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9 a.m.–12:30 p.m.

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741–6008

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

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

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

20 CFR Part 1910

[Docket No. OSHA–2008–0034]

RIN 1218–AC08

Revising Standards Referenced in the Acetylene Standard

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Final rule; confirmation of effective date.

SUMMARY: OSHA is confirming the effective date of its direct final rule that revises the Acetylene Standard for general industry by updating references to standards published by standards-developing organizations. The direct final rule stated that it would become effective on November 9, 2009, unless OSHA received no significant adverse comments on the direct final rule by September 10, 2009. OSHA received eight comments on the direct final rule by that date, which it determined were not significant adverse comments. Therefore, OSHA is confirming that the direct final rule became effective on November 9, 2009.

DATES: The direct final rule published on August 11, 2009, is effective on November 9, 2009. For the purposes of judicial review, OSHA considers November 9, 2009 as the date of issuance.

FOR FURTHER INFORMATION CONTACT:

General information and press inquiries: Contact Jennifer Ashley, Director, OSHA Office of Communications, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–1999.

Technical information: Contact Ted Twardowski, Directorate of Standards and Guidance, Room N–3609, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–2070; fax: (202) 693–1663.

*Copies of this **Federal Register** notice.* Electronic copies of this **Federal Register** notice are available at *http://www.regulations.gov.* This **Federal Register** notice, as well as news releases and other relevant information, are also available at OSHA's Web page at *http://www.osha.gov.*

ADDRESSES: In compliance with 28 U.S.C. 2112(a), OSHA designates the Associate Solicitor of Labor for Occupational Safety and Health as the recipient of petitions for review of the final standard. Contact the Associate Solicitor at the Office of the Solicitor, Room S–4004, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–5445.

SUPPLEMENTARY INFORMATION: On August 11, 2009, OSHA published the direct final rule in the **Federal Register** that revised the Acetylene Standard for general industry by updating references to standards published by standards-developing organizations (see 74 FR 40442). In that **Federal Register** document OSHA also stated that it would confirm the effective date of the direct final rule, if it received no significant adverse comments on the direct final rule.

OSHA received eight comments on the direct final rule, which it determined were not significant adverse comments. Several of these commenters observed that the Compressed Gas Association updated the CGA G–1 standard this year, and recommended that OSHA adopt this new edition (Exs. OSHA–2008–0034–0017, –0010, and –0022). OSHA did not include the 2009 edition of CGA G–1 in the direct final rule because that edition was not made available to OSHA prior to publication of the direct final rule, and, therefore, was beyond the scope of this rulemaking. In its comments, the Compressed Gas Association noted that the only difference between the 2003 edition referenced in the direct final rule and the recently issued 2009 edition is the addition of one sentence to a note in section 5.2 of the 2009 edition, which reads, ''Additionally, single cylinders of acetylene and oxygen located at a work station (e.g., chained to a wall or building column or secured to a cart) shall be considered 'in service' '' (*see* Ex. OSHA–2008–0034–0020). Nevertheless, OSHA plans to update the reference to CGA G–1 in a future rulemaking as resources and priorities permit.

Another commenter complained of the economic burden imposed by the flow-rate provision of the 2003 edition of CGA G–1 (Ex. OSHA–2008–0034–0021). In this regard, the 1966 edition of the standard (the edition cited previously in 29 CFR 1910.102(a)) specified a flow rate of one-seventh of the capacity of the cylinder per hour regardless of the duration of use, while the 2003 edition reduced this flow rate to one-tenth of the cylinder capacity per hour during intermittent use, and one-fifteenth of the cylinder capacity per hour during continuous use. This commenter stated, ''As long as this flow rate [in the 2003 edition] remains advisory * * * this is not a problem.'' In the first footnote in the preamble of the direct final rule, OSHA noted that ''both of these flow-rate provisions [in either the 1966 or 2003 editions] are advisory, not mandatory.'' Therefore, employers may use any flow rate that provides employees with an appropriate level of safety.

Two commenters appeared to confuse the Acetylene Standard at 29 CFR 1910.102, which was the subject of this rulemaking, with OSHA's standard regulating oxygen-fuel gas welding and cutting at 29 CFR 1910.253 (Exs. OSHA–2008–0034–0002 and –0018). The first commenter asked, ''[W]hat are the dimension[s] of a wall that would separate oxygen and acetylene tanks for storage in a[n industrial] shop.'' The second commenter noted that a provision in the 2003 edition of CGA G–1 requires that a regulator and flow restrictor be attached to an acetylene cylinder before opening the cylinder valve, and asserted that this provision contradicted other OSHA standards requiring that a cylinder valve be ''cracked'' before attaching a regulator to it. These comments address requirements for the use of acetylene in welding operations, which is regulated for general industry under 29 CFR 1910.253, and not the requirements for the generation and distribution of acetylene, which is regulated for general

industry under 29 CFR 1910.102. Accordingly, practices and conditions that apply to acetylene stored in cylinders and used in welding operations may differ from the practices and conditions appropriate to bulk storage of acetylene in generation and distribution facilities.

One commenter expressed concern that OSHA would apply retroactively to existing acetylene-generating facilities that were compliant with the appropriate standards when originally constructed, those sections of the NFPA 51A–2001 standard that address site location, design, and materials (Ex. OSHA–2008–0034–0019). The commenter noted that applying the updated NFPA standard in this fashion would require moving or demolishing the facilities, or discontinuing operations. In response to this commenter, OSHA notes that section 1.2.2 of NFPA 51A–2001 states, ''An existing plant that is not in strict compliance with the provisions of this standard shall be permitted to continue operations where such use does not constitute a distinct hazard to life or adjoining property.'' This provision indicates clearly that NFPA 51A–2001 does not apply to acetylene plants in existence prior to publication of the standard when the operations in these plants do not endanger employees. Therefore, OSHA considers acetylene plants in existence prior to the effective date of NFPA 51A–2001 (i.e., February 9, 2001) to be in compliance with that standard when the acetylene operations in these plants do not ''constitute a distinct hazard'' to employees.

List of Subjects in 29 CFR Part 1910

Acetylene, General industry, Occupational safety and health, Safety.

Authority and Signature

Jordan Barab, Acting Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, directed the preparation of this final rule. OSHA is issuing this final rule pursuant to Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, and 657), 5 U.S.C. 553, Secretary of Labor's Order 5–2007 (72 FR 31160), and 29 CFR part 1911.

Signed at Washington, DC, on November 5, 2009.

Jordan Barab,

Acting Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. E9–27004 Filed 11–9–09; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket Number USCG–2009–0963]

Drawbridge Operating Regulations; Victoria Barge Canal, Bloomington, TX

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Union Pacific Railroad (UPRR) Vertical Lift Span Bridge across the Victoria Barge Canal, mile 29.4 at Bloomington, Victoria County, Texas. The deviation is necessary to allow for one phase of an on-going maintenance project to replace the lift span motors and brakes.

DATES: This deviation is effective from 7 a.m. on Tuesday, December 1, 2009 until 7 p.m. on Wednesday, December 2, 2009.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2009–0963 and are available online by going to *http://www.regulations.gov,* inserting USCG–2009–0960 in the ''Keyword'' box and then clicking ''Search.'' They are also available for inspection or copying at 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.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Phil Johnson, Bridge Administration Branch, Eighth Coast Guard District; telephone 504–671–2128, e-mail *Philip.R.Johnson@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

The Victoria County Navigation District has requested a temporary deviation from the operating schedule of the UPRR Vertical Lift Span Bridge across the Victoria Barge Canal, mile 29.4 at Bloomington, Texas. The vertical lift bridge has a vertical clearance of 22 feet above high water in the closed-to-navigation position and 50 feet above high water in the open-to-navigation position.

Presently, the bridge opens on signal for the passage of vessels. This deviation allows the draw span of the bridge to remain closed to navigation for 12 consecutive hours between 7 a.m. and 7 p.m. each day on December 1 and 2, 2009. Navigation on the waterway consists mainly of tugs with tows. Due to prior experience and coordination with waterway users, it has been determined that this closure will not have a significant effect on these vessels.

No alternate routes are available. The closures are necessary for one phase of an on-going maintenance project to replace the lift span motors and brakes on the bridge. The Coast Guard has coordinated the closures with the commercial users of the waterway.

In accordance with 33 CFR 117.35(e), the drawbridge 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: October 28, 2009.

David M. Frank,

Bridge Administrator.

[FR Doc. E9–26984 Filed 11–9–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2009–0686]

Drawbridge Operation Regulations; Lower Grand River, Iberville Parish, LA

AGENCY: Coast Guard, DHS.

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

SUMMARY: The Commander, Eighth Coast Guard District, has issued a temporary deviation from the regulations governing the operation of the LA 75 pontoon bridge and the LA 77 swing bridge across the Lower Grand River, mile 38.4 and 47.0 respectively, in Iberville Parish, Louisiana. This deviation will test a change to both drawbridge's operating schedules to determine whether permanent changes to the schedules are needed. The deviation will allow an additional 30 minutes to the end of each scheduled closure period to provide more time for school buses to transit across the bridges.

DATES: This deviation is effective from November 25, 2009 through December 28, 2009.

Comments, requests for public meetings, and related material must be

received by the Coast Guard on or before January 11, 2010.

ADDRESSES: You may submit comments identified by docket number USCG–2009–0686 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *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.

(4) *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.

To avoid duplication, please use only one of these methods. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail Lindsey Middleton, Bridge Administration Branch; telephone 504–671–2128, e-mail *Lindsey.R.Middleton@uscg.mil.* 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 materials. All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2009–0686), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (*http://www.regulations.gov*), or by fax, mail or hand delivery, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand delivery, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a 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.

To submit your comment online, go to *http://www.regulations.gov,* click on the ''submit a comment'' box, which will then become highlighted in blue. In the ''Keyword'' box insert ''USCG–2009–0686,'' click ''Search,'' and then click on the balloon shape in the ''Actions'' column. If you submit your comments by mail or hand 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 and may change the rule based on your comments.

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,* click on the ''read comments'' box, which will then become highlighted in blue. In the ''Keyword'' box insert ''USCG–2009–0686'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. You may also visit 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, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of 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 notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one on using one of the four methods specified under **ADDRESSES**. Please explain 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 Iberville Parish School Board has requested a change in the operation regulations for the LA 75 pontoon bridge and the LA 77 swing bridge across the Lower Grand River, mile 38.4 and 47.0, respectively, in Iberville Parish, Louisiana. The change would add an additional 30 minutes to the end of each scheduled closure period to provide more time for school buses to transit across the bridge. Extra time is now needed because one of Iberville Parish's high schools has been closed. As a result, students have been redistricted creating the need for buses to have more time to transit the students over the bridges to get to and from school.

Presently, 33 CFR 117.478 (a) states: The draw of the LA 75 bridge, mile 38.4 (Alternate Route) at Bayou Sorrel, shall open on signal; except that, from about August 15 to about June 5 (the school year), the draw need not be opened from 6 a.m. to 7:30 a.m. and from 3 p.m. to 4:30 p.m., Monday through Friday except holidays. The draw shall open on signal at any time for an emergency aboard a vessel.

Presently, 33 CFR 117.478 (b) states: The draw of the LA 77 bridge, mile 47.0 (Alternate Route) at Grosse Tete, shall open on signal; except that from about August 15 to about June 5 (the school year), the draw need not be opened from 6 a.m. to 8 a.m. and from 2:30 p.m. to 4:30 p.m., Monday through Friday except Federal holidays. The draw shall open on signal at any time for an emergency aboard a vessel.

The Iberville Parish School Board has requested that the operating regulation of both the LA 75 and LA 77 bridges be changed to open on signal; except that, from about August 15 to about June 5 (the school year), the LA 75 bridge need not be opened from 6 a.m. to 8 a.m. and from 3 p.m. to 5 p.m., Monday through Friday except holidays and the LA 77 bridge need not be opened from 6 a.m. to 8:30 a.m. and from 2:30 p.m. to 5 p.m., Monday through Friday except Federal holidays. Both draws shall open on signal at any time for an emergency aboard a vessel.

We are testing these potential operating regulation adjustments to discover any outcomes in vehicular traffic and water navigation as a result of the time adjustments. During the temporary deviation period a traffic count has been requested from

Louisiana Department of Transportation and Development.

This deviation is effective from November 25, 2009 until December 28, 2009.

The LA 75 bridge is a pontoon bridge, there is no access for vessels to pass through the bridge while it is in the closed-to-navigation position. Vessels have access to two different alternate routes. One route is the Atchafalaya River and, the other accessible route is the Gulf Intracoastal Waterway.

The LA 77 bridge is a swing span bridge and has a vertical clearance of 2.5 feet above mean high water, elevation 9.0 feet mean sea level and 11.5 feet above mean low water, elevation 0.0 mean sea level in the closed-to-navigation position. Vessels have access to the Gulf Intracoastal Waterway as an alternate route.

In accordance with 33 CFR 117.35(e), the drawbridge 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: October 14, 2009.

David M. Frank,

Bridge Administrator.

[FR Doc. E9–26988 Filed 11–9–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2008–0085]

RIN 1625–AA11

Regulated Navigation Area; East Rockaway Inlet to Atlantic Beach Bridge, Nassau County, Long Island, NY

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a regulated navigation area extending from the entrance of East Rockaway Inlet to the Atlantic Beach Bridge, Nassau County, New York. This regulated navigation area will affect commercial vessels carrying petroleum products in excess of 250 barrels by requiring them to plan all transits of the regulated navigation area so that they maintain a minimum of two feet under keel clearance at all times. Additionally, they may not transit the regulated navigation area if a small craft advisory, or more severe weather warning, has been issued, unless authorized by the Captain of the Port Long Island Sound. This action is necessary because significant shoaling in this area has reduced the depths of the navigable channel and has increased the risk of vessels grounding in the channel and the potential for a significant oil spill.

DATES: This rule is effective December 10, 2009.

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–2008–0085 and are available online by going to *http://www.regulations.gov,* inserting USCG–2008–0085 in the ''Keyword'' box, and then clicking ''Search.'' This material is also available for inspection or copying at 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.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or *e-mail:* Chief Petty Officer Christie Dixon, Prevention Department, USCG Sector Long Island Sound at 203–468–4459, *e-mail: christie.m.dixon@uscg.mil.* 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 June 15, 2009, we published a notice of proposed rulemaking (NPRM) entitled ''Regulated Navigation Area; East Rockaway Inlet to Atlantic Beach Bridge, Nassau County, Long Island, NY'' in the **Federal Register** (74 FR 28199). We did not receive any comments or requests for meetings on the proposed rule.

Background and Purpose

East Rockaway Inlet is on the South Shore of Long Island, in Nassau County. Water depths in the federal navigation channel change constantly and have been reduced in some areas to as low as five feet at times. This channel was last dredged by the Army Corps of Engineers during the winter of 2008–2009 and is on a 2 year cycle for dredge work. The channel buoys require regular relocation to mark best water as the channel shoals in between dredge cycles. East Rockaway Inlet is frequented by small coastal tankers and tugs towing oil barges supplying two facilities: Sprague Energy Oceanside, located in Oceanside, Long Island, New York, a supplier of home heating oil for Long Island, and Keyspan E.F. Barrett, an electrical power generation facility, located in Island Park, Long Island, New York. For vessels carrying 250 or more barrels of petroleum, approximately 60 transits occur in that area each year. The shoaling in this area has reduced depths to a point where there is an increased risk of vessels grounding and the potential for a significant oil spill. Similar shoaling led to the grounding in late 2003 of a small coastal tanker carrying home heating oil.

This rule will provide for the safety of vessel traffic and protection of the maritime environment in and around East Rockaway Inlet, Long Island, New York.

Discussion of Comments and Changes

There were not any comments or changes to the regulatory text.

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.

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 may affect the following entities, some of which may be small entities: The owners or operators of vessels carrying petroleum products intending to transit or anchor in those portions of the East Rockaway Inlet covered by the regulated navigation area; and Sprague Energy Oceanside and Keyspan E.S. Barrett which receive the vessels affected by this regulated

navigation area. Recreational and other maritime traffic is not otherwise restricted or prohibited from transiting this area. In the NPRM the Coast Guard invited small entities who thought their business would be affected by this rule to submit a comment explaining why the entity qualifies and how and to what degree this rule would economically affect it. No comments were received and no changes were made to the regulation.

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.

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 does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards 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 023–01 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 this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule which involves the establishment of a regulated navigation area was published as a Notice of Proposed Rulemaking with an invitation to comment on June 15, 2009. No comments were received that would affect the assessment of environmental impacts from this action. 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. The authority citation for part 165 continues 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; Public Law 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.156 to read as follows:

§ 165.156 Regulated Navigation Area, East Rockaway Inlet to Atlantic Beach Bridge, Nassau County, Long Island, New York.

(a) *Location.* The following area is a Regulated Navigation Area: All waters of East Rockaway Inlet in an area bounded by lines drawn from position 40°34′56″ N, 073°45′19″ W, (approximate position of Silver Point breakwater buoy, LLNR 31500) running north to a point of land on the northwest side of the inlet at position 40°35′28″ N, 073°46′12″ W, thence easterly along the shore to the east side of the Atlantic Beach Bridge, State Route 878, over East Rockaway Inlet, thence across the bridge to the south side of East Rockaway Inlet, thence westerly along the shore and across the water to the beginning.

(b) *Regulations.* (1) The general regulations contained in 33 CFR 165.10, 165.11, and 165.13 apply.

(2) In accordance with the general regulations, the following regulations apply to vessels carrying petroleum products in excess of 250 barrels:

(i) The vessel must have plans in place to maintain a minimum of two feet under keel clearance at all times.

(ii) A vessel requiring a nighttime transit through East Rockaway Inlet may only do so only after receiving approval from the Captain of the Port Long Island Sound.

(iii) Vessels are prohibited from transiting East Rockaway Inlet if a small craft advisory or greater has been issued for the area unless specific approval is received from the Captain of the Port Long Island Sound.

(iv) In an emergency, any vessel may deviate from the regulations in this section to the extent necessary to avoid endangering the safety of persons, the environment, and or property. If deviation from the regulations is necessary, the master or their designee shall inform the Coast Guard as soon as it is practicable to do so.

(c) *Waivers.* (1) The Captain of the Port Long Island Sound may, upon request, waive any regulation in this section.

(2) An application for a waiver must state the need for the waiver and describe the proposed vessel operations through the Regulated Navigation Area.

Dated: October 22, 2009.

Joseph L. Nimmich,

Rear Admiral, U.S. Coast Guard Commander, First Coast Guard District.

[FR Doc. E9–26991 Filed 11–9–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2009–0319]

RIN 1625–AA00

Safety Zone; Sea World December Fireworks, Mission Bay, San Diego, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone upon the navigable waters of Mission Bay near San Diego, California in support of the Sea World December Fireworks. This safety zone is necessary to provide for the safety of the participants, crew, spectators, participating vessels, and other users of the waterway. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port or his designated representative.

DATES: This rule is effective from 8 p.m. until 10 p.m. on December 12, 2009.

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–2009–0319 and are available online by going to *http://www.regulations.gov,* inserting USCG–2009–0319 in the ''Keyword'' box, and then clicking ''Search.'' This material is also available for inspection or copying at 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.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail Petty Officer Shane Jackson, Waterways Management, U.S. Coast Guard Sector San Diego at telephone 619–278–7262, e-mail *Shane.E.Jackson@uscg.mil.* 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 August 6, 2009, we published a notice of proposed rulemaking (NPRM) entitled Safety Zone; Sea World December Fireworks, Mission Bay, San Diego, CA in the **Federal Register** (74 FR 39247). We received no comments on the proposed rule. No public meeting was requested, and none was held.

Background and Purpose

Sea World is sponsoring the Sea World December Fireworks, which will include a fireworks presentation from a barge in Mission Bay. The safety zone will extend in a 600 foot radius around the barge in approximate position 32°46′03″ N, 117°13′11″ W. This temporary safety zone is necessary to provide for the safety of the crew, spectators, participants, and other vessels and users of the waterway.

Discussion of Comments and Changes

The Coast Guard received no comments and made no changes to the proposed regulation.

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 expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary. This determination is based on the size and location of the safety zone. Commercial vessels will not be hindered by the safety zone. Recreational vessels will not be allowed to transit through the designated safety zone during the specified times unless authorized to do so by the Captain of the Port or his designated representative.

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 for the following reasons: Vessel traffic can pass safely around the safety zone. Before the effective period, the Coast Guard will publish a local notice to mariners (LNM) and will issue broadcast notice to mariners (BNM) alerts via marine channel 16 VHF before the safety zone is enforced.

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.

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 does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards 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 023–01 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 this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction because the rule involves the establishment of a safety zone.

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. The authority citation for part 165 continues 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.

■ 2. Add temporary § 165.T11–227 to read as follows:

§ 165.T11–227 Safety Zone; Sea World December Fireworks, Mission Bay, San Diego, CA.

(a) *Location.* The following area is a safety zone: All waters of Mission Bay, from surface to bottom, within a 600 foot radius around the fireworks launch

barge in approximate position 32°46′03″ N, 117°13′11″ W.

(b) *Enforcement Period.* This section will be enforced from 8 p.m. to 10 p.m. on December 12, 2009. If the event concludes prior to the scheduled termination time, the Captain of the Port will cease enforcement of this safety zone and will announce that fact via Broadcast Notice to Mariners.

(c) *Definitions.* The following definition applies to this section: *Designated representative* means any commissioned, warrant, or petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, or local, state, or federal law enforcement vessels who have been authorized to act on the behalf of the Captain of the Port.

(d) *Regulations.* (1) Entry into, transit through or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port of San Diego or his designated on-scene representative.

(2) Mariners requesting permission to transit through the safety zone may request authorization to do so from the Sector San Diego Command Center. The Command Center may be contacted on VHF–FM Channel 16.

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

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

(5) The Coast Guard may be assisted by other Federal, State, or local agencies.

Dated: October 20, 2009.

T.H. Farris,

Captain, U.S. Coast Guard, Captain of the Port San Diego.

[FR Doc. E9–26992 Filed 11–9–09; 8:45 am]

BILLING CODE 4910–15–P

POSTAL SERVICE

39 CFR Part 20

International Product and Price Changes

AGENCY: Postal Service™.

ACTION: Final rule.

SUMMARY: The Postal Service is revising *Mailing Standards of the United States Postal Service,* International Mail Manual (IMM®), to reflect changes to the prices for the following Shipping Services:

- *Global Express Guaranteed® (GXG®).*
- *Express Mail International® (EMI).*
- *Priority Mail International® (PMI).*

In addition to the above shipping services changes the Postal Service adds an individual country listing for Kosovo to reflect it's independence from the Republic of Serbia.

We are implementing this international price change concurrent with our domestic shipping services price change. The price increases for retail services average 4.1 percent for GXG service; 2.9 percent for Express Mail International service; and 3.0 percent for Priority Mail International service.

DATES: *Effective Date:* January 4, 2010.

FOR FURTHER INFORMATION CONTACT: Obataiye B. Akinwole at 703–292–5260.

SUPPLEMENTARY INFORMATION: On September 22, 2009, the Governors of the Postal Service established new prices for shipping services. The new prices are effective on January 4, 2010. Only the shipping services prices will change in January.

This final rule describes the international price changes and the mailing standards changes required for implementation.

Global Express Guaranteed

Global Express Guaranteed (GXG) service is an international expedited delivery service provided through an alliance with FedEx Express. GXG service provides reliable, high-speed, date-certain service with a money-back guarantee to over 190 countries.

The price increase for retail GXG service averages approximately 4.1 percent. The commercial base price for customers who prepare and pay for shipments online at USPS.com or by using an authorized PC Postage® vendor remains 10 percent below the retail price.

Express Mail International

Express Mail International (EMI) service provides reliable, high-speed service to over 190 countries with a money-back, date-certain delivery guarantee to select destinations.

The price increase for retail Express Mail International service averages approximately 2.9 percent. The commercial base price for customers that prepare and pay for shipments online at USPS.com or by using an authorized PC Postage vendor remains 8 percent below the retail price.

Priority Mail International

Priority Mail International (PMI) service offers economical prices for reliable delivery of documents and merchandise, usually within 6 to 10 business days to many major markets.

The price increase for retail Priority Mail International service averages approximately 3.0 percent. The commercial base price for customers that prepare and pay for shipments online at usps.com or by using an authorized PC Postage vendor remains 5 percent below the retail price.

Kosovo

We are adding an Individual Country Listing for Kosovo. This change is necessary to reflect Kosovo's independence from Serbia.

The Postal Service hereby adopts the following changes to *Mailing Standards of the United States Postal Service,* International Mail Manual (IMM), which is incorporated by reference in the *Code of Federal Regulations.* See 39 CFR 20.1

List of Subjects in 39 CFR Part 20

Foreign relations, International postal services.

