-based raw pre-floor, pre-reclassified hospital wage index (to include the clarification of New England ''deemed'' counties and a change in the way that multi-campus hospital wage data are treated in the creation of the raw pre-floor, pre-reclassified hospital wage index), continuing the use the same policies for treatment of areas (rural and urban) without hospital wage data, and reducing the BNAF by 25 percent for the first year of a 3-year BNAF phase-out. The final FY 2009 hospice wage index is based upon the 2008 raw pre-floor, pre-reclassified hospital wage index and the most complete claims data available (FY 2007 as of March 2008) with a 25 percent reduction in the BNAF.

For the purposes of our impacts, our baseline is estimated FY 2008 payments using the 2007 raw pre-floor, pre-reclassified hospital wage index. Our first comparison (column 3, Table 2) compares our baseline to estimated FY 2009 payments (holding payment rates constant) using the updated wage data (2008 raw pre-floor, pre-reclassified hospital wage index). Consequently, the estimated effects illustrated in column 3 of Table 2 are for the updated wage data only. The effects of using the updated raw pre-floor, pre-reclassified hospital wage index data combined with the 25 percent reduction in the BNAF are illustrated in column 4 of Table 2.

Even though the market basket update is not part of this final rule, we have included a comparison of the combined effects of the 25 percent BNAF reduction, the updated raw pre-floor, pre-reclassified hospital wage index, and the 3.6 percent FY 2009 market basket increase for FY 2009 (Table 2, column 5). Presenting these data gives the hospice industry a more complete picture of the effects of the proposed changes in this rule and of the market basket update. Certain events may limit the scope or accuracy of our impact analysis, because such an analysis is susceptible to forecasting errors due to other changes in the forecasted impact time period. The nature of the Medicare program is 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 hospices.

TABLE 2—ANTICIPATED IMPACT ON MEDICARE HOSPICE PAYMENTS OF REDUCING THE BNAF, UPDATING THE RAW PRE-FLOOR, PRE-RECLASSIFIED HOSPITAL WAGE INDEX DATA, AND APPLYING A 3.6 PERCENT MARKET BASKET UPDATE FOR THE FINAL FY 2009 HOSPICE WAGE INDEX, COMPARED TO THE PUBLISHED FINAL FY 2008 HOSPICE WAGE INDEX

	Number of hospices * (1)	Number of routine home care days in thousands (2)	Percent change in hospice payments due to FY 2009 wage index change (3)	Percent change in hospice payments due to wage index change and 25% reduction in budget neutrality adjustment factor (4)	Percent change in hospice payments due to wage index change, 25% reduction in budget neutrality adjustment factor and market basket update (5)
ALL HOSPICES	3,111	67,239	0.0	−1.1	2.5
URBAN HOSPICES	2,098	57,893	0.0	−1.1	2.5
RURAL HOSPICES	1,013	9,346	−0.1	−0.9	2.7
BY REGION—URBAN **:					
NEW ENGLAND	119	2,074	0.4	−0.7	2.9
MIDDLE ATLANTIC	209	5,971	−0.5	−1.5	2.0
SOUTH ATLANTIC	310	12,950	0.0	−1.1	2.5
EAST NORTH CENTRAL	307	8,324	−0.2	−1.3	2.3
EAST SOUTH CENTRAL	170	4,506	−0.4	−1.3	2.3
WEST NORTH CENTRAL	166	3,783	0.1	−1.0	2.6
WEST SOUTH CENTRAL	348	7,588	−0.1	−1.2	2.4
MOUNTAIN	201	5,054	0.0	−1.1	2.5
PACIFIC	234	6,692	0.8	−0.3	3.3
OUTLYING	34	952	−1.1	−1.1	2.4
BY REGION—RURAL **:					
NEW ENGLAND	26	175	−0.4	−1.4	2.1
MIDDLE ATLANTIC	44	462	0.4	−0.6	2.9
SOUTH ATLANTIC	128	1,915	0.1	−0.9	2.7
EAST NORTH CENTRAL	144	1,317	0.0	−1.0	2.5
EAST SOUTH CENTRAL	152	2,051	−0.4	−1.1	2.4
WEST NORTH CENTRAL	192	1,030	−0.2	−1.2	2.3
WEST SOUTH CENTRAL	168	1,388	−0.5	−0.8	2.8
MOUNTAIN	106	601	0.2	−0.8	2.8
PACIFIC	52	397	1.6	0.5	4.1
OUTLYING	1	9	0.0	0.0	3.6
ROUTINE HOME CARE DAYS:					
0–3,499 DAYS (small)	607	1,044	0.1	−0.8	2.7
3,500–19,999 DAYS (medium)	1,506	15,071	−0.1	−1.1	2.5
20,000+ DAYS (large)	998	51,123	0.0	−1.1	2.5
TYPE OF OWNERSHIP:					
VOLUNTARY	1,198	29,597	−0.1	−1.2	2.4
PROPRIETARY	1,528	32,903	0.0	−1.0	2.6
GOVERNMENT	192	1,049	0.2	−0.8	2.8
OTHER †	193	3,690	0.1	−1.0	2.6
HOSPICE BASE:					
FREESTANDING	1,918	49,843	0.0	−1.1	2.5
HOME HEALTH AGENCY	609	9,816	0.1	−1.0	2.6
HOSPITAL	567	7,329	0.1	−1.0	2.6
SKILLED NURSING FACILITY	17	251	−0.5	−1.6	2.0

* As of February, 2008; for this final rule, used FY 2007 claims as of March 2008.

** New England = Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont; Middle Atlantic = Pennsylvania, New Jersey, New York; South Atlantic = Delaware, District of Columbia, Florida, Georgia, Maryland, North Carolina, South Carolina, Virginia, West Virginia; East North Central = Illinois, Indiana, Michigan, Ohio, Wisconsin; East South Central = Alabama, Kentucky, Mississippi, Tennessee; West North Central = Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, South Dakota; West South Central = Arkansas, Louisiana, Oklahoma, Texas; Mountain = Arizona, Colorado, Idaho, Montana, Nevada, New Mexico, Utah, Wyoming; Pacific = Alaska, California, Hawaii, Oregon, Washington; Outlying = Guam, Puerto Rico, Virgin Islands.

† This category refers to other government hospices.

Table 2 shows the results of our analysis. In column 1 we indicate the number of hospices included in our analysis as of February 2008 which had claims in FY 2007. In column 2, we indicate the number of routine home care days that were included in our analysis, although the analysis was performed on all types of hospice care. Column 3 shows the percentage change in estimated Medicare payments from FY 2008 to FY 2009 due to the effects of the updated wage data only. Column 4 shows the percentage change in estimated hospice payments from FY 2008 to FY 2009 due to the combined effects of using the 2008 raw pre-floor, pre-reclassified hospital wage index and

reducing the BNAF by 25 percent. Column 5 shows the percentage change in estimated hospice payments from FY 2008 to FY 2009 due to the combined effects of using updated wage data, a 25 percent BNAF reduction, and the 3.6 percent FY 2009 market basket update.

Table 2 also categorizes hospices by various geographic and provider characteristics. The first row of data displays the aggregate result of the impact for all Medicare-certified hospices. The second and third rows of the table categorize hospices according to their geographic location (urban and rural). Our analysis indicated that there are 2,098 hospices located in urban areas and 1,013 hospices located in rural areas. The next two row groupings in the table indicate the number of hospices by census region, also broken down by urban and rural hospices. The next grouping shows the impact on hospices based on the size of the hospice's program. We determined that the majority of hospice payments are made at the routine home care rate. Therefore, we based the size of each individual hospice's program on the number of routine home care days provided in FY 2007. The next grouping shows the impact on hospices by type of ownership. The final grouping shows the impact on hospices defined by whether they are provider-based or freestanding.

As indicated in Table 2, there are 3,111 hospices. Approximately 50.9 percent of Medicare-certified hospices are identified as voluntary, government, or other government agencies and, therefore, are considered small entities. Because the National Hospice and Palliative Care Organization estimates that approximately 83.7 percent of hospice patients are Medicare beneficiaries, we have not considered other sources of revenue in this analysis. As noted earlier, those CBSAs which had the hospice floor applied prior to our proposal to reduce the BNAF are unaffected by this proposed change in methodology. Those CBSAs that were not previously less than 0.8 after applying the full BNAF but which are now less than 0.8 after applying the reduced BNAF will see less of a reduction in payments as the floor protects their hospice wage index value.

As stated previously, the following discussions are limited to demonstrating trends rather than projected dollars. We used the raw pre-floor, pre-reclassified hospital wage indexes as well as the most complete claims data available (FY 2007 as of March 2008) in developing the impact analysis. The FY 2009 payment rates were adjusted to reflect the full market basket, as required by section 1814(i)(1)(C)(ii)(VII) of the Act. As previously noted, we publish these rates through administrative instructions rather than in a proposed rule. The FY 2008 update was 3.3 percent, and the FY 2009 update is 3.6 percent. Since the inclusion of the effect of a market basket increase provides a more complete picture of estimated hospice payments for FY 2009, the last column of Table 2 shows the combined impacts of the 25 percent BNAF reduction, the updated wage index, and a 3.6 percent market basket update factor.

As discussed in the FY 2006 final rule (70 FR 45129), hospice agencies may use multiple hospice wage index values to compute their payments based on potentially different geographic locations. Before January 1, 2008, the location of the beneficiary was used to determine the CBSA for routine and continuous home care and the location of the hospice agency was used to determine the CBSA for respite and general inpatient care. Beginning January 1, 2008, the hospice wage index utilized is based on the location of the site of service. As the location of the beneficiary's home and the location of the facility may vary, there will still be variability in geographic location for an individual hospice. We anticipate that the location of the various sites will usually correspond with the geographic location of the hospice, and thus we will continue to use the location of the hospice for our analyses of the impact of the proposed changes to the hospice wage index in this rule. For this analysis, we use payments to the hospice in the aggregate based on the location of the hospice.

The impact of hospice wage index changes has been analyzed according to the type of hospice, geographic location, type of ownership, hospice base, and size. Our analysis shows that most hospices are in urban areas and provide the vast majority of routine home care days. Most hospices are medium-sized followed by large hospices. Hospices are almost equal in numbers by ownership with 1,583 designated as non-profit and 1,528 as proprietary. The vast majority of hospices are freestanding.

1. Hospice Size

Under the Medicare hospice benefit, hospices can provide four different levels of care days. The majority of the days provided by a hospice are routine home care (RHC) days representing about 97 percent of the services provided by a hospice. Therefore, the number of RHC days can be used as a proxy for the size of the hospice, that is, the more days of care provided, the larger the hospice. As discussed in the August 4, 2005 final rule, we currently use three size designations to present the impact analyses. The three categories are: (1) Small agencies having 0 to 3,499 RHC days; (2) medium agencies having 3,500 to 19,999 RHC days; and (3) large agencies having 20,000 or more RHC days. The final FY 2009 wage index values without the BNAF reduction are anticipated to have a 0.1 percent increase on small hospice providers, a 0.1 percent decrease anticipated for medium hospices, and no change anticipated for large hospices (column 3); the final FY 2009 wage index values with the 25 percent BNAF reduction and the updated wage data are anticipated to decrease estimated payments by 0.8 percent to small hospices and by 1.1 percent to medium and large hospices (column 4); and finally, the final FY 2009 wage index values with the 25 percent BNAF reduction, the updated wage data, and the 3.6 percent FY 2009 market basket update are projected to increase estimated payments by 2.7 percent for small hospices and by 2.5 percent for medium and large hospices (column 5).

2. Geographic Location

Column 3 of Table 2 shows that FY 2009 wage index values without the BNAF reduction will result in little change in estimated payments with no anticipated change for urban hospices and an anticipated decrease of 0.1 percent for rural hospices. For urban hospices, the greatest increase of 0.8 percent is anticipated to be experienced by the Pacific regions, followed by an increase for New England of 0.4 percent, an increase of 0.1 percent for West North Central, and no change for the South Atlantic and Mountain regions. The remaining urban regions are anticipated to experience a decrease ranging from 0.1 percent in the West South Central region to 1.1 percent in Puerto Rico.

Column 3 shows that for rural hospices, Puerto Rico and the East North Central regions are anticipated to experience no change. Four regions are anticipated to experience a decrease ranging from 0.2 percent for the West North Central region to 0.5 percent for West South Central region. The remaining regions are anticipated to experience an increase ranging from 0.1 percent for the South Atlantic region to 1.6 percent for the Pacific region.

Column 4 shows the combined effect of the 25 percent BNAF reduction and the updated raw pre-floor, pre-reclassified hospital wage index values on estimated payments, as compared to the published FY 2008 payments.

Overall urban hospices are anticipated to experience a 1.1 percent decrease in payments, while rural hospices can expect a 0.9 percent decrease. The estimated percent decrease in payment for urban hospices ranged from 0.3 percent for Pacific hospices to 1.5 percent for Middle Atlantic hospices.

The estimated percent decrease in payment for rural hospices ranged from 0.6 percent for Middle Atlantic hospices to 1.4 percent for New England hospices. Rural Puerto Rico's estimated payments were unaffected, and the Pacific region saw a 0.5 percent increase in estimated payments.

Column 5 shows the combined effects of the final FY 2009 wage index values with the 25 percent BNAF reduction, the updated wage data, and the 3.6 percent FY 2009 market basket update on estimated payments as compared to the published FY 2008 payments. Overall, urban hospices are anticipated to experience a 2.5 percent increase in payments while rural hospices should experience a 2.7 percent increase in payments. Urban hospices are anticipated to see an increase in estimated payments ranging from 2.0 percent for the Middle Atlantic region to 3.3 percent for the Pacific region. Rural hospices are estimated to see an increase in estimated payments ranging from 2.1 percent for the New England region to 4.1 percent for the Pacific region.

3. Type of Ownership

Column 3 demonstrates the effect of the updated raw pre-floor, pre-reclassified hospital wage index on FY 2009 estimated payments versus FY 2008 estimated payments. We anticipate that using the updated raw pre-floor, pre-reclassified hospital wage index data will have no effect on proprietary hospices. While we estimate a slight decrease in estimated payments for voluntary (non-profit) hospices (0.1 percent), other hospices are expected to experience an increase of 0.1 percent, and government hospices are expected to experience an increase of 0.2 percent.

Column 4 demonstrates the combined effects of using updated raw pre-floor, pre-reclassified hospital wage index data and of incorporating a 25 percent BNAF reduction. Estimated payments to proprietary hospices are anticipated to decrease by 1.0 percent, while voluntary (non-profit), government, and other hospices are anticipated to experience decreases of 1.2 percent, 0.8 percent, and 1.0 percent, respectively.

Column 5 shows the combined effects of the updated raw pre-floor, pre-reclassified hospital wage index values with the 25 percent BNAF reduction, the updated wage data, and the 3.6 percent FY 2009 market basket update on estimated payments, comparing FY 2009 to FY 2008. Estimated FY 2009 payments are anticipated to increase for all hospices, regardless of ownership type. Estimated payments are forecast to increase from 2.4 percent for voluntary hospices to 2.8 percent for government hospices.

4. Hospice Base

Column 3 demonstrates the effect of using the updated raw pre-floor, pre-reclassified hospital wage index values, comparing estimated payments for FY 2009 to FY 2008. Estimated payments are anticipated to decrease by 0.5 percent for skilled nursing facilities, but to increase for home health agency and hospital based facilities. Freestanding facilities are anticipated to experience no change in estimated payments.

Column 4 shows the combined effects of reducing the BNAF by 25 percent and updating the raw pre-floor, pre-reclassified hospital wage index values, comparing FY 2009 to FY 2008 estimated payments. Skilled nursing facility based hospices are estimated to see a 1.6 percent decline, while hospital based hospices and home health agency based hospices are each anticipated to experience a 1.0 percent decrease in payments. Freestanding hospices are expected to experience a 1.1 percent decrease.

Column 5 shows the combined effects of the 25 percent BNAF reduction, the updated raw pre-floor, pre-reclassified hospital wage index, and the 3.6 percent FY 2009 market basket update on estimated payments, comparing FY 2009 to FY 2008. Estimated increases in payments range from 2.0 percent for skilled nursing facility based hospices to 2.6 percent for home health agency based hospices and hospital based hospices.

We note that the President's budget includes a proposal for a zero percent payment update for hospices in FY 2009. The impacts outlined in Column 5 of Table 2 in this final rule, which include the effects of a 3.6 percent FY 2009 market basket update, would need to change to reflect any legislation that the Congress might enact which would affect the market basket update.

C. Accounting Statement

As required by OMB Circular A–4 (available at *http://www.whitehouse.gov/omb/circulars/a004/a-4.pdf*), in Table 3 below, we have prepared an accounting statement showing the classification of the expenditures associated with the final provisions of this rule. This table provides our best estimate of the decrease in Medicare payments under the hospice benefit as a result of the changes presented in this final rule on data for 3,111 hospices in our database. All expenditures are classified as transfers to Medicare providers (that is, hospices).

TABLE 3—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES, FROM FY 2008 TO FY 2009

[In millions]

Category	Transfers
Annualized Monetized Transfers.	$ – 100 *
From Whom to Whom	Federal Government to Hospices

* The $100 million reduction in transfers includes the 25 percent reduction in the BNAF and the updated wage data. It does not include the market basket update of 3.6 percent.

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

List of Subjects in 42 CFR Part 418

Health facilities, Health professions, Medicare, and Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Centers for Medicare and Medicare Services amends 42 CFR chapter IV as set forth below:

PART 418—HOSPICE CARE

■ 1. The authority citation for part 418 continues to read as follows:

Authority: Secs 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart G—Payment for Hospice Care

■ 2. Section § 418.306 is amended by revising paragraph (c) to read as follows:

§ 418.306 Determination of payment rates.

* * * * *

(c) *Adjustment for wage differences.* Each hospice's labor market is determined based on definitions of Metropolitan Statistical Areas (MSAs) issued by OMB. CMS will issue annually, in the **Federal Register**, a hospice wage index based on the most current available CMS hospital wage data, including changes to the definition of MSAs. The urban and rural area geographic classifications are defined in § 412.64(b)(1)(ii)(A) through (C) of this chapter. The payment rates established by CMS are adjusted by the intermediary to reflect local differences

in wages according to the revised wage data.

* * * * *

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

Dated: July 18, 2008.

Kerry Weems,

Acting Administrator, Centers for Medicare & Medicaid Services.

Approved: July 24, 2008.

Michael O. Leavitt,

Secretary.

Note: The following Addenda will not appear in the Code of Federal Regulations.

ADDENDUM A—FINAL HOSPICE WAGE INDEX FOR URBAN AREAS BY CBSA—FY 2009

CBSA code	Urban area (constituent counties) [2]	Wage index [1]
10180	Abilene, TX	0.8352
	Callahan County, TX	
	Jones County, TX	
	Taylor County, TX	
10380	Aguadilla-Isabela-San Sebastián, PR	0.3965
	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	0.9231
	Portage County, OH	
	Summit County, OH	
10500	Albany, GA	0.8937
	Baker County, GA	
	Dougherty County, GA	
	Lee County, GA	
	Terrell County, GA	
	Worth County, GA	
10580	Albany-Schenectady-Troy, NY	0.9015
	Albany County, NY	
	Rensselaer County, NY	
	Saratoga County, NY	
	Schenectady County, NY	
	Schoharie County, NY	
10740	Albuquerque, NM	1.0029
	Bernalillo County, NM	
	Sandoval County, NM	
	Torrance County, NM	
	Valencia County, NM	
10780	Alexandria, LA	0.8375
	Grant Parish, LA	
	Rapides Parish, LA	
10900	Allentown-Bethlehem-Easton, PA-NJ	1.0355
	Warren County, NJ	
	Carbon County, PA	
	Lehigh County, PA	
	Northampton County, PA	
11020	Altoona, PA	0.9046
	Blair County, PA	
11100	Amarillo, TX	0.9569
	Armstrong County, TX	
	Carson County, TX	
	Potter County, TX	
	Randall County, TX	
11180	Ames, IA	1.0545
	Story County, IA	
11260	Anchorage, AK	1.2505
	Anchorage Municipality, AK	
	Matanuska-Susitna Borough, AK	
11300	Anderson, IN	0.9266
	Madison County, IN	
11340	Anderson, SC	0.9537
	Anderson County, SC	
11460	Ann Arbor, MI	1.1063
	Washtenaw County, MI	
11500	Anniston-Oxford, AL	0.8320

ADDENDUM A—FINAL HOSPICE WAGE INDEX FOR URBAN AREAS BY CBSA—FY 2009—Continued

CBSA code	Urban area (constituent counties) [2]	Wage index [1]
	Calhoun County, AL	
11540	Appleton, WI	1.0075
	Calumet County, WI	
	Outagamie County, WI	
11700	Asheville, NC	0.9641
	Buncombe County, NC	
	Haywood County, NC	
	Henderson County, NC	
	Madison County, NC	
12020	Athens-Clarke County, GA	1.1040
	Clarke County, GA	
	Madison County, GA	
	Oconee County, GA	
	Oglethorpe County, GA	
12060	Atlanta-Sandy Springs-Marietta, GA	1.0316
	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	1.2804
	Atlantic County, NJ	
12220	Auburn-Opelika, AL	0.8492
	Lee County, AL	
12260	Augusta-Richmond County, GA-SC	1.0124
	Burke County, GA	
	Columbia County, GA	
	McDuffie County, GA	
	Richmond County, GA	
	Aiken County, SC	
	Edgefield County, SC	
12420	Austin-Round Rock, TX	1.0018
	Bastrop County, TX	
	Caldwell County, TX	
	Hays County, TX	
	Travis County, TX	
	Williamson County, TX	
12540	Bakersfield, CA	1.1600
	Kern County, CA	
12580	Baltimore-Towson, MD	1.0638
	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	1.0474