■ Accordingly, 39 CFR Part 20 is amended as follows:

PART 20—[AMENDED]

■ 1. The authority citation for 39 CFR Part 20 continues to read as follows:

Authority: 5 U.S.C. 552(a); 13 U.S.C. 301–307; 39 U.S.C. 401, 403, 404, 407, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

■ 2. Revise the following sections of *Mailing Standards of the United States Postal Service,* International Mail Manual (IMM), as follows:

* * * * *

2 Conditions for Mailing

210 Global Express Guaranteed

* * * * *

213 Prices and Postage Payment Methods

* * * * *

213.5 Destinating Countries and Price Groups

* * * * *

Exhibit 213.5

Destinating Countries and Price Groups

[Add a listing for Kosovo as follows:]

Country	GXG price group
* * * * *	
Kosovo	4

* * * * *

220 Express Mail International

* * * * *

223 Price and Postage Payment Methods

223.1 Prices

* * * * *

223.12 Express Mail International Flat-Rate Envelope Prices

* * * * *

Exhibit 223.12

Express Mail International Flat-Rate Envelope

[Revise Exhibit 223.12 by changing the prices as follows:]

Canada & Mexico	$26.95
All other countries	28.95

* * * * *

230 Priority Mail International

* * * * *

233 Prices and Postage Payment Methods

233.1 Prices

* * * * *

233.12 Priority Mail International Flat-Rate Envelope and Small Flat-Rate Box

* * * * *

Exhibit 233.12

Priority Mail International Flat-Rate Envelope and Small Flat-Rate Box

[Revise Exhibit 233.12 by changing the prices as follows:]

Canada & Mexico	$11.45
All other countries	13.45

233.13 Priority Mail International Regular/Medium and Large Flat-Rate Boxes

* * * * *

Exhibit 233.13

Priority Mail International—Regular/Medium and Large Flat-Rate Boxes

[Revise Exhibit 233.13 by changing the prices as follows:]

International destination	Regular/medium	Large
Canada & Mexico	$26.95	$33.95
All other countries	43.45	55.95

* * * * *

240 First-Class Mail International

* * * * *

243 Prices and Postage Payment Methods

243.1 Prices

* * * * *

243.13 Destinating Countries and Price Groups

* * * * *

Exhibit 243.13

First-Class Mail International Price Groups

[Add an alphabetical listing for Kosovo in Exhibit 243.13 as follows:]

Country	Price group
* * * * *	
Kosovo	5

* * * * *

290 Commercial Services

* * * * *

292 International Priority Airmail (IPA) Service

* * * * *

292.452 Presorted Mail—Direct Country Bundle Label

* * * * *

Exhibit 292.452

IPA Country Price Groups and Foreign Exchange Offices

[Add an alphabetical listing for Kosovo in Exhibit 292.452 as follows:]

Country	Exchange office name	Destination code	Price group
* * * * * * *			
Kosovo	Pristina	PRN	12

* * * * *

Index of Countries and Localities

* * * * *

[Add an alphabetical reference for Kosovo as follows:]

* * * * *

Kosovo, Republic of * * * [INSERT PAGE NUMBER]

* * * * *

Country Price Groups and Weight Limits

[Add an alphabetical listing for Kosovo as follows:]

* * * * *

Country	GXG	GXG	EMI	EMI	PMI [1]	PMI	FCMI	FCMI
	Price group	Max. wt. (lbs.)	Price group	Max. wt. (lbs.)	Price group	Max. wt. (lbs.)	Price group	Max. wt.[2] (lbs.)
* * * * * * *								
Kosovo	4	70	-	-	5	70	5	3.5/4

* * * * *

Individual Country Listings

* * * * *

Country Conditions for Mailing

* * * * *

[For each country for which a Global Express Guaranteed price table is provided replace the Global Express Guaranteed price table with the appropriate table based on the prices below:]

BILLING CODE 7710–12–P

Global Express Guaranteed (210)

Weight Not Over (lb.)	GXG Price Groups							
	1	2	3	4	5	6	7	8
0.5	$33.95	$34.95	$42.95	$93.95	$44.95	$45.95	$43.95	$63.95
1	$53.50	$55.75	$64.00	$110.00	$68.75	$68.75	$56.00	$79.00
2	$57.75	$63.00	$73.25	$128.50	$77.50	$78.50	$64.25	$97.50
3	$62.00	$70.25	$82.50	$147.00	$86.25	$88.25	$72.50	$116.00
4	$66.25	$77.50	$91.75	$165.50	$95.00	$98.00	$80.75	$134.50
5	$70.50	$84.75	$101.00	$184.00	$103.75	$107.75	$89.00	$153.00
6	$74.75	$92.00	$110.25	$202.50	$112.50	$117.50	$97.25	$171.50
7	$79.00	$99.25	$119.50	$221.00	$121.25	$127.25	$105.50	$190.00
8	$83.25	$106.50	$128.75	$239.50	$130.00	$137.00	$113.75	$208.50
9	$87.50	$113.75	$138.00	$258.00	$138.75	$146.75	$122.00	$227.00
10	$91.75	$121.00	$147.25	$276.50	$147.50	$156.50	$130.25	$245.50
11	$95.50	$125.25	$152.50	$291.00	$154.25	$166.25	$136.50	$258.00
12	$99.25	$129.50	$157.75	$305.50	$161.00	$176.00	$142.75	$270.50
13	$103.00	$133.75	$163.00	$320.00	$167.75	$185.75	$149.00	$283.00
14	$106.75	$138.00	$168.25	$334.50	$174.50	$195.50	$155.25	$295.50
15	$110.50	$142.25	$173.50	$349.00	$181.25	$205.25	$161.50	$308.00
16	$114.25	$146.50	$178.75	$363.50	$188.00	$215.00	$167.75	$320.50
17	$118.00	$150.75	$184.00	$378.00	$194.75	$224.75	$174.00	$333.00
18	$121.75	$155.00	$189.25	$392.50	$201.50	$234.50	$180.25	$345.50
19	$125.50	$159.25	$194.50	$407.00	$208.25	$244.25	$186.50	$358.00
20	$129.25	$163.50	$199.75	$421.50	$215.00	$254.00	$192.75	$370.50
21	$133.00	$167.75	$205.00	$436.00	$221.75	$263.75	$199.00	$383.00
22	$136.75	$172.00	$210.25	$450.50	$228.50	$273.50	$205.25	$395.50
23	$140.50	$176.25	$215.50	$465.00	$235.25	$281.25	$211.50	$408.00
24	$144.25	$180.50	$220.75	$479.50	$242.00	$289.00	$217.75	$420.50
25	$148.00	$184.75	$226.00	$494.00	$248.75	$296.75	$224.00	$433.00
26	$151.75	$188.25	$231.25	$508.50	$255.50	$304.50	$230.25	$445.50
27	$155.50	$191.75	$236.50	$523.00	$262.25	$312.25	$236.50	$458.00
28	$159.25	$195.25	$241.75	$537.50	$269.00	$320.00	$242.75	$470.50
29	$163.00	$198.75	$247.00	$552.00	$275.75	$327.75	$249.00	$483.00
30	$166.75	$202.25	$252.25	$566.50	$282.50	$335.50	$255.25	$495.50
31	$170.50	$205.75	$257.50	$581.00	$289.25	$343.25	$261.50	$508.00
32	$174.25	$209.25	$262.75	$595.50	$296.00	$351.00	$267.75	$520.50
33	$178.00	$212.75	$268.00	$610.00	$302.75	$358.75	$274.00	$533.00
34	$181.75	$216.25	$273.25	$624.50	$309.50	$366.50	$280.25	$545.50
35	$185.50	$219.75	$278.50	$639.00	$316.25	$374.25	$286.50	$558.00
36	$189.25	$223.25	$283.75	$653.50	$323.00	$382.00	$292.75	$570.50
37	$193.00	$226.75	$289.00	$668.00	$329.75	$389.75	$299.00	$583.00
38	$196.75	$230.25	$294.25	$682.50	$336.50	$397.50	$305.25	$595.50
39	$200.50	$233.75	$299.50	$697.00	$343.25	$405.25	$311.50	$608.00
40	$204.25	$237.25	$304.75	$711.50	$350.00	$413.00	$317.75	$620.50
41	$207.50	$240.75	$310.00	$722.00	$356.25	$420.75	$323.50	$630.00
42	$210.75	$244.25	$315.25	$732.50	$362.50	$428.50	$329.25	$639.50

43	$214.00	$247.75	$320.50	$743.00	$368.75	$436.25	$335.00	$649.00
44	$217.25	$251.25	$325.75	$753.50	$375.00	$444.00	$340.75	$658.50
45	$220.50	$254.75	$331.00	$764.00	$381.25	$451.75	$346.50	$668.00
46	$223.75	$258.25	$336.25	$774.50	$387.50	$459.50	$352.25	$677.50
47	$227.00	$261.75	$341.50	$785.00	$393.75	$467.25	$358.00	$687.00
48	$230.25	$265.25	$346.75	$795.50	$400.00	$475.00	$363.75	$696.50
49	$233.50	$268.75	$352.00	$806.00	$406.25	$482.75	$369.50	$706.00
50	$236.75	$272.25	$357.25	$816.50	$412.50	$490.50	$375.25	$715.50
51	$239.50	$275.00	$362.50	$827.00	$418.75	$498.25	$381.00	$725.00
52	$242.25	$277.75	$367.75	$837.50	$425.00	$506.00	$386.75	$734.50
53	$245.00	$280.50	$373.00	$848.00	$431.25	$513.75	$392.50	$744.00
54	$247.75	$283.25	$378.25	$858.50	$437.50	$521.50	$398.25	$753.50
55	$250.50	$286.00	$383.50	$869.00	$443.75	$529.25	$404.00	$763.00
56	$253.25	$288.75	$388.75	$879.50	$450.00	$537.00	$409.75	$772.50
57	$256.00	$291.50	$394.00	$890.00	$456.25	$544.75	$415.50	$782.00
58	$258.75	$294.25	$399.25	$900.50	$462.50	$552.50	$421.25	$791.50
59	$261.50	$297.00	$404.50	$911.00	$468.75	$560.25	$427.00	$801.00
60	$264.25	$299.75	$409.75	$921.50	$475.00	$568.00	$432.75	$810.50
61	$267.00	$302.50	$415.00	$932.00	$481.25	$575.75	$438.50	$820.00
62	$269.75	$305.25	$420.25	$942.50	$487.50	$583.50	$444.25	$829.50
63	$272.50	$308.00	$425.50	$953.00	$493.75	$591.25	$450.00	$839.00
64	$275.25	$310.75	$430.75	$963.50	$500.00	$599.00	$455.75	$848.50
65	$278.00	$313.50	$436.00	$974.00	$506.25	$606.75	$461.50	$858.00
66	$280.75	$316.25	$441.25	$984.50	$512.50	$614.50	$467.25	$867.50
67	$283.50	$319.00	$446.50	$995.00	$518.75	$622.25	$473.00	$877.00
68	$286.25	$321.75	$451.75	$1,005.50	$525.00	$630.00	$478.75	$886.50
69	$289.00	$324.50	$457.00	$1,016.00	$531.25	$637.75	$484.50	$896.00
70	$291.75	$327.25	$462.25	$1,026.50	$537.50	$645.50	$490.25	$905.50

* * * * *

[For each country for which an Express Mail International price table is provided replace the Express Mail International price table with the appropriate table based on the prices below:]

Express Mail International (220)

Weight Not	EMI Price Groups									
Over (lb.)	1	2	3	4	5	6	7	8	9	10
0.5	$26.95	$26.95	$28.95	$28.95	$28.95	$28.95	$28.95	$28.95	$28.95	$28.95
1	$31.50	$30.50	$33.00	$32.50	$33.50	$32.50	$35.50	$35.00	$34.00	$33.50
2	$35.00	$34.25	$37.75	$36.75	$38.00	$37.00	$40.25	$39.75	$38.50	$39.00
3	$38.50	$38.00	$42.50	$41.00	$42.50	$41.50	$45.00	$44.50	$43.00	$44.50
4	$42.00	$41.75	$47.25	$45.25	$47.00	$46.00	$49.75	$49.25	$47.50	$50.00
5	$45.50	$45.50	$52.00	$49.50	$51.50	$50.50	$54.50	$54.00	$52.00	$55.75
6	$49.00	$49.25	$56.75	$53.75	$56.00	$55.75	$59.75	$59.75	$57.25	$61.50
7	$52.50	$53.00	$61.50	$58.00	$60.50	$61.00	$65.00	$65.50	$62.50	$67.25
8	$56.00	$56.75	$66.25	$62.25	$65.00	$66.25	$70.25	$71.25	$67.75	$73.00
9	$59.50	$60.50	$71.00	$66.50	$69.50	$71.50	$75.50	$77.00	$73.00	$78.75
10	$63.00	$64.25	$75.75	$70.75	$74.00	$76.75	$80.75	$82.75	$78.25	$84.50
11	$66.50	$67.00	$81.00	$75.00	$78.50	$82.50	$86.50	$88.50	$83.50	$90.25
12	$70.00	$69.75	$86.25	$79.25	$83.00	$88.25	$92.25	$94.25	$88.75	$96.00
13	$73.50	$72.50	$91.50	$83.50	$87.50	$94.00	$98.00	$100.00	$94.00	$101.75
14	$77.00	$75.25	$96.75	$87.75	$92.00	$99.75	$103.75	$105.75	$99.25	$107.50
15	$80.50	$78.00	$102.00	$92.00	$96.50	$105.50	$109.50	$111.50	$104.50	$113.25
16	$84.00	$80.75	$107.75	$96.25	$101.00	$111.25	$115.25	$117.25	$109.75	$119.50
17	$87.50	$83.50	$113.50	$100.50	$105.50	$117.00	$121.00	$123.00	$115.00	$125.75
18	$91.00	$86.25	$119.25	$104.75	$110.00	$122.75	$126.75	$128.75	$120.25	$132.00
19	$94.50	$89.00	$125.00	$109.00	$114.50	$128.50	$132.50	$134.50	$125.50	$138.25
20	$98.00	$91.75	$130.75	$113.25	$119.00	$134.25	$138.25	$140.25	$130.75	$144.50
21	$101.50	$94.50	$136.50	$117.50	$123.50	$140.00	$144.00	$146.00	$136.00	$150.75
22	$105.00	$97.25	$142.25	$121.75	$128.00	$145.75	$149.75	$151.75	$141.25	$157.00
23	$108.50	$100.00	$148.00	$126.00	$132.50	$151.50	$155.50	$157.50	$146.50	$163.25
24	$112.00	$102.75	$153.75	$130.25	$137.00	$157.25	$161.25	$163.25	$151.75	$169.50
25	$115.50	$105.50	$159.50	$134.50	$141.50	$163.00	$167.00	$169.00	$157.00	$175.75
26	$119.00	$108.25	$165.25	$138.75	$146.00	$168.75	$172.75	$174.75	$162.25	$182.00
27	$122.50	$111.00	$171.00	$143.00	$150.50	$174.50	$178.50	$180.50	$167.50	$188.25
28	$126.00	$113.75	$176.75	$147.25	$155.00	$180.25	$184.25	$186.25	$172.75	$194.50
29	$129.50	$116.50	$182.50	$151.50	$159.50	$186.00	$190.00	$192.00	$178.00	$200.75
30	$133.00	$119.25	$188.25	$155.75	$164.00	$191.75	$195.75	$197.75	$183.25	$207.00
31	$136.50	$122.00	$194.00	$160.00	$168.50	$197.50	$201.50	$203.50	$188.50	$213.25
32	$140.00	$124.75	$199.75	$164.25	$173.00	$203.25	$207.25	$209.25	$193.75	$219.50
33	$143.50	$127.50	$205.50	$168.50	$177.50	$209.00	$213.00	$215.00	$199.00	$225.75
34	$147.00	$130.25	$211.25	$172.75	$182.00	$214.75	$218.75	$220.75	$204.25	$232.00
35	$150.50	$133.00	$217.00	$177.00	$186.50	$220.50	$224.50	$226.50	$209.50	$238.25
36	$154.00	$135.75	$222.75	$181.25	$191.00	$226.25	$230.25	$232.25	$214.75	$244.50
37	$157.50	$138.50	$228.50	$185.50	$195.50	$232.00	$236.00	$238.00	$220.00	$250.75
38	$161.00	$141.25	$234.25	$189.75	$200.00	$237.75	$241.75	$243.75	$225.25	$257.00

39	$164.50	$144.00	$240.00	$194.00	$204.50	$243.50	$247.50	$249.50	$230.50	$263.25
40	$168.00	$146.75	$245.75	$198.25	$209.00	$249.25	$253.25	$255.25	$235.75	$269.50
41	$171.50	$150.00	$251.50	$202.50	$213.50	$254.75	$259.00	$261.00	$241.00	$275.75
42	$175.00	$153.25	$257.25	$206.75	$218.00	$260.25	$264.75	$266.75	$246.25	$282.00
43	$178.50	$156.50	$263.00	$211.00	$222.50	$265.75	$270.50	$272.50	$251.50	$288.25
44	$182.00	$159.75	$268.75	$215.25	$227.00	$271.25	$276.25	$278.25	$256.75	$294.50
45	$185.50	-	$274.50	$219.50	$231.50	$276.75	$282.00	$284.00	$262.00	$300.75
46	$189.00	-	$280.25	$223.75	$236.00	$282.25	$287.75	$289.75	$267.25	$307.00
47	$192.50	-	$286.00	$228.00	$240.50	$287.75	$293.50	$295.50	$272.50	$313.25
48	$196.00	-	$291.75	$232.25	$245.00	$293.25	$299.25	$301.25	$277.75	$319.50
49	$199.50	-	$297.50	$236.50	$249.50	$298.75	$305.00	$307.00	$283.00	$325.75
50	$203.00	-	$303.25	$240.75	$254.00	$304.25	$310.75	$312.75	$288.25	$332.00
51	$206.50	-	$309.00	$245.00	$258.50	$309.75	$316.50	$318.50	$293.50	$338.25
52	$210.00	-	$314.75	$249.25	$263.00	$315.25	$322.25	$324.25	$298.75	$344.50
53	$213.50	-	$320.50	$253.50	$267.50	$320.75	$328.00	$330.00	$304.00	$350.75
54	$217.00	-	$326.25	$257.75	$272.00	$326.25	$333.75	$335.75	$309.25	$357.00
55	$220.50	-	$332.00	$262.00	$276.50	$331.75	$339.50	$341.50	$314.50	$363.25
56	$224.00	-	$337.75	$266.25	$281.00	$337.25	$345.25	$347.25	$319.75	$369.50
57	$227.50	-	$343.50	$270.50	$285.50	$342.75	$351.00	$353.00	$325.00	$375.75
58	$231.00	-	$349.25	$274.75	$290.00	$348.25	$356.75	$358.75	$330.25	$382.00
59	$234.50	-	$355.00	$279.00	$294.50	$353.75	$362.50	$364.50	$335.50	$388.25
60	$238.00	-	$360.75	$283.25	$299.00	$359.25	$368.25	$370.25	$340.75	$394.50
61	$241.50	-	$366.50	$287.50	$303.50	$364.75	$374.00	$376.00	$346.00	$400.75
62	$245.00	-	$372.25	$291.75	$308.00	$370.25	$379.75	$381.75	$351.25	$407.00
63	$248.50	-	$378.00	$296.00	$312.50	$375.75	$385.50	$387.50	$356.50	$413.25
64	$252.00	-	$383.75	$300.25	$317.00	$381.25	$391.25	$393.25	$361.75	$419.50
65	$255.50	-	$389.50	$304.50	$321.50	$386.75	$397.00	$399.00	$367.00	$425.75
66	$259.00	-	$395.25	$308.75	$326.00	$392.25	$402.75	$404.75	$372.25	$432.00
67	-	-	$401.00	$313.00	$330.50	$397.75	$408.50	$410.50	$377.50	-
68	-	-	$406.75	$317.25	$335.00	$403.25	$414.25	$416.25	$382.75	-
69	-	-	$412.50	$321.50	$339.50	$408.75	$420.00	$422.00	$388.00	-
70	-	-	$418.25	$325.75	$344.00	$414.25	$425.75	$427.75	$393.25	-

* * * * *

Express Mail International—Flat Rate

[For each country that offers Express Mail International flat-rate service, revise the flat-rate section as follows:]

[For all countries except Canada and Mexico:]

Flat-Rate Envelope: $28.95

[For Canada and Mexico:]

Flat-Rate Envelope: $26.95

* * * * *

[For each country, for which a Priority Mail International price table is provided, replace the Priority Mail International price table with the appropriate table based on the prices below:]

Priority Mail International (230)

Weight Not	PMI Price Groups									
Over (lb.)	1	2	3	4	5	6	7	8	9	10
1	$20.00	$20.00	$26.50	$25.00	$28.00	$26.50	$25.50	$24.50	$24.50	$27.50
2	$21.75	$23.75	$30.75	$28.75	$31.05	$30.75	$30.15	$28.75	$28.25	$32.35
3	$23.50	$27.50	$35.00	$32.50	$34.10	$35.00	$34.80	$33.00	$32.00	$37.20
4	$25.25	$31.25	$39.25	$36.25	$37.15	$39.25	$39.45	$37.25	$35.75	$42.05
5	$27.00	$35.00	$43.50	$40.00	$40.20	$43.50	$44.10	$41.50	$39.50	$46.90
6	$28.75	$37.75	$47.25	$43.75	$43.25	$48.75	$48.75	$45.75	$42.25	$52.25
7	$30.50	$40.50	$51.00	$47.50	$46.30	$54.00	$53.40	$50.00	$45.00	$57.60
8	$32.25	$43.25	$54.75	$51.25	$49.35	$59.25	$58.05	$54.25	$47.75	$62.95
9	$34.00	$46.00	$58.50	$55.00	$52.40	$64.50	$62.70	$58.50	$50.50	$68.30
10	$35.75	$48.75	$62.25	$58.75	$55.45	$69.75	$67.35	$62.75	$53.25	$73.65
11	$37.50	$51.00	$66.00	$62.50	$58.50	$75.00	$72.40	$67.50	$57.00	$79.00
12	$39.25	$53.25	$69.75	$66.25	$61.55	$80.25	$77.45	$72.25	$60.75	$84.35
13	$41.00	$55.50	$73.50	$70.00	$64.60	$85.50	$82.50	$77.00	$64.50	$89.70
14	$42.75	$57.75	$77.25	$73.75	$67.65	$90.75	$87.55	$81.75	$68.25	$95.05
15	$44.50	$60.00	$81.00	$77.50	$70.70	$96.00	$92.60	$86.50	$72.00	$100.40
16	$46.25	$62.25	$84.75	$81.25	$73.75	$101.25	$97.65	$91.25	$75.75	$105.75
17	$48.00	$64.50	$88.50	$85.00	$76.80	$106.50	$102.70	$96.00	$79.50	$111.10
18	$49.75	$66.75	$92.25	$88.75	$79.85	$111.75	$107.75	$100.75	$83.25	$116.45
19	$51.50	$69.00	$96.00	$92.50	$82.90	$117.00	$112.80	$105.50	$87.00	$121.80
20	$53.25	$71.25	$99.75	$96.25	$85.95	$122.25	$117.85	$110.25	$90.75	$127.15
21	$55.00	$73.50	$103.50	$100.00	$89.00	$127.50	$122.90	$115.00	$94.50	$132.50
22	$56.75	$75.75	$107.25	$103.75	$92.05	$132.75	$127.95	$119.75	$98.25	$137.85
23	$58.50	$78.00	$111.00	$107.50	$95.10	$138.00	$133.00	$124.50	$102.00	$143.20
24	$60.25	$80.25	$114.75	$111.25	$98.15	$143.25	$138.05	$129.25	$105.75	$148.55
25	$62.00	$82.50	$118.50	$115.00	$101.20	$148.50	$143.10	$134.00	$109.50	$153.90
26	$63.75	$84.75	$122.25	$118.75	$104.25	$153.75	$148.15	$138.75	$113.25	$159.25
27	$65.50	$87.00	$126.00	$122.50	$107.30	$159.00	$153.20	$143.50	$117.00	$164.60
28	$67.25	$89.25	$129.75	$126.25	$110.35	$164.25	$158.25	$148.25	$120.75	$169.95
29	$69.00	$91.50	$133.50	$130.00	$113.40	$169.50	$163.30	$153.00	$124.50	$175.30
30	$70.75	$93.75	$137.25	$133.75	$116.45	$174.75	$168.35	$157.75	$128.25	$180.65
31	$72.50	$96.00	$141.00	$137.50	$119.50	$180.00	$173.40	$162.50	$132.00	$186.00
32	$74.25	$98.25	$144.75	$141.25	$122.55	$185.25	$178.45	$167.25	$135.75	$191.35
33	$76.00	$100.50	$148.50	$145.00	$125.60	$190.50	$183.50	$172.00	$139.50	$196.70
34	$77.75	$102.75	$152.25	$148.75	$128.65	$195.75	$188.55	$176.75	$143.25	$202.05
35	$79.50	$105.00	$156.00	$152.50	$131.70	$201.00	$193.60	$181.50	$147.00	$207.40
36	$81.25	$107.25	$159.75	$156.25	$134.75	$206.25	$198.65	$186.25	$150.75	$212.75
37	$83.00	$109.50	$163.50	$160.00	$137.80	$211.50	$203.70	$191.00	$154.50	$218.10
38	$84.75	$111.75	$167.25	$163.75	$140.85	$216.75	$208.75	$195.75	$158.25	$223.45
39	$86.50	$114.00	$171.00	$167.50	$143.90	$222.00	$213.80	$200.50	$162.00	$228.80
40	$88.25	$116.25	$174.75	$171.25	$146.95	$227.25	$218.85	$205.25	$165.75	$234.15
41	$90.00	$118.50	$178.50	$175.00	$150.00	$232.50	$223.90	$210.00	$169.50	$239.50

42	$91.75	$120.75	$182.25	$178.75	$153.05	$237.75	$228.95	$214.75	$173.25	$244.85
43	$93.50	$123.00	$186.00	$182.50	$156.10	$243.00	$234.00	$219.50	$177.00	$250.20
44	$95.25	$125.25	$189.75	$186.25	$159.15	$248.25	$239.05	$224.25	$180.75	$255.55
45	$97.00	-	$193.50	$190.00	$162.20	$253.50	$244.10	$229.00	$184.50	$260.90
46	$98.75	-	$197.25	$193.75	$165.25	$258.75	$249.15	$233.75	$188.25	$266.25
47	$100.50	-	$201.00	$197.50	$168.30	$264.00	$254.20	$238.50	$192.00	$271.60
48	$102.25	-	$204.75	$201.25	$171.35	$269.25	$259.25	$243.25	$195.75	$276.95
49	$104.00	-	$208.50	$205.00	$174.40	$274.50	$264.30	$248.00	$199.50	$282.30
50	$105.75	-	$212.25	$208.75	$177.45	$279.75	$269.35	$252.75	$203.25	$287.65
51	$107.50	-	$216.00	$212.50	$180.50	$285.00	$274.40	$257.50	$207.00	$293.00
52	$109.25	-	$219.75	$216.25	$183.55	$290.25	$279.45	$262.25	$210.75	$298.35
53	$111.00	-	$223.50	$220.00	$186.60	$295.50	$284.50	$267.00	$214.50	$303.70
54	$112.75	-	$227.25	$223.75	$189.65	$300.75	$289.55	$271.75	$218.25	$309.05
55	$114.50	-	$231.00	$227.50	$192.70	$306.00	$294.60	$276.50	$222.00	$314.40
56	$116.25	-	$234.75	$231.25	$195.75	$311.25	$299.65	$281.25	$225.75	$319.75
57	$118.00	-	$238.50	$235.00	$198.80	$316.50	$304.70	$286.00	$229.50	$325.10
58	$119.75	-	$242.25	$238.75	$201.85	$321.75	$309.75	$290.75	$233.25	$330.45
59	$121.50	-	$246.00	$242.50	$204.90	$327.00	$314.80	$295.50	$237.00	$335.80
60	$123.25	-	$249.75	$246.25	$207.95	$332.25	$319.85	$300.25	$240.75	$341.15
61	$125.00	-	$253.50	$250.00	$211.00	$337.50	$324.90	$305.00	$244.50	$346.50
62	$126.75	-	$257.25	$253.75	$214.05	$342.75	$329.95	$309.75	$248.25	$351.85
63	$128.50	-	$261.00	$257.50	$217.10	$348.00	$335.00	$314.50	$252.00	$357.20
64	$130.25	-	$264.75	$261.25	$220.15	$353.25	$340.05	$319.25	$255.75	$362.55
65	$132.00	-	$268.50	$265.00	$223.20	$358.50	$345.10	$324.00	$259.50	$367.90
66	$133.75	-	$272.25	$268.75	$226.25	$363.75	$350.15	$328.75	$263.25	$373.25
67	-	-	$276.00	$272.50	$229.30	$369.00	$355.20	$333.50	$267.00	-
68	-	-	$279.75	$276.25	$232.35	$374.25	$360.25	$338.25	$270.75	-
69	-	-	$283.50	$280.00	$235.40	$379.50	$365.30	$343.00	$274.50	-
70	-	-	$287.25	$283.75	$238.45	$384.75	$370.35	$347.75	$278.25	-

BILLING CODE 7710–12–C

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Priority Mail International—Flat Rate

[For each country that offers Priority Mail International flat-rate service, revise the lines of text for the flat-rate envelope and flat-rate boxes as follows:]

[For all countries except Canada and Mexico:]

Flat-Rate Envelope or Small Flat-Rate Box: $13.45

* * * * *

Flat-Rate Boxes: Regular/Medium—$43.45; Large—$55.95

* * * * *

[For Canada and Mexico:]

Flat-Rate Envelope or Small Flat-Rate Box: $11.45

* * * * *

Flat-Rate Boxes: Regular/Medium—$26.95; Large—$33.95

* * * * *

[Add an individual country listing for Kosovo, Republic of as follows:]

* * * * *

Kosovo, Republic of

Prohibitions (130)

Weapons and ammunition by private individuals.

Cigarette paper.

Coins; banknotes; currency notes (paper money); securities payable to bearer; traveler's checks; platinum, gold, and silver, manufactured or not; precious stones; jewelry; and other valuable articles.

Lottery tickets and advertisements concerning lotteries.

Radioactive materials.

Restrictions

No list furnished.

Observations

Items sent to certain individuals and entities in Kosovo must be licensed by the U.S. Treasury Department. These individuals and entities are identified on the treasury Department's specially Designated Nationals list, available at *http://www.treas.gov/offices/enforcement/ofac/sdn.* Certain shipments may also require a license by the U.S. Commerce Department under the Export Administration Regulations (530).

Customs Forms Required (*123*)

First-Class Mail International items and Priority Mail International flat-rate envelopes and small flat-rate boxes:

PS Form 2976 or 2976–A (see *123.61*).

Priority Mail International parcels: PS Form 2976–A inside 2976–E (envelope)

Global Express Guaranteed (*210*) Price Group 4

[Insert the Global Express Guaranteed table for price group 4 with a weight limit of 70 pounds.]

Insurance (*215.5*)

Insured amount not over	Fee	Insured amount not over	Fee
$100	(1)	For document reconstruction insurance or non-document insurance coverage above $800, add $1.00 per $100 or fraction thereof, up to a maximum of $2,499 per shipment.	
200	$1.00		
300	2.00		
400	3.00		
500	4.00		
600	5.00		
700	6.00		
800	7.00	$2,499 max	$24.00

[1] No fee.

Value Limit (*211.2*)

The maximum value of a GXG shipment to this country is $2,499 or a lesser amount if limited by content or value.

Size Limits (*216.5*)

An item must be large enough to hold on its face the postage and the plastic pouch that carries the Global Express Guaranteed Air Waybill/Shipping Invoice (shipping label). The shipping label is approximately 5.5 inches high and 9.5 inches long, and the plastic pouch that carries it is approximately 7 inches high and 12 inches long.

Maximum length: 46 inches.

Maximum width: 35 inches.

Maximum height: 46 inches.

Maximum length and girth combined: 108 inches.

General Conditions for Mailing

See Publication 141, *Global Express Guaranteed Service Guide,* for information about areas served in the destination country, allowable contents, packaging and labeling requirements, tracking and tracing, service standards, and other conditions for mailing.

Express Mail International (*220*)

Not Available

Priority Mail International (*230*) Price Group 5

[Insert the Priority Mail International table for price group 5 with a weight limit of 70 pounds.]

Notes: Ordinary Priority Mail International includes indemnity at no cost based on weight. (See *230*.)

Priority Mail International—Flat Rate

Flat-Rate Envelope or Small Flat-Rate Box: $13.45

May contain items that may be sent as First-Class Mail International. The maximum weight is 4 lbs.

Flat-Rate Boxes: Regular/Medium—$43.45; Large—$55.95

The maximum weight is 20 lbs. or the limit set by the individual country, whichever is less.

Size Limits

See *236.2*

First-Class Mail International (*240*) Price Group 5

Letters

Weight not over (ozs.)	Price	
1	$0.98	**Note:** A letter meeting one or more of the nonmachinable characteristics in *243.23* is charged a nonmachinable surcharge of $0.20.
2	1.82	
3	2.66	
3.5	3.50	

Large Envelopes (Flats)

Weight not over (ozs.)	Price	Weight not over (ozs.)	Price	Weight not over (ozs.)	Price
1	$1.24	12	$8.84	44	$22.60
2	2.08	16	10.56	48	24.32
3	2.92	20	12.28	52	26.04
4	3.76	24	14.00	56	27.76
5	4.60	28	15.72	60	29.48
6	5.44	32	17.44	64	31.20
7	6.28	36	19.16		
8	7.12	40	20.88		

Packages (Small Packets)

Weight not over (ozs.)	Price	Weight not over (ozs.)	Price	Weight not over (ozs.)	Price
1	$1.44	12	$9.04	44	$22.80

Weight not over (ozs.)	Price	Weight not over (ozs.)	Price	Weight not over (ozs.)	Price
2	2.28	16	10.76	48	24.52
3	3.12	20	12.48	52	26.24
4	3.96	24	14.20	56	27.96
5	4.80	28	15.92	60	29.68
6	5.64	32	17.64	64	31.40
7	6.48	36	19.36		
8	7.32	40	21.08		

Size Limits

Postcards: See *243.1*

Letters: See *243.2*

Large Envelopes (Flats): See *243.3*

Packages (Small Packets): See *243.4*

Postcards (*243.1*)

$0.98

Airmail M-bags (*260*)—Direct Sack to One Addressee

Weight not over 11 lbs.	$35.75
Each additional pound or fraction of a pound	3.25
Weight Limit: 66 pounds	

Matter for the Blind (*270*)

Free when sent as First-Class Mail International.

Weight limit: 15 lbs.

Extra Services

Certificate of Mailing (*313*)

Fee: $1.15.

COD and Certified

NOT for International Mail.

Insurance (*320*)

Priority Mail International insurance coverage is not available to Kosovo. Only ordinary (uninsured) parcels may be sent to addressees in Kosovo.

International Business Reply Service (*382*)

Fee: Envelopes up to 2 ounces $1.45; Cards $0.95.

International Postal Money Order (*371*)

NOT Available.

International Reply Coupons (*381*)

Fee: $2.10.

Registered Mail (*330*)

Fee: $11.50.

Maximum Indemnity: $47.93.

Available for First-Class Mail International, including postcards, and matter for the blind or other physically handicapped persons. Not applicable to M-bags.

Restricted Delivery (*350*)

NOT Available.

Return Receipt (*340*)

Fee: $2.30.

Available for registered mail only.

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Serbia, Republic of

Country Conditions for Mailing

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Observations

[Delete observation # 7.]

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Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. E9–26987 Filed 11–5–09; 4:15 pm]

BILLING CODE 7710–12–P

POSTAL SERVICE

39 CFR Part 111

Pricing and Mailing Standards Changes for Shipping Services

AGENCY: Postal Service™.

ACTION: Final rule.

SUMMARY: The Postal Service is revising *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM®), to reflect changes to prices and mailing standards for the following Shipping Services:

- Express Mail®
- Priority Mail®
- Parcel Select®
- Parcel Return Service

DATES: *Effective Date:* January 4, 2010.

FOR FURTHER INFORMATION CONTACT: John Gullo (202) 268–8057, Carol A. Lunkins (202) 268–7262, or Mary Collins (202) 268–5440.

SUPPLEMENTARY INFORMATION: On September 22, 2009, the Governors of the Postal Service established new prices and product features for Shipping Services. This final rule describes price and product changes and the corresponding mailing standards to implement them.

Express Mail

On average, Express Mail prices increase 4.5 percent as follows:

- Retail prices—4.5 percent
- Commercial base prices—4.5 percent
- Commercial plus prices—4.4 percent

Priority Mail

On average, Priority Mail prices increase 3.3 percent as follows:

- Retail prices—3.9 percent
- Commercial base prices—2.9 percent
- Commercial plus prices—0.9 percent

The Priority Mail flat-rate envelope and small flat-rate box are now separately priced as follows:

- Retail:
  Flat-Rate Envelope—$4.90
  Small Flat-Rate Box—$4.95
- Commercial base:
  Flat-Rate Envelope—$4.75
  Small Flat-Rate Box—$4.85
- Commercial plus:
  Flat-Rate Envelope—$4.70
  Flat-Rate Padded Envelope—$4.95
  Small Flat-Rate Box—$4.80

The one-pound price for Priority Mail is now priced according to weight and zone based on seven zone separations as follows: (Local, 1, 2), (3), (4), (5), (6), (7), and (8).

Commercial Plus Prices

New and convenient shipping options for Priority Mail commercial plus mailers are introduced as follows:

- *New Priority Mail 0.5-Pound Price* for items weighing up to 0.5 pound.
- *New Flat-Rate Padded Envelope,* which is priced slightly higher than the conventional flat-rate envelope.
- *New Commercial Plus Cubic Prices* for flats and parcels.

Commercial Plus Cubic Prices

To qualify for commercial plus cubic prices, each mailpiece must measure .50 cubic foot or less and weigh 20 pounds or less. Mailings must qualify for commercial base prices with an annual total volume of 250,000 pieces or more or mailers must have a customer

commitment agreement with the USPS. Prices are available to:

• Registered end-users of USPS-approved PC Postage® products.

• Customers who pay postage with permit imprints and use the Electronic Verification System (e-VS®) program or submit an electronic postage statement and a computerized manifest. Mailings must consist of at least 200 pieces or 50 pounds of mail; mailpieces are not required to be identical in weight.

Markings

The appropriate commercial plus cubic price markings are required.

Prices

There are five price tiers, as follows:

■ Tier 1—mailpieces measuring up to .10 cubic foot

■ Tier 2—mailpieces measuring more than .10 up to .20 cubic foot

■ Tier 3—mailpieces measuring more than .20 up to .30 cubic foot

■ Tier 4—mailpieces measuring more than .30 up to .40 cubic foot

■ Tier 5—mailpieces measuring more than .40 up to .50 cubic foot

Each tier is priced according to the tier level (cubic foot) and zone based on seven zone separations: (Local, 1, 2), (3), (4), (5), (6), (7), and (8).

Parcel Select

On average, Parcel Select prices increase 4.9 percent for destination entry only as follows:

• Destination Delivery Unit (DDU)—3.9 percent

• Destination Sectional Center Facility (DSCF)—6.9 percent

• Destination Bulk Mail Center (DBMC)—6.9 percent

There is no price increase for the following Parcel Select price categories:

• Origin Bulk Mail Center (OBMC)

• Presorted BMC

• Barcoded Nonpresorted

Parcel Select mailers who pay postage using USPS-approved PC Postage and request the barcoded nonpresorted price will not have to meet the minimum volume requirement of 50 mailpieces. However, barcode requirements apply. When requesting destination entry and presorted prices, the 50-piece minimum volume requirement applies for mailers using PC Postage.

Parcel Select Loyalty and Growth Rebates will be eliminated effective May 31, 2010.

Parcel Return Service

On average, Parcel Return Service prices increase 3.0 percent as follows:

• Return Delivery Unit (RDU)—2.1 percent

• Return Bulk Mail Center (RBMC)—3.3 percent

The Postal Service adopts the following changes to *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM), incorporated by reference in the *Code of Federal Regulations.* See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

■ Accordingly, 39 CFR Part 111 is amended as follows:

PART 111—[AMENDED]

■ 1. The authority citation for 39 CFR Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

■ 2. Revise the following sections of *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM), as follows:

100 Retail Letters, Cards, Flats, and Parcels

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110 Express Mail

113 Prices and Eligibility

1.0 Express Mail Prices and Fees

* * * * *

1.3 Prices

[Revise 1.3 by deleting Exhibit 1.3 in its entirety, add a new paragraph, and a link to the Price List as follows:]

See Notice 123—*Price List* for applicable Express Mail retail prices. Commercial base prices are available when postage is paid through Click-N–Ship service at usps.com or by registered end-users of PC Postage using a qualifying shipping label managed by the PC Postage system.

1.4 Flat-Rate Envelope

[Revise the text of 1.4 as follows:]

Material mailed in the USPS-provided Express Mail flat-rate envelope is charged a flat rate, regardless of the actual weight (up to 70 pounds) of the mailpiece or domestic destination. Only USPS-produced flat-rate envelopes are eligible for the flat-rate envelope price. Custom Designed items are not eligible for flat-rate pricing. When sealing a flat-rate envelope, the container flaps must be able to close within the normal folds. Tape may be applied to the flaps and seams to reinforce the container provided the design of the container is not enlarged by opening the sides, and the container is not reconstructed in any way.

1.5 Sunday and Holiday Premium

[Revise the first sentence of 1.5 as follows:]

Delivery guaranteed for a Sunday or holiday is charged a premium fee (see Notice 123—*Price List*), unless paying via an Express Mail Manifesting Agreement. * * *

1.6 Pickup on Demand

1.6.1 Pickup on Demand Fee

[Revise 1.6.1 as follows:]

See Notice 123—*Price List* for fee per occurrence. This service may be combined with Priority Mail, Package Services, and international mail pickups (see 507.6.0).

* * * * *

120 Priority Mail

123 Prices and Eligibility

1.0 Priority Mail Prices and Fees

1.1 Price Application

[Revise paragraph of 1.1 as follows:]

Except under 1.3, 1.4, and 1.5, Priority Mail retail prices are charged per pound; any fraction of a pound is rounded up to the next whole pound. For example, if a piece weighs 1.2 pounds, the weight (postage) increment is 2 pounds. The minimum postage amount per addressed piece is the 1-pound price. Priority Mail retail prices are based on weight and zone except for flat-rate products. Other charges may apply.

1.2 Prices

[Revise 1.2 by deleting Exhibit 1.2 in its entirety and adding a link to the Price List as follows:]

See Notice 123—*Price List* for applicable Priority Mail retail prices.

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1.5 Flat-Rate Envelope and Boxes

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1.5.1 Flat-Rate Envelope—Price and Eligibility

[Revise text of the first sentence of 1.5.1 as follows:]

Each USPS-produced Priority Mail flat-rate envelope is charged a flat rate regardless of the actual weight (up to 70 pounds) of the mailpiece or domestic destination. * * *

1.5.2 Flat-Rate Boxes—Price and Eligibility

[Revise the paragraph 1.5.2 and delete current items ''a'' through ''d'' and replace, as follows:]

For shipping convenience, there are multiple Priority Mail flat-rate boxes:

a. Small flat-rate box to domestic, APO/FPO, and DPO destinations.

b. Regular/medium flat-rate boxes (FRB–1) or (FRB–2) to domestic, APO/FPO and DPO destinations.

c. Large flat-rate box or ''special version of this box'' to APO/FPO and DPO destinations.

d. Large flat-rate box to domestic destinations.

The large flat-rate box to APO/FPO and DPO destinations or ''special version of this box'' is priced less than the conventional domestic large flat-rate box. Items sent to APO/FPO and DPO destination addresses may be shipped in the Priority Mail large flat-rate box or in a special version of the box identified with the additional logo: ''Americasupportsyou.mil.'' If the special version of the APO/FPO flat-rate box is used for non-APO/FPO and DPO destination addresses, the domestic or international large flat-rate box prices will apply. Only USPS-produced flat-rate boxes are eligible for the flat-rate box prices. Each USPS-produced Priority Mail flat-rate box is charged a flat rate regardless of the actual weight (up to 70 pounds) of the mailpiece or domestic destination. See Notice 123—*Price List* for applicable prices.

1.6 Prices for Keys and Identification Devices

[Revise 1.6 by deleting table and footnotes and adding a sentence as follows:]

Keys and identification devices are charged an associated fee plus the applicable First-Class Mail or Priority Mail price. See Notice 123—*Price List.*

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1.8 Pickup on Demand Fee

The Pickup on Demand fee is charged per occurrence regardless of the number of packages and may be combined with Express Mail, Package Services, and international mail pickups (see 507.6.0). See Notice 123—*Price List* for applicable prices.

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400 Commercial Parcels

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402 Elements on the Face of a Mailpiece

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2.0 Placement and Content of Markings

[Renumber current 2.1 through 2.5 as 2.3 through 2.8 and add new 2.2 and 2.3 as follows:]

* * * * *

2.2 Priority Mail Commercial Plus Cubic Markings—PC Postage Indicia

Priority Mail pieces claiming the commercial plus cubic price must bear the applicable marking that reflects the respective price tier printed on the piece or produced as part of the meter imprint or PC Postage indicia. The cubic tiers are determined by the cubic measurement of each mailpiece up to the defined threshold, (i.e. measurements from .01 up to .10—''Cubic .10'' and from .101 up to .20—''Cubic .20''). Place the marking directly above, directly below, or to the left of the postage. Approved markings are as follows:

a. ''Cubic .10''

b. ''Cubic .20''

c. ''Cubic .30''

d. ''Cubic .40''

e. ''Cubic .50''

2.3 Priority Mail Commercial Plus Cubic Markings—Permit Imprint

Priority Mail permit imprint pieces claiming the commercial plus cubic price must bear the applicable marking that reflects the respective price tier, printed on the piece or produced as part of the permit imprint indicia. Place the marking directly above, directly below, or to the left of the postage. Approved markings are as follows:

a. Cubic

b. CUBIC

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410 Express Mail

413 Prices and Eligibility

1.0 Prices and Fees

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1.5 Flat-Rate Envelope

[Revise 1.5 by removing prices and providing link to flat-rate envelope commercial base and plus prices in price list as follows:]

Material mailed in the USPS-provided Express Mail flat-rate envelope is charged a flat price, regardless of the actual weight (up to 70 pounds) of the piece or its domestic destination. Only USPS-produced flat-rate envelopes are eligible for the flat-rate envelope price. Custom Designed items are not eligible for flat-rate pricing. When sealing a flat-rate envelope, the container flaps must be able to close within the normal folds. Tape may be applied to the flaps and seams to reinforce the container provided the design of the container is not enlarged by opening the sides, and the container is not reconstructed in any way. See Notice 123—Price List.

1.6 Sunday and Holiday Premium

[Revise 1.6 by removing prices and providing link to Sunday and holiday premium prices in price list as follows:]

When delivery is guaranteed for a Sunday or holiday, there is a premium (see Notice 123—Price List), unless paying via an Express Mail Manifesting Agreement. Customers not desiring delivery on a Sunday or a holiday may avoid the premium by opting for guaranteed delivery on the subsequent delivery day.

[Delete 1.7.1 and 1.7.2 in their entirety and revise 1.7 as follows:]

1.7 Pickup on Demand

The Pickup on Demand fee is charged every time pickup service is provided, regardless of the number of pieces picked up. This service may be combined with Priority Mail and Package Services pickups (see 507.6.0). See Notice 123—*Price List.*

[Delete 1.8.1 and 1.8.2 in their entirety and revise 1.8 as follows:]

1.8 Delivery Stop

Express Mail Custom Designed items are subject to an additional fee for each delivery stop for items presented for delivery to addressee. See the Notice 123—*Price List.*

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420 Priority Mail

423 Prices and Eligibility

1.0 Prices and Fees

1.1 Price Application

[Revise the paragraph of 1.1 as follows:]

The following price applications apply:

a. Except commercial plus items weighing up to 0.5 pound (see 1.1.c) and commercial plus cubic items (see 1.1d), Priority Mail mailpieces are charged per pound; any fraction of a pound is rounded up to the next whole pound. For example, if a piece weighs 1.2 pounds, the weight (postage) increment is 2 pounds.

b. Flat-rate prices are not based on weight and zone but are charged a flat rate regardless of actual weight (up to 70 pounds) of the mailpiece and domestic destination.

c. The minimum postage amount per addressed piece is the 1-pound price except commercial plus items weighing up to 0.5 pound. Charge the 0.5-pound price for commercial plus items up to 0.5 pound. Items over 0.5 pound are rounded up to the next whole pound. For example, if a commercial plus piece weighs 0.25 pound, the weight (postage) increment is 0.5 pound; if a piece

weighs 0.75 pound, the weight (postage) increment is 1 pound; if a piece weighs 1.2 pounds, the weight (postage) increment is 2 pounds.

d. Commercial cubic prices are not based on weight but are charged per cubic measurement of the mailpiece and zone.

e. Priority Mail items mailed under a specific customer agreement are charged according to the individual agreement.

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1.4 Commercial Plus Cubic

1.4.1 Existing Priority Mail Customers

Commercial plus cubic prices are available to existing Priority Mail customers who meet the following requirements:

a. Registered end-users of USPS-approved PC Postage products who qualify for commercial base prices and whose account volumes exceed 250,000 pieces in the previous calendar year or who have a customer commitment agreement with the USPS (see 1.3.2).

b. Permit imprint customers who qualify for commercial base prices and whose account volumes exceed 250,000 pieces in the previous calendar year or who have a customer commitment agreement with the USPS (see 1.3.2). Customers are required to use the Electronic Verification System (eVS) program or submit an electronic postage statement with a computerized manifest under 705.2.0. Mailings must contain at least 200 pieces or 50 pounds of mail. Mailpieces are not required to be identical in weight.

c. Each mailpiece must measure .50 cubic foot or less, weigh 20 pounds or less, and not exceed maximum girth and length standards for parcels.

d. Mailings containing multiple price tiers may be combined in the same container.

1.4.2 Commercial Plus Cubic Tiers

For prices, see the Notice 123—*Price List*. Cubic prices consist of the following five tiers:

a. Tier 1—mailpieces measuring up to .10 cubic foot

b. Tier 2—mailpieces measuring more than .10 up to .20 cubic foot

c. Tier 3—mailpieces measuring more than .20 up to .30 cubic foot

d. Tier 4—mailpieces measuring more than .30 up to .40 cubic foot

e. Tier 5—mailpieces measuring more than .40 up to .50 cubic foot

1.4.3 Determining Cubic Tier Measurements for Rectangular and Nonrectangular Parcels

Follow these steps to determine the cubic tier measurement for rectangular and nonrectangular parcels:

a. Measure the length, width, and height in inches. Round off (see 604.7.0) each measurement to the nearest whole inch.

b. Multiply the length by the width by the height and divide by 1728. [Example: $6 \times 6 \times 6 = 216$ divided by 1728 = .125; this piece exceeds .10 (Tier 1 threshold). It will be calculated at Tier 2 prices—.101 to .20.]

1.4.4 New Priority Mail Customers

Commercial plus cubic prices are available for new Priority Mail customers who have a customer commitment agreement with the USPS. Shippers must contact their account manager or the manager, Sales and Communication, Expedited Shipping (see 608.8.0 for address) for additional information.

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1.7 Flat-Rate Envelopes and Boxes

1.7.1 Flat-Rate Envelopes—Price and Eligibility

[Revise renumbered 1.7.1 by removing prices and modifying the paragraph as follows:]

There are two types of USPS-produced Priority Mail flat-rate envelopes: A paper envelope and a padded envelope (for commercial plus only). Each type of USPS-produced Priority Mail flat-rate envelope is priced at a flat rate regardless of the actual weight (up to 70 pounds) of the mailpiece or domestic destination. See the Notice 123—*Price List* for applicable prices.

1.7.2 Flat-Rate Boxes—Price and Eligibility

[Revise the text of 1.7.2, as follows:]

For shipping convenience, there are multiple Priority Mail flat-rate boxes:

a. Small flat-rate box to domestic, APO/FPO, and DPO destinations.

b. Regular/medium flat-rate boxes (FRB–1) or (FRB–2) to domestic, APO/FPO and DPO destinations.

c. Large flat-rate box or ''special version of this box'' to APO/FPO and DPO destinations.

d. Large flat-rate box to domestic destinations.

The large flat-rate box to APO/FPO and DPO destinations or ''special version of this box'' is priced less than the conventional domestic large flat-rate box. Items sent to APO/FPO and DPO destination addresses may be shipped in the Priority Mail large flat-rate box or in a special version of the box identified with the additional logo: ''Americasupportsyou.mil.'' If the special version of the APO/FPO flat-rate box is used for non-APO/FPO and DPO destination addresses, the domestic or international large flat-rate box prices will apply. Only USPS-produced flat-rate boxes are eligible for the flat-rate box prices. Each USPS-produced Priority Mail flat-rate box is charged a flat rate regardless of the actual weight (up to 70 pounds) of the mailpiece or domestic destination. See Notice 123—*Price List* for applicable prices.

1.8 Pickup on Demand Fee

[Revise renumbered 1.8 by removing price and providing link to price list as follows:]

The Pickup on Demand fee is charged per occurrence. This service may be combined with Express Mail, Package Services, and international mail pickups (see 507.6.0). See Notice 123—*Price List*.

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425 Mail Preparation

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2.0 Marking

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[Add new 2.3 and 2.4 as follows:]

2.3 Price Marking for Commercial Plus Cubic Prices—PC Postage

Priority Mail pieces claiming the commercial plus cubic price must bear the appropriate marking that reflects the respective price tier printed on the piece or produced as part of the meter imprint or PC Postage indicia. The ranges are determined by pieces measuring up to the threshold, i.e. pieces from .01 up to .10, from .101 up to .20, etc. Place the marking directly above, directly below, or to the left of the postage. Markings are as follows:

a. ''Cubic .10''
b. ''Cubic .20''
c. ''Cubic .30''
d. ''Cubic .40''
e. ''Cubic .50''

2.4 Price Marking for Commercial Plus Cubic Prices—Permit Imprint Indicia

Priority Mail pieces claiming the commercial plus cubic price must bear the appropriate marking that reflects the respective price tier, printed on the piece or produced as part of the permit imprint indicia. Place the marking directly above, directly below, or to the left of the postage. Markings are as follows:

a. Cubic
b. CUBIC

* * * * *

450 Parcel Select

453 Prices and Eligibility

1.0 Prices and Fees

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1.3 Annual Mailing Fee

[Revise the paragraph of 1.3 and provide link to price list, as follows:]

An annual mailing fee is required for Parcel Select destination entry mailings and must be paid once each 12-month period. This fee must be paid at each Post Office of mailing by or for any mailer who enters mailings at the destination entry level. All destination entry prices (DBMC, DSCF, and DDU) are covered under the payment of a single annual fee per office of mailing. During the last 60 days of the current service period, advance payment of the annual mailing fee may be remitted for the subsequent 12-month period only. The established annual mailing fee in effect at the time of remittance will be assessed. See Notice 123—*Price List* for applicable annual mailing fees.

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2.0 Content Standards

2.1 Definition of Parcel Select

[Revise paragraph of 2.1 as follows:]

Parcel Select is a Shipping Services ground product using permit imprint or metered postage when mailing 50 or more packages. When postage is paid using USPS-approved PC Postage in conjunction with barcoded nonpresorted mailings there is no minimum volume.

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3.3 Parcel Select Barcoded Nonpresort Price Eligibility

[Revise 3.3 by revising paragraph and by adding new items ''a, b, and c'' as follows:]

Parcel Select Barcoded Nonpresort per piece prices apply to Parcel Select machinable parcels that are barcoded. See Exhibit 3.3, BMC/ASF Service Areas. The barcoded nonpresort price requires a minimum volume of 50 Parcel Select pieces, except when postage is paid using USPS-approved PC Postage which doesn't require a minimum volume of mailpieces. Machinable parcels (401.1.5) must bear a GS1–128 barcode under 708.5.0 for the ZIP Code of the delivery address under any of the following conditions:

a. The mailing contains a minimum volume of 50 or more pieces.

b. The mailing is prepared as part of a combined mailing of 300 or more pieces under 705.20.0 in other than 5-digit containers.

c. The postage is paid using USPS-approved PC Postage and the mailing is less than 50 pieces.