ADDENDUM A—FINAL HOSPICE WAGE INDEX FOR URBAN AREAS BY CBSA—FY 2009—Continued

CBSA code	Urban area (constituent counties) [2]	Wage index [1]
	Penobscot County, ME	
12700	Barnstable Town, MA	1.3229
	Barnstable County, MA	
12940	Baton Rouge, LA	0.8433
	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	1.0685
	Calhoun County, MI	
13020	Bay City, MI	0.9339
	Bay County, MI	
13140	Beaumont-Port Arthur, TX	0.8955
	Hardin County, TX	
	Jefferson County, TX	
	Orange County, TX	
13380	Bellingham, WA	1.2044
	Whatcom County, WA	
13460	Bend, OR	1.1486
	Deschutes County, OR	
13644	Bethesda-Frederick-Gaithersburg, MD	1.1033
	Frederick County, MD	
	Montgomery County, MD	
13740	Billings, MT	0.9097
	Carbon County, MT	
	Yellowstone County, MT	
13780	Binghamton, NY	0.9394
	Broome County, NY	
	Tioga County, NY	
13820	Birmingham-Hoover, AL	0.9340
	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	0.8000
	Burleigh County, ND	
	Morton County, ND	
13980	Blacksburg-Christiansburg-Radford, VA	0.8599
	Giles County, VA	
	Montgomery County, VA	
	Pulaski County, VA	
	Radford City, VA	
14020	Bloomington, IN	0.9358
	Greene County, IN	
	Monroe County, IN	
	Owen County, IN	
14060	Bloomington-Normal, IL	0.9788
	McLean County, IL	
14260	Boise City-Nampa, ID	0.9935
	Ada County, ID	
	Boise County, ID	
	Canyon County, ID	
	Gem County, ID	
	Owyhee County, ID	
14484	Boston-Quincy, MA	1.2378
	Norfolk County, MA	
	Plymouth County, MA	
	Suffolk County, MA	
14500	Boulder, CO	1.0944
	Boulder County, CO	
14540	Bowling Green, KY	0.8564
	Edmonson County, KY	
	Warren County, KY	

ADDENDUM A—FINAL HOSPICE WAGE INDEX FOR URBAN AREAS BY CBSA—FY 2009—Continued

CBSA code	Urban area (constituent counties) [2]	Wage index [1]
14740	Bremerton-Silverdale, WA	1.1446
	Kitsap County, WA	
14860	Bridgeport-Stamford-Norwalk, CT	1.3368
	Fairfield County, CT	
15180	Brownsville-Harlingen, TX	0.9357
	Cameron County, TX	
15260	Brunswick, GA	0.9946
	Brantley County, GA	
	Glynn County, GA	
	McIntosh County, GA	
15380	Buffalo-Niagara Falls, NY	1.0043
	Erie County, NY	
	Niagara County, NY	
15500	Burlington, NC	0.9182
	Alamance County, NC	
15540	Burlington-South Burlington, VT	1.0140
	Chittenden County, VT	
	Franklin County, VT	
	Grand Isle County, VT	
15764	Cambridge-Newton-Framingham, MA	1.1772
	Middlesex County, MA	
15804	Camden, NJ	1.0928
	Burlington County, NJ	
	Camden County, NJ	
	Gloucester County, NJ	
15940	Canton-Massillon, OH	0.9379
	Carroll County, OH	
	Stark County, OH	
15980	Cape Coral-Fort Myers, FL	0.9863
	Lee County, FL	
16180	Carson City, NV	1.0500
16220	Casper, WY	0.9851
	Natrona County, WY	
16300	Cedar Rapids, IA	0.9292
	Benton County, IA	
	Jones County, IA	
	Linn County, IA	
16580	Champaign-Urbana, IL	0.9859
	Champaign County, IL	
	Ford County, IL	
	Piatt County, IL	
16620	Charleston, WV	0.8701
	Boone County, WV	
	Clay County, WV	
	Kanawha County, WV	
	Lincoln County, WV	
	Putnam County, WV	
16700	Charleston-North Charleston, SC	0.9577
	Berkeley County, SC	
	Charleston County, SC	
	Dorchester County, SC	
16740	Charlotte-Gastonia-Concord, NC-SC	0.9993
	Anson County, NC	
	Cabarrus County, NC	
	Gaston County, NC	
	Mecklenburg County, NC	
	Union County, NC	
	York County, SC	
16820	Charlottesville, VA	0.9738
	Albemarle County, VA	
	Fluvanna County, VA	
	Greene County, VA	
	Nelson County, VA	
	Charlottesville City, VA	
16860	Chattanooga, TN-GA	0.9441
	Catoosa County, GA	
	Dade County, GA	
	Walker County, GA	
	Hamilton County, TN	
	Marion County, TN	
	Sequatchie County, TN	

ADDENDUM A—FINAL HOSPICE WAGE INDEX FOR URBAN AREAS BY CBSA—FY 2009—Continued

CBSA code	Urban area (constituent counties) [2]	Wage index [1]
16940	Cheyenne, WY	0.9771
	Laramie County, WY	
16974	Chicago-Naperville-Joliet, IL	1.1247
	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	1.1851
	Butte County, CA	
17140	Cincinnati-Middletown, OH-KY-IN	1.0270
	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	0.8661
	Christian County, KY	
	Trigg County, KY	
	Montgomery County, TN	
	Stewart County, TN	
17420	Cleveland, TN	0.8452
	Bradley County, TN	
	Polk County, TN	
17460	Cleveland-Elyria-Mentor, OH	0.9803
	Cuyahoga County, OH	
	Geauga County, OH	
	Lake County, OH	
	Lorain County, OH	
	Medina County, OH	
17660	Coeur d'Alene, ID	1.0006
	Kootenai County, ID	
17780	College Station-Bryan, TX	0.9823
	Brazos County, TX	
	Burleson County, TX	
	Robertson County, TX	
17820	Colorado Springs, CO	1.0202
	El Paso County, CO	
	Teller County, CO	
17860	Columbia, MO	0.9088
	Boone County, MO	
	Howard County, MO	
17900	Columbia, SC	0.9237
	Calhoun County, SC	
	Fairfield County, SC	
	Kershaw County, SC	
	Lexington County, SC	
	Richland County, SC	
	Saluda County, SC	
17980	Columbus, GA-AL	0.9163
	Russell County, AL	
	Chattahoochee County, GA	
	Harris County, GA	
	Marion County, GA	
	Muscogee County, GA	
18020	Columbus, IN	1.0011
	Bartholomew County, IN	
18140	Columbus, OH	1.0586

ADDENDUM A—FINAL HOSPICE WAGE INDEX FOR URBAN AREAS BY CBSA—FY 2009—Continued

CBSA code	Urban area (constituent counties) [2]	Wage index [1]
	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	0.9015
	Aransas County, TX	
	Nueces County, TX	
	San Patricio County, TX	
18700	Corvallis, OR	1.1504
	Benton County, OR	
19060	Cumberland, MD-WV	0.8706
	Allegany County, MD	
	Mineral County, WV	
19124	Dallas-Plano-Irving, TX	1.0408
	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	0.9195
	Murray County, GA	
	Whitfield County, GA	
19180	Danville, IL	0.9402
	Vermilion County, IL	
19260	Danville, VA	0.8649
	Pittsylvania County, VA	
	Danville City, VA	
19340	Davenport-Moline-Rock Island, IA-IL	0.9269
	Henry County, IL	
	Mercer County, IL	
	Rock Island County, IL	
	Scott County, IA	
19380	Dayton, OH	0.9647
	Greene County, OH	
	Miami County, OH	
	Montgomery County, OH	
	Preble County, OH	
19460	Decatur, AL	0.8277
	Lawrence County, AL	
	Morgan County, AL	
19500	Decatur, IL	0.8475
	Macon County, IL	
19660	Deltona-Daytona Beach-Ormond Beach, FL	0.9480
	Volusia County, FL	
19740	Denver-Aurora, CO	1.1251
	Adams County, CO	
	Arapahoe County, CO	
	Broomfield County, CO	
	Clear Creek County, CO	
	Denver County, CO	
	Douglas County, CO	
	Elbert County, CO	
	Gilpin County, CO	
	Jefferson County, CO	
	Park County, CO	
19780	Des Moines-West Des Moines, IA	0.9684
	Dallas County, IA	
	Guthrie County, IA	
	Madison County, IA	
	Polk County, IA	
	Warren County, IA	
19804	Detroit-Livonia-Dearborn, MI	1.0496
	Wayne County, MI	
20020	Dothan, AL	0.8000

ADDENDUM A—FINAL HOSPICE WAGE INDEX FOR URBAN AREAS BY CBSA—FY 2009—Continued

CBSA code	Urban area (constituent counties) [2]	Wage index [1]
	Geneva County, AL	
	Henry County, AL	
	Houston County, AL	
20100	Dover, DE	1.0601
	Kent County, DE	
20220	Dubuque, IA	0.9508
	Dubuque County, IA	
20260	Duluth, MN-WI	1.0471
	Carlton County, MN	
	St. Louis County, MN	
	Douglas County, WI	
20500	Durham, NC	1.0304
	Chatham County, NC	
	Durham County, NC	
	Orange County, NC	
	Person County, NC	
20740	Eau Claire, WI	0.9946
	Chippewa County, WI	
	Eau Claire County, WI	
20764	Edison, NJ	1.1737
	Middlesex County, NJ	
	Monmouth County, NJ	
	Ocean County, NJ	
	Somerset County, NJ	
20940	El Centro, CA	0.9357
	Imperial County, CA	
21060	Elizabethtown, KY	0.9144
	Hardin County, KY	
	Larue County, KY	
21140	Elkhart-Goshen, IN	1.0089
	Elkhart County, IN	
21300	Elmira, NY	0.8675
	Chemung County, NY	
21340	El Paso, TX	0.9436
	El Paso County, TX	
21500	Erie, PA	0.8917
	Erie County, PA	
21660	Eugene-Springfield, OR	1.1475
	Lane County, OR	
21780	Evansville, IN-KY	0.9092
	Gibson County, IN	
	Posey County, IN	
	Vanderburgh County, IN	
	Warrick County, IN	
	Henderson County, KY	
	Webster County, KY	
21820	Fairbanks, AK	1.1599
	Fairbanks North Star Borough, AK	
21940	Fajardo, PR	0.5031
	Ceiba Municipio, PR	
	Fajardo Municipio, PR	
	Luquillo Municipio, PR	
22020	Fargo, ND-MN	0.8442
	Cass County, ND	
	Clay County, MN	
22140	Farmington, NM	1.0063
	San Juan County, NM	
22180	Fayetteville, NC	0.9834
	Cumberland County, NC	
	Hoke County, NC	
22220	Fayetteville-Springdale-Rogers, AR-MO	0.9176
	Benton County, AR	
	Madison County, AR	
	Washington County, AR	
	McDonald County, MO	
22380	Flagstaff, AZ	1.2268
	Coconino County, AZ	
22420	Flint, MI	1.1778
	Genesee County, MI	
22500	Florence, SC	0.8659
	Darlington County, SC	

ADDENDUM A—FINAL HOSPICE WAGE INDEX FOR URBAN AREAS BY CBSA—FY 2009—Continued

CBSA code	Urban area (constituent counties) [2]	Wage index [1]
	Florence County, SC	
22520	Florence-Muscle Shoals, AL	0.8062
	Colbert County, AL	
	Lauderdale County, AL	
22540	Fond du Lac, WI	1.0147
	Fond du Lac County, WI	
22660	Fort Collins-Loveland, CO	1.0389
	Larimer County, CO	
22744	Fort Lauderdale-Pompano Beach-Deerfield Beach, FL	1.0737
	Broward County, FL	
22900	Fort Smith, AR-OK	0.8327
	Crawford County, AR	
	Franklin County, AR	
	Sebastian County, AR	
	Le Flore County, OK	
	Sequoyah County, OK	
23020	Fort Walton Beach-Crestview-Destin, FL	0.9177
	Okaloosa County, FL	
23060	Fort Wayne, IN	0.9745
	Allen County, IN	
	Wells County, IN	
	Whitley County, IN	
23104	Fort Worth-Arlington, TX	1.0175
	Johnson County, TX	
	Parker County, TX	
	Tarrant County, TX	
	Wise County, TX	
23420	Fresno, CA	1.1539
	Fresno County, CA	
23460	Gadsden, AL	0.8564
	Etowah County, AL	
23540	Gainesville, FL	0.9653
	Alachua County, FL	
	Gilchrist County, FL	
23580	Gainesville, GA	0.9674
	Hall County, GA	
23844	Gary, IN	0.9682
	Jasper County, IN	
	Lake County, IN	
	Newton County, IN	
	Porter County, IN	
24020	Glens Falls, NY	0.8666
	Warren County, NY	
	Washington County, NY	
24140	Goldsboro, NC	0.9750
	Wayne County, NC	
24220	Grand Forks, ND-MN	0.8273
	Polk County, MN	
	Grand Forks County, ND	
24300	Grand Junction, CO	1.0354
	Mesa County, CO	
24340	Grand Rapids-Wyoming, MI	0.9778
	Barry County, MI	
	Ionia County, MI	
	Kent County, MI	
	Newaygo County, MI	
24500	Great Falls, MT	0.9106
	Cascade County, MT	
24540	Greeley, CO	1.0138
	Weld County, CO	
24580	Green Bay, WI	1.0210
	Brown County, WI	
	Kewaunee County, WI	
	Oconto County, WI	
24660	Greensboro-High Point, NC	0.9458
	Guilford County, NC	
	Randolph County, NC	
	Rockingham County, NC	
24780	Greenville, NC	0.9869
	Greene County, NC	
	Pitt County, NC	

ADDENDUM A—FINAL HOSPICE WAGE INDEX FOR URBAN AREAS BY CBSA—FY 2009—Continued

CBSA code	Urban area (constituent counties) [2]	Wage index [1]
24860	Greenville-Mauldin-Easley, SC	1.0350
	Greenville County, SC	
	Laurens County, SC	
	Pickens County, SC	
25020	Guayama, PR	0.3524
	Arroyo Municipio, PR	
	Guayama Municipio, PR	
	Patillas Municipio, PR	
25060	Gulfport-Biloxi, MS	0.9209
	Hancock County, MS	
	Harrison County, MS	
	Stone County, MS	
25180	Hagerstown-Martinsburg, MD–WV	0.9461
	Washington County, MD	
	Berkeley County, WV	
	Morgan County, WV	
25260	Hanford-Corcoran, CA	1.1021
	Kings County, CA	
25420	Harrisburg-Carlisle, PA	0.9741
	Cumberland County, PA	
	Dauphin County, PA	
	Perry County, PA	
25500	Harrisonburg, VA	0.9308
	Rockingham County, VA	
	Harrisonburg City, VA	
25540	Hartford-West Hartford-East Hartford, CT	1.1504
	Hartford County, CT	
	Middlesex County, CT	
	Tolland County, CT	
25620	Hattiesburg, MS	0.8000
	Forrest County, MS	
	Lamar County, MS	
	Perry County, MS	
25860	Hickory-Lenoir-Morganton, NC	0.9477
	Alexander County, NC	
	Burke County, NC	
	Caldwell County, NC	
	Catawba County, NC	
25980	Hinesville-Fort Stewart, GA [3]	0.9644
	Liberty County, GA	
	Long County, GA	
26100	Holland-Grand Haven, MI	0.9454
	Ottawa County, MI	
26180	Honolulu, HI	1.2130
	Honolulu County, HI	
26300	Hot Springs, AR	0.9562
	Garland County, AR	
26380	Houma-Bayou Cane-Thibodaux, LA	0.8284
	Lafourche Parish, LA	
	Terrebonne Parish, LA	
26420	Houston-Sugar Land-Baytown, TX	1.0433
	Austin County, TX	
	Brazoria County, TX	
	Chambers County, TX	
	Fort Bend County, TX	
	Galveston County, TX	
	Harris County, TX	
	Liberty County, TX	
	Montgomery County, TX	
	San Jacinto County, TX	
	Waller County, TX	
26580	Huntington-Ashland, WV-KY-OH	0.9490
	Boyd County, KY	
	Greenup County, KY	
	Lawrence County, OH	
	Cabell County, WV	
	Wayne County, WV	
26620	Huntsville, AL	0.9600
	Limestone County, AL	
	Madison County, AL	
26820	Idaho Falls, ID	0.9724

ADDENDUM A—FINAL HOSPICE WAGE INDEX FOR URBAN AREAS BY CBSA—FY 2009—Continued

CBSA code	Urban area (constituent counties) [2]	Wage index [1]
	Bonneville County, ID	
	Jefferson County, ID	
26900	Indianapolis-Carmel, IN	1.0333
	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	1.0043
	Johnson County, IA	
	Washington County, IA	
27060	Ithaca, NY	1.0109
	Tompkins County, NY	
27100	Jackson, MI	0.9793
	Jackson County, MI	
27140	Jackson, MS	0.8409
	Copiah County, MS	
	Hinds County, MS	
	Madison County, MS	
	Rankin County, MS	
	Simpson County, MS	
27180	Jackson, TN	0.9107
	Chester County, TN	
	Madison County, TN	
27260	Jacksonville, FL	0.9469
	Baker County, FL	
	Clay County, FL	
	Duval County, FL	
	Nassau County, FL	
	St. Johns County, FL	
27340	Jacksonville, NC	0.8480
	Onslow County, NC	
27500	Janesville, WI	1.0184
	Rock County, WI	
27620	Jefferson City, MO	0.8899
	Callaway County, MO	
	Cole County, MO	
	Moniteau County, MO	
	Osage County, MO	
27740	Johnson City, TN	0.8058
	Carter County, TN	
	Unicoi County, TN	
	Washington County, TN	
27780	Johnstown, PA	0.8000
	Cambria County, PA	
27860	Jonesboro, AR	0.8177
	Craighead County, AR	
	Poinsett County, AR	
27900	Joplin, MO	0.9396
	Jasper County, MO	
	Newton County, MO	
28020	Kalamazoo-Portage, MI	1.0951
	Kalamazoo County, MI	
	Van Buren County, MI	
28100	Kankakee-Bradley, IL	1.0747
	Kankakee County, IL	
28140	Kansas City, MO-KS	0.9976
	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	

ADDENDUM A—FINAL HOSPICE WAGE INDEX FOR URBAN AREAS BY CBSA—FY 2009—Continued

CBSA code	Urban area (constituent counties) [2]	Wage index [1]
	Clay County, MO	
	Clinton County, MO	
	Jackson County, MO	
	Lafayette County, MO	
	Platte County, MO	
	Ray County, MO	
28420	Kennewick-Richland-Pasco, WA	1.0576
	Benton County, WA	
	Franklin County, WA	
28660	Killeen-Temple-Fort Hood, TX	0.8659
	Bell County, TX	
	Coryell County, TX	
	Lampasas County, TX	
28700	Kingsport-Bristol-Bristol, TN-VA	0.8039
	Hawkins County, TN	
	Sullivan County, TN	
	Bristol City, VA	
	Scott County, VA	
	Washington County, VA	
28740	Kingston, NY	1.0031
	Ulster County, NY	
28940	Knoxville, TN	0.8435
	Anderson County, TN	
	Blount County, TN	
	Knox County, TN	
	Loudon County, TN	
	Union County, TN	
29020	Kokomo, IN	1.0068
	Howard County, IN	
	Tipton County, IN	
29100	La Crosse, WI-MN	1.0166
	Houston County, MN	
	La Crosse County, WI	
29140	Lafayette, IN	0.9310
	Benton County, IN	
	Carroll County, IN	
	Tippecanoe County, IN	
29180	Lafayette, LA	0.8657
	Lafayette Parish, LA	
	St. Martin Parish, LA	
29340	Lake Charles, LA	0.8163
	Calcasieu Parish, LA	
	Cameron Parish, LA	
29404	Lake County-Kenosha County, IL-WI	1.1130
	Lake County, IL	
	Kenosha County, WI	
29420	Lake Havasu City-Kingman, AZ	0.9797
	Mohave County, AZ	
29460	Lakeland, FL	0.9091
	Polk County, FL	
29540	Lancaster, PA	0.9712
	Lancaster County, PA	
29620	Lansing-East Lansing, MI	1.0622
	Clinton County, MI	
	Eaton County, MI	
	Ingham County, MI	
29700	Laredo, TX	0.8495
	Webb County, TX	
29740	Las Cruces, NM	0.9107
	Dona Ana County, NM	
29820	Las Vegas-Paradise, NV	1.2385
	Clark County, NV	
29940	Lawrence, KS	0.8636
	Douglas County, KS	
30020	Lawton, OK	0.8424
	Comanche County, OK	
30140	Lebanon, PA	0.8599
	Lebanon County, PA	
30300	Lewiston, ID-WA	0.9924
	Nez Perce County, ID	
	Asotin County, WA	