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455 Mail Preparation

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6.0 Preparing Barcoded Machinable Parcels

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6.2 Basic Standards

Pieces must meet the applicable standards in 4.0 and the following criteria:

[Revise item ''a'' of 6.2 as follows:]

a. Must be part of a mailing of at least 50 Parcel Select pieces, except barcoded nonpresorted parcels when postage is paid using USPS-approved PC Postage which does not require a minimum volume.

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500 Additional Services

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507 Mailer Services

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3.0 Premium Forwarding Service

3.1 Prices and Fees

3.1.1 Application Fee

[Revise 3.1.1 by removing price and providing link to price list, as follows:]

Customers must pay a nonrefundable application fee. See Notice 123—*Price List* for applicable fee.

3.1.2 Weekly Reshipment Charge

[Revise 3.1.2 by removing price, providing a link to the price list, and modifying the last sentence, as follows:]

There is a reshipment charge for each Priority Mail shipment to one temporary address for each week of service requested. Upon submission of the application, the amount due for the total weeks requested must be paid in full. See Notice 123—*Price List* for the applicable fee.

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9.0 Business Reply Mail (BRM)

9.1 Business Reply Mail (BRM) Prices and Fees

9.1.1 Basic BRM

[Revise 9.1.1, as follows:]

For basic BRM, an annual permit fee is required. A per-piece fee is applied to each mailpiece in addition to the applicable First-Class Mail or Priority Mail postage. See Notice 123—*Price List* for applicable prices and fees.

9.1.2 High-Volume BRM

[Revise 9.1.2, as follows:]

For high-volume BRM, an annual permit fee and annual account maintenance fee are required. A per-piece fee is applied to each mailpiece in addition to the applicable First-Class Mail or Priority Mail postage. See Notice 123—*Price List* for applicable prices and fees.

9.1.3 Basic Qualified BRM

[Revise 9.1.3, as follows:]

For basic qualified BRM, an annual permit fee and annual account maintenance fee are required. A per-piece fee is applied to each mailpiece in addition to the applicable First-Class Mail QBRM postage. See Notice 123—*Price List* for applicable prices and fees.

9.1.4 High-Volume Qualified BRM

[Revise 9.1.4, as follows:]

For high-volume qualified BRM, an annual permit fee, an annual account maintenance fee, and a quarterly fee are required. A per-piece fee is applied to each mailpiece in addition to the applicable First-Class Mail QBRM postage. See Notice 123—*Price List* for applicable prices and fees.

9.1.5 Bulk Weight Averaged Nonletter-Size BRM

[Revise 9.1.5, as follows:]

For bulk weight average nonletter-size BRM, an annual permit fee, an annual account maintenance fee (for advanced deposit accounts), and a monthly fee are required. A per-piece fee is applied to each mailpiece in addition to the applicable First-Class Mail or Priority Mail postage. See Notice 123—*Price List* for applicable prices and fees.

9.2 Qualified Business Reply Mail (QBRM) Prices

9.2.1 Cards

[Revise 9.2.1, as follows:]

See Notice 123—*Price List* for QBRM card prices and fees.

9.2.2 Letters

[Revise 9.2.2 (delete chart), as follows:]

See Notice 123—*Price List* for QBRM letter prices and fees.

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11.0 Merchandise Return Service

11.1 Prices and Fees

11.1.1 Permit Fee

[Delete the first sentence and revise the second sentence of 11.1.1 by removing prices and providing link to price as follows:]

An annual permit fee must be paid once each 12-month period at each Post Office where a Merchandise Return Service (MRS) permit is held. See Notice 123—*Price List* for the applicable fee. * * *

11.1.2 Advance Deposit Account and Account Maintenance Fee

[Revise the first sentence of 11.1.2 by removing prices and providing link to price as follows:]

There is an annual account maintenance fee for the advance deposit account (see Notice 123—*Price List*).

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12.0 Bulk Parcel Return Service

12.1 Bulk Parcel Return Service (BPRS) Fees

12.1.1 Permit Fee

[Revise text of 12.1.1 by removing prices and providing link to price as follows:]

An annual permit fee is required. See Notice 123—*Price List* for applicable fee.

12.1.2 Account Maintenance Fee

[Revise text of 12.1.2 by removing prices and providing link to price as follows:]

An annual account maintenance fee is required. See Notice 123—*Price List* for applicable fee.

12.1.3 Per Piece Charge

[Revise text of 12.1.3 by removing prices and providing link to price as follows:]

There is a per piece charge for each mailpiece returned, regardless of weight. See Notice 123—*Price List* for applicable fee.

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13.0 Parcel Return Service

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13.2 Postage and Fees

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13.2.2 Permit Fee

[Revise 13.2.2 by removing price and providing link to price list, as follows:]

The participant must pay an annual permit fee at the Post Office where the PRS permit is held. See Notice 123—*Price List* for applicable fee.

13.2.3 Advance Deposit Account and Annual Account Maintenance Fee

[Revise 13.2.3 by removing price and providing link to price list, as follows:]

The participant must pay postage through an advance deposit account and pay an annual account maintenance fee. See Notice 123—*Price List* for applicable fee.

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700 Special Standards

703 Nonprofit Standard Mail and Other Unique Eligibility

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2.0 Overseas Military Mail

2.1 Basic Standards

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2.1.2 APO/FPO Priority Mail Flat-Rate Boxes

[Revise the text of 2.1.2, as follows:]

For shipping convenience, there are multiple Priority Mail flat-rate boxes:

a. Small flat-rate box to domestic, APO/FPO, and DPO destinations.

b. Regular/medium flat-rate boxes (FRB–1) or (FRB–2) to domestic, APO/FPO and DPO destinations.

c. Large flat-rate box or ''special version of this box'' to APO/FPO and DPO destinations.

d. Large flat-rate box to domestic destinations.

The large flat-rate box to APO/FPO and DPO destinations or ''special version of this box'' is priced less than the conventional domestic large flat-rate box. Items sent to APO/FPO and DPO destination addresses may be shipped in the Priority Mail large flat-rate box or in a special version of the box identified with the additional logo: ''Americasupportsyou.mil.'' If the special version of the APO/FPO flat-rate box is used for non-APO/FPO and DPO destination addresses, the domestic or international large flat-rate box prices will apply. Only USPS-produced flat-rate boxes are eligible for the flat-rate box prices. Each USPS-produced Priority Mail flat-rate box is charged a flat rate regardless of the actual weight (up to 70 pounds) of the mailpiece or domestic destination. See Notice 123—*Price List* for applicable prices.

* * * * *

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. E9–26986 Filed 11–5–09; 4:15 pm]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2008–0783; FRL–8971–9]

Approval and Promulgation of Air Quality Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving sulfur dioxide, particulate matter (PM), and nitrogen oxides emission limitations and related requirements for the Southern Indiana Gas and Electric Company's F.B. Culley Generating Station (Culley Station). Indiana requested a revision to its State Implementation Plan (SIP) on September 11, 2008. Most of the provisions to be added are contained in a Federal consent decree. In addition, Indiana has removed expired sulfur dioxide emission limits from its regulations. These requirements are consistent with section 110 of the Clean Air Act as revisions to the Indiana State Implementation Plan (SIP).

DATES: This direct final rule will be effective January 11, 2010, unless EPA receives adverse comments by December 10, 2009. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2008–0783, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: mooney.john@epa.gov.*
3. *Fax:* (312) 692–2551.
4. *Mail:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R05–OAR–2008–0783. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://*

www.regulations.gov your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. We recommend that you telephone Matt Rau, Environmental Engineer, at (312) 886–6524 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Matt Rau, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6524, *rau.matthew@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

I. Background
II. What Is EPA Approving?
III. What Is EPA's Analysis of the Revisions?
IV. What Is the Environmental Effect of this Action?
V. What Action Is EPA Taking?
VI. Statutory and Executive Order Reviews

I. Background

Southern Indiana Gas and Electric Company (SIGECO) operates the Culley Station, a coal-fired power plant, in Warrick County, Indiana.[1] To resolve without litigation violations of Prevention of Significant Deterioration provisions, New Source Performance Standards, and the Indiana SIP, SIGECO agreed in a June 2003 Federal consent decree, to (among other things) install and operate sulfur dioxide, particulate matter, and nitrogen oxides control equipment and continuous emission monitoring systems (CEMS). *See U.S.* v. *SIGECO,* Civil Action number IP99–1692 C–M/F. Indiana has requested that these requirements for the Culley Station be incorporated into its SIP.[2] Culley Station Unit 1 permanently shut down on December 16, 2006.

II. What Is EPA Approving?

EPA is approving revisions to the sulfur dioxide, PM, and nitrogen oxide SIP for the Culley Station facility. Indiana has added: new PM requirements as 326 Indiana Administrative Code (IAC) 6–7–1; revised sulfur dioxide requirements to 326 IAC 7–4–10; and new nitrogen oxide limits as 326 IAC 10–6–1. This includes continuous monitoring for sulfur dioxide and nitrogen oxide emissions, added to 326 IAC 7–4–10 and 326 IAC 10–6–1, respectively.

Under 326 IAC 6–7–1, SIGECO must utilize an electrostatic precipitator (ESP) to control Unit 2 emissions and a baghouse to control Unit 3 emissions. Unit 3 must also meet a 0.015 pound per million BTUs PM limit.

Revised 326 IAC 7–4–10 requires SIGECO to improve its flue gas desulfurization (FGD) system to at least a 95 percent sulfur dioxide removal efficiency. The FGD must be operated whenever a unit burns coal. SIGECO must use a low sulfur content coal for Unit 2 should there be an unplanned FGD outage. Using low sulfur coal should help to minimize sulfur dioxide emissions until the FGD operation is restored. Indiana also removed from the rule alternative sulfur dioxide emissions scenarios that no longer apply.

Indiana added nitrogen oxides emission limits for Unit 3 as 326 IAC 10–6–1. Unit 3 must meet an emission limit of 0.100 pounds of nitrogen oxides per million BTUs. SIGECO is also required to operate selective catalytic reduction technology (SCR) whenever the unit operates.

In addition, Indiana removed expired sulfur dioxide emission limits for Warrick County in 326 IAC 7–4–10.

III. What Is EPA's Analysis of the Revisions?

The consent decree conditions and the corresponding Indiana rule incorporating the condition are summarized in Table 1.

TABLE 1

Applicable unit(s)	Consent decree provision	Indiana rule
1	Re-power or retire Unit 1 (36)	Unit 1 permanently shut down.
3	NO_X: 0.100 lb/MMBTU [1] (39)	326 IAC 10–6–1 (1).
3	NO_X: requires SCR operation at all times (41)	326 IAC 10–6–1 (2).
3	NO_X: use a CEMS to monitor (45)	326 IAC 10–6–1 (3).
2, 3	SO_2: FGD- 95% efficiency [2] (47)	326 IAC 7–4–10 (a)(1)(E).
2, 3	SO_2: run FGD at all times(48)	326 IAC 7–4–10 (a)(1)(F).
2, 3	SO_2: use compliance coal during unplanned FGD outage (49).	326 IAC 7–4–10 (a)(1)(F).
2	PM: run ESP at all times coal is burned (61)	326 IAC 6–7–1 (2).
3	PM: install baghouse, 0.015 lb/MMBTU limit (62)	326 IAC 6–7–1 (1)(A).
3	PM: operate baghouse at all times coal is burned(63)	326 IAC 6–7–1 (1)(B).
3	PM: use 40 CFR 60, Method 5 (65)	326 IAC 6–7–1 (1)(C).

[1] 30-day rolling average emission rate.
[2] 30-day rolling average SO_2 removal efficiency using CEMS data from the control device inlet and outlet.

[1] SIGECO is a wholly-owned subsidiary of Vectren Corporation.

[2] EPA is making no finding in this notice as to whether Indiana's submission constitutes SIGECO's compliance with any provision of the Consent Decree.

The requirements in 326 IAC 6–7–1 and 326 IAC 10–6–1 for fine particulate matter and nitrogen oxides, respectively, are expected to reduce emissions and thus benefit air quality.

The current sulfur dioxide emission limits remain unchanged in this SIP revision. Indiana added the consent decree conditions requiring SIGECO to maintain a sulfur dioxide removal efficiency of at least ninety-five percent (30-day rolling average) from its control device to its SIP in 326 IAC 7–4–10 (a)(1)(E). In addition, SIGECO must operate the FGD, its sulfur dioxide control device, at all times coal is burned in the units. The removal efficiency standard and operating requirement for the FGD will help to minimize sulfur dioxide emissions. In addition to the control requirement revisions on SIGECO Culley, sulfur dioxide emission limits that are no longer pertinent were also removed.

The revisions to the Indiana rules adding the sulfur dioxide, particulate matter, and nitrogen oxides emission limitations for SIGECO Culley Indiana also removed expired sulfur dioxide emission limits from 326 IAC 7–4–10 leaving just the current emission limits which clarifies the rule. Therefore, EPA is approving the revisions to the Indiana SIP.

IV. What Is the Environmental Effect of This Action?

The revisions for SIGECO Culley strengthen the particulate matter, sulfur dioxide, and nitrogen oxides emission limits. Indiana expects a reduction in sulfur dioxide, nitrogen oxide, and particulate matter emissions from SIGECO Culley resulting from the revisions.

Sulfur dioxide in the atmosphere can aggravate respiratory and cardiovascular disease. Sulfur dioxide emissions also contribute to acid rain and fine particulate matter formation. Nitrogen oxides participate in atmospheric reactions forming fine particulate matter and ground level ozone.

In addition to the particulate precursor emission reductions from the more stringent rules, particulate matter emissions directly to the atmosphere are expected to be reduced by the control device upgrade and tightened emission limits at the Culley Station's Unit 3. Particulate matter in the atmosphere is known to harm health by decreasing lung function and aggravating respiratory ailments.

V. What Action Is EPA Taking?

EPA is approving revisions to the Indiana SIP submitted on September 11, 2008. The PM, sulfur dioxide, and nitrogen oxides emission limits and other control requirements for SIGECO's Culley Generating Station are more stringent than the previous applicable limits and should result in overall environmental improvement. Therefore, EPA is approving 326 IAC 6–7–1, 7–4–10, and 10–6–1 into the Indiana SIP.

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the State plan if relevant adverse written comments are filed. This rule will be effective January 11, 2010 without further notice unless we receive relevant adverse written comments by December 10, 2009. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. If we do not receive any comments, this action will be effective January 11, 2010.

VI. Statutory and Executive Order Reviews

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

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by *January 11, 2010.* Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness

of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: October 13, 2009.

Walter W. Kovallivk Jr.,

Acting Regional Administrator, Region 5.

■ 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 P—Indiana

■ 2. Section 52.770 is amended by adding paragraph (c)(190) to read as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

(190) On September 11, 2008, Indiana submitted a revision to its SIP. The revisions add particulate matter, sulfur dioxide, and nitrogen oxides control and emission limitations on the Southern Indiana Gas and Electric Company's F.B. Culley Generating Station, a power plant located in Warrick County, Indiana.

(i) Incorporation by reference.

(A) Indiana Administrative Code Title 326: Air Pollution Control Board, Article 6: Particulate Rules, Rule 7: Particulate Matter Emission Limitations for Southern Indiana Gas and Electric Company, Section 1: ''Southern Indiana Gas and Electric Company (SIGECO)''; Article 7: Sulfur Dioxide Rules, Rule 4: Emission Limitations and Requirements by County, Section 10: ''Warrick County sulfur dioxide emission limitations''; and Article 10: Nitrogen Oxides Rules, Rule 6: Nitrogen Oxides Emission Limitations for Southern Indiana Gas and Electric Company, Section 1: ''Southern Indiana Gas and Electric Company (SIGECO)''.

Filed with the Secretary of State on July 31, 2008 and effective on August 30, 2008. Published in Indiana Register 326070309 on August 28, 2008, LSA Document #07–309(F).

[FR Doc. E9–26936 Filed 11–9–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2009–0272; FRL–8970–4]

Revisions to the California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District and South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing approval of revisions to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) and South Coast Air Quality Management District (SCAQMD) portions of the California State Implementation Plan (SIP). These revisions were proposed in the **Federal Register** on June 26, 2009, and concern particulate matter (PM) emissions from open burning, wood burning fireplaces and heaters, and the storage, handling, and transportation of coke, coal, and sulfur. We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: *Effective Date:* This rule is effective on December 10, 2009.

ADDRESSES: EPA has established docket number EPA–R09–OAR–2009–0272 for this action. The index to the docket is available electronically at *http://www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Mae Wang, EPA Region IX, (415) 947–4124, *wang.mae@epa.gov.*

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

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I. Proposed Action
II. Public Comments and EPA Responses
III. EPA Action
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I. Proposed Action

On June 26, 2009, (74 FR 30485), EPA proposed to approve the following rules into the California SIP:

Local agency	Rule #	Rule title	Amended	Submitted
SJVUAPCD	4103	Open Burning	05/17/07	04/06/09
SJVUAPCD	4901	Wood Burning Fireplaces and Wood Burning Heaters.	10/16/08	12/23/08
SCAQMD	1158	Storage, Handling, Transport of Coke, Coal and Sulfur.	07/11/08	12/23/08

We proposed to approve these rules because we determined that they complied with the relevant CAA requirements. Our proposed action contains more information on the rules and our evaluation.

II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. During this period, we did not receive any comments.

III. EPA Action

No comments were submitted that change our assessment that the submitted rules comply with the relevant CAA requirements. Therefore, as authorized in section 110(k)(3) of the Act, EPA is fully approving these rules into the California SIP.

IV. Statutory and Executive Order Reviews

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

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 11, 2010. 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 may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

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

Dated: September 18, 2009.

Jane Diamond,

Acting Regional Administrator, Region IX.

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

PART 52—[AMENDED]

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

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

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraphs (c)(364)(i)(A)(*2*) and (c)(364)(i)(B), and (c)(366) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(364) * * *

(i) * * *

(A) * * *

(*2*) Rule 4901, ''Wood Burning Fireplaces and Wood Burning Heaters,'' amended on October 16, 2008.

* * * * *

(B) South Coast Air Quality Management District.

(*1*) Rule 1158, ''Storage, Handling, and Transport of Coke, Coal and Sulfur,'' amended July 11, 2008.

* * * * *

(366) New and amended regulations for the following agencies were submitted on April 6, 2009, by the Governor's designee.

(i) *Incorporation by reference.*

(A) San Joaquin Valley Unified Air Pollution Control District.

(*1*) Rule 4103, ''Open Burning,'' amended May 17, 2007.

* * * * *

[FR Doc. E9–26958 Filed 11–9–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 141

[EPA–HQ–OW–2009–0707; FRL–8979–5]

Expedited Approval of Alternative Test Procedures for the Analysis of Contaminants Under the Safe Drinking Water Act; Analysis and Sampling Procedures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action announces the Environmental Protection Agency's (EPA's) approval of alternative testing methods for use in measuring the levels of contaminants in drinking water and determining compliance with national primary drinking water regulations. The Safe Drinking Water Act (SDWA) authorizes EPA to approve the use of alternative testing methods through publication in the **Federal Register.** EPA is using this streamlined authority to make 25 additional methods available for analyzing drinking water samples required by regulation. This expedited approach provides public water systems, laboratories, and primacy agencies with more timely access to new measurement techniques and greater flexibility in the selection of analytical methods, thereby reducing monitoring costs while maintaining public health protection.

DATES: This action is effective November 10, 2009.

FOR FURTHER INFORMATION CONTACT: Safe Drinking Water Hotline: (800) 426–4791

or Patricia Snyder Fair, Technical Support Center, Office of Ground Water and Drinking Water (MS 140), Environmental Protection Agency, 26 West Martin Luther King Drive, Cincinnati, OH 45268; telephone number: (513) 569–7937; e-mail address: *fair.pat@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

Public water systems are the regulated entities required to measure contaminants in drinking water samples. In addition, EPA Regions as well as States and Tribal governments with authority to administer the regulatory program for public water systems under SDWA may also measure contaminants in water samples. When EPA sets a monitoring requirement in its national primary drinking water regulations for a given contaminant, the Agency also establishes in the regulations standardized test procedures for analysis of the contaminant. This action makes alternative testing methods available for particular drinking water contaminants beyond the testing methods currently established in the regulations. EPA is providing public water systems required to test water samples with a choice of using either a test procedure already established in the existing regulations or an alternative test procedure that has been approved in this action. Categories and entities that may ultimately be affected by this action include:

Category	Examples of potentially regulated entities	NAICS [1]
State, Local, & Tribal Governments	States, local and Tribal governments that analyze water samples on behalf of public water systems required to conduct such analysis; States, local and Tribal governments that themselves operate community and non-transient non-community water systems required to monitor.	924110
Industry	Private operators of community and non-transient non-community water systems required to monitor.	221310
Municipalities	Municipal operators of community and non-transient non-community water systems required to monitor.	924110

[1] North American Industry Classification System.

This table is not exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. This table lists the types of entities that EPA is now aware could potentially be affected by this action. Other types of entities not listed in the table could also be impacted. To determine whether your facility is affected by this action, you should carefully examine the applicability language at 40 CFR 141.2 (definition of public water system). If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. How Can I Get Copies of This Document and Other Related Information?

Docket. EPA established a docket for this action under Docket ID No. EPA–HQ–OW–2009–0707. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Water Docket in the EPA Docket Center, (EPA/DC) EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. Copyrighted materials are available only in hard copy. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426.

Abbreviations and Acronyms Used in This Action

CFR: Code of Federal Regulations.
DOC: Dissolved Organic Carbon.
DPD: N,N-Diethyl-p-phenylenediamine.
E. coli: Escherichia coli.
EPA: Environmental Protection Agency.
HAA5: Haloacetic Acids (five); Sum of Monochloroacetic Acid, Dichloroacetic Acid, Trichloroacetic Acid, Monobromoacetic Acid, and Dibromoacetic Acid.
IC: Ion Chromatography.
IC–ESI–MS/MS: Ion Chromatography Electrospray Ionization Tandem Mass Spectrometry.
LED: Light Emitting Diode.
mg/L: Milligrams/Liter.
MRL: Minimum Reporting Level.
NEMI: National Environmental Methods Index.
nm: Nanometers.
QC: Quality Control.
SDWA: Safe Drinking Water Act.
SUVA: Specific Ultraviolet Absorbance.
TOC: Total Organic Carbon.
UV_{254}: Ultraviolet Absorbance at 254 nanometers.

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II. Background

A. What Is the Purpose of This Action?

In this action, EPA is approving 25 analytical methods for determining contaminant concentrations in samples collected under SDWA. Regulated parties required to sample and monitor may use either the testing methods already established in existing regulations or the alternative testing methods being approved in this action. The new methods are listed in Appendix A to Subpart C in 40 CFR 141 and on EPA's drinking water methods Web site at *http://www.epa.gov/safewater/methods/analyticalmethods_expedited.html.*

B. What Is the Basis for This Action?

When EPA determines that an alternative analytical method is ''equally effective'' (*i.e.,* as effective as a method that has already been promulgated in the regulations), SDWA allows EPA to approve the use of the alternative method through publication in the **Federal Register.** (*See* Section 1401(1) of SDWA.) EPA is using this streamlined approval authority to make 25 additional methods available for determining contaminant concentrations in samples collected under SDWA. EPA has determined that, for each contaminant or group of contaminants listed in Section III, the additional testing methods being approved in this action are equally effective as one or more of the testing methods already established in the regulations for those contaminants.

Section 1401(1) states that the newly approved methods ''shall be treated as an alternative for public water systems to the quality control and testing procedures listed in the regulation.'' Accordingly, this action makes these additional (and optional) 25 analytical methods legally available for meeting EPA's monitoring requirements.

This action does not add regulatory language, but does, for informational purposes, update an appendix to the regulations at 40 CFR part 141 that lists all methods approved under Section 1401(1) of SDWA. Accordingly, while this action is not a rule, it is updating CFR text and therefore is being published in the ''Final Rules'' section of this **Federal Register.**

EPA described this expedited methods approval process in an April 10, 2007, **Federal Register** notice (72 FR 17902) (USEPA 2007) and announced its intent to begin using the process. EPA published the first set of approvals in a June 3, 2008, **Federal Register** notice (73 FR 31616) (USEPA 2008) and added Appendix A to 40 CFR Part 141, Subpart C. Six additional methods were added to Appendix A to Subpart C in an August 3, 2009, **Federal Register** notice (74 FR 38348) (USEPA 2009a). Future approvals using this process are anticipated.

III. Summary of Approvals

EPA is approving 25 methods that are equally effective relative to methods previously promulgated in the regulations. By means of this notice, these 25 methods are added to Appendix A of 40 CFR Part 141, Subpart C.

A. Methods Developed by EPA

1. EPA Method 334.0, ''Determination of Residual Chlorine in Drinking Water Using an On-line Chlorine Analyzer'' (USEPA 2009b) establishes quality control (QC) criteria for on-line chlorine analyzers such that the analyzers provide data equivalent to the grab sample methodologies that are already approved in the regulations. The on-line chlorine analyzer is calibrated using aqueous standards or the results from grab samples that are collected at the same sample point as used by the analyzer. The grab samples are analyzed for chlorine using a method that is approved for drinking water compliance monitoring. The accuracy of the on-line chlorine analyzer is periodically verified (and adjustments made when necessary) based on results from grab sample analyses.

Previously approved methods for determining free and total chlorine residuals in drinking water are listed in the tables at 40 CFR 141.74(a)(2) and 40 CFR 141.131(c)(1). All of the methods are designed for grab sample analyses. The regulation at 40 CFR 141.74(a)(2) also states, ''Free and total chlorine residuals may be measured continuously by adapting a specified chlorine residual method for use with a continuous monitoring instrument provided the chemistry, accuracy, and precision remain the same. Instruments used for continuous monitoring must be calibrated with a grab sample measurement at least every five days, or with a protocol approved by the State.''

Continuous monitoring instruments that use N,N-Diethyl-p-phenylenediamine (DPD) chemistry are the only on-line chlorine analyzers that, prior to this action, met the drinking water regulatory requirement to use the same chemistry as an approved method. The instruments perform chlorine residual measurements on a frequent basis using an automated version of Standard Method 4500–Cl G (APHA 1998), which is listed in the tables at 40 CFR 141.74(a)(2) and 40 CFR 141.131(c)(1). Since the instruments use an approved method, they have the capability to provide the same accuracy and precision as the approved method (Standard Method 4500–Cl G), if they are properly installed and maintained. The performance characteristics of the instruments are periodically checked by comparing the instrumental results to grab sample measurements according to a protocol approved by the State.

EPA Method 334.0 now allows the use of on-line chlorine analyzers based on chemistry different from that of approved methods. It is a ''performance based'' method, which means it establishes QC criteria to bench-mark the performance of the on-line chlorine analyzer against the performance of approved grab sample methods. As long as the on-line analyzer meets the QC criteria in EPA Method 334.0, the data are deemed equivalent to data obtained using the approved grab sample methods. EPA Method 334.0 can be used with any type of on-line chlorine analyzer.