ADDENDUM A—FINAL HOSPICE WAGE INDEX FOR URBAN AREAS BY CBSA—FY 2009—Continued

CBSA code	Urban area (constituent counties) [2]	Wage index [1]
30340	Lewiston-Auburn, ME	0.9650
	Androscoggin County, ME	
30460	Lexington-Fayette, KY	0.9648
	Bourbon County, KY	
	Clark County, KY	
	Fayette County, KY	
	Jessamine County, KY	
	Scott County, KY	
	Woodford County, KY	
30620	Lima, OH	0.9892
	Allen County, OH	
30700	Lincoln, NE	1.0550
	Lancaster County, NE	
	Seward County, NE	
30780	Little Rock-North Little Rock-Conway, AR	0.9303
	Faulkner County, AR	
	Grant County, AR	
	Lonoke County, AR	
	Perry County, AR	
	Pulaski County, AR	
	Saline County, AR	
30860	Logan, UT-ID	0.9639
	Franklin County, ID	
	Cache County, UT	
30980	Longview, TX	0.9150
	Gregg County, TX	
	Rusk County, TX	
	Upshur County, TX	
31020	Longview, WA	1.1365
	Cowlitz County, WA	
31084	Los Angeles-Long Beach-Glendale, CA	1.2356
	Los Angeles County, CA	
31140	Louisville, KY-IN	0.9515
	Clark County, IN	
	Floyd County, IN	
	Harrison County, IN	
	Washington County, IN	
	Bullitt County, KY	
	Henry County, KY	
	Jefferson County, KY	
	Meade County, KY	
	Nelson County, KY	
	Oldham County, KY	
	Shelby County, KY	
	Spencer County, KY	
	Trimble County, KY	
31180	Lubbock, TX	0.9111
	Crosby County, TX	
	Lubbock County, TX	
31340	Lynchburg, VA	0.9166
	Amherst County, VA	
	Appomattox County, VA	
	Bedford County, VA	
	Campbell County, VA	
	Bedford City, VA	
	Lynchburg City, VA	
31420	Macon, GA	1.0015
	Bibb County, GA	
	Crawford County, GA	
	Jones County, GA	
	Monroe County, GA	
	Twiggs County, GA	
31460	Madera, CA	0.8470
	Madera County, CA	
31540	Madison, WI	1.1478
	Columbia County, WI	
	Dane County, WI	
	Iowa County, WI	
31700	Manchester-Nashua, NH	1.0783
	Hillsborough County, NH	
31900	Mansfield, OH	0.9732

ADDENDUM A—FINAL HOSPICE WAGE INDEX FOR URBAN AREAS BY CBSA—FY 2009—Continued

CBSA code	Urban area (constituent counties) [2]	Wage index [1]
	Richland County, OH	
32420	Mayagüez, PR	0.4268
	Hormigueros Municipio, PR	
	Mayagüez Municipio, PR	
32580	McAllen-Edinburg-Pharr, TX	0.9576
	Hidalgo County, TX	
32780	Medford, OR	1.0831
	Jackson County, OR	
32820	Memphis, TN-MS-AR	0.9710
	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	1.2722
	Merced County, CA	
33124	Miami-Miami Beach-Kendall, FL	1.0499
	Miami-Dade County, FL	
33140	Michigan City-La Porte, IN	0.9357
	LaPorte County, IN	
33260	Midland, TX	1.0515
	Midland County, TX	
33340	Milwaukee-Waukesha-West Allis, WI	1.0722
	Milwaukee County, WI	
	Ozaukee County, WI	
	Washington County, WI	
	Waukesha County, WI	
33460	Minneapolis-St. Paul-Bloomington, MN-WI	1.1644
	Anoka County, MN	
	Carver County, MN	
	Chisago County, MN	
	Dakota County, MN	
	Hennepin County, MN	
	Isanti County, MN	
	Ramsey County, MN	
	Scott County, MN	
	Sherburne County, MN	
	Washington County, MN	
	Wright County, MN	
	Pierce County, WI	
	St. Croix County, WI	
33540	Missoula, MT	0.9398
	Missoula County, MT	
33660	Mobile, AL	0.8432
	Mobile County, AL	
33700	Modesto, CA	1.2556
	Stanislaus County, CA	
33740	Monroe, LA	0.8221
	Ouachita Parish, LA	
	Union Parish, LA	
33780	Monroe, MI	0.9882
	Monroe County, MI	
33860	Montgomery, AL	0.8490
	Autauga County, AL	
	Elmore County, AL	
	Lowndes County, AL	
	Montgomery County, AL	
34060	Morgantown, WV	0.8734
	Monongalia County, WV	
	Preston County, WV	
34100	Morristown, TN	0.8000
	Grainger County, TN	
	Hamblen County, TN	
	Jefferson County, TN	
34580	Mount Vernon-Anacortes, WA	1.1052
	Skagit County, WA	
34620	Muncie, IN	0.8622
	Delaware County, IN	

ADDENDUM A—FINAL HOSPICE WAGE INDEX FOR URBAN AREAS BY CBSA—FY 2009—Continued

CBSA code	Urban area (constituent counties) [2]	Wage index [1]
34740	Muskegon-Norton Shores, MI	1.0325
	Muskegon County, MI	
34820	Myrtle Beach-Conway-North Myrtle Beach, SC	0.9063
	Horry County, SC	
34900	Napa, CA	1.5195
	Napa County, CA	
34940	Naples-Marco Island, FL	0.9958
	Collier County, FL	
34980	Nashville-Davidson-Murfreesboro-Franklin, TN	1.0170
	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	1.3268
	Nassau County, NY	
	Suffolk County, NY	
35084	Newark-Union, NJ-PA	1.2451
	Essex County, NJ	
	Hunterdon County, NJ	
	Morris County, NJ	
	Sussex County, NJ	
	Union County, NJ	
	Pike County, PA	
35300	New Haven-Milford, CT	1.2461
	New Haven County, CT	
35380	New Orleans-Metairie-Kenner, LA	0.9339
	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	1.3767
	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	0.9595
	Berrien County, MI	
35980	Norwich-New London, CT	1.2000
	New London County, CT	
36084	Oakland-Fremont-Hayward, CA	1.6464
	Alameda County, CA	
	Contra Costa County, CA	
36100	Ocala, FL	0.9056
	Marion County, FL	
36140	Ocean City, NJ	1.1534
	Cape May County, NJ	
36220	Odessa, TX	1.0541
	Ector County, TX	
36260	Ogden-Clearfield, UT	0.9447
	Davis County, UT	
	Morgan County, UT	
	Weber County, UT	

ADDENDUM A—FINAL HOSPICE WAGE INDEX FOR URBAN AREAS BY CBSA—FY 2009—Continued

CBSA code	Urban area (constituent counties) [2]	Wage index [1]
36420	Oklahoma City, OK	0.9253
	Canadian County, OK	
	Cleveland County, OK	
	Grady County, OK	
	Lincoln County, OK	
	Logan County, OK	
	McClain County, OK	
	Oklahoma County, OK	
36500	Olympia, WA	1.2084
	Thurston County, WA	
36540	Omaha-Council Bluffs, NE-IA	1.0036
	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	0.9684
	Lake County, FL	
	Orange County, FL	
	Osceola County, FL	
	Seminole County, FL	
36780	Oshkosh-Neenah, WI	1.0026
	Winnebago County, WI	
36980	Owensboro, KY	0.9082
	Daviess County, KY	
	Hancock County, KY	
	McLean County, KY	
37100	Oxnard-Thousand Oaks-Ventura, CA	1.2441
	Ventura County, CA	
37340	Palm Bay-Melbourne-Titusville, FL	0.9788
	Brevard County, FL	
37380	Palm Coast, FL	0.9389
	Flagler County, FL	
37460	Panama City-Lynn Haven, FL	0.8726
	Bay County, FL	
37620	Parkersburg-Marietta, WV-OH	0.8508
	Washington County, OH	
	Pleasants County, WV	
	Wirt County, WV	
	Wood County, WV	
37700	Pascagoula, MS	0.9077
	George County, MS	
	Jackson County, MS	
37764	Peabody, MA	1.1179
	Essex County, MA	
37860	Pensacola-Ferry Pass-Brent, FL	0.8692
	Escambia County, FL	
	Santa Rosa County, FL	
37900	Peoria, IL	0.9761
	Marshall County, IL	
	Peoria County, IL	
	Stark County, IL	
	Tazewell County, IL	
	Woodford County, IL	
37964	Philadelphia, PA	1.1468
	Bucks County, PA	
	Chester County, PA	
	Delaware County, PA	
	Montgomery County, PA	
	Philadelphia County, PA	
38060	Phoenix-Mesa-Scottsdale, AZ	1.0774
	Maricopa County, AZ	
	Pinal County, AZ	
38220	Pine Bluff, AR	0.8229
	Cleveland County, AR	
	Jefferson County, AR	
	Lincoln County, AR	
38300	Pittsburgh, PA	0.8949

ADDENDUM A—FINAL HOSPICE WAGE INDEX FOR URBAN AREAS BY CBSA—FY 2009—Continued

CBSA code	Urban area (constituent counties) [2]	Wage index [1]
	Allegheny County, PA	
	Armstrong County, PA	
	Beaver County, PA	
	Butler County, PA	
	Fayette County, PA	
	Washington County, PA	
	Westmoreland County, PA	
38340	Pittsfield, MA	1.0592
	Berkshire County, MA	
38540	Pocatello, ID	0.9935
	Bannock County, ID	
	Power County, ID	
38660	Ponce, PR	0.5118
	Juana Díaz Municipio, PR	
	Ponce Municipio, PR	
	Villalba Municipio, PR	
38860	Portland-South Portland-Biddeford, ME	1.0541
	Cumberland County, ME	
	Sagadahoc County, ME	
	York County, ME	
38900	Portland-Vancouver-Beaverton, OR-WA	1.2069
	Clackamas County, OR	
	Columbia County, OR	
	Multnomah County, OR	
	Washington County, OR	
	Yamhill County, OR	
	Clark County, WA	
	Skamania County, WA	
38940	Port St. Lucie, FL	1.0514
	Martin County, FL	
	St. Lucie County, FL	
39100	Poughkeepsie-Newburgh-Middletown, NY	1.1528
	Dutchess County, NY	
	Orange County, NY	
39140	Prescott, AZ	1.0518
	Yavapai County, AZ	
39300	Providence-New Bedford-Fall River, RI-MA	1.1099
	Bristol County, MA	
	Bristol County, RI	
	Kent County, RI	
	Newport County, RI	
	Providence County, RI	
	Washington County, RI	
39340	Provo-Orem, UT	1.0032
	Juab County, UT	
	Utah County, UT	
39380	Pueblo, CO	0.9291
	Pueblo County, CO	
39460	Punta Gorda, FL	0.9714
	Charlotte County, FL	
39540	Racine, WI	0.9970
	Racine County, WI	
39580	Raleigh-Cary, NC	1.0328
	Franklin County, NC	
	Johnston County, NC	
	Wake County, NC	
39660	Rapid City, SD	0.9249
	Meade County, SD	
	Pennington County, SD	
39740	Reading, PA	0.9821
	Berks County, PA	
39820	Redding, CA	1.4214
	Shasta County, CA	
39900	Reno-Sparks, NV	1.1247
	Storey County, NV	
	Washoe County, NV	
40060	Richmond, VA	0.9893
	Amelia County, VA	
	Caroline County, VA	
	Charles City County, VA	
	Chesterfield County, VA	

ADDENDUM A—FINAL HOSPICE WAGE INDEX FOR URBAN AREAS BY CBSA—FY 2009—Continued

CBSA code	Urban area (constituent counties) [2]	Wage index [1]
	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	1.1652
	Riverside County, CA	
	San Bernardino County, CA	
40220	Roanoke, VA	0.9123
	Botetourt County, VA	
	Craig County, VA	
	Franklin County, VA	
	Roanoke County, VA	
	Roanoke City, VA	
	Salem City, VA	
40340	Rochester, MN	1.1289
	Dodge County, MN	
	Olmsted County, MN	
	Wabasha County, MN	
40380	Rochester, NY	0.9298
	Livingston County, NY	
	Monroe County, NY	
	Ontario County, NY	
	Orleans County, NY	
	Wayne County, NY	
40420	Rockford, IL	1.0302
	Boone County, IL	
	Winnebago County, IL	
40484	Rockingham County-Strafford County, NH	1.0613
	Rockingham County, NH	
	Strafford County, NH	
40580	Rocky Mount, NC	0.9448
	Edgecombe County, NC	
	Nash County, NC	
40660	Rome, GA	0.9491
	Floyd County, GA	
40900	Sacramento—Arden-Arcade—Roseville, CA	1.4176
	El Dorado County, CA	
	Placer County, CA	
	Sacramento County, CA	
	Yolo County, CA	
40980	Saginaw-Saginaw Township North, MI	0.9250
	Saginaw County, MI	
41060	St. Cloud, MN	1.1073
	Benton County, MN	
	Stearns County, MN	
41100	St. George, UT	0.9823
	Washington County, UT	
41140	St. Joseph, MO-KS	0.9197
	Doniphan County, KS	
	Andrew County, MO	
	Buchanan County, MO	
	DeKalb County, MO	
41180	St. Louis, MO-IL	0.9472
	Bond County, IL	
	Calhoun County, IL	
	Clinton County, IL	
	Jersey County, IL	
	Macoupin County, IL	
	Madison County, IL	

ADDENDUM A—FINAL HOSPICE WAGE INDEX FOR URBAN AREAS BY CBSA—FY 2009—Continued

CBSA code	Urban area (constituent counties) [2]	Wage index [1]
	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	1.1097
	Marion County, OR	
	Polk County, OR	
41500	Salinas, CA	1.5509
	Monterey County, CA	
41540	Salisbury, MD	0.9441
	Somerset County, MD	
	Wicomico County, MD	
41620	Salt Lake City, UT	0.9866
	Salt Lake County, UT	
	Summit County, UT	
	Tooele County, UT	
41660	San Angelo, TX	0.9005
	Irion County, TX	
	Tom Green County, TX	
41700	San Antonio, TX	0.9273
	Atascosa County, TX	
	Bandera County, TX	
	Bexar County, TX	
	Comal County, TX	
	Guadalupe County, TX	
	Kendall County, TX	
	Medina County, TX	
	Wilson County, TX	
41740	San Diego-Carlsbad-San Marcos, CA	1.2063
	San Diego County, CA	
41780	Sandusky, OH	0.9260
	Erie County, OH	
41884	San Francisco-San Mateo-Redwood City, CA	1.5950
	Marin County, CA	
	San Francisco County, CA	
	San Mateo County, CA	
41900	San Germán-Cabo Rojo, PR	0.5438
	Cabo Rojo Municipio, PR	
	Lajas Municipio, PR	
	Sabana Grande Municipio, PR	
	San Germán Municipio, PR	
41940	San Jose-Sunnyvale-Santa Clara, CA	1.6517
	San Benito County, CA	
	Santa Clara County, CA	
41980	San Juan-Caguas-Guaynabo, PR	0.5207
	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	

ADDENDUM A—FINAL HOSPICE WAGE INDEX FOR URBAN AREAS BY CBSA—FY 2009—Continued

CBSA code	Urban area (constituent counties) [2]	Wage index [1]
	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	1.3109
	San Luis Obispo County, CA	
42044	Santa Ana-Anaheim-Irvine, CA	1.2351
	Orange County, CA	
42060	Santa Barbara-Santa Maria-Goleta, CA	1.2296
	Santa Barbara County, CA	
42100	Santa Cruz-Watsonville, CA	1.6923
	Santa Cruz County, CA	
42140	Santa Fe, NM	1.1267
	Santa Fe County, NM	
42220	Santa Rosa-Petaluma, CA	1.5426
	Sonoma County, CA	
42260	Sarasota-Bradenton-Venice, FL	1.0427
	Manatee County, FL	
	Sarasota County, FL	
42340	Savannah, GA	0.9585
	Bryan County, GA	
	Chatham County, GA	
	Effingham County, GA	
42540	Scranton—Wilkes-Barre, PA	0.8877
	Lackawanna County, PA	
	Luzerne County, PA	
	Wyoming County, PA	
42644	Seattle-Bellevue-Everett, WA	1.2147
	King County, WA	
	Snohomish County, WA	
42680	Sebastian-Vero Beach, FL	0.9880
	Indian River County, FL	
43100	Sheboygan, WI	0.9421
	Sheboygan County, WI	
43300	Sherman-Denison, TX	0.8733
	Grayson County, TX	
43340	Shreveport-Bossier City, LA	0.8897
	Bossier Parish, LA	
	Caddo Parish, LA	
	De Soto Parish, LA	
43580	Sioux City, IA-NE-SD	0.9711
	Woodbury County, IA	
	Dakota County, NE	
	Dixon County, NE	
	Union County, SD	
43620	Sioux Falls, SD	1.0038
	Lincoln County, SD	
	McCook County, SD	
	Minnehaha County, SD	
	Turner County, SD	
43780	South Bend-Mishawaka, IN-MI	1.0095
	St. Joseph County, IN	
	Cass County, MI	

ADDENDUM A—FINAL HOSPICE WAGE INDEX FOR URBAN AREAS BY CBSA—FY 2009—Continued

CBSA code	Urban area (constituent counties) [2]	Wage index [1]
43900	Spartanburg, SC	0.9890
	Spartanburg County, SC	
44060	Spokane, WA	1.0975
	Spokane County, WA	
44100	Springfield, IL	0.9388
	Menard County, IL	
	Sangamon County, IL	
44140	Springfield, MA	1.0881
	Franklin County, MA	
	Hampden County, MA	
	Hampshire County, MA	
44180	Springfield, MO	0.9127
	Christian County, MO	
	Dallas County, MO	
	Greene County, MO	
	Polk County, MO	
	Webster County, MO	
44220	Springfield, OH	0.9126
	Clark County, OH	
44300	State College, PA	0.9204
	Centre County, PA	
44700	Stockton, CA	1.2444
	San Joaquin County, CA	
44940	Sumter, SC	0.9026
	Sumter County, SC	
45060	Syracuse, NY	1.0402
	Madison County, NY	
	Onondaga County, NY	
	Oswego County, NY	
45104	Tacoma, WA	1.1604
	Pierce County, WA	
45220	Tallahassee, FL	0.9473
	Gadsden County, FL	
	Jefferson County, FL	
	Leon County, FL	
	Wakulla County, FL	
45300	Tampa-St. Petersburg-Clearwater, FL	0.9468
	Hernando County, FL	
	Hillsborough County, FL	
	Pasco County, FL	
	Pinellas County, FL	
45460	Terre Haute, IN	0.9243
	Clay County, IN	
	Sullivan County, IN	
	Vermillion County, IN	
	Vigo County, IN	
45500	Texarkana, TX-Texarkana, AR	0.8156
	Miller County, AR	
	Bowie County, TX	
45780	Toledo, OH	0.9900
	Fulton County, OH	
	Lucas County, OH	
	Ottawa County, OH	
	Wood County, OH	
45820	Topeka, KS	0.8962
	Jackson County, KS	
	Jefferson County, KS	
	Osage County, KS	
	Shawnee County, KS	
	Wabaunsee County, KS	
45940	Trenton-Ewing, NJ	1.1231
	Mercer County, NJ	
46060	Tucson, AZ	0.9704
	Pima County, AZ	
46140	Tulsa, OK	0.8754
	Creek County, OK	
	Okmulgee County, OK	
	Osage County, OK	
	Pawnee County, OK	
	Rogers County, OK	
	Tulsa County, OK	

ADDENDUM A—FINAL HOSPICE WAGE INDEX FOR URBAN AREAS BY CBSA—FY 2009—Continued

CBSA code	Urban area (constituent counties) [2]	Wage index [1]
	Wagoner County, OK	
46220	Tuscaloosa, AL	0.8716
	Greene County, AL	
	Hale County, AL	
	Tuscaloosa County, AL	
46340	Tyler, TX	0.9567
	Smith County, TX	
46540	Utica-Rome, NY	0.8908
	Herkimer County, NY	
	Oneida County, NY	
46660	Valdosta, GA	0.8500
	Brooks County, GA	
	Echols County, GA	
	Lanier County, GA	
	Lowndes County, GA	
46700	Vallejo-Fairfield, CA	1.5395
	Solano County, CA	
47020	Victoria, TX	0.8715
	Calhoun County, TX	
	Goliad County, TX	
	Victoria County, TX	
47220	Vineland-Millville-Bridgeton, NJ	1.0637
	Cumberland County, NJ	
47260	Virginia Beach-Norfolk-Newport News, VA-NC	0.9256
	Currituck County, NC	
	Gloucester County, VA	
	Isle of Wight County, VA	
	James City County, VA	
	Mathews County, VA	
	Surry County, VA	
	York County, VA	
	Chesapeake City, VA	
	Hampton City, VA	
	Newport News City, VA	
	Norfolk City, VA	
	Poquoson City, VA	
	Portsmouth City, VA	
	Suffolk City, VA	
	Virginia Beach City, VA	
	Williamsburg City, VA	
47300	Visalia-Porterville, CA	1.0592
	Tulare County, CA	
47380	Waco, TX	0.8941
	McLennan County, TX	
47580	Warner Robins, GA	0.9582
	Houston County, GA	
47644	Warren-Troy-Farmington Hills, MI	1.0498
	Lapeer County, MI	
	Livingston County, MI	
	Macomb County, MI	
	Oakland County, MI	
	St. Clair County, MI	
47894	Washington-Arlington-Alexandria, DC-VA-MD-WV	1.1394
	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	

ADDENDUM A—FINAL HOSPICE WAGE INDEX FOR URBAN AREAS BY CBSA—FY 2009—Continued

CBSA code	Urban area (constituent counties) [2]	Wage index [1]
	Manassas Park City, VA	
	Jefferson County, WV	
47940	Waterloo-Cedar Falls, IA	0.8942
	Black Hawk County, IA	
	Bremer County, IA	
	Grundy County, IA	
48140	Wausau, WI	1.0160
	Marathon County, WI	
48260	Weirton-Steubenville, WV-OH	0.8318
	Jefferson County, OH	
	Brooke County, WV	
	Hancock County, WV	
48300	Wenatchee, WA	1.2039
	Chelan County, WA	
	Douglas County, WA	
48424	West Palm Beach-Boca Raton-Boynton Beach, FL	1.0211
	Palm Beach County, FL	
48540	Wheeling, WV-OH	0.8000
	Belmont County, OH	
	Marshall County, WV	
	Ohio County, WV	
48620	Wichita, KS	0.9512
	Butler County, KS	
	Harvey County, KS	
	Sedgwick County, KS	
	Sumner County, KS	
48660	Wichita Falls, TX	0.8314
	Archer County, TX	
	Clay County, TX	
	Wichita County, TX	
48700	Williamsport, PA	0.8443
	Lycoming County, PA	
48864	Wilmington, DE-MD-NJ	1.1362
	New Castle County, DE	
	Cecil County, MD	
	Salem County, NJ	
48900	Wilmington, NC	0.9878
	Brunswick County, NC	
	New Hanover County, NC	
	Pender County, NC	
49020	Winchester, VA-WV	1.0406
	Frederick County, VA	
	Winchester City, VA	
	Hampshire County, WV	
49180	Winston-Salem, NC	0.9571
	Davie County, NC	
	Forsyth County, NC	
	Stokes County, NC	
	Yadkin County, NC	
49340	Worcester, MA	1.1848
	Worcester County, MA	
49420	Yakima, WA	1.0777
	Yakima County, WA	
49500	Yauco, PR	0.3777
	Guánica Municipio, PR	
	Guayanilla Municipio, PR	
	Peñuelas Municipio, PR	
	Yauco Municipio, PR	
49620	York-Hanover, PA	0.9824
	York County, PA	
49660	Youngstown-Warren-Boardman, OH-PA	0.9449
	Mahoning County, OH	
	Trumbull County, OH	
	Mercer County, PA	
49700	Yuba City, CA	1.1290
	Sutter County, CA	
	Yuba County, CA	
49740	Yuma, AZ	0.9959

ADDENDUM A—FINAL HOSPICE WAGE INDEX FOR URBAN AREAS BY CBSA—FY 2009—Continued

CBSA code	Urban area (constituent counties) [2]	Wage index [1]
	Yuma County, AZ	

[1] Wage index values are based on FY 2004 hospital cost report data before reclassification. These data form the basis for the raw pre-floor, pre-reclassified hospital wage index. The budget neutrality adjustment or the hospice floor is then applied to the raw pre-floor, pre-reclassified hospital wage index to derive the hospice wage index. Wage index values greater than or equal to 0.8 are subject to a budget neutrality adjustment. The hospice floor calculation is as follows: Wage index values below 0.8 are adjusted to be the greater of either (a) the 25 percent reduced budget neutrality adjustment OR (b) the minimum of the raw pre-floor, pre-reclassified hospital wage index value × 1.15, or 0.8000. For the final FY 2009 hospice wage index, the budget neutrality adjustment was reduced by 25 percent.

[2] This column lists each CBSA area name and each county or county equivalent, in the CBSA area. Counties not listed in this table are considered to be rural areas. Wage index values for rural areas are found in Addendum B.

[3] Because there are no hospitals in this CBSA, the wage index value is calculated by taking the average of all other urban CBSAs in Georgia.

ADDENDUM B—FINAL HOSPICE WAGE INDEX FOR RURAL AREAS BY CBSA—FY 2009

CBSA code	Nonurban area	Wage index
1	Alabama	0.8000
2	Alaska	1.2711
3	Arizona	0.8900
4	Arkansas	0.8000
5	California	1.2620
6	Colorado	1.0186
7	Connecticut	1.1672
8	Delaware	1.0210
10	Florida	0.8886
11	Georgia	0.8040
12	Hawaii	1.1139
13	Idaho	0.8314
14	Illinois	0.8749
15	Indiana	0.9002
16	Iowa	0.8992
17	Kansas	0.8378
18	Kentucky	0.8180
19	Louisiana	0.8000
20	Maine	0.8897
21	Maryland	0.9483

ADDENDUM B—FINAL HOSPICE WAGE INDEX FOR RURAL AREAS BY CBSA—FY 2009—Continued

CBSA code	Nonurban area	Wage index
22	Massachusetts [1]	1.2164
23	Michigan	0.9398
24	Minnesota	0.9530
25	Mississippi	0.8083
26	Missouri	0.8324
27	Montana	0.8795
28	Nebraska	0.9289
29	Nevada	0.9733
30	New Hampshire	1.0990
31	New Jersey [2]	
32	New Mexico	0.9384
33	New York	0.8679
34	North Carolina	0.9030
35	North Dakota	0.8000
36	Ohio	0.9147
37	Oklahoma	0.8000
38	Oregon	1.0398
39	Pennsylvania	0.8802
40	Puerto Rico [3]	0.4654
41	Rhode Island [2]	

ADDENDUM B—FINAL HOSPICE WAGE INDEX FOR RURAL AREAS BY CBSA—FY 2009—Continued

CBSA code	Nonurban area	Wage index
42	South Carolina	0.9086
43	South Dakota	0.8974
44	Tennessee	0.8107
45	Texas	0.8364
46	Utah	0.8519
47	Vermont	1.0412
48	Virgin Islands	0.7855
49	Virginia	0.8288
50	Washington	1.0769
51	West Virginia	0.8000
52	Wisconsin	1.0147
53	Wyoming	0.9748
65	Guam	1.0089

[1] There are no hospitals in the rural areas of Massachusetts, so the wage index value used is the average wage index value for the contiguous counties.

[2] There are no rural areas in this state.

[3] Wage index values are obtained using the methodology described in the rule.

ADDENDUM C—COMPARISON OF RAW PRE-FLOOR, PRE-RECLASSIFIED HOSPITAL WAGE INDEX VALUES USED AS INPUT VALUES TO DERIVE THE FY 2008 AND FY 2009 HOSPICE WAGE INDICES

[For illustrative purposes only]

		FY2008	FY2009	FY09–FY08	Percent chng
	Rural Area				
1	Alabama	0.7591	0.7533	−0.0058	−0.76
2	Alaska	1.0661	1.2109	0.1448	13.58
3	Arizona	0.8908	0.8479	−0.0429	−4.82
4	Arkansas	0.7307	0.7371	0.0064	0.88
5	California	1.1454	1.2023	0.0569	4.97
6	Colorado	0.9325	0.9704	0.0379	4.06
7	Connecticut	1.1709	1.1119	−0.0590	−5.04
8	Delaware	0.9705	0.9727	0.0022	0.23
10	Florida	0.8594	0.8465	−0.0129	−1.50
11	Georgia	0.7593	0.7659	0.0066	0.87
12	Hawaii	1.0448	1.0612	0.0164	1.57
13	Idaho	0.8120	0.7920	−0.0200	−2.46
14	Illinois	0.8320	0.8335	0.0015	0.18
15	Indiana	0.8538	0.8576	0.0038	0.45
16	Iowa	0.8681	0.8566	−0.0115	−1.32
17	Kansas	0.7998	0.7981	−0.0017	−0.21
18	Kentucky	0.7768	0.7793	0.0025	0.32
19	Louisiana	0.7438	0.7373	−0.0065	−0.87
20	Maine	0.8443	0.8476	0.0033	0.39
21	Maryland	0.8926	0.9034	0.0108	1.21
22	Massachusetts	1.1661	1.1589	−0.0072	−0.62
23	Michigan	0.9062	0.8953	−0.0109	−1.20

ADDENDUM C—COMPARISON OF RAW PRE-FLOOR, PRE-RECLASSIFIED HOSPITAL WAGE INDEX VALUES USED AS INPUT VALUES TO DERIVE THE FY 2008 AND FY 2009 HOSPICE WAGE INDICES—Continued

[For illustrative purposes only]

		FY2008	FY2009	FY09–FY08	Percent chng
24	Minnesota	0.9153	0.9079	−0.0074	−0.81
25	Mississippi	0.7738	0.7700	−0.0038	−0.49
26	Missouri	0.7927	0.7930	0.0003	0.04
27	Montana	0.8590	0.8379	−0.0211	−2.46
28	Nebraska	0.8677	0.8849	0.0172	1.98
29	Nevada	0.8944	0.9272	0.0328	3.67
30	New Hampshire	1.0853	1.0470	−0.0383	−3.53
32	New Mexico	0.8332	0.8940	0.0608	7.30
33	New York	0.8232	0.8268	0.0036	0.44
34	North Carolina	0.8588	0.8603	0.0015	0.17
35	North Dakota	0.7215	0.7182	−0.0033	−0.46
36	Ohio	0.8658	0.8714	0.0056	0.65
37	Oklahoma	0.7629	0.7492	−0.0137	−1.80
38	Oregon	0.9753	0.9906	0.0153	1.57
39	Pennsylvania	0.8320	0.8385	0.0065	0.78
40	Puerto Rico	0.4047	0.4047	0.0000	0.00
42	South Carolina	0.8566	0.8656	0.0090	1.05
43	South Dakota	0.8480	0.8549	0.0069	0.81
44	Tennessee	0.7827	0.7723	−0.0104	−1.33
45	Texas	0.7965	0.7968	0.0003	0.04
46	Utah	0.8140	0.8116	−0.0024	−0.29
47	Vermont	0.9744	0.9919	0.0175	1.80
48	Virgin Islands	0.8467	0.6830	−0.1637	−19.33
49	Virginia	0.7940	0.7896	−0.0044	−0.55
50	Washington	1.0263	1.0259	−0.0004	−0.04
51	West Virginia	0.7607	0.7454	−0.0153	−2.01
52	Wisconsin	0.9553	0.9667	0.0114	1.19
53	Wyoming	0.9295	0.9287	−0.0008	−0.09
65	Guam	0.9611	0.9611	0.0000	0.00
CBSA	**Urban Area**				
10180	Abilene, TX	0.8000	0.7957	−0.0043	−0.54
10380	Aguadilla-Isabela-San Sebastián, PR	0.3915	0.3448	−0.0467	−11.93
10420	Akron, OH	0.8654	0.8794	0.0140	1.62
10500	Albany, GA	0.8991	0.8514	−0.0477	−5.31
10580	Albany-Schenectady-Troy, NY	0.8720	0.8588	−0.0132	−1.51
10740	Albuquerque, NM	0.9458	0.9554	0.0096	1.02
10780	Alexandria, LA	0.8006	0.7979	−0.0027	−0.34
10900	Allentown-Bethlehem-Easton, PA-NJ	0.9947	0.9865	−0.0082	−0.82
11020	Altoona, PA	0.8812	0.8618	−0.0194	−2.20
11100	Amarillo, TX	0.9169	0.9116	−0.0053	−0.58
11180	Ames, IA	0.9760	1.0046	0.0286	2.93
11260	Anchorage, AK	1.2023	1.1913	−0.0110	−0.91
11300	Anderson, IN	0.8681	0.8827	0.0146	1.68
11340	Anderson, SC	0.9017	0.9086	0.0069	0.77
11460	Ann Arbor, MI	1.0826	1.0539	−0.0287	−2.65
11500	Anniston-Oxford, AL	0.7770	0.7926	0.0156	2.01
11540	Appleton, WI	0.9455	0.9598	0.0143	1.51
11700	Asheville, NC	0.9216	0.9185	−0.0031	−0.34
12020	Athens-Clarke County, GA	0.9856	1.0517	0.0661	6.71
12060	Atlanta-Sandy Springs-Marietta, GA	0.9762	0.9828	0.0066	0.68
12100	Atlantic City, NJ	1.1831	1.2198	0.0367	3.10
12220	Auburn-Opelika, AL	0.8096	0.8090	−0.0006	−0.07
12260	Augusta-Richmond County, GA-SC	0.9667	0.9645	−0.0022	−0.23
12420	Austin-Round Rock, TX	0.9344	0.9544	0.0200	2.14
12540	Bakersfield, CA	1.0725	1.1051	0.0326	3.04
12580	Baltimore-Towson, MD	1.0088	1.0134	0.0046	0.46
12620	Bangor, ME	0.9711	0.9978	0.0267	2.75
12700	Barnstable Town, MA	1.2539	1.2603	0.0064	0.51
12940	Baton Rouge, LA	0.8084	0.8034	−0.0050	−0.62
12980	Battle Creek, MI	0.9762	1.0179	0.0417	4.27
13020	Bay City, MI	0.9251	0.8897	−0.0354	−3.83
13140	Beaumont-Port Arthur, TX	0.8595	0.8531	−0.0064	−0.74
13380	Bellingham, WA	1.1104	1.1474	0.0370	3.33
13460	Bend, OR	1.0743	1.0942	0.0199	1.85
13644	Bethesda-Gaithersburg-Frederick, MD	1.0903	1.0511	−0.0392	−3.60
13740	Billings, MT	0.8712	0.8666	−0.0046	−0.53
13780	Binghamton, NY	0.8786	0.8949	0.0163	1.86

ADDENDUM C—COMPARISON OF RAW PRE-FLOOR, PRE-RECLASSIFIED HOSPITAL WAGE INDEX VALUES USED AS INPUT VALUES TO DERIVE THE FY 2008 AND FY 2009 HOSPICE WAGE INDICES—Continued

[For illustrative purposes only]

		FY2008	FY2009	FY09–FY08	Percent chng
13820	Birmingham-Hoover, AL	0.8894	0.8898	0.0004	0.04
13900	Bismarck, ND	0.7240	0.7225	−0.0015	−0.21
13980	Blacksburg-Christiansburg-Radford, VA	0.8213	0.8192	−0.0021	−0.26
14020	Bloomington, IN	0.8533	0.8915	0.0382	4.48
14060	Bloomington-Normal, IL	0.8944	0.9325	0.0381	4.26
14260	Boise City-Nampa, ID	0.9401	0.9465	0.0064	0.68
14484	Boston-Quincy, MA	1.1679	1.1792	0.0113	0.97
14500	Boulder, CO	1.0350	1.0426	0.0076	0.73
14540	Bowling Green, KY	0.8148	0.8159	0.0011	0.14
14740	Bremerton-Silverdale, WA	1.0913	1.0904	−0.0009	−0.08
14860	Bridgeport-Stamford-Norwalk, CT	1.2659	1.2735	0.0076	0.60
15180	Brownsville-Harlingen, TX	0.9430	0.8914	−0.0516	−5.47
15260	Brunswick, GA	1.0164	0.9475	−0.0689	−6.78
15380	Buffalo-Niagara Falls, NY	0.9424	0.9568	0.0144	1.53
15500	Burlington, NC	0.8674	0.8747	0.0073	0.84
15540	Burlington-South Burlington, VT	0.9474	0.9660	0.0186	1.96
15764	Cambridge-Newton-Framingham, MA	1.0970	1.1215	0.0245	2.23
15804	Camden, NJ	1.0392	1.0411	0.0019	0.18
15940	Canton-Massillon, OH	0.9031	0.8935	−0.0096	−1.06
15980	Cape Coral-Fort Myers, FL	0.9342	0.9396	0.0054	0.58
16180	Carson City, NV	1.0025	1.0003	−0.0022	−0.22
16220	Casper, WY	0.9145	0.9385	0.0240	2.62
16300	Cedar Rapids, IA	0.8888	0.8852	−0.0036	−0.41
16580	Champaign-Urbana, IL	0.9644	0.9392	−0.0252	−2.61
16620	Charleston, WV	0.8542	0.8289	−0.0253	−2.96
16700	Charleston-North Charleston, SC	0.9145	0.9124	−0.0021	−0.23
16740	Charlotte-Gastonia-Concord, NC-SC	0.9554	0.9520	−0.0034	−0.36
16820	Charlottesville, VA	1.0125	0.9277	−0.0848	−8.38
16860	Chattanooga, TN-GA	0.8948	0.8994	0.0046	0.51
16940	Cheyenne, WY	0.9060	0.9308	0.0248	2.74
16974	Chicago-Naperville-Joliet, IL	1.0751	1.0715	−0.0036	−0.33
17020	Chico, CA	1.1053	1.1290	0.0237	2.14
17140	Cincinnati-Middletown, OH-KY-IN	0.9601	0.9784	0.0183	1.91
17300	Clarksville, TN-KY	0.8436	0.8251	−0.0185	−2.19
17420	Cleveland, TN	0.8109	0.8052	−0.0057	−0.70
17460	Cleveland-Elyria-Mentor, OH	0.9400	0.9339	−0.0061	−0.65
17660	Coeur d'Alene, ID	0.9344	0.9532	0.0188	2.01
17780	College Station-Bryan, TX	0.9045	0.9358	0.0313	3.46
17820	Colorado Springs, CO	0.9701	0.9719	0.0018	0.19
17860	Columbia, MO	0.8542	0.8658	0.0116	1.36
17900	Columbia, SC	0.8933	0.8800	−0.0133	−1.49
17980	Columbus, GA-AL	0.8239	0.8729	0.0490	5.95
18020	Columbus, IN	0.9318	0.9537	0.0219	2.35
18140	Columbus, OH	1.0107	1.0085	−0.0022	−0.22
18580	Corpus Christi, TX	0.8564	0.8588	0.0024	0.28
18700	Corvallis, OR	1.1546	1.0959	−0.0587	−5.08
19060	Cumberland, MD-WV	0.8446	0.8294	−0.0152	−1.80
19124	Dallas-Plano-Irving, TX	1.0075	0.9915	−0.0160	−1.59
19140	Dalton, GA	0.9093	0.8760	−0.0333	−3.66
19180	Danville, IL	0.9266	0.8957	−0.0309	−3.33
19260	Danville, VA	0.8451	0.8240	−0.0211	−2.50
19340	Davenport-Moline-Rock Island, IA-IL	0.8846	0.8830	−0.0016	−0.18
19380	Dayton, OH	0.9037	0.9190	0.0153	1.69
19460	Decatur, AL	0.8159	0.7885	−0.0274	−3.36
19500	Decatur, IL	0.8172	0.8074	−0.0098	−1.20
19660	Deltona-Daytona Beach-Ormond Beach, FL	0.9263	0.9031	−0.0232	−2.50
19740	Denver-Aurora, CO	1.0930	1.0718	−0.0212	−1.94
19780	Des Moines-West Des Moines, IA	0.9214	0.9226	0.0012	0.13
19804	Detroit-Livonia-Dearborn, MI	1.0281	0.9999	−0.0282	−2.74
20020	Dothan, AL	0.7381	0.7270	−0.0111	−1.50
20100	Dover, DE	0.9847	1.0099	0.0252	2.56
20220	Dubuque, IA	0.9133	0.9058	−0.0075	−0.82
20260	Duluth, MN-WI	1.0042	0.9975	−0.0067	−0.67
20500	Durham, NC	0.9826	0.9816	−0.0010	−0.10
20740	Eau Claire, WI	0.9630	0.9475	−0.0155	−1.61
20764	Edison, NJ	1.1190	1.1181	−0.0009	−0.08
20940	El Centro, CA	0.9076	0.8914	−0.0162	−1.78
21060	Elizabethtown, KY	0.8697	0.8711	0.0014	0.16
21140	Elkhart-Goshen, IN	0.9426	0.9611	0.0185	1.96

ADDENDUM C—COMPARISON OF RAW PRE-FLOOR, PRE-RECLASSIFIED HOSPITAL WAGE INDEX VALUES USED AS INPUT VALUES TO DERIVE THE FY 2008 AND FY 2009 HOSPICE WAGE INDICES—Continued

[For illustrative purposes only]

		FY2008	FY2009	FY09–FY08	Percent chng
21300	Elmira, NY	0.8240	0.8264	0.0024	0.29
21340	El Paso, TX	0.9053	0.8989	−0.0064	−0.71
21500	Erie, PA	0.8827	0.8495	−0.0332	−3.76
21604	Essex County, MA	1.0418	.....	.....	.....
21660	Eugene-Springfield, OR	1.0876	1.0932	0.0056	0.51
21780	Evansville, IN-KY	0.9071	0.8662	−0.0409	−4.51
21820	Fairbanks, AK	1.1059	1.1050	−0.0009	−0.08
21940	Fajardo, PR	0.4036	0.4375	0.0339	8.40
22020	Fargo, ND-MN	0.8250	0.8042	−0.0208	−2.52
22140	Farmington, NM	0.8589	0.9587	0.0998	11.62
22180	Fayetteville, NC	0.8945	0.9368	0.0423	4.73
22220	Fayetteville-Springdale-Rogers, AR-MO	0.8865	0.8742	−0.0123	−1.39
22380	Flagstaff, AZ	1.1601	1.1687	0.0086	0.74
22420	Flint, MI	1.0969	1.1220	0.0251	2.29
22500	Florence, SC	0.8388	0.8249	−0.0139	−1.66
22520	Florence-Muscle Shoals, AL	0.7843	0.7680	−0.0163	−2.08
22540	Fond du Lac, WI	1.0063	0.9667	−0.0396	−3.94
22660	Fort Collins-Loveland, CO	0.9544	0.9897	0.0353	3.70
22744	Ft Lauderdale-Pompano Beach-Deerfield, FL	1.0133	1.0229	0.0096	0.95
22900	Fort Smith, AR-OK	0.7731	0.7933	0.0202	2.61
23020	Fort Walton Beach-Crestview-Destin, FL	0.8643	0.8743	0.0100	1.16
23060	Fort Wayne, IN	0.9517	0.9284	−0.0233	−2.45
23104	Fort Worth-Arlington, TX	0.9569	0.9693	0.0124	1.30
23420	Fresno, CA	1.0943	1.0993	0.0050	0.46
23460	Gadsden, AL	0.8066	0.8159	0.0093	1.15
23540	Gainesville, FL	0.9277	0.9196	−0.0081	−0.87
23580	Gainesville, GA	0.8958	0.9216	0.0258	2.88
23844	Gary, IN	0.9334	0.9224	−0.0110	−1.18
24020	Glens Falls, NY	0.8324	0.8256	−0.0068	−0.82
24140	Goldsboro, NC	0.9171	0.9288	0.0117	1.28
24220	Grand Forks, ND-MN	0.7949	0.7881	−0.0068	−0.86
24300	Grand Junction, CO	0.9668	0.9864	0.0196	2.03
24340	Grand Rapids-Wyoming, MI	0.9455	0.9315	−0.0140	−1.48
24500	Great Falls, MT	0.8598	0.8675	0.0077	0.90
24540	Greeley, CO	0.9602	0.9658	0.0056	0.58
24580	Green Bay, WI	0.9787	0.9727	−0.0060	−0.61
24660	Greensboro-High Point, NC	0.8866	0.9010	0.0144	1.62
24780	Greenville, NC	0.9432	0.9402	−0.0030	−0.32
24860	Greenville, SC	0.9804	0.9860	0.0056	0.57
25020	Guayama, PR	0.3235	0.3064	−0.0171	−5.29
25060	Gulfport-Biloxi, MS	0.8915	0.8773	−0.0142	−1.59
25180	Hagerstown-Martinsburg, MD-WV	0.9038	0.9013	−0.0025	−0.28
25260	Hanford-Corcoran, CA	1.0282	1.0499	0.0217	2.11
25420	Harrisburg-Carlisle, PA	0.9402	0.9280	−0.0122	−1.30
25500	Harrisonburg, VA	0.9073	0.8867	−0.0206	−2.27
25540	Hartford-West Hartford-East Hartford, CT	1.0894	1.0959	0.0065	0.60
25620	Hattiesburg, MS	0.7430	0.7366	−0.0064	−0.86
25860	Hickory-Lenoir-Morganton, NC	0.9010	0.9028	0.0018	0.20
25980	Hinesville-Fort Stewart, GA	0.9178	0.9187	0.0009	0.10
26100	Holland-Grand Haven, MI	0.9163	0.9006	−0.0157	−1.71
26180	Honolulu, HI	1.1096	1.1556	0.0460	4.15
26300	Hot Springs, AR	0.8782	0.9109	0.0327	3.72
26380	Houma-Bayou Cane-Thibodaux, LA	0.8082	0.7892	−0.0190	−2.35
26420	Houston-Sugar Land-Baytown, TX	1.0008	0.9939	−0.0069	−0.69
26580	Huntington-Ashland, WV-KY-OH	0.8997	0.9041	0.0044	0.49
26620	Huntsville, AL	0.9007	0.9146	0.0139	1.54
26820	Idaho Falls, ID	0.9088	0.9264	0.0176	1.94
26900	Indianapolis-Carmel, IN	0.9895	0.9844	−0.0051	−0.52
26980	Iowa City, IA	0.9714	0.9568	−0.0146	−1.50
27060	Ithaca, NY	0.9928	0.9630	−0.0298	−3.00
27100	Jackson, MI	0.9560	0.9329	−0.0231	−2.42
27140	Jackson, MS	0.8271	0.8011	−0.0260	−3.14
27180	Jackson, TN	0.8853	0.8676	−0.0177	−2.00
27260	Jacksonville, FL	0.9165	0.9021	−0.0144	−1.57
27340	Jacksonville, NC	0.8231	0.8079	−0.0152	−1.85
27500	Janesville, WI	0.9655	0.9702	0.0047	0.49
27620	Jefferson City, MO	0.8332	0.8478	0.0146	1.75
27740	Johnson City, TN	0.8043	0.7677	−0.0366	−4.55
27780	Johnstown, PA	0.8620	0.7543	−0.1077	−12.49