Data from 38 drinking water treatment facilities (EE&T, Inc. 2009) were used as the basis for establishing the on-line chlorine analyzer QC criteria in EPA Method 334.0. Chlorine residual measurements from on-line amperometric chlorine analyzers were compared to the results from grab sample analyses performed using either Standard Method 4500–Cl D (amperometric titration) (APHA 1998) or Standard Method 4500–Cl G (DPD colorimetric). Both Standard Methods are approved for drinking water compliance monitoring analyses and are listed in the tables at 40 CFR 141.74(a)(2) and 40 CFR 141.131(c)(1). The data from the 38 facilities demonstrate that on-line amperometric chlorine analyzers can provide data that are equivalent to approved methods.

EPA Method 334.0 requires that the analyst demonstrate that the grab sample method provides reliable data prior to using it to verify the performance of an on-line chlorine analyzer. This QC requirement is consistent with the QC requirements in the approved grab sample methods. Aqueous standards are analyzed to demonstrate the accuracy and precision of the measurements. EPA recommends that the grab sample QC requirements in EPA Method 334.0 be used with all on-line chlorine analyzers, including those that are originally approved under the provisions of 40 CFR 141.74.

A preliminary draft of EPA Method 334.0 was provided to the Association of State Drinking Water Administrators, the American Water Works Association, and the Water and Wastewater Equipment Manufacturers Association. A revised draft was reviewed by persons from two State agencies and two drinking water utilities. The final method reflects changes made in response to review comments. The public docket for this action includes the comments from these organizations and the Agency's response to comments (USEPA 2009c).

EPA has determined that EPA Method 334.0 is equally effective for measuring free and total chlorine residuals as the methods that are promulgated in the regulations at 40 CFR 141.74(a)(2) and 40 CFR 141.131(c)(1). The basis for this determination is discussed in Fair and Wendelken 2009. EPA is therefore approving use of EPA Method 334.0 for on-line analyses of free and total chlorine. A copy of the method can be accessed and downloaded directly on-line at *http://epa.gov/safewater/methods/analyticalmethods_ogwdw.html.*

2. EPA Method 302.0, ''Determination of Bromate in Drinking Waters using Two-Dimensional Ion Chromatography with Suppressed Conductivity Detection'' (USEPA 2009d) is a large volume (1.0 mL), two-dimensional ion chromatography (IC) method that uses suppressed conductivity detection for the determination of bromate in raw and finished drinking waters. Because this method utilizes two dissimilar IC columns it does not require second column confirmation. Detection and quantitation are accomplished in the second dimension by suppressed conductivity measurement. Bromate

concentration is calculated using the integrated peak area and the external standard technique.

EPA Method 302.0 offers increased bromate specificity without the complexity of post column reactors.

The approved methods for bromate are listed at 40 CFR 141.131(b)(1). The performance characteristics of EPA Method 302.0 were compared to the characteristics of approved EPA Methods 300.1 (USEPA 2000), 317.0, Revision 2.0 (USEPA 2001), and 326.0 (USEPA 2002). EPA has determined that EPA Method 302.0 is equally effective for measuring bromate concentrations as these approved methods. EPA Method 302.0 can also meet the minimum reporting limit (MRL) requirements necessary for methods that are used to support the reduced bromate monitoring specified at 40 CFR 141.132(b)(3)(ii)(B). The basis for these determinations is discussed in Munch 2009a. EPA is therefore approving EPA Method 302.0 for the routine determination of bromate in drinking water and also allowing its use for reduced bromate monitoring. A copy of the method can be accessed and downloaded directly on-line at *http://epa.gov/safewater/methods/analyticalmethods_ogwdw.html.*

3. EPA Method 557, ''Determination of Haloacetic Acids, Bromate, and Dalapon in Drinking Water by Ion Chromatography Electrospray Ionization Tandem Mass Spectrometry (IC–ESI–MS/MS)'' (USEPA 2009e) is a direct-injection, ion chromatography, negative-ion electrospray ionization, tandem mass spectrometry (IC–ESI–MS/MS) method for the determination of nine haloacetic acids in finished drinking waters. Each method analyte is qualitatively identified via a unique mass transition, and the concentration is calculated using the integrated peak area and the internal standard technique.

Bromate may be measured concurrently with the haloacetic acids. Real time, chromatographic separation of common anions in drinking water (matrix elimination) is a key feature of this method. Acceptable method performance has been demonstrated for matrix ion concentrations of 320 milligrams/Liter (mg/L) chloride, 250 mg/L sulfate, 150 mg/L bicarbonate and 20 mg/L nitrate.

EPA Method 557 eliminates the labor intensive sample preparation steps (extraction and derivatization) that are required in the current methods that are approved for haloacetic acid determinations. It also reduces the use of solvents and potentially hazardous chemicals. The development work for this method is described in the method research summary (Zaffiro and Zimmerman 2009).

The sum of five haloacetic acids (monochloroacetic acid, dichloroacetic acid, trichloroacetic acid, monobromoacetic acid, and dibromoacetic acid) is regulated as HAA5. The approved methods for HAA5 are listed at 40 CFR 141.131(b)(1). The performance characteristics of EPA Method 557 for each of the five haloacetic acids were compared to the characteristics of approved EPA Methods 552.2 (USEPA 1995) and 552.3, Revision 1.0 (USEPA 2003) for the same compounds. EPA has determined that EPA Method 557 is equally effective for measuring HAA5 relative to approved EPA Methods 552.2 and 552.3. The basis for this determination is discussed in Munch 2009b. Therefore, EPA is approving EPA Method 557 for determining HAA5 in drinking water.

The performance characteristics of EPA Method 557 were also compared to the bromate-measurement characteristics of approved EPA Methods 300.1 (USEPA 2000), 317.0 Revision 2.0 (USEPA 2001), and 326.0 (USEPA 2002). EPA has determined that EPA Method 557 is equally effective for measuring bromate concentrations as these approved methods. EPA Method 557 can also meet the MRL requirements necessary for methods that are used to support the reduced bromate monitoring specified at 40 CFR 141.132(b)(3)(ii)(B). The basis for these determinations is discussed in Munch 2009b. EPA is therefore approving EPA Method 557 for the routine determination of bromate in drinking water and also allowing its use for reduced bromate monitoring.

A copy of EPA Method 557 can be accessed and downloaded directly on-line at *http://epa.gov/safewater/methods/analyticalmethods_ogwdw.html.*

4. EPA Method 415.3, Revision 1.2, ''Determination of Total Organic Carbon and Specific UV Absorbance at 254 nanometers (nm) in Source Water and Drinking Water'' (USEPA 2009f) is a slightly modified version of the currently approved EPA Method 415.3, Revision 1.1 (USEPA 2005). Revision 1.1 is listed as an approved method for determining total organic carbon (TOC), dissolved organic carbon (DOC), ultraviolet absorbance at 254 nm (UV_{254}), and specific ultraviolet absorbance (SUVA) concentrations at 40 CFR 141.131(d). Determination of UV_{254} can only be done using a double beam spectrophotometer if the instrument is zeroed according to the directions in the approved method. Since many water system laboratories use single beam spectrophotometers, the method was revised to allow for their use by modifying the zeroing procedure. This modification did not result in any change in the performance of the method. Therefore, EPA finds that Method 415.3, Revision 1.2 is equally effective as Revision 1.1. Revision 1.2 also corrects some typographical errors that are present in Revision 1.1. The modifications are documented in Wimsatt 2009. EPA is approving EPA Method 415.3, Revision 1.2 for determining TOC, DOC, UV_{254}, and SUVA in source water and drinking water.

A copy of EPA Method 415.3, Revision 1.2 can be accessed and downloaded directly on-line at *http://www.epa.gov/nerlcwww/ordmeth.htm.*

B. Methods Developed by Voluntary Consensus Standard Bodies (VCSB)

1. *Standard Methods for the Examination of Water and Wastewater.* Standard Methods 9223 B–97 and 9223 B (20th and 21st Edition) can be used to detect *Escherichia coli (E. coli).* Approved methods for *E. coli* are listed at 40 CFR 141.21(f)(6). The Minimal Medium ONPG–MUG (MMO–MUG) Test is listed as an approved method for *E. coli* and the reference cited for the procedure is a journal article (Edberg *et al.* 1989). Standard Methods used the same research documented in the journal article to write Standard Method 9223 B, which is published in the 20th and 21st Edition of *Standard Methods for the Analysis of Water and Wastewater* (APHA 1998, 2005). The same method is also available on-line as Standard Method 9223 B–97 (APHA 1997). Since Standard Methods 9223 B (20th and 21st Edition) and 9223 B–97 are the same procedure as that documented in the Edberg *et al.* article, they are equally effective as the approved Edberg method for determining *E. coli* (Best 2009). Therefore, EPA is approving the use of Standard Methods 9223 B (20th Edition), 9223 B (21st Edition) and 9223 B–97 for determining *E. coli* as specified at 40 CFR 141.21(f)(6). The 20th and 21st editions can be obtained from American Public Health Association (APHA), 800 I Street, NW., Washington, DC 20001–3710. Standard Method 9223 B–97 is available at *http://www.standardmethods.org.*

2. *ASTM International.* EPA compared the most recent versions of 14 ASTM International methods to the versions of those methods cited in 40 CFR 141 and 143. Changes between the approved version and the most recent version of each method are summarized

in Fair 2009. The revisions primarily involve editorial changes (*i.e.,* updated references, reorganization, and corrections of errors). Data generated using the revised methods are comparable to data obtained using the previous versions because the chemistry, sample-handling protocols, and QC are unchanged. The new versions are equally effective relative to the version cited in the regulation (Fair 2009). Therefore, EPA is approving the use of the 14 updated ASTM methods for the contaminants and regulations listed in the following table.

The revised ASTM method for bromate and chlorite analyses (D 6581–08) is split into two techniques. Method A uses chemically suppressed ion chromatography and is the same as the approved Method D 6581–00, which is listed in the regulation at 40 CFR 141.131(b)(1); ASTM D 6581–08 A is one of the 14 methods previously discussed. Method B uses electrolytically suppressed ion chromatography and represents a new method. EPA compared the bromate and chlorite performance data for Method B to the data in the approved Method D 6581–00 and determined that Method B is equally effective as the currently approved method (Fair 2009). Therefore, EPA is approving ASTM D 6581–08 B for the determination of bromate and chlorite in routine drinking water compliance samples.

The ASTM methods that are approved in this action are listed in the following table:

ASTM method	Contaminant	Regulation
D511–09 A (ASTM International 2009a)	Calcium	40 CFR 141.23(k)(1).
	Magnesium	40 CFR 141.23(k)(1).
D511–09 B (ASTM International 2009a)	Calcium	40 CFR 141.23(k)(1).
	Magnesium	40 CFR 141.23(k)(1).
D1688–07 A (ASTM International 2009b)	Copper	40 CFR 141.23(k)(1).
D1688–07 C (ASTM International 2009b)	Copper	40 CFR 141.23(k)(1).
D2972–08 B (ASTM International 2009c)	Arsenic	40 CFR 141.23(k)(1).
D2972–08 C (ASTM International 2009c)	Arsenic	40 CFR 141.23(k)(1).
D3559–08 D (ASTM International 2009d)	Lead	40 CFR 141.23(k)(1).
D3645–08 B (ASTM International 2009e)	Beryllium	40 CFR 141.23(k)(1).
D3697–07 (ASTM International 2009f)	Antimony	40 CFR 141.23(k)(1).
D3859–08 A (ASTM International 2009g)	Selenium	40 CFR 141.23(k)(1).
D3859–08 B (ASTM International 2009g)	Selenium	40 CFR 141.23(k)(1).
D1253–08 (ASTM International 2009h)	Free Chlorine	40 CFR 141.74(a)(2).
		40 CFR 141.131(c)(1)
	Total Chlorine	40 CFR 141.74(a)(2).
		40 CFR 141.131(c)(1).
	Combined Chlorine	40 CFR 141.131(c)(1).
D516–07 (ASTM International 2009i)	Sulfate	40 CFR 143.4(b).
D6581–08 A (ASTM International 2009j)	Bromate	40 CFR 141.131(b)(1).
	Chlorite	40 CFR 141.131(b)(1).
D6581–08 B (ASTM International 2009j)	Bromate	40 CFR 141.131(b)(1).
	Chlorite	40 CFR 141.131(b)(1).

The 15 ASTM methods are available from ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428–2959 or *http://www.astm.org*.

C. Methods Developed by Vendors

1. AMI Turbiwell Method (SWAN Analytische Instrumente AG 2009a) uses light emitting diode (LED) nephelometry to continuously measure turbidity in drinking water. The turbidimeter utilizes a non-contact light source design to avoid fouling of optical surfaces. The LED has an emission range of 415 nm to 780 nm with a peak spectral radiance of 562nm. The light beam from the emission LED impinges the water surface and is refracted. The detector measures the scattered light at an angle of 90°. A light barrier avoids measurement errors due to light reflections. The instrument is equipped with an internal data logger, or the data can be downloaded to a personal computer or central data system with appropriate computer software.

The approved methods for turbidity are listed at 40 CFR 141.74(a)(1). The performance characteristics of the AMI Turbiwell turbidimeter were compared to the performance characteristics of approved EPA Method 180.1 (USEPA 1993). The validation study report (SWAN Analytische Instrumente AG 2009b) summarizes the results obtained from the turbidimeters placed in series at three different public water systems. One water system used ground water and the other two plants used surface water sources. Measurements included at least one filter backwash at each of the surface water plants.

EPA has determined that the AMI Turbiwell Method is equally effective as approved EPA Method 180.1. The basis for this determination is discussed in the validation study report (SWAN Analytische Instrumente AG 2009b). Therefore, EPA is approving the AMI Turbiwell Method for determining turbidity in drinking water. A copy of the method can be downloaded from the National Environmental Methods Index (NEMI) at *http://www.nemi.gov* or obtained by contacting Markus Bernasconi, SWAN Analytische Instrumente AG, Studbachstrasse 13, CH–8340 Hinwil, Switzerland.

2. ChloroSense (Palintest Ltd 2009a) is an electrochemical sensor method that measures free and total chlorine using disposable sensors. Free and combined available chlorine react with proprietary reagents on the sensor to create intermediate reaction products. These products are then detected electrochemically. The current that flows in each case is proportional to the amount of free available chlorine or total available chlorine in the sample. The sensors are pre-calibrated, and free and total chlorine concentrations are displayed upon completion of the analysis.

Approved methods for determining free and total chlorine residuals in drinking water are listed in the tables at 40 CFR 141.74(a)(2) and 40 CFR 141.131(c)(1). The performance characteristics of ChloroSense were compared to the performance characteristics of approved Standard Methods 4500–Cl D (amperometric titration)(APHA 1998) and 4500–Cl G (DPD colorimetric)(APHA 1998). A variety of samples, including drinking water samples from both surface and

ground water sources, were fortified with known chlorine concentrations and then analyzed by each method. The results are summarized in the validation study report (Palintest Ltd 2009b).

EPA has determined that the ChloroSense Method is equally effective as approved Standard Methods 4500–Cl D and 4500–Cl G. The basis for this determination is discussed in the validation study report (Palintest Ltd 2009b). Therefore, EPA is approving the ChloroSense Method for determining free and total chlorine residuals in drinking water. A copy of the method can be downloaded from NEMI at *http://www.nemi.gov* or obtained by contacting Palintest Ltd, 21 Kenton Lands Road, P.O. Box 18395, Erlanger, KY 41018.

3. Modified Colitag™ (CPI International 2009). Colitag™ (CPI International 2001) is a presence/absence method approved for use under the Total Coliform Rule. It uses enzymatic cleavage of a chromogenic substance to detect total coliforms and enzymatic cleavage of a fluorogenic substance to detect *E. coli* in a 100 mL sample of drinking water. Detection of total coliforms and *E. coli* are performed simultaneously by this method. Colitag™ may also be used in a most-probable-number format provided that the sum of all individual portions of the sample total 100 mL. Modified Colitag™ has a different formulation from the originally approved Colitag™. The purpose of the formula change is to achieve greater selectivity for total coliforms and *E. coli.* Additionally, the Modified Colitag™ provides flexibility in the incubation period (16 to 48 hours), while the approved Colitag™ requires a 24 hour incubation time.

Approved methods for total coliforms are listed at 40 CFR 141.21(f)(3) and approved methods for *E. coli* are listed at 40 CFR 141.21(f)(6). The performance characteristics of Modified Colitag™ were compared to Standard Methods 9221 B (LTB/BGLB) for total coliforms and 9222 G (LTB/EC–MUG) for *E. coli* (APHA 1998). The comparison study involved analyses of twenty replicate drinking water samples that were inoculated with very low densities of chlorine stressed total coliforms or *E. coli* obtained from ten geographically dispersed waste waters. Method specificity was evaluated using 100 positive and 100 negative cultures as determined from analyses by the reference methods.

EPA has determined that the Modified Colitag™ Method is equally effective as approved Standard Methods 9221 B for total coliforms and 9222 G for *E. coli,* which are already promulgated in the regulations at 40 CFR 141.21(f)(3) and 40 CFR 141.21(f)(6), respectively. The basis for this determination is discussed in the study report (USEPA 2009g). Therefore, EPA is approving the Modified Colitag™ Method for determining total coliforms and *E. coli* in drinking water. A copy of the method can be downloaded from NEMI at *http://www.nemi.gov* or obtained by contacting CPI International, 580 Skylane Boulevard, Santa Rosa, CA 95403.

IV. Statutory and Executive Order Reviews

As noted in Section II, under the terms of SDWA Section 1401(1), this streamlined method approval action is not a rule. Accordingly, the Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a rule for purposes of 5 U.S.C. 804(3). Similarly, this action is not subject to the Regulatory Flexibility Act because it is not subject to notice and comment requirements under the Administrative Procedure Act or any other statute. In addition, because this approval action is not a rule but simply makes alternative (optional) testing methods available for monitoring under SDWA, EPA has concluded that other statutes and executive orders generally applicable to rulemaking do not apply to this approval action.

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List of Subjects in 40 CFR Part 141

Chemicals, Environmental protection, Indians—lands, Intergovernmental relations, Radiation protection, Reporting and recordkeeping requirements, Water supply.

Dated: October 29, 2009.

Peter S. Silva,

Assistant Administrator, Office of Water.

■ For the reasons stated in the preamble, 40 CFR part 141 is amended as follows:

PART 141—NATIONAL PRIMARY DRINKING WATER REGULATIONS

■ 1. The authority citation for part 141 continues to read as follows:

Authority: 42 U.S.C. 300f, 300g–l, 300j–4, and 300j–9.

■ 2. Appendix A to subpart C of part 141 is amended as follows:

■ a. By revising the entry in the table entitled ''Alternative testing methods for contaminants listed at 40 CFR 141.21(f)(3).''

■ b. By adding the table entitled ''Alternative testing methods for contaminants listed at 40 CFR 141.21(f)(6)'' after the table entitled ''Alternative testing methods for contaminants listed at 40 CFR 141.21(f)(3).''

■ c. By revising the entries for ''Antimony,'' ''Arsenic,'' ''Beryllium,'' ''Calcium,'' ''Copper,'' ''Lead,'' ''Magnesium,'' and ''Selenium'' in the table entitled ''Alternative testing methods for contaminants listed at 40 CFR 141.23(k)(1).''

■ d. By revising the entry for ''Turbidity'' in the table entitled ''Alternative testing methods for contaminants listed at 40 CFR 141.74(a)(1).''

■ e. By revising the entries for ''Free Chlorine'' and ''Total Chlorine'' in the

table entitled ''Alternative testing methods for disinfectant residuals listed at 40 CFR 141.74(a)(2).''

■ f. By revising the entry for ''HAA5'' and adding the entries for ''Bromate'' and ''Chlorite'' after the entry for ''HAA5'' in the table entitled ''Alternative testing methods for contaminants listed at 40 CFR 141.131(b)(1).''

■ g. By revising the entries for ''Free Chlorine,'' ''Combined Chlorine'' and ''Total Chlorine'' in the table entitled ''Alternative testing methods for disinfectant residuals listed at 40 CFR 141.131(c)(1).''

■ h. By revising all the entries in the table entitled ''Alternative testing methods for parameters listed at 40 CFR 141.131(d).''

■ i. By adding the table entitled ''Alternative testing methods with MRL ≤ 0.0010 mg/L for monitoring listed at 40 CFR 141.132(b)(3)(ii)(B)'' after the table entitled ''Alternative testing methods for parameters listed at 40 CFR 141.131(d).''

■ j. By revising the entry for ''Sulfate'' in the table entitled ''Alternative testing methods for contaminants listed at 40 CFR 143.4(b)'' and,

■ k. By adding footnotes 13 through 19 to the table.

Appendix A to Subpart C of Part 141—Alternative Testing Methods Approved for Analyses Under the Safe Drinking Water Act

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ALTERNATIVE TESTING METHODS FOR CONTAMINANTS LISTED AT 40 CFR 141.21(f)(3)

Organism	Methodology	SM 21st edition [1]	Other
Total Coliforms	Total Coliform Fermentation Technique	9221 A, B	
	Total Coliform Membrane Filter Technique	9222 A, B, C	
	Presence-Absence (P–A) Coliform Test	9221 D	
	ONPG–MUG Test	9223	
	Colitag™		Modified Colitag™ [13]

ALTERNATIVE TESTING METHODS FOR CONTAMINANTS LISTED AT 40 CFR 141.21(F)(6)

Organism	Methodology	SM 20th edition [6]	SM 21st edition [1]	SM online [3]	Other
E. coli	*ONPG–MUG Test*	*9223 B*	*9223 B*	*9223 B–97*	Modified Colitag™ [13]

ALTERNATIVE TESTING METHODS FOR CONTAMINANTS LISTED AT 40 CFR 141.23(k)(1)

Contaminant	Methodology	EPA method	SM 21st edition [1]	SM online [3]	ASTM [4]	Other
*	*	*	*	*	*	*
Antimony	Hydride-Atomic Absorption				D 3697–07	
	Atomic Absorption; Furnace		3113 B			
	Axially viewed inductively coupled plasma-atomic emission spectrometry (AVICP–AES).	200.5, Revision 4.2.[2]				
Arsenic	Atomic Absorption; Furnace		3113 B		D 2972–08 C	
	Hydride Atomic Absorption		3114 B		D 2972–08 B	
	Axially viewed inductively coupled plasma-atomic emission spectrometry (AVICP–AES).	200.5, Revision 4.2.				
*	*	*	*	*	*	*
Beryllium	Inductively Coupled Plasma		3120 B			
	Atomic Absorption; Furnace		3113 B		D 3645–08 B	
	Axially viewed inductively coupled plasma-atomic emission spectrometry (AVICP–AES).	200.5, Revision 4.2.				
*	*	*	*	*	*	*
Calcium	EDTA titrimetric		3500–Ca B		D 511–09 A	
	Atomic Absorption; Direct Aspiration.		3111 B		D 511–09 B	
	Inductively Coupled Plasma		3120 B			
	Axially viewed inductively coupled plasma-atomic emission spectrometry (AVICP–AES).	200.5, Revision 4.2.				
*	*	*	*	*	*	*
Copper	Atomic Absorption; Furnace		3113 B		D 1688–07 C	
	Atomic Absorption; Direct Aspiration.		3111 B		D 1688–07 A	
	Inductively Coupled Plasma		3120 B			

ALTERNATIVE TESTING METHODS FOR CONTAMINANTS LISTED AT 40 CFR 141.23(k)(1)—Continued

Contaminant	Methodology	EPA method	SM 21st edition [1]	SM online [3]	ASTM [4]	Other
	Axially viewed inductively coupled plasma-atomic emission spectrometry (AVICP–AES).	200.5, Revision 4.2.				
*	* *		*	*	*	*
Lead	Atomic Absorption; Furnace		3113 B		D 3559–08 D	
	Axially viewed inductively coupled plasma-atomic emission spectrometry (AVICP–AES).	200.5, Revision 4.2.				
Magnesium	Atomic Absorption		3111 B		D 511–09 B	
	Inductively Coupled Plasma		3120 B			
	Complexation Titrimetric Methods.		3500–Mg B		D 511–09 A	
	Axially viewed inductively coupled plasma-atomic emission spectrometry (AVICP–AES).	200.5, Revision 4.2.				
*	* *		*	*	*	*
Selenium	Hydride-Atomic Absorption		3114 B		D 3859–08 A	
	Atomic Absorption; Furnace		3113 B		D 3859–08 B	
	Axially viewed inductively coupled plasma-atomic emission spectrometry (AVICP–AES).	200.5, Revision 4.2.				
*	* *		*	*	*	

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ALTERNATIVE TESTING METHODS FOR CONTAMINANTS LISTED AT 40 CFR 141.74(a)(1)

Organism	Methodology	SM 21st edition [1]	Other
*	* * * * *	*	
Turbidity	Nephelometric Method	2130 B	
	Laser Nephelometry (on-line)		Mitchell M5271 [10]
	LED Nephelometry (on-line)		Mitchell M5331 [11]
	LED Nephelometry (on-line)		AMI Turbiwell [15]
	LED Nephelometry (portable)		Orion AQ4500 [12]

ALTERNATIVE TESTING METHODS FOR DISINFECTANT RESIDUALS LISTED AT 40 CFR 141.74(a)(2)

Residual	Methodology	SM 21st edition [1]	ASTM [4]	Other
Free Chlorine	Amperometric Titration	4500–Cl D	D 1253–08	
	DPD Ferrous Titrimetric	4500–Cl F		
	DPD Colorimetric	4500–Cl G		
	Syringaldazine (FACTS)	4500–Cl H		
	On-line Chlorine Analyzer			EPA 334.0 [16]
	Amperometric Sensor			ChloroSense [17]
Total Chlorine	Amperometric Titration	4500–Cl D	D 1253–08	
	Amperometric Titration (Low level measurement)	4500–Cl E		
	DPD Ferrous Titrimetric	4500–Cl F		
	DPD Colorimetric	4500–Cl G		
	Iodometric Electrode	4500–Cl I		
	On-line Chlorine Analyzer			EPA 334.0 [16]
	Amperometric Sensor			ChloroSense [17]
*	* * * * *		*	

ALTERNATIVE TESTING METHODS FOR CONTAMINANTS LISTED AT 40 CFR 141.131(b)(1)

Contaminant	Methodology	EPA method	ASTM [4]	SM 21st edition [1]
*	* * *	*	*	
HAA5	LLE (diazomethane)/GC/ECD			6251 B
*	* * *	*	*	
	Ion Chromatography Electrospray Ionization Tandem Mass Spectrometry (IC–ESI–MS/MS).	557 [14]		
Bromate	Two-Dimensional Ion Chromatography (IC)	302.0 [18]		
	Ion Chromatography Electrospray Ionization Tandem Mass Spectrometry (IC–ESI–MS/MS).	557 [14]		
	Chemically Suppressed Ion Chromatography		D 6581–08 A	
	Electrolytically Suppressed Ion Chromatography		D 6581–08 B	
Chlorite	Chemically Suppressed Ion Chromatography		D 6581–08 A	
	Electrolytically Suppressed Ion Chromatography		D 6581–08 B	

ALTERNATIVE TESTING METHODS FOR DISINFECTANT RESIDUALS LISTED AT 40 CFR 141.131(c)(1)

Residual	Methodology	SM 21st edition [1]	ASTM [4]	Other
Free Chlorine	Amperometric Titration	4500–Cl D	D 1253–08	
	DPD Ferrous Titrimetric	4500–Cl F		
	DPD Colorimetric	4500–Cl G		
	Syringaldazine (FACTS)	4500–Cl H		
	Amperometric Sensor			ChloroSense [17]
	On-line Chlorine Analyzer			EPA 334.0 [16]
Combined Chlorine	Amperometric Titration	4500–Cl D	D 1253–08	
	DPD Ferrous Titrimetric	4500–Cl F		
	DPD Colorimetric	4500–Cl G		
Total Chlorine	Amperometric Titration	4500–Cl D	D 1253–08	
	Low level Amperometric Titration	4500–Cl E		
	DPD Ferrous Titrimetric	4500–Cl F		
	DPD Colorimetric	4500–Cl G		
	Iodometric Electrode	4500–Cl I		
	Amperometric Sensor			ChloroSense [17]
	On-line Chlorine Analyzer			EPA 334.0 [16]

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ALTERNATIVE TESTING METHODS FOR PARAMETERS LISTED AT 40 CFR 141.131(d)

Parameter	Methodology	SM 21st edition [1]	EPA
Total Organic Carbon (TOC)	High Temperature Combustion	5310 B	415.3, Rev 1.2 [19]
	Persulfate-Ultraviolet or Heated Persulfate Oxidation.	5310 C	415.3, Rev 1.2
	Wet Oxidation	5310 D	415.3, Rev 1.2
Specific Ultraviolet Absorbance (SUVA)	Calculation using DOC and UV_{254} data		415.3, Rev 1.2
Dissolved Organic Carbon (DOC)	High Temperature Combustion	5310 B	415.3, Rev 1.2
	Persulfate-Ultraviolet or Heated Persulfate Oxidation.	5310 C	415.3, Rev 1.2
	Wet Oxidation	5310 D	415.3, Rev 1.2
Ultraviolet absorption at 254 nm (UV_{254})	Spectrophotometry	5910 B	415.3, Rev 1.2

ALTERNATIVE TESTING METHODS WITH MRL > 0.0010 MG/L FOR MONITORING LISTED AT 40 CFR 141.132(b)(3)(ii)(B)

Contaminant	Methodology	EPA method
Bromate	Two-Dimensional Ion Chromatography (IC)	302.0 [18]
	Ion Chromatography Electrospray Ionization Tandem Mass Spectrometry (IC–ESI–MS/MS)	557 [14]

* * * * *

ALTERNATIVE TESTING METHODS FOR CONTAMINANTS LISTED AT 40 CFR 143.4(b)

Contaminant	Methodology	EPA Method	ASTM [4]	SM 21st edition [1]	SM Online [3]
*	*	*	*	*	
Sulfate	Ion Chromatography			4110 B	
	Gravimetric with ignition of residue			4500–SO_4^{-2} C	4500–SO_4^{-2} C–97
	Gravimetric with drying of residue			4500–SO_4^{-2} D	4500–SO_4^{-} D–97
	Turbidimetric method		D 516–07	4500–SO_4^{-2} E	4500–SO_4^{-2} E–97
	Automated methylthymol blue method			4500–SO_4^{-2} F	4500–SO_4^{-2} F–97
*	*	*	*	*	

[1] *Standard Methods for the Examination of Water and Wastewater,* 21st edition (2005). Available from American Public Health Association, 800 I Street, NW, Washington, DC 20001–3710.