ADDENDUM C—COMPARISON OF RAW PRE-FLOOR, PRE-RECLASSIFIED HOSPITAL WAGE INDEX VALUES USED AS INPUT VALUES TO DERIVE THE FY 2008 AND FY 2009 HOSPICE WAGE INDICES—Continued

[For illustrative purposes only]

		FY2008	FY2009	FY09–FY08	Percent chng
27860	Jonesboro, AR	0.7662	0.7790	0.0128	1.67
27900	Joplin, MO	0.8605	0.8951	0.0346	4.02
28020	Kalamazoo-Portage, MI	1.0704	1.0433	−0.0271	−2.53
28100	Kankakee-Bradley, IL	1.0083	1.0238	0.0155	1.54
28140	Kansas City, MO-KS	0.9495	0.9504	0.0009	0.09
28420	Kennewick-Richland-Pasco, WA	1.0343	1.0075	−0.0268	−2.59
28660	Killeen-Temple-Fort Hood, TX	0.8901	0.8249	−0.0652	−7.33
28700	Kingsport-Bristol, TN-VA	0.7985	0.7658	−0.0327	−4.10
28740	Kingston, NY	0.9367	0.9556	0.0189	2.02
28940	Knoxville, TN	0.8249	0.8036	−0.0213	−2.58
29020	Kokomo, IN	0.9669	0.9591	−0.0078	−0.81
29100	La Crosse, WI-MN	0.9426	0.9685	0.0259	2.75
29140	Lafayette, IN	0.8931	0.8869	−0.0062	−0.69
29180	Lafayette, LA	0.8289	0.8247	−0.0042	−0.51
29340	Lake Charles, LA	0.7914	0.7777	−0.0137	−1.73
29404	Lake County-Kenosha County, IL-WI	1.0570	1.0603	0.0033	0.31
29420	Lake Havasu City-Kingman, AZ	.....	0.9333	.....	.....
29460	Lakeland, FL	0.8879	0.8661	−0.0218	−2.46
29540	Lancaster, PA	0.9589	0.9252	−0.0337	−3.51
29620	Lansing-East Lansing, MI	1.0088	1.0119	0.0031	0.31
29700	Laredo, TX	0.7811	0.8093	0.0282	3.61
29740	Las Cruces, NM	0.9273	0.8676	−0.0597	−6.44
29820	Las Vegas-Paradise, NV	1.1430	1.1799	0.0369	3.23
29940	Lawrence, KS	0.8365	0.8227	−0.0138	−1.65
30020	Lawton, OK	0.8065	0.8025	−0.0040	−0.50
30140	Lebanon, PA	0.8679	0.8192	−0.0487	−5.61
30300	Lewiston, ID-WA	0.9853	0.9454	−0.0399	−4.05
30340	Lewiston-Auburn, ME	0.9126	0.9193	0.0067	0.73
30460	Lexington-Fayette, KY	0.9181	0.9191	0.0010	0.11
30620	Lima, OH	0.9042	0.9424	0.0382	4.22
30700	Lincoln, NE	1.0092	1.0051	−0.0041	−0.41
30780	Little Rock-North Little Rock, AR	0.8890	0.8863	−0.0027	−0.30
30860	Logan, UT-ID	0.9022	0.9183	0.0161	1.78
30980	Longview, TX	0.8788	0.8717	−0.0071	−0.81
31020	Longview, WA	1.0011	1.0827	0.0816	8.15
31084	Los Angeles-Long Beach-Santa Ana, CA	1.1760	1.1771	0.0011	0.09
31140	Louisville-Jefferson County, KY-IN	0.9118	0.9065	−0.0053	−0.58
31180	Lubbock, TX	0.8613	0.8680	0.0067	0.78
31340	Lynchburg, VA	0.8694	0.8732	0.0038	0.44
31420	Macon, GA	0.9519	0.9541	0.0022	0.23
31460	Madera, CA	0.8154	0.8069	−0.0085	−1.04
31540	Madison, WI	1.0840	1.0935	0.0095	0.88
31700	Manchester-Nashua, NH	1.0243	1.0273	0.0030	0.29
31900	Mansfield, OH	0.9271	0.9271	0.0000	0.00
32420	Mayagüez, PR	0.3848	0.3711	−0.0137	−3.56
32580	McAllen-Edinburg-Mission, TX	0.8773	0.9123	0.0350	3.99
32780	Medford, OR	1.0818	1.0318	−0.0500	−4.62
32820	Memphis, TN-MS-AR	0.9373	0.9250	−0.0123	−1.31
32900	Merced, CA	1.1471	1.2120	0.0649	5.66
33124	Miami-Miami Beach-Kendall, FL	0.9812	1.0002	0.0190	1.94
33140	Michigan City-La Porte, IN	0.9118	0.8914	−0.0204	−2.24
33260	Midland, TX	0.9786	1.0017	0.0231	2.36
33340	Milwaukee-Waukesha-West Allis, WI	1.0218	1.0214	−0.0004	−0.04
33460	Minneapolis-St. Paul-Bloomington, MN-WI	1.0946	1.1093	0.0147	1.34
33540	Missoula, MT	0.8928	0.8953	0.0025	0.28
33660	Mobile, AL	0.7913	0.8033	0.0120	1.52
33700	Modesto, CA	1.1729	1.1962	0.0233	1.99
33740	Monroe, LA	0.7997	0.7832	−0.0165	−2.06
33780	Monroe, MI	0.9707	0.9414	−0.0293	−3.02
33860	Montgomery, AL	0.8009	0.8088	0.0079	0.99
34060	Morgantown, WV	0.8423	0.8321	−0.0102	−1.21
34100	Morristown, TN	0.7933	0.7388	−0.0545	−6.87
34580	Mount Vernon-Anacortes, WA	1.0517	1.0529	0.0012	0.11
34620	Muncie, IN	0.8562	0.8214	−0.0348	−4.06
34740	Muskegon-Norton Shores, MI	0.9941	0.9836	−0.0105	−1.06
34820	Myrtle Beach-Conway-North Myrtle Beach, SC	0.8810	0.8634	−0.0176	−2.00
34900	Napa, CA	1.3374	1.4476	0.1102	8.24
34940	Naples-Marco Island, FL	0.9941	0.9487	−0.0454	−4.57
34980	Nashville-Davidson-Murfreesboro, TN	0.9847	0.9689	−0.0158	−1.60

ADDENDUM C—COMPARISON OF RAW PRE-FLOOR, PRE-RECLASSIFIED HOSPITAL WAGE INDEX VALUES USED AS INPUT VALUES TO DERIVE THE FY 2008 AND FY 2009 HOSPICE WAGE INDICES—Continued

[For illustrative purposes only]

		FY2008	FY2009	FY09–FY08	Percent chng
35004	Nassau-Suffolk, NY	1.2662	1.2640	−0.0022	−0.17
35084	Newark-Union, NJ-PA	1.1892	1.1862	−0.0030	−0.25
35300	New Haven-Milford, CT	1.1953	1.1871	−0.0082	−0.69
35380	New Orleans-Metairie-Kenner, LA	0.8831	0.8897	0.0066	0.75
35644	New York-White Plains-Wayne, NY-NJ	1.3177	1.3115	−0.0062	−0.47
35660	Niles-Benton Harbor, MI	0.8915	0.9141	0.0226	2.54
35980	Norwich-New London, CT	1.1932	1.1432	−0.0500	−4.19
36084	Oakland-Fremont-Hayward, CA	1.5819	1.5685	−0.0134	−0.85
36100	Ocala, FL	0.8867	0.8627	−0.0240	−2.71
36140	Ocean City, NJ	1.0472	1.0988	0.0516	4.93
36220	Odessa, TX	1.0073	1.0042	−0.0031	−0.31
36260	Ogden-Clearfield, UT	0.8995	0.9000	0.0005	0.06
36420	Oklahoma City, OK	0.8843	0.8815	−0.0028	−0.32
36500	Olympia, WA	1.1081	1.1512	0.0431	3.89
36540	Omaha-Council Bluffs, NE-IA	0.9450	0.9561	0.0111	1.17
36740	Orlando-Kissimmee, FL	0.9452	0.9226	−0.0226	−2.39
36780	Oshkosh-Neenah, WI	0.9315	0.9551	0.0236	2.53
36980	Owensboro, KY	0.8748	0.8652	−0.0096	−1.10
37100	Oxnard-Thousand Oaks-Ventura, CA	1.1546	1.1852	0.0306	2.65
37340	Palm Bay-Melbourne-Titusville, FL	0.9443	0.9325	−0.0118	−1.25
37380	Palm Coast, FL	.....	0.8945	.....	.....
37460	Panama City-Lynn Haven, FL	0.8027	0.8313	0.0286	3.56
37620	Parkersburg-Marietta-Vienna, WV-OH	0.7977	0.8105	0.0128	1.60
37700	Pascagoula, MS	0.8215	0.8647	0.0432	5.26
37764	Peabody, MA	.....	1.0650	.....	.....
37860	Pensacola-Ferry Pass-Brent, FL	0.8000	0.8281	0.0281	3.51
37900	Peoria, IL	0.8982	0.9299	0.0317	3.53
37964	Philadelphia, PA	1.0996	1.0925	−0.0071	−0.65
38060	Phoenix-Mesa-Scottsdale, AZ	1.0287	1.0264	−0.0023	−0.22
38220	Pine Bluff, AR	0.8383	0.7839	−0.0544	−6.49
38300	Pittsburgh, PA	0.8674	0.8525	−0.0149	−1.72
38340	Pittsfield, MA	1.0266	1.0091	−0.0175	−1.70
38540	Pocatello, ID	0.9400	0.9465	0.0065	0.69
38660	Ponce, PR	0.4842	0.4450	−0.0392	−8.10
38860	Portland-South Portland-Biddeford, ME	0.9908	1.0042	0.0134	1.35
38900	Portland-Vancouver-Beaverton, OR-WA	1.1416	1.1498	0.0082	0.72
38940	Port St. Lucie-Fort Pierce, FL	0.9833	1.0016	0.0183	1.86
39100	Poughkeepsie-Newburgh-Middletown, NY	1.0911	1.0982	0.0071	0.65
39140	Prescott, AZ	0.9836	1.0020	0.0184	1.87
39300	Providence-New Bedford-Fall River, RI-MA	1.0783	1.0574	−0.0209	−1.94
39340	Provo-Orem, UT	0.9537	0.9557	0.0020	0.21
39380	Pueblo, CO	0.8753	0.8851	0.0098	1.12
39460	Punta Gorda, FL	0.9405	0.9254	−0.0151	−1.61
39540	Racine, WI	0.9356	0.9498	0.0142	1.52
39580	Raleigh-Cary, NC	0.9864	0.9839	−0.0025	−0.25
39660	Rapid City, SD	0.8833	0.8811	−0.0022	−0.25
39740	Reading, PA	0.9622	0.9356	−0.0266	−2.76
39820	Redding, CA	1.3198	1.3541	0.0343	2.60
39900	Reno-Sparks, NV	1.1963	1.0715	−0.1248	−10.43
40060	Richmond, VA	0.9177	0.9425	0.0248	2.70
40140	Riverside-San Bernardino-Ontario, CA	1.0904	1.1100	0.0196	1.80
40220	Roanoke, VA	0.8647	0.8691	0.0044	0.51
40340	Rochester, MN	1.1408	1.0755	−0.0653	−5.72
40380	Rochester, NY	0.8994	0.8858	−0.0136	−1.51
40420	Rockford, IL	0.9989	0.9814	−0.0175	−1.75
40484	Rockingham County, NH	1.0159	1.0111	−0.0048	−0.47
40580	Rocky Mount, NC	0.8854	0.9001	0.0147	1.66
40660	Rome, GA	0.9193	0.9042	−0.0151	−1.64
40900	Sacramento—Arden-Arcade—Roseville, CA	1.3372	1.3505	0.0133	0.99
40980	Saginaw-Saginaw Township North, MI	0.8874	0.8812	−0.0062	−0.70
41060	St. Cloud, MN	1.0362	1.0549	0.0187	1.80
41100	St. George, UT	0.9265	0.9358	0.0093	1.00
41140	St. Joseph, MO-KS	1.0118	0.8762	−0.1356	−13.40
41180	St. Louis, MO-IL	0.9005	0.9024	0.0019	0.21
41420	Salem, OR	1.0438	1.0572	0.0134	1.28
41500	Salinas, CA	1.4337	1.4775	0.0438	3.06
41540	Salisbury, MD	0.8953	0.8994	0.0041	0.46
41620	Salt Lake City, UT	0.9402	0.9399	−0.0003	−0.03
41660	San Angelo, TX	0.8362	0.8579	0.0217	2.60

ADDENDUM C—COMPARISON OF RAW PRE-FLOOR, PRE-RECLASSIFIED HOSPITAL WAGE INDEX VALUES USED AS INPUT VALUES TO DERIVE THE FY 2008 AND FY 2009 HOSPICE WAGE INDICES—Continued

[For illustrative purposes only]

		FY2008	FY2009	FY09–FY08	Percent chng
41700	San Antonio, TX	0.8844	0.8834	−0.0010	−0.11
41740	San Diego-Carlsbad-San Marcos, CA	1.1354	1.1492	0.0138	1.22
41780	Sandusky, OH	0.9302	0.8822	−0.0480	−5.16
41884	San Francisco-San Mateo-Redwood City, CA	1.5165	1.5195	0.0030	0.20
41900	San Germán-Cabo Rojo, PR	0.4885	0.4729	−0.0156	−3.19
41940	San Jose-Sunnyvale-Santa Clara, CA	1.5543	1.5735	0.0192	1.24
41980	San Juan-Caguas-Guaynabo, PR	0.4452	0.4528	0.0076	1.71
42020	San Luis Obispo-Paso Robles, CA	1.1598	1.2488	0.0890	7.67
42044	Santa Ana-Anaheim-Irvine, CA	1.1473	1.1766	0.0293	2.55
42060	Santa Barbara-Santa Maria, CA	1.1091	1.1714	0.0623	5.62
42100	Santa Cruz-Watsonville, CA	1.5457	1.6122	0.0665	4.30
42140	Santa Fe, NM	1.0824	1.0734	−0.0090	−0.83
42220	Santa Rosa-Petaluma, CA	1.4464	1.4696	0.0232	1.60
42260	Sarasota-Bradenton-Venice, FL	0.9868	0.9933	0.0065	0.66
42340	Savannah, GA	0.9351	0.9131	−0.0220	−2.35
42540	Scranton—Wilkes-Barre, PA	0.8347	0.8457	0.0110	1.32
42644	Seattle-Bellevue-Everett, WA	1.1434	1.1572	0.0138	1.21
42680	Sebastian-Vero Beach, FL	0.9573	0.9412	−0.0161	−1.68
43100	Sheboygan, WI	0.9026	0.8975	−0.0051	−0.57
43300	Sherman-Denison, TX	0.8502	0.8320	−0.0182	−2.14
43340	Shreveport-Bossier City, LA	0.8865	0.8476	−0.0389	−4.39
43580	Sioux City, IA-NE-SD	0.9200	0.9251	0.0051	0.55
43620	Sioux Falls, SD	0.9559	0.9563	0.0004	0.04
43780	South Bend-Mishawaka, IN-MI	0.9842	0.9617	−0.0225	−2.29
43900	Spartanburg, SC	0.9174	0.9422	0.0248	2.70
44060	Spokane, WA	1.0447	1.0455	0.0008	0.08
44100	Springfield, IL	0.8890	0.8944	0.0054	0.61
44140	Springfield, MA	1.0079	1.0366	0.0287	2.85
44180	Springfield, MO	0.8469	0.8695	0.0226	2.67
44220	Springfield, OH	0.8593	0.8694	0.0101	1.18
44300	State College, PA	0.8784	0.8768	−0.0016	−0.18
44700	Stockton, CA	1.1442	1.1855	0.0413	3.61
44940	Sumter, SC	0.8083	0.8599	0.0516	6.38
45060	Syracuse, NY	0.9691	0.9910	0.0219	2.26
45104	Tacoma, WA	1.0789	1.1055	0.0266	2.47
45220	Tallahassee, FL	0.8942	0.9025	0.0083	0.93
45300	Tampa-St. Petersburg-Clearwater, FL	0.9144	0.9020	−0.0124	−1.36
45460	Terre Haute, IN	0.8765	0.8805	0.0040	0.46
45500	Texarkana, TX-Texarkana, AR	0.8104	0.7770	−0.0334	−4.12
45780	Toledo, OH	0.9586	0.9431	−0.0155	−1.62
45820	Topeka, KS	0.8730	0.8538	−0.0192	−2.20
45940	Trenton-Ewing, NJ	1.0835	1.0699	−0.0136	−1.26
46060	Tucson, AZ	0.9202	0.9245	0.0043	0.47
46140	Tulsa, OK	0.8103	0.8340	0.0237	2.92
46220	Tuscaloosa, AL	0.8542	0.8303	−0.0239	−2.80
46340	Tyler, TX	0.8811	0.9114	0.0303	3.44
46540	Utica-Rome, NY	0.8396	0.8486	0.0090	1.07
46660	Valdosta, GA	0.8369	0.8098	−0.0271	−3.24
46700	Vallejo-Fairfield, CA	1.5137	1.4666	−0.0471	−3.11
47020	Victoria, TX	0.8560	0.8302	−0.0258	−3.01
47220	Vineland-Millville-Bridgeton, NJ	0.9832	1.0133	0.0301	3.06
47260	Virginia Beach-Norfolk-Newport News, VA	0.8790	0.8818	0.0028	0.32
47300	Visalia-Porterville, CA	0.9968	1.0091	0.0123	1.23
47380	Waco, TX	0.8633	0.8518	−0.0115	−1.33
47580	Warner Robins, GA	0.8380	0.9128	0.0748	8.93
47644	Warren-Troy-Farmington Hills, MI	1.0054	1.0001	−0.0053	−0.53
47894	Washington-Arlington-Alexandria, DC-VA	1.1054	1.0855	−0.0199	−1.80
47940	Waterloo-Cedar Falls, IA	0.8408	0.8519	0.0111	1.32
48140	Wausau, WI	0.9722	0.9679	−0.0043	−0.44
48260	Weirton-Steubenville, WV-OH	0.8063	0.7924	−0.0139	−1.72
48300	Wenatchee, WA	1.0346	1.1469	0.1123	10.85
48424	West Palm Beach-Boca Raton-Boynton, FL	0.9649	0.9728	0.0079	0.82
48540	Wheeling, WV-OH	0.7010	0.6961	−0.0049	−0.70
48620	Wichita, KS	0.9063	0.9062	−0.0001	−0.01
48660	Wichita Falls, TX	0.8311	0.7920	−0.0391	−4.70
48700	Williamsport, PA	0.8139	0.8043	−0.0096	−1.18
48864	Wilmington, DE-MD-NJ	1.0684	1.0824	0.0140	1.31
48900	Wilmington, NC	0.9835	0.9410	−0.0425	−4.32
49020	Winchester, VA-WV	1.0091	0.9913	−0.0178	−1.76