[2] EPA Method 200.5, Revision 4.2. ''Determination of Trace Elements in Drinking Water by Axially Viewed Inductively Coupled Plasma-Atomic Emission Spectrometry.'' 2003. EPA/600/R–06/115. (Available at *http://www.epa.gov/nerlcwww/ordmeth.htm.*)

[3] Standard Methods Online are available at *http://www.standardmethods.org.* The year in which each method was approved by the Standard Methods Committee is designated by the last two digits in the method number. The methods listed are the only online versions that may be used.

[4] Available from ASTM International, 100 Barr Harbor Drive, West Conshohocken, PA 19428–2959 or *http://astm.org.* The methods listed are the only alternative versions that may be used.

* * * * *

[6] *Standard Methods for the Examination of Water and Wastewater*, 20th edition (1998). Available from American Public Health Association, 800 I Street, NW., Washington, DC 20001–3710.

* * * * *

[10] Mitchell Method M5271, Revision 1.1. ''Determination of Turbidity by Laser Nephelometry,'' March 5, 2009. Available at *http://www.nemi.gov* or from Leck Mitchell, Ph.D., PE, 656 Independence Valley Dr., Grand Junction, CO 81507.

[11] Mitchell Method M5331, Revision 1.1. ''Determination of Turbidity by LED Nephelometry,'' March 5, 2009. Available at *http://www.nemi.gov* or from Leck Mitchell, Ph.D., PE, 656 Independence Valley Dr., Grand Junction, CO 81507.

[12] Orion Method AQ4500, Revision 1.0. ''Determination of Turbidity by LED Nephelometry,'' May 8, 2009. Available at *http://www.nemi.gov* or from Thermo Scientific, 166 Cummings Center, Beverly, MA 01915, *http://www.thermo.com.*

[13] Modified Colitag™ Method, ''Modified Colitag™ Test Method for the Simultaneous Detection of *E. coli* and other Total Coliforms in Water (ATP D05–0035),'' August 28, 2009. Available at *http://www.nemi.gov* or from CPI, International, 580 Skylane Boulevard, Santa Rosa, CA 95403.

[14] EPA Method 557. ''Determination of Haloacetic Acids, Bromate, and Dalapon in Drinking Water by Ion Chromatography Electrospray Ionization Tandem Mass Spectrometry (IC–ESI–MS/MS),'' August 2009. EPA 815–B–09–012. Available at *http://epa.gov/safewater/methods/analytical methods_ogwdw.html.*

[15] AMI Turbiwell, ''Continuous Measurement of Turbidity Using a SWAN AMI Turbiwell Turbidimeter,'' August 2009. Available at *http://www.nemi.gov* or from Markus Bernasconi, SWAN Analytische Instrumente AG, Studbachstrasse 13, CH–8340 Hinwil, Switzerland.

[16] EPA Method 334.0. ''Determination of Residual Chlorine in Drinking Water Using an On-line Chlorine Analyzer,'' August 2009. EPA 815–B–09–013. Available at *http://epa.gov/safewater/methods/analyticalmethods_ogwdw.html.*

[17] ChloroSense. ''Measurement of Free and Total Chlorine in Drinking Water by Palintest ChloroSense,'' September 2009. Available at *http://www.nemi.gov* or from Palintest Ltd, 21 Kenton Lands Road, PO Box 18395, Erlanger, KY 41018.

[18] EPA Method 302.0. ''Determination of Bromate in Drinking Waters using Two-Dimensional Ion Chromatography with Suppressed Conductivity Detection,'' September 2009. EPA 815–B–09–014. Available at *http://epa.gov/safewater/methods/analyticalmethods_ogwdw.html.*

[19] EPA 415.3, Revision 1.2. ''Determination of Total Organic Carbon and Specific UV Absorbance at 254 nm in Source Water and Drinking Water,'' August 2009. EPA/600/R–09/122. Available at *http://www.epa.gov/nerlcwww/ordmeth.htm.*

[FR Doc. E9–27044 Filed 11–9–09; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

42 CFR Part 52

[Docket No. NIH–2007–0929]

RIN 0925–AA42

Grants for Research Projects

AGENCY: National Institutes of Health, Department of Health and Human Services.

ACTION: Final rule.

SUMMARY: The National Institutes of Health is amending the current regulations governing grants for research projects by revising the definition of Principal Investigator to mean one or more individuals designated by the grantee in the grant application and approved by the Secretary, who is or are responsible for the scientific and technical direction of the project, rather than limiting the role of Principal Investigator to one single individual; and the conditions for multiple or concurrent awards pursuant to one or more applications.

DATES: This final rule is effective December 10, 2009.

FOR FURTHER INFORMATION CONTACT: Jerry Moore, NIH Regulations Officer, Office of Management Assessment, National Institutes of Health, 6011 Executive Boulevard, Room 601, MSC 7669, Rockville, MD 20852–7669, or telephone 301–496–4607.

SUPPLEMENTARY INFORMATION: On September 30, 2003, the NIH Director announced a series of far reaching strategic initiatives known collectively as the NIH Roadmap for Medical Research (NIH Roadmap). The NIH Roadmap is an innovative approach designed to transform the Nation's medical research capabilities and accelerate fundamental research discovery and translation of that knowledge into effective prevention strategies and new treatments. One of the NIH Roadmap initiatives encourages interdisciplinary research and team science and includes a recommendation to modify grant and research contract applications to allow for the proposing of more than one Principal Investigator when appropriate. This is congruent with the January 4, 2005, directive issued by the Office of Science and Technology Policy (OSTP) to all Federal research agency heads instructing the heads to accommodate the recognition of two or more Principal Investigators on research projects (grants and contracts). This OSTP policy does not prohibit the use of a single Principal

Investigator when that is most appropriate for a particular research project; it simply permits the designation of one or more than one Principal Investigator when that more accurately reflects the management needs of a research project.

For the purpose of implementing the NIH Roadmap initiatives, now known as the Common Fund, the NIH plans to modify research grant and contract applications to request information on more than one Principal Investigator, consistent with the OSTP policy establishing the appropriateness of multiple Principal Investigators. Accordingly, we are revising the definition of the term Principal Investigator set forth in section 52.2 of the Grants for Research Projects regulations, codified at 42 CFR part 52, so that it does not limit the role of Principal Investigator to one single individual, and the conditions for multiple or concurrent awards set forth in section 52.6, paragraph (d) of the Grants for Research Projects regulations, codified at 42 CFR part 52, to permit the Secretary to evaluate, approve, and make one or more awards pursuant to one or more applications.

As announced in NIH notice number OD–07–017 (*http://grants.nih.gov/grants/guide/notice-files/NOT-OD-07-017.html*), these individuals must be judged by the applicant organization to have the appropriate level of authority and responsibility to direct the project or program supported by the grant in order to be considered Principal Investigators. While this rule permits the applicant organization to designate multiple individuals as Principal Investigators who share the authority and responsibility for leading and directing the project, intellectually and logistically, each Principal Investigator is responsible and accountable to the applicant organization (or as appropriate, to a collaborating organization) for the proper conduct of the project or program, including the submission of all required reports. In other words, the presence of more than one identified Principal Investigator on an application or award diminishes neither the responsibility nor the accountability of any individual Principal Investigator.

Additionally, under current regulations, the Secretary is permitted to evaluate, approve, and make more than one award pursuant to two or more applications. In some cases, however, it may be desirable to disaggregate a single application to make more than one award. For example, in the case of an application for support of a project that involves more than one Principal Investigator affiliated with more than one institution, it may be desirable to administer the project with more than one award. In addition, applications that involve subprojects may be disaggregated into separate awards to improve scientific management.

The revised regulatory language clarifies options and provides an opportunity to contemplate more than one award that may involve more than one institution in response to a single application. In some of these cases, separate records will be associated in the NIH data system so that the components can be managed as a single project to promote close collaboration with their counterparts. Actual awards also will be associated through special terms of award to clearly note collaborations and any special requirements resulting from such collaborations. In other cases, it may be appropriate to consider multiple applications from more than one institution that are managed as a single unit, with multiple awards to the different institutions to facilitate collaboration.

We believe this change will foster interdisciplinary and collaborative research and will improve management flexibility even when components of such collaborative research programs are administered by different NIH awarding components.

On June 25, 2007, we published a Notice of Proposed Rulemaking in the **Federal Register** (72 FR 34655–34657) in which we announced our intention to amend the current regulations governing NIH grants for research projects, as previously discussed, and solicited public comment. We provided for a 60-day comment period. We received comments from 11 separate individuals and institutions concerning various aspects of the NPRM. Most comments supported NIH's proposed actions. However, several comments raised concerns about the actions. In order to make it easier to identify comments and NIH's responses to the comments, the word ''Comment'' appears in parentheses before the description of the comment, and the word ''Response'' appears in parentheses before NIH's response.

(Comment) Three commenters indicated that having multiple PIs on a research grant would result in many disputes, some of which would need to be resolved by NIH. They suggested that one person will always have the vision that guides the study and that having additional PIs could lead to confusion and diffuse authority and could result in a team that is less productive. They indicated that NIH should not permit more than a single PI.

(Response) The NIH believes there are many projects that already involve collaboration at the leadership level. Also, there are many projects that cannot be accomplished without a partnership between individuals with different disciplinary or experimental backgrounds. Offering the option of having more than one PI will enable all members of the leadership team to be recognized for their respective contributions. It is not clear to us that there will be more disputes in a partnership setting than there would be in a more hierarchical setting. However, each multiple PI application must include a leadership plan that establishes an approach for dispute resolution. This approach has been used successfully for many years in the administration of program project and center grants, which involve more than one research component. Furthermore, NIH will not require all projects to include more than one PI. The NIH is offering this management approach as an option to more effectively credit partnering collaborators.

(Comment) One commenter stated that allowing multiple PIs will permit more senior investigators to take money away from junior collaborators.

(Response) The issue of inequities between junior and senior collaborators is an issue that all institutions need to consider. The NIH believes that in cases of a true partnership, recognizing the names of both junior and senior collaborating PIs will offer an opportunity to reduce any power differential that might exist with respect to the project or within the grantee organization. It is not clear how making this option available would allow more senior investigators to take money away from junior collaborators.

(Comment) One commenter supported the proposed revision of the definition of the term ''Principal Investigator'' in section 52.2. However, the same commenter was concerned that institutions should be consulted if NIH decides to make more than one award in response to a singe application (section 52.6).

(Response) We agree with the second comment that NIH should consult with institutions when it decides to make more than one award in response to a single application (section 52.6). Over the years NIH has occasionally disaggregated complex multiple project awards into separate, single project awards when the individual projects have appeared to be more meritorious than the combined, multicomponent approach. In all such cases, NIH

consulted the grantee institution(s) before such awards were made. We agree with the proposal and have modified the language set forth in section 52.6 to read as follows: ''* * * [T]he Secretary may evaluate, approve, and make one or more awards pursuant to one or more applications. When making more than one award in response to a single application, the Secretary shall consult with the applicant organization(s), as appropriate.''

(Comment) One commenter was concerned that the rationale for disaggregating single applications into several awards was not fully articulated. The commenter believed that it could have utility in the case of a project that involved collaborating PIs at different institutions, which could be supported through multiple, linked awards, but in the view of the commenter, this was not sufficiently explained in the final rule.

(Response) The commenter provided an important point. As previously indicated, NIH has experience in disaggregating complex awards into one or more discrete projects when the individual projects are more meritorious than the combined, complex project. In the case of collaborative applications for a single project that involves more than one institution, it may be ideal from a management perspective to make more than one award that is linked to fund the remote parts of the project. The alternative and more commonly employed approach is to make a single award to one of the institutions and to manage the parts of the project that occur at a separate institution through a sub-award. The NIH has used both approaches. Presently, NIH is not in a position to consider large numbers of collaborative applications that involve multiple institutions or to manage a large number of linked awards. Nonetheless, the change in the final rule will permit such management approaches in the future.

(Comment) One commenter supported the proposal to allow multiple PIs and multiple awards in response to a single application.

(Comment) One commenter supported the proposed redefinition of the term Principal Investigator and the language which permits the evaluation approval and issuance of more awards pursuant to one or more grant applications.

(Comment) One commenter supported the proposed rule, indicating that it will encourage collaboration and will facilitate the management, oversight, and stewardship of Federal funds.

(Comment) One commenter supported the proposed revision of the definition of ''Principal Investigator,'' indicating that it will preserve the role, authority and responsibility of all collaborating PIs.

(Comment) One commenter fully supported expanding the position of Principal Investigator as proposed, indicating that it will better reflect the intellectual leadership of many NIH grants.

(Comment) One commenter indicated that the designation of multiple Principal Investigators is an excellent idea, noting that it will be beneficial for young investigators who frequently get ''second billing'' on a proposal because of the feeling that a senior colleague is more likely to be funded.

(Comment) One commenter stated that having the ability to make more than one award to recognize collaborating institutions will improve the business process for collaborating institutions, although this was not specifically mentioned in the NPRM.

We provide the following as public information.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. chapter 6) requires that regulatory actions be analyzed to determine whether they create a significant impact on a substantial number of small entities. The Director, NIH, certifies that this final rule does not have such impact.

Executive Order 12866

Executive Order 12866, ''Regulatory Planning and Review,'' requires that all regulatory actions reflect consideration of the costs and benefits they generate and that they meet certain standards, such as avoiding the imposition of unnecessary burdens on the affected public. If a regulatory action is deemed to fall within the scope of the definition of the term ''significant regulatory action'' contained in section 3(f) of Executive Order 12866, prepublication review by the Office of Management and Budget (OMB)'s Office if Information and Regulatory Affairs (OIRA) is necessary. This final rule was reviewed under Executive Order 12866 by OIRA and was deemed significant.

Executive Order 12866 also requires each agency to write all rules in plain language. With this in mind, we have made every effort to make this rule easy to understand.

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. The Director, NIH, has reviewed this final rule and as required has determined that it does not have any Federalism implications. The Director, NIH, certifies that the final rule will not have an effect on the States, or on the distribution of power and responsibilities among the various levels of government.

Unfunded Mandates Act of 1995

This final rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $12,000,000 or more [adjusted for inflation] in any one year and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the Unfunded Mandates Act of 1995.

Paperwork Reduction Act

This final rule contains information collection requirements that were approved under OMB 0925–0001 in April 2006.

The Catalogue of Federal Domestic Assistance

The Catalogue of Federal Domestic Assistance numbered programs that are affected by the final rule include the following:

93.113—Biological Response to Environmental Health Hazards
93.114—Applied Toxicological Research and Testing
93.115—Biometry and Risk Estimation-Health Risks from Environmental Exposures
93.118—Acquired Immunodeficiency Syndrome (AIDS) Activity
93.121—Oral Diseases and Disorders Research
93.135—Centers for Research and Demonstration for Health Promotion and Disease Prevention
93.136—Injury Prevention and Control Research and State and Community Based Programs
93.172—Human Genome Research
93.173—Research Related to Deafness and Communication Disorders
93.184—Disabilities Prevention
93.213—Research and Training in Complementary and Alternative Medicine
93.242—Mental Health Research Grants
93.262—Occupational Safety and Health Program
93.271—Alcohol Research Career Development Awards for Scientists and Clinicians
93.273—Alcohol Research Programs
93.279—Drug Abuse and Addiction Research Programs
93.281—Mental Health Research Career/Scientist Development Awards
93.283—Centers for Disease Control and Prevention-Investigations and Technical Assistance
93.361—Nursing Research
93.389—National Center for Research Resources

93.390—Academic Research Enhancement Award
93.393—Cancer Cause and Prevention Research
93.394—Cancer Detection and Diagnosis Research
93.395—Cancer Treatment Research
93.396—Cancer Biology Research
93.701—Trans-NIH Recovery Act Research Grant
93.702—NCRR Recovery Act Construction Support
93.821—Biophysics and Physiological Sciences Research
93.827—Heart and Vascular Diseases Research
93.838—Lung Diseases Research
93.839—Blood Diseases and Resources Research
93.846—Arthritis, Musculoskeletal and Skin Diseases Research
93.847—Diabetes, Endocrinology and Metabolism Research
93.848—Digestive Diseases and Nutrition Research
93.849—Kidney Diseases, Urology and Hematology Research
93.853—Clinical Research Related to Neurological Disorders
93.855—Allergy, Immunology and Transplantation Research
93.856—Microbiology and Infectious Diseases Research
93.859—Biomedical Research and Research Training
93.865—Research for Mothers and Children
93.866—Aging Research
93.867—Vision Research
93.879—Medical Library Assistance
93.929—Center for Medical Rehabilitation Research
93.934—Fogarty International Center Research Collaboration Award
93.939—Blood Diseases and Resources Research
93.941—HIV Demonstration, Research, Public and Professional Education Projects
93.942—Research, Treatment and Education Programs on Lyme Disease in the United States
93.943—Epidemiologic Research Studies of Acquired Immunodeficiency Syndrome (AIDS) and Human Immunodeficiency Virus (HIV) Infection in Selected Population Groups
93.947—Tuberculosis Demonstration, Research, Public and Professional Education

List of Subjects in 42 CFR Part 52

Grant programs—Health, Medical research, Occupational safety and health.

Dated: July 21, 2009.

Raynard S. Kington,

Director, National Institutes of Health.

Approved: September 22, 2009.

Kathleen Sebelius,

Secretary.

■ For reasons presented in the preamble, we amend Part 52 of Title 42 of the Code of Federal Regulations as set forth below.

PART 52—GRANTS FOR RESEARCH PROJECTS

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

Authority: 42 U.S.C. 216.

■ 2. We amend § 52.2 by revising the definition of the term ''Principal investigator'' to read as follows:

§ 52.2 Definitions.

* * * * *

Principal investigator means the individual(s) judged by the applicant organization to have the appropriate level of authority and responsibility to direct the project or program supported by the grant and who is or are responsible for the scientific and technical direction of the project.

* * * * *

■ 3. We amend § 52.6 by revising paragraph (d) to read as follows:

§ 52.6 Grant awards.

* * * * *

(d) *Multiple or concurrent awards.* Whenever a research project involves a number of different but related problems, activities or disciplines which require evaluation by different groups, or whenever support for a project could be more effectively administered by separate handling of separate aspects of the project, the Secretary may evaluate, approve, and make one or more awards pursuant to one or more applications. When making more than one award in response to a single application, the Secretary shall consult with the applicant organization(s), as appropriate.

* * * * *

[FR Doc. E9–27025 Filed 11–9–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

[Docket ID FEMA–2008–0020; Internal Agency Docket No. FEMA–B–1063]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Interim rule.

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

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

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

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

FOR FURTHER INFORMATION CONTACT: Kevin C. Long, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2820.

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

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

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

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

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

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain

management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by the other Federal, State, or regional entities. The changes in BFEs are in accordance with 44 CFR 65.4.

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

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

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

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

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

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

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

PART 65—[AMENDED]

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

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

§ 65.4 [Amended]

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

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Idaho: Teton	Unincorporated areas of Teton County (08–10–0585P).	May 21, 2009; May 28, 2009; *Teton Valley News*.	The Honorable Larry Young, Chairman, Teton County, Board of Commissioners, P.O. Box 756, Driggs, ID 83422.	September 25, 2009	160230
Minnesota:					
Olmsted	Unincorporated areas of Olmsted County (09–05–1227P).	May 26, 2009; June 2, 2009; *Post-Bulletin*.	The Honorable Ken Brown, Commissioner, c/o County Administration, 151 4th Street Southeast, Rochester, MN 55904.	May 15, 2009	270626
Olmsted	City of Rochester (09–05–1227P).	May 26, 2009; June 2, 2009; *Post-Bulletin*.	The Honorable Ardell F. Brede, Mayor, City of Rochester, 201 4th Street Southeast, Room 281, Rochester, MN 55904.	May 15, 2009	275246
Stearns	City of Cold Springs (09–05–2287P).	June 2, 2009; June 9, 2009; *Cold Springs Record*.	The Honorable Doug Schmitz, Mayor, City of Cold Spring, 12 11th Avenue North, Cold Spring, MN 56320.	October 7, 2009	270444
Missouri: Jefferson	Unincorporated areas of Jefferson County (09–07–0429P).	June 4, 2009; June 11, 2009; *Jefferson County Leader*.	Mr. Chuck Banks, Jefferson County Executive, Jefferson County, P.O. Box 100, Hillsboro, MO 63050.	May 28, 2009	290808
Montana: Flathead	Unincorporated areas of Flathead County (09–08–0251P).	May 26, 2009; June 2, 2009; *Daily Inter Lake*.	The Honorable Dale Lauman, Chairman, Flathead County Board of Commissioners, 800 South Main Street, Kalispell, MT 59901.	September 30, 2009	300023
New Mexico: Sandoval.	City of Rio Rancho (09–06–0561P).	June 5, 2009; June 12, 2009; *Albuquerque Journal*.	The Honorable Thomas E. Swisstack, Mayor, City of Rio Rancho, 3200 Civic Center Circle Northeast, Rio Rancho, NM 87144.	May 26, 2009	350146
South Carolina:					
Aiken	Unincorporated areas of Aiken County (09–04–1792P).	May 8, 2009; May 15, 2009; *Aiken Standard*.	The Honorable Ronnie Young, Council Chairman, Aiken County Council, 736 Richland Avenue West, Aiken, SC 29801.	April 30, 2009	450002
Aiken	City of North Augusta (09–04–1792P).	May 8, 2009; May 15, 2009; *Aiken Standard*.	The Honorable Lark W. Jones, Mayor, City of North Augusta, Post Office Box 6400, North Augusta, SC 29861.	April 30, 2009	450007
South Dakota: Lawrence.	City of Deadwood (09–08–0225P).	June 3, 2009; June 10, 2009; *Lawrence County Journal*.	The Honorable Francis A. Toscana, Mayor, City of Deadwood, P.O. Box 413, Deadwood, SD 57732.	October 8, 2009	460045
Texas: Kerr	City of Kerrville (09–06–0116P).	May 11, 2009; May 18, 2009; *Kerrville Daily Times*.	The Honorable Todd Bock, Mayor, City of Kerrville, 800 Junction Highway, Kerrville, TX 78028.	September 15, 2009	480420
Utah: Davis	City of Centerville (07–08–0754P).	May 26, 2009; June 2, 2009; *Salt Lake Tribune*.	The Honorable Ronald G. Russell, Mayor, City of Centerville, 73 West Ricks Creek Way, Centerville, UT 84014.	May 12, 2009	490040
Virginia:					
Rockingham	Town of Bridgewater (09–03–0163P).	May 21, 2009; May 28, 2009; *Daily News Record*.	Mr. Bob F. Holton, Town Superintendent, Town of Bridgewater, 201 Green Street, Bridgewater, VA 22812.	May 12, 2009	510134
Rockingham	Unincorporated areas of Rockingham County (09–03–0163P).	May 21, 2009; May 28, 2009; *Daily News Record*.	Mr. Joseph F. Paxton, County Administrator, Rockingham County, 20 East Gay Street, Harrisonburg, VA 22801.	May 12, 2009	510133

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

Deborah S. Ingram,

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

[FR Doc. E9–27111 Filed 11–9–09; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2008–0020]

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Base (1% annual-chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

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

FOR FURTHER INFORMATION CONTACT: Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2820.

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

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

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

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

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

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

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

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

■ 1. The authority citation for part 67 continues to read as follows:

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

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
Miller County, Arkansas, and Incorporated Areas Docket No.: FEMA–B–1017			
McKinney Bayou Tributary 2A ..	Approximately 4,306 feet downstream from the intersection of Sugar Hill Road and McKinney Bayou Tributary 2A.	+272	Unincorporated Areas of Miller County.
	Approximately 630 feet downstream from the intersection of Sugar Hill Road and McKinney Bayou Tributary 2A.	+288	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

Unincorporated Areas of Miller County

Maps are available for inspection at the County Courthouse, 400 Laurel Street, Texarkana, AR 71854.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
Barrow County, Georgia, and Incorporated Areas Docket No.: FEMA–B–1021			
Apalachee River	Approximately 5,345 feet upstream of Loganville Highway	+820	Unincorporated Areas of Barrow County, City of Auburn.
	Approximately 1,140 feet upstream of CSX Railroad	+905	
Cedar Creek	Approximately 1,220 feet downstream of Miles Patrick Road.	+820	Unincorporated Areas of Barrow County, City of Winder.
	Approximately 470 feet downstream of Miles Patrick Road	+822	
Tributary No. 1	At the confluence with Cedar Creek	+822	Unincorporated Areas of Barrow County, City of Winder.
	Approximately 50 feet downstream of Sims Road	+840	
Winder Reservoir	Entire shoreline	+850	Unincorporated Areas of Barrow County.

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

City of Auburn
Maps are available for inspection at City Hall, 1369 4th Avenue, Auburn, GA 30011.

City of Winder
Maps are available for inspection at the Inspections Department, 23 North Jackson Street, Winder, GA 30680.

Unincorporated Areas of Barrow County
Maps are available for inspection at the Annex Building, 223 East Broad Street, Winder, GA 30680.

Richland County, North Dakota, and Incorporated Areas Docket No.: FEMA–B–1016			
Sheyenne River	50 feet upstream of Gol Bridge	+956	Unincorporated Areas of Richland County, Township of Barrie.
	1,696 feet downstream of 151st Avenue SE	+986	
Upstream Wahpeton Breakout, Breakout Reach.	100 feet upstream of 182nd Avenue SE	+964	Township of Center, City of Wahpeton, Township of Summit.
	64 feet downstream of 182nd Avenue SE	+966	
Upstream Wahpeton Breakout, Drain 55.	49 feet upstream of State Highway 127	+965	Township of Summit, Township of Center.
Upstream Wahpeton Breakout, West Breakout Reach.	220 feet upstream of 78th Street SE	+955	Township of Center, City of Wahpeton.
	36 feet upstream of 83rd Street SE	+963	
Wild Rice River	1,118 feet upstream of ND Highway 46	+923	Township of Walcott.
	2,466 feet downstream of 60th Street SE	+930	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

City of Wahpeton
Maps are available for inspection at 1900 North 4th Street, Wahpeton, ND 58074.

Unincorporated Areas of Richland County
Maps are available for inspection at 418 2nd Avenue North, Wahpeton, ND 58075.

Township of Barrie
Maps are available for inspection at 5515 160th Avenue Southeast, Kindred, ND 58051.

Township of Center
Maps are available for inspection at 17915 84th Street Southeast, Wahpeton, ND 58075.

Township of Summit
Maps are available for inspection at 8945 179th Avenue Southeast, Fairmount, ND 58030.

Township of Walcott
Maps are available for inspection at 5470 County Road #1, Kindred, ND 58051.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
Athens County, Ohio, and Incorporated Areas Docket No.: FEMA–B–1006			
Hocking River	Approximately 3,200 feet downstream of State Route 144	+602	Village of Coolville.
	Just downstream of State Route 144	+602	
Hocking River	Approximately 16,000 feet upstream of Highway 50	+625	Unincorporated Areas of Athens County.
	Approximately 100 feet upstream of South Canaan Road	+629	
	At Chessie System Railroad	+649	
	Approximately 1,500 feet upstream of Chessie System Railroad.	+649	
Hocking River	At confluence with Sunday Creek	+661	Village of Chauncey.
	Approximately 150 feet upstream of Conrail Railroad	+661	
Margaret Creek	Approximately 500 feet upstream of State Highway 682	+649	Unincorporated Areas of Athens County, City of Athens.
	Approximately 550 feet downstream of State Highway 56	+649	
Sunday Creek	Approximately 240 feet downstream of railroad at Village of Trimble/Athens County Unincorporated Areas boundary.	+679	Unincorporated Areas of Athens County.
	Just upstream of railroad at Village of Trimble/Athens County Unincorporated Areas boundary.	+680	
Sunday Creek	At State Highway 13	+661	Village of Chauncey.
	Approximately 4,600 feet upstream of State Highway 13	+661	
Sunday Creek	Approximately 240 feet downstream of railroad at Village of Trimble/Athens County Unincorporated Areas boundary.	+679	Village of Jacksonville.
	Just upstream of railroad at Village of Trimble/Athens County Unincorporated Areas boundary.	+680	
Sunday Creek	Just upstream of railroad at Village of Trimble/Athens County Unincorporated Areas boundary.	+680	Village of Trimble.
	Approximately 850 feet upstream of Center Street	+682	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

City of Athens
Maps are available for inspection at 28 Curran Drive, Athens, OH 45701.

Unincorporated Areas of Athens County
Maps are available for inspection at 28 Curran Drive, Athens, OH 45701.

Village of Chauncey
Maps are available for inspection at 28 Curran Drive, Athens, OH 45701.

Village of Coolville
Maps are available for inspection at 28 Curran Drive, Athens, OH 45701.

Village of Jacksonville
Maps are available for inspection at 28 Curran Drive, Athens, OH 45701.

Village of Trimble
Maps are available for inspection at 15 Congress Street, Trimble, OH 45782.

Jackson County, Ohio, and Incorporated Areas Docket No.: FEMA–B–7778			
North Pigeon Creek	Approximately 800 feet downstream of Chessie System Railroad.	+630	Unincorporated Areas of Jackson County.
	Approximately 580 feet upstream of County Highway 31	+641	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

Unincorporated Areas of Jackson County
Maps are available for inspection at the GIS Office, 237 East Main Street, Jackson, OH 45640.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
Oklahoma County, Oklahoma, and Incorporated Areas Docket No.: FEMA–B–7752			
Cherry Creek	NE 10th Street	+1162	City of Del City, City of Oklahoma City.
	Approximately 565 feet upstream to intersection with SE 44th Street.	+1233	
Chisolm Creek	Intersection with Hefner Road	+1169	City of The Village.
	Approximately 103 feet upstream of Greystone Avenue	+1189	
Coffee Creek	Confluence with Deep Fork	+955	City of Edmond, Town of Arcadia.
	Approximately 5,600 feet upstream of confluence with Deep Fork.	+1102	
Cowbell Creek Tributary 1	Confluence with Cowbell Creek	+1089	City of Edmond.
	Approximately 9,050 feet upstream of confluence with Cowbell Creek.	+1089	
Crutcho Creek	Approximately 1,650 feet downstream of NE 36th Street	+1149	City of Midwest City, City of Del City, City of Oklahoma City, Unincorporated Areas of Oklahoma County.
	Approximately 1,800 feet downstream of Sunnylane Road	+1268	
Crutcho Creek Trib C (West Crutcho).	Confluence with Crutcho Creek	+1208	City of Oklahoma City.
	Approximately 800 feet downstream of Sunnylane Road Intersection.	+1256	
Crutcho Creek Trib E (East Crutcho).	Confluence with Crutcho Creek	+1208	City of Oklahoma City.
	Approximately 6,450 feet upstream of Air Depot Boulevard.	+1243	
Crutcho Creek Tributary B	Confluence with Crutcho Creek	+1197	City of Del City.
	Intersection with Woodview Drive	+1213	
Crutcho Creek Tributary D	Confluence with Crutcho Creek	+1171	City of Midwest City.
	Approximately 5,544 feet upstream of confluence with Crutcho Creek.	+1192	
Deep Fork	Approximately 100 feet upstream of Luther Avenue	+896	Town of Luther.
	Approximately 345 feet upstream of Peebly Road	+908	
Deep Fork	Confluence with Deep Fork Tributary 3	+946	City of Edmond, Town of Arcadia.
	Approximately 3,416 feet upstream of 33rd Street	+963	
Deep Fork (Arcadia Lake)	Upstream of Arcadia Dam at the Intersection with East Hefner Road.	+1030	City of Edmond, City of Oklahoma City.
Draper Lake Drainage East	Approximately 400 feet upstream of SE 74th Street	+1239	City of Oklahoma City
	Approximately 2,100 feet upstream of SE 74th Street	+1265	
Draper Lake Drainage West	Approximately 450 feet upstream of SE 74th Street	+1226	City of Oklahoma City.
	Approximately 2,100 feet upstream of SE 74th Street	+1260	
Kuhlman Creek	Approximately 2,000 feet upstream from the intersection with Airport Depot Boulevard.	+1226	City of Midwest City, City of Oklahoma City.
	Confluence with Crutcho Creek	+1999	
Opossum Creek	Confluence with Deep Fork	+950	City of Edmond.
	Approximately 28,100 feet upstream of confluence with Deep Fork.	+1029	
Silver Creek	At the intersection with Spencer Road	+1155	City of Midwest City, City of Spencer.
	Approximately 820 feet upstream of Lloyd Drive	+1231	
Smith Creek	Confluence with Deep Fork	+907	Town of Luther, City of Oklahoma City.
	Approximately 26,200 feet upstream of confluence with Crutcho Creek.	+929	
Soldier Creek Tributary to Crutcho Creek.	Confluence with Crutcho Creek	+1167	City of Midwest City.
	Approximately 26,200 feet upstream of confluence with Crutcho Creek.	+1225	
Spring Creek	Confluence with Arcadia Lake	+1030	City of Edmond.
	Intersection with Interstate 35	+1032	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected

ADDRESSES

City of Del City
Maps are available for inspection at 4517 Southeast 29th Street, Del City, OK 73155.

City of Edmond
Maps are available for inspection at 100 East 1st Street, Edmond, OK 73083.

City of Midwest City
Maps are available for inspection at 100 North Midwest City Boulevard, Midwest City, OK 73140.

City of Oklahoma City
Maps are available for inspection at 420 West Main Street, Suite 700, Oklahoma City, OK 73102.

City of Spencer
Maps are available for inspection at 8200 Northeast 36th Street, Spencer, OK 73084.

City of The Village
Maps are available for inspection at 2304 Manchester Drive, The Village, OK 73120.

Town of Arcadia
Maps are available for inspection at 217 North Main Street, Arcadia, OK 73007.

Town of Luther
Maps are available for inspection at 119 South Main Street, Luther, OK 73054.

Unincorporated Areas of Oklahoma County
Maps are available for inspection at 320 Robert S. Kerr Avenue, Suite 101, Oklahoma City, OK 73102.

Sauk County, Wisconsin, and Incorporated Areas
Docket No.: FEMA–B–1018

Baraboo River	Columbia County boundary	+802	City of Baraboo, City of Reedsburg, Unincorporated Areas of Sauk County, Village of Lavalle, Village of North Freedom, Village of Rock Springs, Village of West Baraboo.
	3.7 miles downstream of Juneau County boundary	+905	
Baraboo River Tributary	64 feet upstream of State Hwy 33	+849	Unincorporated Areas of Sauk County.
	350 feet upstream of Berkley Boulevard	+880	
Clark Creek	Confluence with Baraboo River	+818	Unincorporated Areas of Sauk County.
	0.37 mile upstream from bridge at Tower Road	+1234	
Devil's Lake Tributary	Confluence with Baraboo River	+819	City of Baraboo, Unincorporated Areas of Sauk County.
	0.57 mile upstream from County Highway DL	+979	
Hay Creek	0.56 mile upstream of County Highway F	+909	Unincorporated Areas of Sauk County.
	161 ft upstream of County Highway F	+909	
Hulbert Creek	0.32 mile upstream of US Highway 12	+827	City of Wisconsin Dells.
	0.51 mile upstream of Trout Road (Wisconsin Dells)	+831	
Pine Creek	874 feet downstream of Hatchery Road	+858	Unincorporated Areas of Sauk County.
	Confluence with Skillet Creek	+869	
Skillet Creek	Confluence with Pine Creek	+869	Unincorporated Areas of Sauk County.
	28 feet upstream of bridge at State Highway 159	+981	
Tributary to Devil's Lake Tributary.	Confluence with Devil's Lake Tributary	+871	Unincorporated Areas of Sauk County.
	0.67 mile upstream from bridge at State Highway 159	+1117	
Wisconsin River	6.9 miles upstream of Richland County boundary	+711	Village of Merrimac, Unincorporated Areas of Sauk County, Village of Prairie du Sac, Village of Sauk City, Village of Spring Green.
	12.5 miles downstream of Kilbourn Dam	+808	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected

ADDRESSES

City of Baraboo
Maps are available for inspection at 135 4th Street, Barboo, WI 53913.

City of Reedsburg
Maps are available for inspection at 134 South Locust Street, Reedsburg, WI 53959.

City of Wisconsin Dells
Maps are available for inspection at 300 La Crosse Street, Wisconsin Dells, WI 53965.

Unincorporated Areas of Sauk County
Maps are available for inspection at 505 Broadway, Baraboo, WI 53913

Village of Lavalle
Maps are available for inspection at 103 West Main Street, La Valle, WI 53941.

Village of Merrimac
Maps are available for inspection at 100 Cook Street, Merrimac, WI 53561.

Village of North Freedom
Maps are available for inspection at 103 North Maple Street, North Freedom, WI 53951.

Village of Prairie Du Sac
Maps are available for inspection at 335 Galena Street, Prairie du Sac, WI 53578.

Village of Rock Springs
Maps are available for inspection at 201 West Broadway Avenue, Rock Springs, WI 53961.

Village of Sauk City
Maps are available for inspection at 726 Water Street, Sauk City, WI 53583.

Village of Spring Green
Maps are available for inspection at 154 North Lexington Street, Spring Green, WI 53588.

Village of West Baraboo
Maps are available for inspection at 500 Cedar Street, Baraboo, WI 53913.

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

Deborah S. Ingram,

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

[FR Doc. E9–27109 Filed 11–9–09; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2008–0020]

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Base (1% annual-chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

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

FOR FURTHER INFORMATION CONTACT: Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2820.

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

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community. The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

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

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

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

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

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

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

■ 1. The authority citation for part 67 continues to read as follows:

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

§ 67.11 [Amended]

■ 2. The tables published under the authority of 67.11 are amended as follows:

State	City/town/county	Source of flooding	Location	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified
City of Campbell, Ohio Docket No.: FEMA–B–1012				
Ohio	City of Campbell	Mahoning River	Approximately 1,400 feet upstream of Bridge Road.	+827
			Approximately 7,700 feet upstream of Bridge Road.	+831
			Approximately 2,700 feet downstream of Center Street.	+833
			Approximately 2,000 feet downstream of Center Street.	+833

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

City of Campbell

Maps are available for inspection at the Administration and Finance Office, 351 Tenney Avenue, Campbell, OH 44405.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
Mohave County, Arizona, and Incorporated Areas Docket Nos.: FEMA–B–7775 and FEMA–B–1007			
Beaver Dam Wash	1 mile downstream of Old U.S. 91	+1,800	Unincorporated Areas of Mohave County.
	2.3 miles upstream of Old U.S. 91	+1,926	
Big Montana Wash	Approximately 1,325 feet downstream of Black Mountain Road.	#1	City of Bullhead City.
	Approximately 425 feet downstream of Ramar Road	+534	
	Approximately 100 feet downstream of State Route 95	+603	
	Approximately 1,325 feet downstream of Black Mountain Road.	+767	
	Approximately 380 feet upstream of Tesota Road	+876	
Big Montana Wash Overflow	Approximately at confluence with Big Montana Wash	#1	City of Bullhead City.
Bojorquez Wash	Approximately 150 feet upstream of Country Club Road	#1	City of Bullhead City.
	Approximately 120 feet upstream of Country Club Road	+504	
Cerbat Wash	Approximately 700 feet downstream of Ramada Road	+2,478	Unincorporated Areas of Mohave County.
	Approximately 250 feet upstream of Shipp Drive	+2,765	
Cerbat Wash Tributary 1A	Approximately 1,400 feet downstream of Unkar Drive	+2,563	Unincorporated Areas of Mohave County.
	Approximately 200 feet downstream of Bolsa Drive	+2,630	
Chaparral Wash	Approximately at upstream side of Newberry Road	#1	City of Bullhead City.
	Approximately 1,200 feet upstream of Acacia Road	#2	
	Approximately 300 feet downstream of Country Club Road.	+504	
	Approximately 400 feet downstream of Country Club Road.	+504	
	Approximately 400 feet downstream of State Route 95	+548	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
	Approximately 1,200 feet upstream of Acacia Way	+726	
	Approximately 0.68 mile upstream of Acacia Way	+778	
Chaparral Wash Tributary 1	Approximately 0.48 mile downstream of Acacia Way	#1	City of Bullhead City.
	Approximately 0.75 mile downstream of Acacia Way	#1	
	Approximately 1,355 feet downstream of Acacia Way	#2	
	Approximately 0.60 mile downstream of Acacia Way	#2	
	Approximately 1,300 feet downstream of Acacia Way	+670	
	Approximately 650 feet upstream of Acacia Way	+717	
Chaparral Wash Tributary 2	Approximately 830 feet downstream of Havasupai Road	#2	City of Bullhead City.
	Approximately 830 feet downstream of Havasupai Road	+726	
	Approximately 50 feet downstream of Havasupai Road	+749	
Chemehuevi Wash	Approximately 1,170 feet downstream of Sweetwater Avenue.	+669	City of Lake Havasu, Unincorporated Areas of Mohave County.
	Approximately 0.80 mile upstream of Chicksaw Drive	+1,374	
Colorado River	Approximately at the upstream side of Interstate 40	+465	City of Bullhead City, Unincorporated Areas of Mohave County.
	Approximately 250 feet downstream of Davis Dam	+514	
Davis Wash	Approximately 700 feet upstream of La Puerta Road	#1	City of Bullhead City.
	Approximately 0.53 mile downstream of La Puerta Road	#1	
	Approximately 0.40 mile downstream of La Puerta Road	#2	
	Approximately 100 feet downstream of State Route 95	+522	
	Approximately 100 feet downstream of Pegasus Ranch Road.	+967	
	Approximately 100 feet upstream of Pegasus Ranch Road	+987	
Davis Wash Tributary 1	Approximately 550 feet upstream of Pegasus Ranch Road	#1	City of Bullhead City.
Davis Wash Tributary 1 of Tributary 1.	Approximately 550 feet upstream of Pegasus Ranch Road	#1	City of Bullhead City.
Davis Wash Tributary 2	Approximately 550 feet upstream of Pegasus Ranch Road	#1	City of Bullhead City.
Davis Wash Tributary 3	Approximately 530 feet upstream of Pegasus Ranch Road	#1	City of Bullhead City.
Davis Wash Tributary 4	Approximately 500 feet upstream of Pegasus Ranch Road	#1	City of Bullhead City.
	Approximately 50 feet downstream of Pegasus Ranch Road.	#1	
Davis Wash Tributary 5	Approximately 1,100 feet upstream of McCormick Blvd	#1	City of Bullhead City.
Dump Wash	Approximately 100 feet upstream of Bullhead Parkway	#1	City of Bullhead City.
	Approximately 300 feet upstream of State Route 95	#1	
	Approximately 1,850 feet downstream of Bullhead Parkway.	#1	
	Approximately 100 feet downstream of Bullhead Parkway	#2	
	Approximately upstream side of State Route 95	#2	
	Approximately 0.40 mile upstream of Lost Hills Road	#2	
El Dorado Wash	Approximately 700 feet downstream of London Bridge Road.	+462.	City of Lake Havasu
	Approximately 1,320 feet upstream of Jamaica Blvd	+1276	
Fort Mohave Wash	Approximately 1,250 feet upstream of State Route 95	#1	City of Bullhead City, Unincorporated Areas of Mohave County.
	Approximately 0.57 mile upstream of Arroyo Vista Drive	#2	
	Approximately 150 feet upstream of confluence with Soto Wash.	#2	
Fox Wash	Approximately 0.64 mile upstream of State Route 95	#1	City of Bullhead City.
	Approximately 1,200 feet downstream of Tera Loma Road	#1	
	Approximately 1,730 feet downstream of Bullhead Parkway.	#2	
	Approximately 1,450 feet downstream of State Route 95	#2	
	Approximately 700 feet downstream of State Route 95	#3	
	Approximately 0.63 mile downstream of Tera Loma Road	+491	
	Approximately 600 feet downstream of State Route 95	+511	
	Approximately 0.64 mile upstream of State Route 95	+642	
	Approximately 1,700 feet downstream of Bullhead Parkway.	+802	
	Approximately 1,950 feet upstream of Bullhead Parkway	+903	
Green Wash	Approximately 250 feet upstream of confluence with Williams Wash.	+703	City of Bullhead City.
	Approximately 1.42 mile upstream of confluence with Green Wash Tributary 2.	+1,465	
Green Wash Tributary 1	Approximately 70 feet upstream of confluence with Green Wash.	+967	City of Bullhead City.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
	Approximately 2.1 miles upstream of confluence with Green Wash.	+1,450	
Green Wash Tributary 2	Approximately 0.41 mile upstream of confluence with Green Wash.	#1	City of Bullhead City.
Havasupai Wash at Bullhead City.	Approximately 870 feet upstream of Camino del Rio Road	#1	City of Bullhead City.
	Approximately 870 feet upstream of Camino del Rio Road	+504	
Havasupai Wash at Bullhead City Tributary 1.	Approximately 0.5 mile upstream of Miracle Mile Road	#1	City of Bullhead City.
	Approximately 0.5 mile upstream of Miracle Mile Road	+651	
	Approximately 0.82 mile upstream of Miracle Mile Road	+691	
Havasupai Wash at Lake Havasu City.	Approximately 1,060 feet downstream of London Bridge Road.	+452	City of Lake Havasu.
	Approximately 800 feet upstream of Paso de Oro Drive	+1,506	
Highland Wash	Approximately 300 feet downstream of State Route 95	+518	City of Bullhead City.
	Approximately 325 feet upstream of Bullhead Parkway	+693	
Indian Peak Wash	Approximately 360 feet downstream of State Route 95	+543	City of Lake Havasu, Unincorporated Areas of Mohave County.
	Approximately 470 feet upstream of Black Hill Drive	+1,439	
Mockingbird Wash	Approximately 875 feet downstream of Osborn Drive	+754	City of Lake Havasu.
	Approximately 0.78 mile upstream of McCulloch Blvd S	+1,258	
Montana Wash	Approximately 0.72 mile upstream of Rolling Hills Road	#1	City of Bullhead City.
	Approximately 0.42 mile upstream of Bullhead Parkway	#2	
	Approximately 120 feet downstream of Riverfront Road	+505	
	Approximately 1,900 feet upstream of Goldrush Road	+827	
Montana Wash Overflow	Approximately 50 feet downstream of Arcadia Road	#1	City of Bullhead City.
	Approximately upstream side of Arriba Road	#1	
	Approximately 800 feet upstream of Jacarta Road	#2	
Montana Wash Tributary 1	Approximately 150 feet upstream of confluence with Montana Wash.	+1,126	City of Bullhead City.
	Approximately 250 feet upstream of Unnamed Road	+1,198	
Neptune Wash	Approximately 550 feet downstream of London Bridge Road.	+455	City of Lake Havasu.
	Approximately 0.47 mile upstream of Avalon Avenue	+832	
Old Trails Wash	Approximately 750 feet downstream of Third Street	+3,299	City of Kingman.
	Approximately 1,200 feet upstream of U.S. 93/U.S. 66	+3,428	
Old Trails Wash Tributary	Approximately 790 feet downstream of Center Street	+3,361	City of Kingman.
	Approximately 0.5 mile upstream of Buchanan Street	+3,410	
Richardo Wash	Approximately 1,400 feet downstream of Terra Loma Road.	#1	City of Bullhead City.
	Approximately 50 feet downstream of State Route 95	#1	
	Approximately 100 feet upstream of State Route 95	#2	
	Approximately 1,100 feet upstream of Terra Loma Road	#2	
	Approximately 800 feet upstream of confluence with Fox Wash.	+491	
Sacramento Wash Tributary 6	Approximately 250 feet upstream of Bolsa Drive	+2,635	Unincorporated Areas of Mohave County.
	Approximately 300 feet upstream of Shipp Drive	+2,762	
Sacramento Wash Tributary 6C	Approximately 0.5 mile downstream of Redwall Drive	+2,668	Unincorporated Areas of Mohave County.
	Approximately 1,025 feet upstream of Chino Drive	+2,830	
Sacramento Wash Tributary 6D	Approximately 650 feet downstream of State Route 68	+2,789	Unincorporated Areas of Mohave County.
	Approximately 290 feet upstream of Chino Drive	+2,819	
Secret Pass Wash	Approximately downstream side of Pass Canyon Road	#3	Unincorporated Areas of Mohave County, City of Bullhead City.
	Approximately 1.18 mile upstream of Bullhead Parkway	#4	
	Approximately 250 feet downstream of State Route 95	+515	
	Approximately 50 feet downstream of State Route 95	+527	
	Approximately 1.23 mile upstream of Bullhead Parkway	+1,073	
	Approximately 2 miles upstream of Bullhead Parkway	+1,188	
Shadow Canyon Wash	Approximately 870 feet downstream of Corwin Road	+563	City of Bullhead City.
	Approximately 320 feet upstream of Mountain View Road	+668	
Shadow Canyon Wash Overflow.	Approximately upstream side of Central Park Avenue	+540	City of Bullhead City.
	Approximately 450 feet upstream of Central Avenue	+550	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
Short Creek	Approximately 1.6 mile downstream of State Route 389	+4,857	City of Colorado City, Unincorporated Areas of Mohave County.
	Approximately 50 feet upstream of State Route 389	+4,933	
Short Creek Tributary 1	Approximately 320 feet downstream of Township Avenue	+4,939	City of Colorado City.
	Approximately 1,000 feet upstream of Arizona Avenue	+5,027	
Silver Creek Wash	Approximately 1.4 mile upstream of Bullhead Parkway	#3	City of Bullhead City.
	Approximately 0.56 mile upstream of State Route 95	#3	
	Approximately 1,250 feet upstream of State Route 95	#3	
	Approximately 1.04 mile upstream of State Route 95	#3	
	Approximately 500 feet downstream of Bullhead Parkway	#3	
	Approximately 0.62 miles upstream of Bullhead Parkway	#4	
	Approximately 500 feet upstream of Plata Caleta Road	#4	
Silver Creek Wash Tributary 1	Approximately 0.47 mile upstream of Bullhead Parkway	#1	City of Bullhead City.
	Approximately 0.38 mile upstream of confluence with Silver Creek Wash.	#3	
	Approximately 200 feet upstream of confluence with Silver Creek Wash.	#4	
Silver Creek Wash Tributary 2	Approximately 0.83 mile upstream of confluence with Silver Creek Wash.	#2	City of Bullhead City.
	Approximately 1,800 feet upstream of confluence Silver Creek Wash.	#3	
	Approximately 1,100 feet upstream of confluence with Silver Creek Wash.	#4	
Soto Wash	Approximately 1,800 feet upstream of State Route 95	#1	City of Bullhead City.
	Approximately 1,800 feet upstream of Arroyo Vista Drive	#2	
	Approximately 100 feet downstream of State Route 95	#2	
	Approximately 1,300 feet upstream of Mohave Community College Road.	+515	
	Approximately 0.36 mile upstream of Arroyo Vista Drive	+758	
	Approximately 0.65 mile upstream of Arroyo Vista Drive	+803	
Thirteen Mile Wash	Approximately 75 feet upstream of Limit of Detailed Study	+2,478	Unincorporated Areas of Mohave County.
	Approximately 600 feet upstream of Shipp Drive	+2,803	
Thirteen Mile Wash Overflow 1	Approximately 620 feet downstream of Unkar Drive	+2,575	Unincorporated Areas of Mohave County.
	Approximately 1,100 feet upstream of Bolsa Drive	+2,658	
Thirteen Mile Wash Overflow 2	Approximately 770 feet downstream of Chuar Drive	+2,599	Unincorporated Areas of Mohave County.
	Approximately 1,260 feet upstream of Bolsa Drive	+2,655	
Thirteen Mile Wash Overflow 3	Approximately 1,660 feet downstream of Adobe Road	+2,757	Unincorporated Areas of Mohave County.
	Approximately 400 feet upstream of Shipp Drive	+2,793	
Unnamed Wash 10	Approximately upstream side of Airway Avenue	+3,450	City of Kingman.
	Approximately 700 feet upstream of Interstate 40	+3,510	
Unnamed Wash 10 Overflow	Approximately 200 feet upstream of confluence with Unnamed Wash 6.	+3,491	City of Kingman.
	Approximately 795 feet downstream of confluence with Unnamed Wash 6.	+3,499	
Unnamed Wash 13	Approximately 50 feet downstream of Ashley Street	#1	Unincorporated Areas of Mohave County.
	Approximately 50 feet upstream of confluence with Unnamed Wash East Golf Course.	#2	
	Approximately 300 feet upstream of Lippan Blvd	#3	
Unnamed Wash 13 East Golf Course.	At approximately Clubhouse Road	#1	Unincorporated Areas of Mohave County.
Unnamed Wash 13 Overflow	Approximately 700 feet upstream of Lippan Blvd	#1	Unincorporated Areas of Mohave County, Fort Mojave Indian Tribe.
	Approximately 600 feet upstream of Lippan Blvd	#2	
Unnamed Wash 13 Tributary 1	Approximately 150 feet downstream of Ashley Street	#1	Unincorporated Areas of Mohave County.
Unnamed Wash 13 Tributary 1 of Tributary 1.	Approximately downstream side of Ashley Street	#1	Unincorporated Areas of Mohave County.
Unnamed Wash 13 Tributary 1 of Tributary 2.	Approximately upstream side of Ashley Street	#1	Unincorporated Areas of Mohave County.
Unnamed Wash 13 Tributary 1 of Tributary 2 of Tributary 1.	Approximately 200 feet downstream of Ashley Street	#1	Unincorporated Areas of Mohave County.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
Unnamed Wash 13 Tributary 2	Approximately 200 feet downstream of Ashley Street	#1	Unincorporated Areas of Mohave County.
Unnamed Wash 13 Tributary 2 of Tributary 1.	Approximately 350 feet downstream of Ashley Street	#1	Unincorporated Areas of Mohave County.
Unnamed Wash 13 West Golf Course.	Approximately 50 feet downstream of Desert Lakes Drive	#1	Unincorporated Areas of Mohave County.
Unnamed Wash 14	Approximately 750 feet downstream of Ashley Street	#1	Unincorporated Areas of Mohave County, Fort Mojave Indian Tribe.
	Approximately 50 feet downstream of Ashley Street	#2	
	Approximately 50 feet upstream of Mountain View Road	+553	
	Approximately 475 feet upstream of Antelope Drive	+676	
Unnamed Wash 14 Tributary 1	Approximately 100 feet downstream of Ashley Street	#1	Unincorporated Areas of Mohave County.
Unnamed Wash 15	Approximately 350 feet upstream of Boundary Cone Road	#1	Unincorporated Areas of Mohave County.
	Approximately 400 feet downstream of Ashley Street	#2	
	Approximately 400 feet upstream of Boundary Cone Road	+524	
	Approximately 450 feet upstream of Bison Avenue	+652	
Unnamed Wash 15 Tributary 1	Approximately 450 feet downstream of Ashley Street	#1	Unincorporated Areas of Mohave County.
	Approximately 900 feet upstream of Bison Avenue	#2	
Unnamed Wash 6	Approximately 280 feet downstream of Andy Devine Road	#1	City of Kingman.
	Approximately 50 feet upstream of Andy Devine Avenue	+3,446	
	Approximately 50 feet upstream of Interstate 40	+3,491	
Unnamed Wash 6 Overflow	Approximately 800 feet downstream of Railroad Tracks	+3,459	City of Kingman.
	Approximately 1070 feet upstream of Railroad Street	+3,487	
Unnamed Wash 7 (With Berm)	Approximately 50 feet upstream of Andy Devine Road	+3,502	City of Kingman.
	Approximately 300 feet upstream of Hulapai Mountain Road.	+3,530	
Unnamed Wash 7 (Without Berm).	Approximately 250 feet downstream of Railroad Tracks	#1	City of Kingman.
Unnamed Wash 9	Approximately 100 feet downstream of Lead Street	#1	City of Kingman.
	Approximately 800 feet upstream of Lead Street	#2	
Virgin River	Approximately 2.7 miles downstream of Scenic Blvd	+1,598	Unincorporated Areas of Mohave County.
	Approximately 1.0 mile upstream of Interstate 15	+1,817	
Wash A	Approximately 1,750 feet downstream of Redwall Drive	+2,678	Unincorporated Areas of Mohave County.
	Approximately 150 feet upstream of Shipp Drive	+2,771	
Wash B	Approximately 0.45 mile downstream of Bolsa Drive	+2,606	Unincorporated Areas of Mohave County.
	Approximately 200 feet upstream of Shipp Drive	+2,783	
Wash B Tributary 1A	Approximately 0.07 mile downstream of Redwall Drive	+2,662	Unincorporated Areas of Mohave County.
	Approximately 1,760 feet upstream of U.S. 68	+2,861	
Wash B Tributary 1B	Approximately 900 feet downstream of Shipp Drive	+2,763	Unincorporated Areas of Mohave County.
	Approximately 200 feet upstream of Shipp Drive	+2,777	
Wash B Tributary 1C	Approximately 250 feet upstream of confluence with Wash B Tributary 1A.	+2,753	Unincorporated Areas of Mohave County.
	Approximately 150 feet upstream of Shipp Drive	+2,784	
Wash C	Approximately 1,700 feet downstream of Shinarump Drive	+2,493	Unincorporated Areas of Mohave County.
	Approximately 200 feet upstream of Shipp Drive	+2,829	
Williams Wash	Approximately 1.21 mile upstream of confluence with Highland/Green Wash.	#1	City of Bullhead City.
	Approximately 1,865 feet upstream of confluence with Highland/Green Wash.	#1	
	Approximately 2.15 miles upstream of confluence with Highland/Green Wash.	+1,244	
	Approximately 622 feet upstream of La Puerta Road	+1,471	
	Approximately 1,215 feet upstream of confluence with Highland/Green Wash.	#2	
	Approximately 1.43 mile upstream of confluence with Highland/Green Wash.	#2	
	Approximately 1.0 mile upstream of confluence with Highland/Green Wash.	#2	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
	Approximately 250 feet upstream of confluence Highland/Green Wash.	+703	
	Approximately 1,200 feet upstream of confluence with Highland/Green Wash.	+740	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