ADDENDUM C—COMPARISON OF RAW PRE-FLOOR, PRE-RECLASSIFIED HOSPITAL WAGE INDEX VALUES USED AS INPUT VALUES TO DERIVE THE FY 2008 AND FY 2009 HOSPICE WAGE INDICES—Continued

[For illustrative purposes only]

		FY2008	FY2009	FY09–FY08	Percent chng
49180	Winston-Salem, NC	0.9276	0.9118	−0.0158	−1.70
49340	Worcester, MA	1.0722	1.1287	0.0565	5.27
49420	Yakima, WA	0.9847	1.0267	0.0420	4.27
49500	Yauco, PR	0.3854	0.3284	−0.0570	−14.79
49620	York-Hanover, PA	0.9397	0.9359	−0.0038	−0.40
49660	Youngstown-Warren-Boardman, OH-PA	0.8802	0.9002	0.0200	2.27
49700	Yuba City, CA	1.0730	1.0756	0.0026	0.24
49740	Yuma, AZ	0.9109	0.9488	0.0379	4.16

ADDENDUM D—COMPARISON OF RAW PRE-FLOOR, PRE-RECLASSIFIED HOSPITAL WAGE INDEX VALUES USED AS INPUT VALUES TO DERIVE THE FY 2007 AND FY 2008 HOSPICE WAGE INDICES

[For illustrative purposes only]

		FY2007	FY2008	FY08–FY07	Percent chng
	Rural Area				
1	Alabama	0.7446	0.7591	0.0145	1.95
2	Alaska	1.1977	1.0661	−0.1316	−10.99
3	Arizona	0.8768	0.8908	0.0140	1.60
4	Arkansas	0.7466	0.7307	−0.0159	−2.13
5	California	1.1054	1.1454	0.0400	3.62
6	Colorado	0.9380	0.9325	−0.0055	−0.59
7	Connecticut	1.1730	1.1709	−0.0021	−0.18
8	Delaware	0.9579	0.9705	0.0126	1.32
10	Florida	0.8568	0.8594	0.0026	0.30
11	Georgia	0.7662	0.7593	−0.0069	−0.90
12	Hawaii	1.0551	1.0448	−0.0103	−0.98
13	Idaho	0.8037	0.8120	0.0083	1.03
14	Illinois	0.8271	0.8320	0.0049	0.59
15	Indiana	0.8624	0.8538	−0.0086	−1.00
16	Iowa	0.8509	0.8681	0.0172	2.02
17	Kansas	0.8035	0.7998	−0.0037	−0.46
18	Kentucky	0.7766	0.7768	0.0002	0.03
19	Louisiana	0.7411	0.7438	0.0027	0.36
20	Maine	0.8843	0.8443	−0.0400	−4.52
21	Maryland	0.9353	0.8926	−0.0427	−4.57
22	Massachusetts	1.0216	1.1661	0.1445	14.14
23	Michigan	0.8895	0.9062	0.0167	1.88
24	Minnesota	0.9132	0.9153	0.0021	0.23
25	Mississippi	0.7674	0.7738	0.0064	0.83
26	Missouri	0.7900	0.7927	0.0027	0.34
27	Montana	0.8762	0.8590	−0.0172	−1.96
28	Nebraska	0.8657	0.8677	0.0020	0.23
29	Nevada	0.9065	0.8944	−0.0121	−1.33
30	New Hampshire	1.0817	1.0853	0.0036	0.33
32	New Mexico	0.8635	0.8332	−0.0303	−3.51
33	New York	0.8154	0.8232	0.0078	0.96
34	North Carolina	0.8540	0.8588	0.0048	0.56
35	North Dakota	0.7261	0.7215	−0.0046	−0.63
36	Ohio	0.8826	0.8658	−0.0168	−1.90
37	Oklahoma	0.7581	0.7629	0.0048	0.63
38	Oregon	0.9826	0.9753	−0.0073	−0.74
39	Pennsylvania	0.8291	0.8320	0.0029	0.35
40	Puerto Rico	0.4047	0.4047	0.0000	0.00
42	South Carolina	0.8638	0.8566	−0.0072	−0.83
43	South Dakota	0.8560	0.8480	−0.0080	−0.93
44	Tennessee	0.7895	0.7827	−0.0068	−0.86
45	Texas	0.8003	0.7965	−0.0038	−0.47
46	Utah	0.8118	0.8140	0.0022	0.27
47	Vermont	0.9830	0.9744	−0.0086	−0.87
48	Virgin Islands	0.7615	0.8467	0.0852	11.19
49	Virginia	0.8013	0.7940	−0.0073	−0.91
50	Washington	1.0510	1.0263	−0.0247	−2.35
51	West Virginia	0.7717	0.7607	−0.0110	−1.43
52	Wisconsin	0.9509	0.9553	0.0044	0.46

ADDENDUM D—COMPARISON OF RAW PRE-FLOOR, PRE-RECLASSIFIED HOSPITAL WAGE INDEX VALUES USED AS INPUT VALUES TO DERIVE THE FY 2007 AND FY 2008 HOSPICE WAGE INDICES—Continued

[For illustrative purposes only]

		FY2007	FY2008	FY08–FY07	Percent chng
53	Wyoming	0.9257	0.9295	0.0038	0.41
65	Guam	0.9611	0.9611	0.0000	0.00
CBSA	**Urban Area**				
10180	Abilene, TX	0.7896	0.8000	0.0104	1.32
10380	Aguadilla-Isabela-San Sebastián, PR	0.4738	0.3915	−0.0823	−17.37
10420	Akron, OH	0.8982	0.8654	−0.0328	−3.65
10500	Albany, GA	0.8628	0.8991	0.0363	4.21
10580	Albany-Schenectady-Troy, NY	0.8589	0.8720	0.0131	1.53
10740	Albuquerque, NM	0.9684	0.9458	−0.0226	−2.33
10780	Alexandria, LA	0.8033	0.8006	−0.0027	−0.34
10900	Allentown-Bethlehem-Easton, PA-NJ	0.9818	0.9947	0.0129	1.31
11020	Altoona, PA	0.8944	0.8812	−0.0132	−1.48
11100	Amarillo, TX	0.9156	0.9169	0.0013	0.14
11180	Ames, IA	0.9536	0.9760	0.0224	2.35
11260	Anchorage, AK	1.1895	1.2023	0.0128	1.08
11300	Anderson, IN	0.8586	0.8681	0.0095	1.11
11340	Anderson, SC	0.8997	0.9017	0.0020	0.22
11460	Ann Arbor, MI	1.0859	1.0826	−0.0033	−0.30
11500	Anniston-Oxford, AL	0.7682	0.7770	0.0088	1.15
11540	Appleton, WI	0.9288	0.9455	0.0167	1.80
11700	Asheville, NC	0.9285	0.9216	−0.0069	−0.74
12020	Athens-Clarke County, GA	0.9855	0.9856	0.0001	0.01
12060	Atlanta-Sandy Springs-Marietta, GA	0.9793	0.9762	−0.0031	−0.32
12100	Atlantic City, NJ	1.1615	1.1831	0.0216	1.86
12220	Auburn-Opelika, AL	0.8100	0.8096	−0.0004	−0.05
12260	Augusta-Richmond County, GA-SC	0.9748	0.9667	−0.0081	−0.83
12420	Austin-Round Rock, TX	0.9437	0.9344	−0.0093	−0.99
12540	Bakersfield, CA	1.0470	1.0725	0.0255	2.44
12580	Baltimore-Towson, MD	0.9897	1.0088	0.0191	1.93
12620	Bangor, ME	0.9993	0.9711	−0.0282	−2.82
12700	Barnstable Town, MA	1.2600	1.2539	−0.0061	−0.48
12940	Baton Rouge, LA	0.8593	0.8084	−0.0509	−5.92
12980	Battle Creek, MI	0.9508	0.9762	0.0254	2.67
13020	Bay City, MI	0.9343	0.9251	−0.0092	−0.98
13140	Beaumont-Port Arthur, TX	0.8412	0.8595	0.0183	2.18
13380	Bellingham, WA	1.1731	1.1104	−0.0627	−5.34
13460	Bend, OR	1.0786	1.0743	−0.0043	−0.40
13644	Bethesda-Gaithersburg-Frederick, MD	1.1483	1.0903	−0.0580	−5.05
13740	Billings, MT	0.8834	0.8712	−0.0122	−1.38
13780	Binghamton, NY	0.8562	0.8786	0.0224	2.62
13820	Birmingham-Hoover, AL	0.8959	0.8894	−0.0065	−0.73
13900	Bismarck, ND	0.7574	0.7240	−0.0334	−4.41
13980	Blacksburg-Christiansburg-Radford, VA	0.7954	0.8213	0.0259	3.26
14020	Bloomington, IN	0.8447	0.8533	0.0086	1.02
14060	Bloomington-Normal, IL	0.9075	0.8944	−0.0131	−1.44
14260	Boise City-Nampa, ID	0.9052	0.9401	0.0349	3.86
14484	Boston-Quincy, MA	1.1558	1.1679	0.0121	1.05
14500	Boulder, CO	0.9734	1.0350	0.0616	6.33
14540	Bowling Green, KY	0.8211	0.8148	−0.0063	−0.77
14740	Bremerton-Silverdale, WA	1.0675	1.0913	0.0238	2.23
14860	Bridgeport-Stamford-Norwalk, CT	1.2592	1.2659	0.0067	0.53
15180	Brownsville-Harlingen, TX	0.9804	0.9430	−0.0374	−3.81
15260	Brunswick, GA	0.9311	1.0164	0.0853	9.16
15380	Buffalo-Niagara Falls, NY	0.9511	0.9424	−0.0087	−0.91
15500	Burlington, NC	0.8905	0.8674	−0.0231	−2.59
15540	Burlington-South Burlington, VT	0.9410	0.9474	0.0064	0.68
15764	Cambridge-Newton-Framingham, MA	1.1172	1.0970	−0.0202	−1.81
15804	Camden, NJ	1.0517	1.0392	−0.0125	−1.19
15940	Canton-Massillon, OH	0.8935	0.9031	0.0096	1.07
15980	Cape Coral-Fort Myers, FL	0.9356	0.9342	−0.0014	−0.15
16180	Carson City, NV	1.0234	1.0025	−0.0209	−2.04
16220	Casper, WY	0.9026	0.9145	0.0119	1.32
16300	Cedar Rapids, IA	0.8825	0.8888	0.0063	0.71
16580	Champaign-Urbana, IL	0.9594	0.9644	0.0050	0.52
16620	Charleston, WV	0.8445	0.8542	0.0097	1.15
16700	Charleston-North Charleston, SC	0.9245	0.9145	−0.0100	−1.08
16740	Charlotte-Gastonia-Concord, NC-SC	0.9750	0.9554	−0.0196	−2.01

ADDENDUM D—COMPARISON OF RAW PRE-FLOOR, PRE-RECLASSIFIED HOSPITAL WAGE INDEX VALUES USED AS INPUT VALUES TO DERIVE THE FY 2007 AND FY 2008 HOSPICE WAGE INDICES—Continued

[For illustrative purposes only]

		FY2007	FY2008	FY08–FY07	Percent chng
16820	Charlottesville, VA	1.0187	1.0125	−0.0062	−0.61
16860	Chattanooga, TN-GA	0.9088	0.8948	−0.0140	−1.54
16940	Cheyenne, WY	0.8775	0.9060	0.0285	3.25
16974	Chicago-Naperville-Joliet, IL	1.0790	1.0751	−0.0039	−0.36
17020	Chico, CA	1.0511	1.1053	0.0542	5.16
17140	Cincinnati-Middletown, OH-KY-IN	0.9615	0.9601	−0.0014	−0.15
17300	Clarksville, TN-KY	0.8284	0.8436	0.0152	1.83
17420	Cleveland, TN	0.8139	0.8109	−0.0030	−0.37
17460	Cleveland-Elyria-Mentor, OH	0.9213	0.9400	0.0187	2.03
17660	Coeur d'Alene, ID	0.9647	0.9344	−0.0303	−3.14
17780	College Station-Bryan, TX	0.8900	0.9045	0.0145	1.63
17820	Colorado Springs, CO	0.9468	0.9701	0.0233	2.46
17860	Columbia, MO	0.8345	0.8542	0.0197	2.36
17900	Columbia, SC	0.9057	0.8933	−0.0124	−1.37
17980	Columbus, GA-AL	0.8560	0.8239	−0.0321	−3.75
18020	Columbus, IN	0.9588	0.9318	−0.0270	−2.82
18140	Columbus, OH	0.9860	1.0107	0.0247	2.51
18580	Corpus Christi, TX	0.8550	0.8564	0.0014	0.16
18700	Corvallis, OR	1.0729	1.1546	0.0817	7.61
19060	Cumberland, MD-WV	0.9317	0.8446	−0.0871	−9.35
19124	Dallas-Plano-Irving, TX	1.0228	1.0075	−0.0153	−1.50
19140	Dalton, GA	0.9079	0.9093	0.0014	0.15
19180	Danville, IL	0.9028	0.9266	0.0238	2.64
19260	Danville, VA	0.8489	0.8451	−0.0038	−0.45
19340	Davenport-Moline-Rock Island, IA-IL	0.8724	0.8846	0.0122	1.40
19380	Dayton, OH	0.9064	0.9037	−0.0027	−0.30
19460	Decatur, AL	0.8469	0.8159	−0.0310	−3.66
19500	Decatur, IL	0.8067	0.8172	0.0105	1.30
19660	Deltona-Daytona Beach-Ormond Beach, FL	0.9299	0.9263	−0.0036	−0.39
19740	Denver-Aurora, CO	1.0723	1.0930	0.0207	1.93
19780	Des Moines-West Des Moines, IA	0.9669	0.9214	−0.0455	−4.71
19804	Detroit-Livonia-Dearborn, MI	1.0424	1.0281	−0.0143	−1.37
20020	Dothan, AL	0.7721	0.7381	−0.0340	−4.40
20100	Dover, DE	0.9776	0.9847	0.0071	0.73
20220	Dubuque, IA	0.9024	0.9133	0.0109	1.21
20260	Duluth, MN-WI	1.0213	1.0042	−0.0171	−1.67
20500	Durham, NC	1.0244	0.9826	−0.0418	−4.08
20740	Eau Claire, WI	0.9201	0.9630	0.0429	4.66
20764	Edison, NJ	1.1249	1.1190	−0.0059	−0.52
20940	El Centro, CA	0.8906	0.9076	0.0170	1.91
21060	Elizabethtown, KY	0.8802	0.8697	−0.0105	−1.19
21140	Elkhart-Goshen, IN	0.9627	0.9426	−0.0201	−2.09
21300	Elmira, NY	0.8250	0.8240	−0.0010	−0.12
21340	El Paso, TX	0.8977	0.9053	0.0076	0.85
21500	Erie, PA	0.8737	0.8827	0.0090	1.03
21604	Essex County, MA	1.0538	1.0418	−0.0120	−1.14
21660	Eugene-Springfield, OR	1.0818	1.0876	0.0058	0.54
21780	Evansville, IN-KY	0.8713	0.9071	0.0358	4.11
21820	Fairbanks, AK	1.1408	1.1059	−0.0349	−3.06
21940	Fajardo, PR	0.4153	0.4036	−0.0117	−2.82
22020	Fargo, ND-MN	0.8486	0.8250	−0.0236	−2.78
22140	Farmington, NM	0.8509	0.8589	0.0080	0.94
22180	Fayetteville, NC	0.9416	0.8945	−0.0471	−5.00
22220	Fayetteville-Springdale-Rogers, AR-MO	0.8661	0.8865	0.0204	2.36
22380	Flagstaff, AZ	1.2092	1.1601	−0.0491	−4.06
22420	Flint, MI	1.0655	1.0969	0.0314	2.95
22500	Florence, SC	0.8947	0.8388	−0.0559	−6.25
22520	Florence-Muscle Shoals, AL	0.8272	0.7843	−0.0429	−5.19
22540	Fond du Lac, WI	0.9640	1.0063	0.0423	4.39
22660	Fort Collins-Loveland, CO	1.0122	0.9544	−0.0578	−5.71
22744	Ft Lauderdale-Pompano Beach-Deerfield, FL	1.0432	1.0133	−0.0299	−2.87
22900	Fort Smith, AR-OK	0.8230	0.7731	−0.0499	−6.06
23020	Fort Walton Beach-Crestview-Destin, FL	0.8872	0.8643	−0.0229	−2.58
23060	Fort Wayne, IN	0.9793	0.9517	−0.0276	−2.82
23104	Fort Worth-Arlington, TX	0.9486	0.9569	0.0083	0.87
23420	Fresno, CA	1.0538	1.0943	0.0405	3.84
23460	Gadsden, AL	0.7938	0.8066	0.0128	1.61
23540	Gainesville, FL	0.9388	0.9277	−0.0111	−1.18
23580	Gainesville, GA	0.8874	0.8958	0.0084	0.95

ADDENDUM D—COMPARISON OF RAW PRE-FLOOR, PRE-RECLASSIFIED HOSPITAL WAGE INDEX VALUES USED AS INPUT VALUES TO DERIVE THE FY 2007 AND FY 2008 HOSPICE WAGE INDICES—Continued

[For illustrative purposes only]

		FY2007	FY2008	FY08–FY07	Percent chng
23844	Gary, IN	0.9395	0.9334	−0.0061	−0.65
24020	Glens Falls, NY	0.8559	0.8324	−0.0235	−2.75
24140	Goldsboro, NC	0.8775	0.9171	0.0396	4.51
24220	Grand Forks, ND-MN	0.7901	0.7949	0.0048	0.61
24300	Grand Junction, CO	0.9550	0.9668	0.0118	1.24
24340	Grand Rapids-Wyoming, MI	0.9390	0.9455	0.0065	0.69
24500	Great Falls, MT	0.9052	0.8598	−0.0454	−5.02
24540	Greeley, CO	0.9570	0.9602	0.0032	0.33
24580	Green Bay, WI	0.9483	0.9787	0.0304	3.21
24660	Greensboro-High Point, NC	0.9104	0.8866	−0.0238	−2.61
24780	Greenville, NC	0.9425	0.9432	0.0007	0.07
24860	Greenville, SC	1.0027	0.9804	−0.0223	−2.22
25020	Guayama, PR	0.3181	0.3235	0.0054	1.70
25060	Gulfport-Biloxi, MS	0.8929	0.8915	−0.0014	−0.16
25180	Hagerstown-Martinsburg, MD-WV	0.9489	0.9038	−0.0451	−4.75
25260	Hanford-Corcoran, CA	1.0036	1.0282	0.0246	2.45
25420	Harrisburg-Carlisle, PA	0.9313	0.9402	0.0089	0.96
25500	Harrisonburg, VA	0.9088	0.9073	−0.0015	−0.17
25540	Hartford-West Hartford-East Hartford, CT	1.1073	1.0894	−0.0179	−1.62
25620	Hattiesburg, MS	0.7601	0.7430	−0.0171	−2.25
25860	Hickory-Lenoir-Morganton, NC	0.8921	0.9010	0.0089	1.00
25980	Hinesville-Fort Stewart, GA	0.9198	0.9178	−0.0020	−0.22
26100	Holland-Grand Haven, MI	0.9055	0.9163	0.0108	1.19
26180	Honolulu, HI	1.1214	1.1096	−0.0118	−1.05
26300	Hot Springs, AR	0.9005	0.8782	−0.0223	−2.48
26380	Houma-Bayou Cane-Thibodaux, LA	0.7894	0.8082	0.0188	2.38
26420	Houston-Sugar Land-Baytown, TX	0.9996	1.0008	0.0012	0.12
26580	Huntington-Ashland, WV-KY-OH	0.9477	0.8997	−0.0480	−5.06
26620	Huntsville, AL	0.9146	0.9007	−0.0139	−1.52
26820	Idaho Falls, ID	0.9420	0.9088	−0.0332	−3.52
26900	Indianapolis-Carmel, IN	0.9920	0.9895	−0.0025	−0.25
26980	Iowa City, IA	0.9747	0.9714	−0.0033	−0.34
27060	Ithaca, NY	0.9793	0.9928	0.0135	1.38
27100	Jackson, MI	0.9304	0.9560	0.0256	2.75
27140	Jackson, MS	0.8311	0.8271	−0.0040	−0.48
27180	Jackson, TN	0.8964	0.8853	−0.0111	−1.24
27260	Jacksonville, FL	0.9290	0.9165	−0.0125	−1.35
27340	Jacksonville, NC	0.8236	0.8231	−0.0005	−0.06
27500	Janesville, WI	0.9538	0.9655	0.0117	1.23
27620	Jefferson City, MO	0.8387	0.8332	−0.0055	−0.66
27740	Johnson City, TN	0.7937	0.8043	0.0106	1.34
27780	Johnstown, PA	0.8354	0.8620	0.0266	3.18
27860	Jonesboro, AR	0.7911	0.7662	−0.0249	−3.15
27900	Joplin, MO	0.8582	0.8605	0.0023	0.27
28020	Kalamazoo-Portage, MI	1.0381	1.0704	0.0323	3.11
28100	Kankakee-Bradley, IL	1.0721	1.0083	−0.0638	−5.95
28140	Kansas City, MO-KS	0.9476	0.9495	0.0019	0.20
28420	Kennewick-Richland-Pasco, WA	1.0619	1.0343	−0.0276	−2.60
28660	Killeen-Temple-Fort Hood, TX	0.8526	0.8901	0.0375	4.40
28700	Kingsport-Bristol-Bristol, TN-VA	0.8054	0.7985	−0.0069	−0.86
28740	Kingston, NY	0.9255	0.9367	0.0112	1.21
28940	Knoxville, TN	0.8441	0.8249	−0.0192	−2.27
29020	Kokomo, IN	0.9508	0.9669	0.0161	1.69
29100	La Crosse, WI-MN	0.9564	0.9426	−0.0138	−1.44
29140	Lafayette, IN	0.8736	0.8931	0.0195	2.23
29180	Lafayette, LA	0.8428	0.8289	−0.0139	−1.65
29340	Lake Charles, LA	0.7833	0.7914	0.0081	1.03
29404	Lake County-Kenosha County, IL-WI	1.0429	1.0570	0.0141	1.35
29460	Lakeland, FL	0.8912	0.8879	−0.0033	−0.37
29540	Lancaster, PA	0.9694	0.9589	−0.0105	−1.08
29620	Lansing-East Lansing, MI	0.9794	1.0088	0.0294	3.00
29700	Laredo, TX	0.8068	0.7811	−0.0257	−3.19
29740	Las Cruces, NM	0.8467	0.9273	0.0806	9.52
29820	Las Vegas-Paradise, NV	1.1437	1.1430	−0.0007	−0.06
29940	Lawrence, KS	0.8537	0.8365	−0.0172	−2.01
30020	Lawton, OK	0.7872	0.8065	0.0193	2.45
30140	Lebanon, PA	0.8459	0.8679	0.0220	2.60
30300	Lewiston, ID-WA	0.9886	0.9853	−0.0033	−0.33
30340	Lewiston-Auburn, ME	0.9331	0.9126	−0.0205	−2.20

ADDENDUM D—COMPARISON OF RAW PRE-FLOOR, PRE-RECLASSIFIED HOSPITAL WAGE INDEX VALUES USED AS INPUT VALUES TO DERIVE THE FY 2007 AND FY 2008 HOSPICE WAGE INDICES—Continued

[For illustrative purposes only]

		FY2007	FY2008	FY08–FY07	Percent chng
30460	Lexington-Fayette, KY	0.9075	0.9181	0.0106	1.17
30620	Lima, OH	0.9225	0.9042	−0.0183	−1.98
30700	Lincoln, NE	1.0214	1.0092	−0.0122	−1.19
30780	Little Rock-North Little Rock, AR	0.8747	0.8890	0.0143	1.63
30860	Logan, UT-ID	0.9164	0.9022	−0.0142	−1.55
30980	Longview, TX	0.8730	0.8788	0.0058	0.66
31020	Longview, WA	0.9579	1.0011	0.0432	4.51
31084	Los Angeles-Long Beach-Santa Ana, CA	1.1783	1.1760	−0.0023	−0.20
31140	Louisville-Jefferson County, KY-IN	0.9251	0.9118	−0.0133	−1.44
31180	Lubbock, TX	0.8783	0.8613	−0.0170	−1.94
31340	Lynchburg, VA	0.8691	0.8694	0.0003	0.03
31420	Macon, GA	0.9443	0.9519	0.0076	0.80
31460	Madera, CA	0.8713	0.8154	−0.0559	−6.42
31540	Madison, WI	1.0659	1.0840	0.0181	1.70
31700	Manchester-Nashua, NH	1.0354	1.0243	−0.0111	−1.07
31900	Mansfield, OH	0.9891	0.9271	−0.0620	−6.27
32420	Mayagüez, PR	0.4020	0.3848	−0.0172	−4.28
32580	McAllen-Edinburg-Mission, TX	0.8934	0.8773	−0.0161	−1.80
32780	Medford, OR	1.0225	1.0818	0.0593	5.80
32820	Memphis, TN-MS-AR	0.9397	0.9373	−0.0024	−0.26
32900	Merced, CA	1.1109	1.1471	0.0362	3.26
33124	Miami-Miami Beach-Kendall, FL	0.9750	0.9812	0.0062	0.64
33140	Michigan City-La Porte, IN	0.9399	0.9118	−0.0281	−2.99
33260	Midland, TX	0.9514	0.9786	0.0272	2.86
33340	Milwaukee-Waukesha-West Allis, WI	1.0146	1.0218	0.0072	0.71
33460	Minneapolis-St. Paul-Bloomington, MN-WI	1.1075	1.0946	−0.0129	−1.16
33540	Missoula, MT	0.9473	0.8928	−0.0545	−5.75
33660	Mobile, AL	0.7891	0.7913	0.0022	0.28
33700	Modesto, CA	1.1885	1.1729	−0.0156	−1.31
33740	Monroe, LA	0.8031	0.7997	−0.0034	−0.42
33780	Monroe, MI	0.9468	0.9707	0.0239	2.52
33860	Montgomery, AL	0.8618	0.8009	−0.0609	−7.07
34060	Morgantown, WV	0.8420	0.8423	0.0003	0.04
34100	Morristown, TN	0.7961	0.7933	−0.0028	−0.35
34580	Mount Vernon-Anacortes, WA	1.0454	1.0517	0.0063	0.60
34620	Muncie, IN	0.8930	0.8562	−0.0368	−4.12
34740	Muskegon-Norton Shores, MI	0.9664	0.9941	0.0277	2.87
34820	Myrtle Beach-Conway-North Myrtle Beach, SC	0.8934	0.8810	−0.0124	−1.39
34900	Napa, CA	1.2643	1.3374	0.0731	5.78
34940	Naples-Marco Island, FL	1.0139	0.9941	−0.0198	−1.95
34980	Nashville-Davidson—Murfreesboro, TN	0.9790	0.9847	0.0057	0.58
35004	Nassau-Suffolk, NY	1.2719	1.2662	−0.0057	−0.45
35084	Newark-Union, NJ-PA	1.1883	1.1892	0.0009	0.08
35300	New Haven-Milford, CT	1.1887	1.1953	0.0066	0.56
35380	New Orleans-Metairie-Kenner, LA	0.8995	0.8831	−0.0164	−1.82
35644	New York-White Plains-Wayne, NY-NJ	1.3188	1.3177	−0.0011	−0.08
35660	Niles-Benton Harbor, MI	0.8879	0.8915	0.0036	0.41
35980	Norwich-New London, CT	1.1345	1.1932	0.0587	5.17
36084	Oakland-Fremont-Hayward, CA	1.5346	1.5819	0.0473	3.08
36100	Ocala, FL	0.8925	0.8867	−0.0058	−0.65
36140	Ocean City, NJ	1.1011	1.0472	−0.0539	−4.90
36220	Odessa, TX	0.9884	1.0073	0.0189	1.91
36260	Ogden-Clearfield, UT	0.9029	0.8995	−0.0034	−0.38
36420	Oklahoma City, OK	0.9031	0.8843	−0.0188	−2.08
36500	Olympia, WA	1.0927	1.1081	0.0154	1.41
36540	Omaha-Council Bluffs, NE-IA	0.9560	0.9450	−0.0110	−1.15
36740	Orlando-Kissimmee, FL	0.9464	0.9452	−0.0012	−0.13
36780	Oshkosh-Neenah, WI	0.9183	0.9315	0.0132	1.44
36980	Owensboro, KY	0.8780	0.8748	−0.0032	−0.36
37100	Oxnard-Thousand Oaks-Ventura, CA	1.1622	1.1546	−0.0076	−0.65
37340	Palm Bay-Melbourne-Titusville, FL	0.9839	0.9443	−0.0396	−4.02
37460	Panama City-Lynn Haven, FL	0.8005	0.8027	0.0022	0.27
37620	Parkersburg-Marietta-Vienna, WV-OH	0.8270	0.7977	−0.0293	−3.54
37700	Pascagoula, MS	0.8156	0.8215	0.0059	0.72
37860	Pensacola-Ferry Pass-Brent, FL	0.8096	0.8000	−0.0096	−1.19
37900	Peoria, IL	0.8870	0.8982	0.0112	1.26
37964	Philadelphia, PA	1.1038	1.0996	−0.0042	−0.38
38060	Phoenix-Mesa-Scottsdale, AZ	1.0127	1.0287	0.0160	1.58
38220	Pine Bluff, AR	0.8680	0.8383	−0.0297	−3.42

ADDENDUM D—COMPARISON OF RAW PRE-FLOOR, PRE-RECLASSIFIED HOSPITAL WAGE INDEX VALUES USED AS INPUT VALUES TO DERIVE THE FY 2007 AND FY 2008 HOSPICE WAGE INDICES—Continued

[For illustrative purposes only]

		FY2007	FY2008	FY08–FY07	Percent chng
38300	Pittsburgh, PA	0.8845	0.8674	−0.0171	−1.93
38340	Pittsfield, MA	1.0181	1.0266	0.0085	0.83
38540	Pocatello, ID	0.9351	0.9400	0.0049	0.52
38660	Ponce, PR	0.4939	0.4842	−0.0097	−1.96
38860	Portland-South Portland-Biddeford, ME	1.0382	0.9908	−0.0474	−4.57
38900	Portland-Vancouver-Beaverton, OR-WA	1.1266	1.1416	0.0150	1.33
38940	Port St. Lucie-Fort Pierce, FL	1.0123	0.9833	−0.0290	−2.86
39100	Poughkeepsie-Newburgh-Middletown, NY	1.0891	1.0911	0.0020	0.18
39140	Prescott, AZ	0.9869	0.9836	−0.0033	−0.33
39300	Providence-New Bedford-Fall River, RI-MA	1.0966	1.0783	−0.0183	−1.67
39340	Provo-Orem, UT	0.9500	0.9537	0.0037	0.39
39380	Pueblo, CO	0.8623	0.8753	0.0130	1.51
39460	Punta Gorda, FL	0.9255	0.9405	0.0150	1.62
39540	Racine, WI	0.8997	0.9356	0.0359	3.99
39580	Raleigh-Cary, NC	0.9691	0.9864	0.0173	1.79
39660	Rapid City, SD	0.8987	0.8833	−0.0154	−1.71
39740	Reading, PA	0.9686	0.9622	−0.0064	−0.66
39820	Redding, CA	1.2203	1.3198	0.0995	8.15
39900	Reno-Sparks, NV	1.0982	1.1963	0.0981	8.93
40060	Richmond, VA	0.9328	0.9177	−0.0151	−1.62
40140	Riverside-San Bernardino-Ontario, CA	1.1027	1.0904	−0.0123	−1.12
40220	Roanoke, VA	0.8374	0.8647	0.0273	3.26
40340	Rochester, MN	1.1131	1.1408	0.0277	2.49
40380	Rochester, NY	0.9121	0.8994	−0.0127	−1.39
40420	Rockford, IL	0.9984	0.9989	0.0005	0.05
40484	Rockingham County, NH	1.0374	1.0159	−0.0215	−2.07
40580	Rocky Mount, NC	0.8915	0.8854	−0.0061	−0.68
40660	Rome, GA	0.9414	0.9193	−0.0221	−2.35
40900	Sacramento—Arden-Arcade—Roseville, CA	1.2969	1.3372	0.0403	3.11
40980	Saginaw-Saginaw Township North, MI	0.9088	0.8874	−0.0214	−2.35
41060	St. Cloud, MN	0.9965	1.0362	0.0397	3.98
41100	St. George, UT	0.9392	0.9265	−0.0127	−1.35
41140	St. Joseph, MO-KS	0.9519	1.0118	0.0599	6.29
41180	St. Louis, MO-IL	0.8954	0.9005	0.0051	0.57
41420	Salem, OR	1.0442	1.0438	−0.0004	−0.04
41500	Salinas, CA	1.4128	1.4337	0.0209	1.48
41540	Salisbury, MD	0.9064	0.8953	−0.0111	−1.22
41620	Salt Lake City, UT	0.9421	0.9402	−0.0019	−0.20
41660	San Angelo, TX	0.8271	0.8362	0.0091	1.10
41700	San Antonio, TX	0.8980	0.8844	−0.0136	−1.51
41740	San Diego-Carlsbad-San Marcos, CA	1.1413	1.1354	−0.0059	−0.52
41780	Sandusky, OH	0.9019	0.9302	0.0283	3.14
41884	San Francisco-San Mateo-Redwood City,CA	1.4994	1.5165	0.0171	1.14
41900	San Germán-Cabo Rojo, PR	0.4650	0.4885	0.0235	5.05
41940	San Jose-Sunnyvale-Santa Clara, CA	1.5099	1.5543	0.0444	2.94
41980	San Juan-Caguas-Guaynabo, PR	0.4621	0.4452	−0.0169	−3.66
42020	San Luis Obispo-Paso Robles, CA	1.1349	1.1598	0.0249	2.19
42044	Santa Ana-Anaheim-Irvine, CA	1.1559	1.1473	−0.0086	−0.74
42060	Santa Barbara-Santa Maria, CA	1.1694	1.1091	−0.0603	−5.16
42100	Santa Cruz-Watsonville, CA	1.5166	1.5457	0.0291	1.92
42140	Santa Fe, NM	1.0920	1.0824	−0.0096	−0.88
42220	Santa Rosa-Petaluma, CA	1.3493	1.4464	0.0971	7.20
42260	Sarasota-Bradenton-Venice, FL	0.9639	0.9868	0.0229	2.38
42340	Savannah, GA	0.9461	0.9351	−0.0110	−1.16
42540	Scranton—Wilkes-Barre, PA	0.8540	0.8347	−0.0193	−2.26
42644	Seattle-Bellevue-Everett, WA	1.1577	1.1434	−0.0143	−1.24
42680	Sebastian-Vero Beach, FL	.....	0.9573	0.9573	.....
43100	Sheboygan, WI	0.8911	0.9026	0.0115	1.29
43300	Sherman-Denison, TX	0.9507	0.8502	−0.1005	−10.57
43340	Shreveport-Bossier City, LA	0.8760	0.8865	0.0105	1.20
43580	Sioux City, IA-NE-SD	0.9381	0.9200	−0.0181	−1.93
43620	Sioux Falls, SD	0.9635	0.9559	−0.0076	−0.79
43780	South Bend-Mishawaka, IN-MI	0.9788	0.9842	0.0054	0.55
43900	Spartanburg, SC	0.9172	0.9174	0.0002	0.02
44060	Spokane, WA	1.0905	1.0447	−0.0458	−4.20
44100	Springfield, IL	0.8792	0.8890	0.0098	1.11
44140	Springfield, MA	1.0248	1.0079	−0.0169	−1.65
44180	Springfield, MO	0.8237	0.8469	0.0232	2.82
44220	Springfield, OH	0.8396	0.8593	0.0197	2.35

ADDENDUM D—COMPARISON OF RAW PRE-FLOOR, PRE-RECLASSIFIED HOSPITAL WAGE INDEX VALUES USED AS INPUT VALUES TO DERIVE THE FY 2007 AND FY 2008 HOSPICE WAGE INDICES—Continued

[For illustrative purposes only]

		FY2007	FY2008	FY08–FY07	Percent chng
44300	State College, PA	0.8356	0.8784	0.0428	5.12
44700	Stockton, CA	1.1307	1.1442	0.0135	1.19
44940	Sumter, SC	0.8377	0.8083	−0.0294	−3.51
45060	Syracuse, NY	0.9574	0.9691	0.0117	1.22
45104	Tacoma, WA	1.0742	1.0789	0.0047	0.44
45220	Tallahassee, FL	0.8688	0.8942	0.0254	2.92
45300	Tampa-St. Petersburg-Clearwater, FL	0.9233	0.9144	−0.0089	−0.96
45460	Terre Haute, IN	0.8304	0.8765	0.0461	5.55
45500	Texarkana, TX-Texarkana, AR	0.8283	0.8104	−0.0179	−2.16
45780	Toledo, OH	0.9574	0.9586	0.0012	0.13
45820	Topeka, KS	0.8920	0.8730	−0.0190	−2.13
45940	Trenton-Ewing, NJ	1.0834	1.0835	0.0001	0.01
46060	Tucson, AZ	0.9007	0.9202	0.0195	2.16
46140	Tulsa, OK	0.8543	0.8103	−0.0440	−5.15
46220	Tuscaloosa, AL	0.8645	0.8542	−0.0103	−1.19
46340	Tyler, TX	0.9168	0.8811	−0.0357	−3.89
46540	Utica-Rome, NY	0.8358	0.8396	0.0038	0.45
46660	Valdosta, GA	0.8866	0.8369	−0.0497	−5.61
46700	Vallejo-Fairfield, CA	1.4936	1.5137	0.0201	1.35
46940	Vero Beach, FL	0.9434	.....	−0.9434	.....
47020	Victoria, TX	0.8160	0.8560	0.0400	4.90
47220	Vineland-Millville-Bridgeton, NJ	0.9827	0.9832	0.0005	0.05
47260	Virginia Beach-Norfolk-Newport News, VA	0.8799	0.8790	−0.0009	−0.10
47300	Visalia-Porterville, CA	1.0123	0.9968	−0.0155	−1.53
47380	Waco, TX	0.8518	0.8633	0.0115	1.35
47580	Warner Robins, GA	0.8645	0.8380	−0.0265	−3.07
47644	Warren-Troy-Farmington Hills, MI	0.9871	1.0054	0.0183	1.85
47894	Washington-Arlington-Alexandria, DC-VA	1.0926	1.1054	0.0128	1.17
47940	Waterloo-Cedar Falls, IA	0.8557	0.8408	−0.0149	−1.74
48140	Wausau, WI	0.9590	0.9722	0.0132	1.38
48260	Weirton-Steubenville, WV-OH	0.7819	0.8063	0.0244	3.12
48300	Wenatchee, WA	1.0070	1.0346	0.0276	2.74
48424	West Palm Beach-Boca Raton-Boynton, FL	1.0067	0.9649	−0.0418	−4.15
48540	Wheeling, WV-OH	0.7161	0.7010	−0.0151	−2.11
48620	Wichita, KS	0.9153	0.9063	−0.0090	−0.98
48660	Wichita Falls, TX	0.8285	0.8311	0.0026	0.31
48700	Williamsport, PA	0.8364	0.8139	−0.0225	−2.69
48864	Wilmington, DE-MD-NJ	1.0471	1.0684	0.0213	2.03
48900	Wilmington, NC	0.9582	0.9835	0.0253	2.64
49020	Winchester, VA-WV	1.0214	1.0091	−0.0123	−1.20
49180	Winston-Salem, NC	0.8944	0.9276	0.0332	3.71
49340	Worcester, MA	1.1028	1.0722	−0.0306	−2.77
49420	Yakima, WA	1.0155	0.9847	−0.0308	−3.03
49500	Yauco, PR	0.4408	0.3854	−0.0554	−12.57
49620	York-Hanover, PA	0.9347	0.9397	0.0050	0.53
49660	Youngstown-Warren-Boardman, OH-PA	0.8603	0.8802	0.0199	2.31
49700	Yuba City, CA	1.0921	1.0730	−0.0191	−1.75
49740	Yuma, AZ	0.9126	0.9109	−0.0017	−0.19

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Federal Register

Friday,
August 8, 2008

Part V

Department of Labor

Order of Succession to the Secretary of Labor; Notice

DEPARTMENT OF LABOR

[Secretary's Order 4–2008]

Order of Succession to the Secretary of Labor, Continuity of Executive Direction, Repositioning and Devolution of Departmental Governance, and Emergency Planning Under Circumstances of Extreme Disruption

1. *Purpose.* To provide for succession to act as, or on behalf of, the Secretary of Labor in case of death or resignation of the Secretary, or if the Secretary is otherwise unable to perform the functions and duties of the office, including in case of absence or sickness; to provide lines of succession for executive continuity within the Department and its Agencies during vacancies arising in a period of national emergency or in the course of business; to provide for the repositioning and devolution of Departmental governance under circumstances of extreme disruption; and to identify the first assistant to those officers of the Department whose appointment to office is required to be made by the President, including those whose appointment is subject to the advice and consent of the Senate.

2. *Authority and Directives Affected.*

A. This Order is issued pursuant to Executive Order 13245; the Federal Vacancies Reform Act of 1998 (the FVRA) (codified generally at 5 U.S.C. 3345, *et seq.*); 29 U.S.C. 551 *et seq.*; Reorganization Plan No. 6 of 1950; Reorganization Plan No. 1 of 1958; Reorganization Plan No. 1 of 1973; Federal Civil Defense Act of 1950; Disaster Relief Act of 1974; 5 U.S.C. 301; 31 U.S.C. 1531 and 1533; Executive Order 12656; and Executive Order 12148. National Security Presidential Directive 51/Homeland Security Presidential Directive 20 (NSPD–51/HSPD–20) *National Continuity Policy* (May 2007); National Continuity Policy Implementation Plan (NCPIP) (Aug 2007); Federal Continuity Directive 1 (FCD–1) *Federal Executive Branch National Continuity Policy* (Feb 2008); Office of Personnel Management, *Handbook on Pay and Leave Benefits for Federal Employees Affected by Severe Weather Conditions or Other Emergency Situations* (July 2007).

B. Secretary's Order 4–2003, published at 68 FR 41048–01 on July 9, 2003, is hereby superseded and canceled, and all agency delegations in conflict with this Order and/or its Attachment are hereby superseded.

3. *Background.* Following the 1998 enactment of the Federal Vacancies Reform Act, the order of succession of officers to act as Secretary of Labor in periods of vacancy was determined by Secretary's Order 2–2001, which was issued under the authority of Executive Order (E.O.) 10513 (January 19, 1954). On December 18, 2001, E.O. 13245 revoked E.O. 10513 and provided a new order of succession to the position of Secretary of Labor. The Department's plan for continuity of operations in the event of a need for relocation involves movement of National Office executive and other staff to a relocation center, currently the National Mine Health and Safety Academy (the ''Relocation Site''). The Department's plan for devolution was established by Secretarial Memorandum dated December 20, 2006, wherein the Secretary selected Dallas, Texas as the National Office, Department of Labor devolution site (the ''Devolution Site'').

4. *Order of Governance.* In accordance with E.O. 13245 and the FVRA, in case of absence due to sickness, resignation, death or national emergency, the functions and duties of the officers of the Department of Labor and their respective responsibilities for operational management will be performed in an acting capacity or on behalf thereof by the incumbents of the positions designated in the following orders:

A. Succession to the Secretary of Labor

Sequence for identifying the Acting Secretary of Labor, who shall have all of the authorities and responsibilities of the Secretary:

(1) Deputy Secretary of Labor;

(2) Solicitor of Labor;

(3) Assistant Secretary of Labor in charge of Administration and Management;

(4) Assistant Secretary of Labor in charge of Policy;

(5) Assistant Secretary of Labor in charge of Congressional and Intergovernmental Affairs;

(6) Assistant Secretary of Labor in charge of the Employment and Training Administration;

(7) Assistant Secretary of Labor in charge of the Employment Standards Administration;

(8) Assistant Secretary of Labor in charge of the Employee Benefits Security Administration;

(9) Assistant Secretary of Labor for Occupational Safety and Health;

(10) Assistant Secretary of Labor for Mine Safety and Health;

(11) Assistant Secretary of Labor in charge of the Office of Public Affairs;

(12) Assistant Secretary of Labor for Veterans Employment and Training; and

(13) Assistant Secretary of Labor in charge of the Office of Disability Employment Policy.

Provided that, no individual who is serving in an acting capacity in any of the above positions shall serve as Acting Secretary pursuant to this Order.

B. Identifying the Delegated Secretarial Designee on Behalf of the Secretary of Labor

In the event and for such time(s) that none of the Presidentially-appointed and Senate-confirmed positions (PAS) incumbents in the succession sequence set forth in Paragraph 4.A., above, are available to serve as Acting Secretary, the Delegated Secretarial Designee (DSD) shall fulfill, on an interim basis, the operational management of the Department except the Secretary's ''functions and duties.'' The ''functions and duties'' of the Secretary are those non-delegable responsibilities (a) established by law (statute or regulation); and (b) required to be performed by, and only by, the Secretary. Except as determined otherwise by the President, whoever from time to time is highest in the following sequence and is available to serve shall be the Delegated Secretarial Designee:

(1) The following PAS:

(a) Chief Financial Officer;

(b) Administrator of the Wage and Hour Division;

(c) Director of the Women's Bureau; and

(d) Commissioner of Labor Statistics.

(2) The following ''First Assistants,'' provided that, upon the issuance of a new ''Memorandum to Provide for Order of Succession for Executive Community'' to replace the attached Memorandum, the new listing in such Memorandum will then become the authoritative list of ''First Assistants'':

(a) Deputy Solicitor of Labor;

(b) Deputy Assistant Secretary for Operations within the Office of the Assistant Secretary for Administration and Management;

(c) Deputy Assistant Secretary for Policy;

(d) Deputy Assistant Secretary for Congressional Affairs;

(e) Deputy Assistant Secretary within the Office of Employment and Training (organizationally known as the DAS for the Workforce Investment System);

(f) Deputy Assistant Secretary for Policy within the Employee Benefits Security Administration;

(g) Deputy Assistant Secretary within the Occupational Safety and Health Administration;

(h) Deputy Assistant Secretary for Mine Safety and Health;

(i) Deputy Assistant Secretary within the Office of Public Affairs (serving as the primary advisor to the Assistant

Secretary in charge of the Office of Public Affairs);

(j) Deputy Assistant Secretary within the Veterans Employment and Training Service;

(k) Deputy Assistant Secretary within the Office of Disability Employment Policy;

(l) Deputy Chief Financial Officer;

(m) Deputy Wage and Hour Administrator;

(n) Deputy Director, Women's Bureau; and

(o) Deputy Commissioner of Labor Statistics.

(3) Specified DOL officials as follows:

(a) Regional Solicitor—Dallas;

(b) Dallas, Texas Office of the Assistant Secretary for Administration and Management (OASAM) Regional Administrator (who, upon becoming DSD by order of operation of this Succession Order, the Secretary hereby authorizes and pre-approves for an immediate, noncompetitive appointment to the Senior Executive Service (SES) under a limited-term appointment using a DOL SES allocation);

(c) Regional Administrator for ETA located in Dallas;

(d) OSHA Regional Administrator—Dallas.

Provided that, no individual who is serving in an acting capacity in any of the above positions shall serve as the Delegated Secretarial Designee pursuant to this Order.

C. To All Other PAS Positions and Heads of Other Principal Organizational Units

(1) There are offices and agencies within the Department of Labor headed by officers whose appointment to office is required to be made by the President, by and with the advice and consent of the Senate (PAS). In the event of a vacancy in any of these PAS positions, the FVRA provides that, except in certain narrow circumstances, the ''first assistant [to the PAS position] shall perform the functions and duties of the [PAS position] temporarily in an acting capacity'' (subject to certain time limitations), unless and until the President makes an alternative designation under the FVRA. The functions and duties of the PAS officers of the Department and the operational management of the respective agency will be performed by the incumbent first assistant to the PAS position, as designated in the Secretarial Memorandum to Department of Labor Executive Staff (see, ''Memorandum,'' attached to this Order).

(2) In the event that (a) there is a vacancy in the position of the first assistant, or (b) the first assistant position is occupied by a person who is statutorily barred from serving as an acting officer, the operational management of the agency headed by the PAS shall be performed by the person whose designation closest follows that of the first assistant, unless and until the President makes an alternative designation under the FVRA. However, the ''functions and duties'' of the PAS may not be performed by any person other than the person serving in an acting capacity (or, in the absence of an acting officer, by the Secretary pursuant to the FVRA). The ''functions and duties'' are those non-delegable responsibilities (a) established by law (statute or regulation); and (b) required to be performed by, and only by, the PAS.

(3) The Memorandum described in Paragraph 4.C.(1) above shall include succession to the heads of other Departmental organizational units that report to the Secretary.

(4) Nothing in this Order or the Memorandum shall: (1) be construed to override the provisions in the FVRA with respect to the Inspector General or the Chief Financial Officer (5 U.S.C. 3348(e)); or (2) limit the Secretary's authority to reassign functions or duties of officers unless otherwise precluded by law or regulation.

(5) The Memorandum shall be published in the **Federal Register** and codified in the Department of Labor Manual Series. It is also subject to periodic revision by the Secretary, as necessary, and is effective upon signature unless otherwise specified.

5. *Emergency Governance of the Department of Labor and Devolution of Authorities and Responsibilities*

A. Secretary (or Acting Secretary) of Labor. Unless otherwise directed by the President (or designee), upon the occurrence of a national emergency entailing a wholesale disruption of the operations, structure, and leadership of the Department of Labor, the Secretary or Acting Secretary (as designated by the President or as provided in the order of succession set forth in Paragraph 4.A. above) shall activate the governing Continuity Plans and determine whether the National Office of the Department of Labor will remain in the then existing location, be repositioned organizationally to the Relocation Site, or be repositioned and reconstituted at the Devolution Site.

B. Except as otherwise directed by the President (or designee), if (1) a catastrophic event occurs in the Washington, DC metropolitan area; (2) the incumbents identified in Paragraph 4.A. are unavailable or unlikely to be available promptly for succession; and (3) the incumbent(s) higher-situated to fill the role of Delegated Secretarial Designee (DSD) as provided in Paragraph 4.B. are unavailable or unlikely to be available promptly to assume the position of DSD, then consistent with the guidelines and operational plans of the Department and upon a review of the circumstances and Executive branch guidance, the incumbent in the next highest DSD-eligible position shall activate the governing Continuity Plans described in Paragraph 5.A. and, based upon those plans, determine whether the National Office of the Department of Labor will remain in the then existing location, be repositioned organizationally to the Relocation Site, or be repositioned and reconstituted in Dallas, Texas. If emergency circumstances exist that make identification of the DSD untenable, then the Regional Solicitor located in Dallas shall assume the duties and responsibilities described above in this Paragraph 5.B. unless and until the Secretary, Acting Secretary or a higher-situated official listed in Paragraph 4.B. above is identified and is available to serve.

6. *General and Specific Delegations of Authority and Assignment of Responsibilities*

A. *Acting Secretary:* Upon designation in accordance with the conditions and sequence set forth in Section 4.A. of this Order, the Acting Secretary shall have all of the authorities of the Secretary of Labor, whether statutorily-conferred or delegated by the President. The Acting Secretary shall provide for the full operational management of the Department of Labor, including, for example, the activation or modification of pre-existing Continuity Plans for the repositioning and reconstitution of the Department of Labor in the event of a national emergency.

B. *Delegated Secretarial Designee:* Upon designation in accordance with the conditions and sequence set forth above and subject to direction by the President or designee, the Secretary, or the Acting Secretary, the DSD shall fulfill interim operational management functions for the Department of Labor, performing all of the duties and responsibilities of the Secretary of Labor (except the ''functions and duties'' as defined in Paragraph 4.B. above) including, for example, the activation or modification of pre-existing Continuity Plans for the repositioning and reconstitution of the Department of Labor in the event of a national emergency.

C. *Assistant Secretary in charge of Administration and Management*

(ASAM) shall develop and provide on at least an annual basis a ''duties and responsibilities'' briefing to the designated Secretarial successors and DSDs and other key positions on their respective responsibilities, and on applicable relocation and reconstitution provisions, and shall establish (within 180 days from the date of this Order) and regularly thereafter update, in consultation with DOL Agency Heads, governing Continuity Plans for the repositioning and reconstitution of the Department of Labor upon the occurrence of national emergency scenarios entailing a wholesale disruption of the operations, structure, and leadership of the Department of Labor.

The governing Continuity Plans for the Department as approved by the ASAM shall reflect:

(1) The standards under a variety of scenarios for activation of the Continuity Plans;

(2) the determination of each agency head that the succession plans, delegations of authority and assignments of responsibility, emergency agency directives, standard operating procedures, and position descriptions needed to fulfill its mission, if devolved to or reconstituted in Dallas, are established, approved by the ASAM, and presented to the Dallas Regional Administrator (OASAM) for contingency activation by Secretary, Acting Secretary, or the Delegated Secretarial Designee;

(3) plans prepared by the Dallas Regional Administrator (OASAM) for receiving a devolved Department or for reconstituting the Department in the event of activation of the DOL Continuity Plans in Dallas, Texas; and

(4) the review by the Dallas Regional Administrator of each agency's succession plans, delegations of authority and assignments of responsibility, emergency agency directives, standard operating procedures, and position descriptions needed to fulfill its mission, if relocated to or reconstituted in Dallas, are established, and approved by the ASAM.

D. *The Chief Human Capital Officer* shall develop and approve (within 180 days from the date of this Order) and regularly thereafter update, a plan, consistent with applicable law, for managing, positioning and compensating DOL human resources in the event of a continuity of operations event, and shall assist with, and review the adequacy of, preparations by Agency Heads for repositioning and reconstituting the operations of their respective agencies. The Chief Human Capital Officer shall also assure that the position descriptions of all DSD-eligible incumbents reflect their potential DSD service.

E. *The Chief Acquisition Officer* shall develop and approve (within 180 days from the date of this Order) and regularly thereafter update, appropriate plans for assuring that all stages of the Department's central contracting needs can be met with regional resources and that emergency powers, to the extent permitted by law, are ready for activation upon the occurrence of a national emergency or major disruption, and shall assist with and review the adequacy of preparations by Agency Heads for repositioning and reconstituting the operations of their respective agencies.

F. *The Chief Information Officer* shall develop and approve (within 180 days from the date of this Order) and regularly thereafter update, appropriate plans for assuring that all of the Department's information technology systems have sufficient redundancies to support the timely relocation of the Department's Primary Mission Essential Functions and Mission Essential Functions and the reconstitution of the all the Department's organizations and functions, and shall assist with and review the adequacy of preparations by Agency Heads for repositioning and reconstituting the operations of their respective agencies.

G. (1) *The Assistant Secretary in charge of Administration and Management* shall, develop and approve (within 180 days from the date of this Order) and regularly thereafter update, plans, consistent with applicable law, for the establishment of budget formulation for a relocated or reconstituted Department and for securing apportionment flexibilities that will permit functions to be transferred and redistributed among DOL agencies and their respective appropriation accounts, and shall assist with and review the adequacy of preparations by Agency Heads for repositioning and reconstituting the operations of their respective agencies.

(2) *The Chief Financial Officer* shall develop and approve (within 180 days from the date of this Order) and regularly thereafter update, plans consistent with applicable law, for the establishment of budget execution capabilities for a relocated or reconstituted Department and shall assist with and review the adequacy of preparations by Agency Heads for repositioning and reconstituting the operations of their respective agencies.

H. *The Chief Property Officer* shall assist with and review the adequacy of preparations by Agency Heads for repositioning and reconstituting the operations of their respective agencies.

I. *The Solicitor of Labor* is delegated authority and assigned responsibility for providing legal advice and assistance to all officers of the Department relating to the administration and implementation of this Order and, if such an event arises, for a relocated or reconstituted Department. The bringing of legal proceedings, the representation of the Secretary and other officials of the Department, and the determination of whether such proceedings or representations are appropriate in a given case, are delegated exclusively.

J. *Agency Heads* shall assure completion (within 180 days from the date of this Order, and on a regular basis thereafter) of the planning, support, and consultation required by authorized officers in connection with all aspects of the administration of this Order, including:

(1) Establishing appropriate succession plans, delegations of authority and assignments of responsibility, emergency agency directives, vital record identification and protection, standard operating procedures, and position descriptions to assure for the continuity of agency operations relocated to the Relocation Site or the Devolution Site, as appropriate;

(2) Engaging in specific transitional planning with the ASAM, including provisions for appropriate transfer of staff and programs as appropriate, in order to create devolution plans for DOL Agencies whose Offices do not currently have staff and space available at the Devolution Site; and

(3) In consultation with the Office of the Solicitor, identifying, compiling, and reporting to the ASAM regarding those emergency authorities and responsibilities that may not be suspended, or are activated, during national emergencies of any type.

K. *The Dallas Regional Administrator (OASAM)* shall prepare and approve (within 180 days from the date of this Order) and regularly thereafter update, plans for receiving a relocated Department or for reconstituting the Department in the event of activation of the DOL Continuity Plans in the Devolution Site.

L. All employees of the Department shall be responsible for knowing their individual responsibilities in any continuity situation, for contacting DOL as soon as possible after a major incident consistent with applicable guidance and for being available to work during emergencies to the extent deemed necessary and appropriate and

consistent with OPM guidance. All employees shall also comply with such further directions as may be published from time to time in the Department's internal regulations or otherwise distributed relating to their duties and responsibilities during emergency circumstances.

7. *Reservations of Authority*

A. Except to the extent stated in this Order, this Secretary's Order does not affect the authorities and responsibilities of the Inspector General under the Inspector General Act of 1978, as amended, or Secretary's Order 04–2006 (February 21, 2006).

B. This Order does not affect any authorities and responsibilities of the Chief Financial Officer under the Chief Financial Officers Act of 1990, any other Federal law or regulation, or any Office of Management and Budget, Government Accountability Office, or U.S. Department of the Treasury policies and publications governing the fiscal responsibilities of Federal departments and agencies.

8. *Effective Date.* This Order is effective immediately.

Dated: August 4, 2008.

Elaine L. Chao,

Secretary of Labor.

Attachment

MEMORANDUM FOR DEPARTMENT OF LABOR EXECUTIVE STAFF

FROM: ELAINE L. CHAO

SUBJECT: To Provide for the Order of Succession for Executive Continuity

This memorandum is issued pursuant to Secretary's Order 4–2008 and the authorities cited therein, in order to provide lines of succession in case of absence, sickness, resignation, or death of agency heads and during periods of national emergency declared by the President and to provide for ongoing operational management of agency programs and personnel.

Functions and duties and ongoing operational management responsibilities of the officers of the Department whose appointment to office is required to be made by the President, by and with the advice and consent of the Senate (PAS), will be performed in an acting capacity by the below designated ''first assistants,'' unless and until the President makes an alternative designation under the Federal Vacancies Reform Act of 1998 (FVRA). Functions and duties are those non-delegable responsibilities established by law (statute or regulation) and required to be performed by, and only by, the PAS.

In the event that the first assistant does not serve or is barred from serving, unless and until the President makes an alternative designation under the FVRA, the person whose designation closest follows that of the first assistant shall perform the operational management of the agency. However, the functions and duties of the PAS may not be performed by any person other than the person serving in an acting capacity, in accord with FVRA (or, in the absence of an acting officer, by the Secretary pursuant to the FVRA).

The Office of the Chief Information Officer and the Bureau of International Labor Affairs, which are not covered by the statute, (because they are not headed by PAS positions) are included in this memorandum for the purpose of consolidating the presentation of the Department's program for establishing orderly internal succession in the event of vacancies.

This memorandum supersedes all prior inconsistent agency delegations. Agency Heads shall assure that agency delegations, position descriptions, and other pertinent documents are maintained consistently with the designations provided below. Any modifications to the Order of Succession specified in this memorandum are solely reserved to the Secretary.

This memorandum shall be published in the **Federal Register** and codified in the Department of Labor Manual Series. This memorandum is subject to periodic revision by the Secretary, as necessary, and is effective on the date indicated above.

DESIGNATION OF AGENCY FIRST ASSISTANT [1] AND ORDER OF SUCCESSION

A. PAS Positions Under the Secretary of Labor

Deputy Secretary of Labor:
- Designation to be made by Presidential direction, as provided in 5 U.S.C. § 3345.

Solicitor of Labor:
- *Deputy Solicitor*
- Deputy Solicitor (National Operations)
- Deputy Solicitor (Regional Operations)

Assistant Secretary in charge of Administration and Management:
- *Deputy Assistant Secretary for Operations*
- Deputy Assistant Secretary for Budget and Performance Planning
- Deputy Assistant Secretary for Security and Emergency Management

Assistant Secretary of Labor in charge of Policy:
- *Deputy Assistant Secretary for Policy* [2]
- Deputy Assistant Secretary for Policy (Operations and Analysis)

Assistant Secretary in charge of the Office of Congressional and Intergovernmental Affairs:
- *Deputy Assistant Secretary for Congressional Affairs*
- Deputy Assistant Secretary for Intergovernmental Affairs

Assistant Secretary in charge of the Employment and Training Administration:
- *Deputy Assistant Secretary* [3]
- Deputy Assistant Secretary for Employment and Training [4]

Assistant Secretary in charge of the Employment Standards Administration:
- *Administrator of the Wage and Hour Division*
- Deputy Assistant Secretary for Employment Standards
- Deputy Assistant Secretary for Federal Contract Compliance
- Deputy Assistant Secretary for Labor-Management Programs
- Deputy Assistant Secretary for Operations
- Director, Office of Workers' Compensation Programs

Assistant Secretary in charge of the Employee Benefits Security Administration: [5]
- *Deputy Assistant Secretary for Policy*
- Deputy Assistant Secretary for Program Operations

Assistant Secretary for the Occupational Safety and Health Administration:
- *Deputy Assistant Secretary* [6]
- Deputy Assistant Secretary

Assistant Secretary for the Mine Safety and Health Administration:
- *Deputy Assistant Secretary for Mine*

[1] The first assistants are designated in the list that follows as the position designated immediately below the PAS or non-PAS agency head position title.

[2] This Deputy Assistant Secretary serves as liaison to the Executive Office of the President to assure Departmental policies, goals, objectives and strategies reflect the Administration's positions.

[3] This Deputy Assistant Secretary position is responsible for the formulation of policies and development of multi-year goals, objectives and strategies, among other responsibilities. Organizationally, the position is known as the Deputy Assistant Secretary for the Workforce Investment System.

[4] This Deputy Assistant Secretary position is responsible for providing leadership and direction to ETA operations with specific direction provided to administrative and management systems and activities. Organizationally, this position is known as the Deputy Assistant Secretary for Administration and National Activity.

[5] Described as Assistant Secretary of Labor in charge of the Pension and Welfare Benefits Administration in Executive Order 13245. This agency was renamed Employee Benefits Security Administration in Secretary's Order 1–2003.

[6] This Deputy Assistant Secretary position is responsible for Congressional and Intergovernmental liaison activity, among other responsibilities.

Safety and Health [7]
Deputy Assistant Secretary for Mine Safety and Health [8]
Assistant Secretary in charge of the Office of Public Affairs:
Deputy Assistant Secretary [9]
Deputy Assistant Secretary [10]
Assistant Secretary for the Veterans' Employment and Training Service:
Deputy Assistant Secretary
Deputy Assistant Secretary for Operations and Management
Assistant Secretary in charge of the Office of Disability Employment Policy:
Deputy Assistant Secretary
Chief Financial Officer:
Deputy Chief Financial Officer
Administrator of the Wage and Hour Division:
Deputy Wage and Hour Administrator
Deputy Wage and Hour Administrator (Operations)
Deputy Wage and Hour Administrator for Enforcement
Director of the Women's Bureau:
Chief of Staff [11]
Commissioner of Labor Statistics:
Deputy Commissioner
Inspector General:
Deputy Inspector General

Non-PAS Agency Head Positions

Deputy Under Secretary for International Affairs of the Bureau of International Labor Affairs:
Associate Deputy Under Secretary for International Affairs
Chief Information Officer:
Deputy Chief Information Officer

[FR Doc. E8–18334 Filed 8–7–08; 8:45 am]

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[7] This Deputy Assistant Secretary is responsible for the formulation of policies and development of multi-year goals, objectives, and strategies, among other responsibilities. Organizationally, the position is known as the Deputy Assistant Secretary for Policy.

[8] This Deputy Assistant Secretary is responsible for the day-to-day management of internal operations, among other responsibilities. Organizationally, the position is known as the Deputy Assistant Secretary for Operations.

[9] This Deputy Assistant Secretary serves as the primary adviser to the Assistant Secretary and other DOL officials on public affairs aspects of policy and program development, among other responsibilities.

[10] This Deputy Assistant Secretary develops marketing and public outreach campaigns for programs or issues and serves as the primary spokesperson for the Secretary and the Department, among other responsibilities.

[11] This position is first assistant, pursuant to 29 U.S.C. 14.

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