City of Bullhead City
Maps are available for inspection at 1255 Marina Boulevard, Bullhead City, AZ 86442.

City of Colorado City
Maps are available for inspection at 25 South Central Street, Colorado City, AZ 86021.

City of Kingman
Maps are available for inspection at 310 North 4th Street, Kingman, AZ 86401.

City of Lake Havasu
Maps are available for inspection at 2330 McCulloch Boulevard North, Lake Havasu City, AZ 86403.

Fort Mojave Indian Tribe
Maps are available for inspection at 500 Merriman Avenue, Needles, CA 92363.

Unincorporated Areas of Mohave County
Maps are available for inspection at 700 West Beale Street, Kingman, AZ 86402.

Franklin County, Illinois, and Incorporated Areas
Docket No.: FEMA–B–1021

Big Ditch Tributary	From approximately 2,630 feet upstream of the confluence with Middle Fork Big Muddy River.	+382	Unincorporated Areas of Franklin County, City of West Frankfort.
	To approximately 790 feet downstream of County Highway 37/Logan Street.	+388	
Ewing Creek	From approximately 5,000 feet upstream of the confluence with Middle Fork Big Muddy River.	+385	Unincorporated Areas of Franklin County, City of West Frankfort.
	To approximately 2,500 feet upstream of County Highway 5/Deering Road.	+393	
Pond Creek	From Interstate 57	+394	Unincorporated Areas of Franklin County, City of West Frankfort.
	To approximately 2,250 feet upstream of Old Johnston City Road.	+398	
Rend Lake	From the Rend Lake Dam	+415	Unincorporated Areas of Franklin County.
	To approximately 5,650 feet west of the intersection of North County Line Road and Conservation Lane.	+415	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

City of West Frankfort
Maps are available for inspection at City Hall, 110 North Jefferson Street, West Frankfort, IL 62896.

Unincorporated Areas of Franklin County
Maps are available for inspection at the Franklin County Highway Department, 13034 Oddfellow Lane, Benton, IL 62812.

Hinds County, Mississippi, and Incorporated Areas
Docket No.: FEMA–B–1014

Allen Creek Tributary	500 feet upstream of Hampstead Road	+318	City of Clinton.
	750 feet upstream of Woodstone Place	+337	
Bakers Creek	At Mount Moriah Road	+145	Unincorporated Areas of Hinds County.
	250 feet upstream of railroad	+205	
Bakers Creek Tributary 1	9,200 feet upstream of confluence with Bakers Creek	+151	Unincorporated Areas of Hinds County.
	12,000 feet upstream of confluence with Bakers Creek	+157	
Bakers Creek Tributary 2–1	1,050 feet upstream of confluence with Bakers Creek Tributary 2.	+262	Unincorporated Areas of Hinds County.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
	5,200 feet upstream of confluence with Bakers Creek Tributary 2.	+288	
Big Black River	4,600 feet upstream of confluence with Fourteenmile Creek.	+118	Unincorporated Areas of Hinds County.
	1,600 feet upstream of confluence with Bogue Falia Creek	+154	
Big Creek	150 feet upstream of State HWY 18	+362	Unincorporated Areas of Hinds County.
	1,150 feet upstream of State HWY 18	+364	
Big Creek Tributary 1	300 feet upstream of Terry Road	+268	Unincorporated Areas of Hinds County.
	6,700 feet upstream of Gary Road	+310	
Bitter Creek	200 feet downstream of Learned Oakley Road	+178	Town of Learned, Unincorporated Areas of Hinds County.
	8,000 feet upstream of Learned Oakley Road	+195	
Bogue Chitto Creek	At county boundary	+193	Unincorporated Areas of Hinds County.
	3,200 feet downstream of Natchez Trace Parkway	+246	
	400 feet upstream of US HWY 49	+284	
	50 feet downstream of Hilda Road	+320	
Bogue Chitto Creek Tributary 10.	4,500 feet upstream of confluence with Bogue Chitto Creek.	+210	Unincorporated Areas of Hinds County.
	9,900 feet upstream of confluence with Bogue Chitto Creek.	+215	
Bogue Chitto Creek Tributary 11.	3,600 feet upstream of confluence with Bogue Chitto Creek.	+200	Unincorporated Areas of Hinds County.
	5,150 feet upstream of confluence with Bogue Chitto Creek.	+213	
Bogue Chitto Creek Tributary 12.	3,400 feet downstream of Carsley Road	+200	Unincorporated Areas of Hinds County.
	1,000 feet upstream of Carsley Road	+223	
Bogue Chitto Creek Tributary 13.	2,800 feet upstream of Carsley Road	+198	Unincorporated Areas of Hinds County.
	100 feet upstream of Carsley Road	+213	
Bogue Chitto Creek Tributary 14.	500 feet downstream of Springdale Road	+200	Unincorporated Areas of Hinds County.
	1,500 feet upstream of Springdale Road	+211	
Bogue Chitto Creek Tributary 15.	1,525 feet downstream of Springdale Road	+195	Unincorporated Areas of Hinds County.
	200 feet downstream of county boundary	+204	
Bogue Chitto Creek Tributary 2	3,400 feet upstream of confluence with Bogue Chitto Creek.	+261	Unincorporated Areas of Hinds County.
	300 feet downstream of Northside Drive	+272	
Bogue Chitto Creek Tributary 3	1,500 feet upstream of confluence with Bogue Chitto Creek.	+268	Unincorporated Areas of Hinds County.
	3,700 feet upstream of confluence with Bogue Chitto Creek.	+281	
Bogue Chitto Creek Tributary 4	600 feet downstream of confluence with Bogue Chitto Creek.	+275	Unincorporated Areas of Hinds County.
	3,250 feet upstream of Northside Drive	+330	
Bogue Chitto Creek Tributary 5	275 feet upstream of Northside Drive	+283	Unincorporated Areas of Hinds County.
	100 feet upstream of Richardson Road	+289	
Bogue Chitto Creek Tributary 6	1,200 feet upstream ojf confluence with Bogue Chitto Creek.	+293	Unincorporated Areas of Hinds County.
	4,850 feet upstream of confluence with Bogue Chitto Creek.	+324	
Bogue Chitto Creek Tributary 6–1.	375 feet upstream of confluence with Bogue Chitto Creek Tributary 6.	+302	Unincorporated Areas of Hinds County.
	1,350 feet upstream of confluence with Bogue Chitto Creek Tributary 6.	+310	
Bogue Chitto Creek Tributary 7	1,100 feet upstream of confluence with Bogue Chitto Creek.	+244	Unincorporated Areas of Hinds County.
	300 feet upstream of US HWY 49	+286	
Bogue Chitto Creek Tributary 8	1,300 feet upstream of confluence with Bogue Chitto Creek.	+236	Unincorporated Areas of Hinds County.
	7,300 feet upstream of County Line Road	+290	
Bogue Chitto Creek Tributary 8–1.	1,450 feet upstream of confluence with Bogue Chitto Creek Tributary 8.	+257	Unincorporated Areas of Hinds County.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
	250 feet upstream of US HWY 49	+275	
Bogue Chitto Creek Tributary 9	5,500 feet upstream of confluence with Bogue Chitto Creek.	+222	Unincorporated Areas of Hinds County.
	6,500 feet upstream of railroad	+305	
Bogue Chitto Creek Tributary 9–1.	1,700 feet downstream of US HWY 49	+228	Unincorporated Areas of Hinds County.
	700 feet upstream of Golf Club Road	+247	
Bogue Chitto Creek Tributary 9–2.	1,600 feet downstream of MacLean Road	+247	Unincorporated Areas of Hinds County.
	2,400 feet upstream of MacLean Road	+256	
Bogue Chitto Creek Tributary 9–3.	1,000 feet upstream of MacLean Road	+258	Unincorporated Areas of Hinds County.
	4,850 feet upstream of railroad	+291	
Bogue Chitto Creek Tributary 9–4.	500 feet downstream of Billy Bell Road	+273	Unincorporated Areas of Hinds County.
	5,700 feet upstream of railroad	+322	
Chestnut Creek Tributary 1	200 feet downstream of county boundary	+269	Unincorporated Areas of Hinds County.
	3,150 feet upstream of county boundary	+288	
Chestnut Creek Tributary 3	At county boundary	+291	Unincorporated Areas of Hinds County.
	4,500 feet upstream of county boundary	+306	
Fleetwood Creek	400 Feet Downstream of I–20	+202	Unincorporated Areas of Hinds County.
	2,400 feet upstream of confluence with Fleetwood Creek Tributary 4.	+248	
Fleetwood Creek Tributary 1	1,700 feet upstream of confluence with Fleetwood Creek	+221	Unincorporated Areas of Hinds County.
	7,900 feet upstream of confluence with Fleetwood Creek	+240	
Fleetwood Creek Tributary 2	2,250 feet upstream of confluence with Fleetwood Creek	+228	Unincorporated Areas of Hinds County.
	350 feet upstream of Private Farm Road	+250	
Fleetwood Creek Tributary 3	1,250 feet upstream of confluence with Fleetwood Creek	+229	Unincorporated Areas of Hinds County.
	7,900 feet upstream of confluence with Fleetwood Creek	+256	
Fleetwood Creek Tributary 4	200 feet upstream of confluence with Fleetwood Creek	+242	Unincorporated Areas of Hinds County.
	3,600 feet upstream of confluence with Fleetwood Creek	+254	
Fourteenmile Creek	9,450 feet downstream of Newman Road	+119	Unincorporated Areas of Hinds County.
	400 feet upstream of Old Port Gibson Road	+226	
Fourteenmile Creek Tributary 1	650 feet downstream of Smith Station Road	+135	Unincorporated Areas of Hinds County.
	10,650 feet upstream of Smith Station Road	+157	
Fourteenmile Creek Tributary 2	1,800 feet downstream of US HWY 18	+224	Unincorporated Areas of Hinds County.
	1,400 feet downstream of Dry Grove Road	+252	
French Creek Tributary 1	1,550 feet downstream of US HWY 80	+301	City of Clinton.
	1,700 feet upstream of US HWY 80	+316	
French Creek Tributary 2	1,100 feet upstream of confluence with French Creek Tributary 1.	+302	City of Clinton.
	50 feet upstream of Clinton Boulevard	+329	
French Creek Tributary 3	1,450 feet upstream of confluence with French Creek	+300	City of Clinton, City of Jackson.
	3,450 feet upstream of confluence with French Creek	+308	
French Creek Tributary 4	1,600 feet upstream of confluence with French Creek	+309	City of Jackson.
	1,700 feet upstream of Norman Road	+339	
French Creek Tributary 5	300 feet upstream of HWY 80	+326	City of Jackson.
	1,000 feet upstream of HWY 80	+327	
Hanging Moss Creek Tributary 1.	1,100 feet upstream of confluence with Hanging Moss Creek.	+328	City of Jackson, Unincorporated Areas of Hinds County.
	3,200 feet upstream of confluence with Hanging Moss Creek.	+338	
Hanging Moss Creek Tributary 2.	400 feet downstream of Graven Road	+338	Unincorporated Areas of Hinds County.
	3,500 feet upstream of Graven Road	+355	
Hanging Moss Creek Tributary 3.	500 feet upstream of confluence with Hanging Moss Creek.	+334	Unincorporated Areas of Hinds County.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
	4,900 feet upstream of confluence with Hanging Moss Creek.	+355	
Hanging Moss Creek Tributary 5–1.	250 feet downstream of Beasley Road	+314	City of Jackson.
	950 feet upstream of Westwind Road	+344	
Harris Creek	6,700 feet upstream of Old HWY 51	+280	Unincorporated Areas of Hinds County.
	6,500 feet upstream of Stubbs Road	+333	
Harris Creek Tributary 1	700 feet upstream of confluence with Harris Creek	+301	Unincorporated Areas of Hinds County.
	6,700 feet upstream of Green Gable Road	+333	
Jackson Creek	5,500 feet upstream of confluence with Bakers Creek	+150	Unincorporated Areas of Hinds County.
	2,200 feet upstream of US HWY 467	+204	
Limekiln Creek	7,100 feet upstream of confluence with Bakers Creek	+204	Unincorporated Areas of Hinds County.
	At county boundary	+245	
Limekiln Creek Tributary 1	4,100 feet upstream of confluence with Limekiln Creek	+211	Unincorporated Areas of Hinds County.
	14,800 feet upstream of confluence with Limekiln Creek	+236	
Limekiln Creek Tributary 1–1	2,000 feet downstream of Stigger Road	+214	Unincorporated Areas of Hinds County.
	6,800 feet upstream of Stigger Road	+233	
Limekiln Creek Tributary 2	400 feet downstream of US HWY 49	+219	Unincorporated Areas of Hinds County.
	2,900 feet upstream of confluence with Limekiln Creek Tributary 2–1.	+242	
Limekiln Creek Tributary 2–1	100 feet downstream of railroad	+234	Unincorporated Areas of Hinds County.
	400 feet upstream of Lanewood Road	+258	
Limekiln Creek Tributary 3	4,000 feet upstream of confluence with Limekiln Creek	+226	Unincorporated Areas of Hinds County.
	300 feet downstream of county boundary	+236	
Lindsey Creek	600 feet downstream of Norrell Road	+244	City of Clinton, Unincorporated Areas of Hinds County.
	700 feet upstream of Natchez Trace Parkway	+270	
	550 feet downstream of Neal Street	+312	
	200 feet upstream of Oak Hill Circle	+330	
Lindsey Creek Tributary 1	4,350 feet upstream of confluence with Lindsey Creek	+245	Unincorporated Areas of Hinds County.
	5,900 feet upstream of confluence with Lindsey Creek	+258	
Lindsey Creek Tributary 3	2,000 feet upstream of confluence with Lindsey Creek	+277	Unincorporated Areas of Hinds County.
	150 feet upstream of I–20	+295	
Little Bakers Creek	1,100 feet downstream of Private Farm Road	+213	Town of Bolton, Unincorporated Areas of Hinds County.
	200 feet upstream of railroad	+281	
Little Bakers Creek Tributary 1	1,800 feet upstream of confluence with Little Bakers Creek.	+220	Unincorporated Areas of Hinds County.
	2,600 feet upstream of I–20	+239	
Little Bakers Creek Tributary 2	700 feet upstream of confluence with Little Bakers Creek	+230	Unincorporated Areas of Hinds County.
	5,400 feet upstream of confluence with Little Bakers Creek.	+262	
Little Bakers Creek Tributary 3	400 feet upstream of Williamson Road	+254	Unincorporated Areas of Hinds County.
	900 feet upstream of I–20	+268	
Little Bakers Creek Tributary 3–1.	500 feet upstream of Williamson Road	+254	Unincorporated Areas of Hinds County, City of Clinton.
	4,250 feet upstream of Williamson Road	+280	
Little Bakers Creek Tributary 4	1,500 feet upstream of confluence with Little Bakers Creek.	+254	Unincorporated Areas of Hinds County.
	5,900 feet upstream of confluence with Little Bakers Creek.	+270	
Little Bakers Creek Tributary 5	950 feet upstream of confluence with Little Bakers Creek	+268	City of Clinton.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
	2,700 feet upstream of confluence with Little Bakers Creek.	+280	
Little Bakers Creek Tributary 6	500 feet upstream of confluence with Little Bakers Creek	+271	City of Clinton.
	1,500 feet upstream of railroad	+291	
Little Creek	400 feet downstream of Flowers Road	+310	Unincorporated Areas of Hinds County.
	100 feet upstream of Flowers Road	+310	
Lynch Creek	150 feet downstream of Bonita Drive	+355	City of Jackson.
	300 feet downstream of Flag Chapel Road	+363	
	1,350 feet upstream of Flag Chapel Road	+377	
Lynch Creek Tributary 5–1	1,050 feet upstream of confluence with Lynch Creek	+335	City of Jackson.
	4,150 feet upstream of confluence with Lynch Creek	+352	
McDonald Creek	600 feet downstream of HWY 18	+212	Unincorporated Areas of Hinds County.
	200 feet upstream of Dry Grove Road	+247	
Patrol Creek	1,000 feet upstream of confluence with Lindsey Creek	+268	City of Clinton.
	2,900 feet upstream of confluence with Lindsey Creek	+268	
Pearl River Tributary 1	500 feet downstream of railroad	+260	Unincorporated Areas of Hinds County.
	2,300 feet upstream of railroad	+299	
Pearl River Tributary 2	1,000 feet downstream of railroad	+265	Unincorporated Areas of Hinds County.
	2,600 feet upstream of I–55	+330	
Rhodes Creek	15,000 feet upstream of North Siwell Road	+391	Unincorporated Areas of Hinds County.
	16,000 feet upstream of North Siwell Road	+396	
Rhodes Creek Tributary 1	3,150 feet upstream of confluence with Rhodes Creek	+258	Unincorporated Areas of Hinds County.
	2,000 feet upstream of confluence with Rhodes Creek	+271	
Rhodes Creek Tributary 4	2,800 feet upstream of confluence with Rhodes Creek	+275	Unincorporated Areas of Hinds County.
	1,150 feet upstream of Dac Road	+338	
Rhodes Creek Tributary 5	2,300 feet upstream of confluence with Rhodes Creek	+293	Unincorporated Areas of Hinds County.
	3,900 feet upstream of confluence with Rhodes Creek	+299	
Rhodes Creek Tributary 6	2,100 feet upstream of confluence with Rhodes Creek	+295	Unincorporated Areas of Hinds County.
Robertson Creek	2,800 feet upstream of confluence with Rhodes Creek	+299	Unincorporated Areas of Hinds County.
	1,900 feet upstream of Flowers Road	+306	
Smith Creek Tributary 4	200 feet upstream of Wells Road	+263	Unincorporated Areas of Hinds County.
	5,500 feet upstream of Wells Road	+312	
Snake Creek	4,000 feet upstream of US HWY 18	+283	Unincorporated Areas of Hinds County.
	5,600 feet upstream of confluence with Snake Creek Tributary 1.	+313	
Snake Creek Tributary 1	450 feet downstream of Midway Road	+306	Unincorporated Areas of Hinds County.
	1,050 feet upstream of Midway Road	+317	
Straight Fence Creek	10,500 feet upstream of confluence with Bogue Chitto Creek.	+203	Unincorporated Areas of Hinds County.
	750 feet downstream of Williamson road	+241	
Straight Fence Creek Tributary 1.	750 feet downstream of McGuffee Road	+217	Unincorporated Areas of Hinds County.
	200 feet downstream of Clinton-Tinnin Road	+240	
Straight Fence Creek Tributary 1–1.	700 feet downstream of McGuffee Road	+217	Unincorporated Areas of Hinds County.
	600 feet upstream of McGuffee Road	+226	
Straight Fence Creek Tributary 2.	800 feet downstream of McGuffee Road	+217	Unincorporated Areas of Hinds County.
	2,000 feet upstream of confluence with Straight Fence Creek Tributary 2–1.	+238	
Straight Fence Creek Tributary 2–1.	1,350 feet upstream of confluence with Straight Fence Creek Tributary 2.	+235	Unincorporated Areas of Hinds County.
	3,400 feet upstream of confluence with Straight Fence Creek Tributary 2.	+242	
Straight Fence Creek Tributary 3.	3,800 feet upstream of confluence with Straight Fence Creek.	+218	Unincorporated Areas of Hinds County.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
	100 feet downstream of Jimmy Williams Road	+254	
Straight Fence Creek Tributary 3–1.	300 feet upstream of confluence with Straight Fence Creek Tributary 3.	+245	Unincorporated Areas of Hinds County.
	2,800 feet upstream of McGuffee Road	+263	
Straight Fence Creek Tributary 4.	1,000 feet upstream of confluence with Straight Fence Creek.	+222	Unincorporated Areas of Hinds County.
	1,500 feet upstream of Noah Johnson Road	+247	
Straight Fence Creek Tributary 5–1.	900 feet upstream of confluence with Straight Fence Creek Tributary 5.	+246	Unincorporated Areas of Hinds County.
	3,050 feet upstream of confluence with Straight Fence Creek Tributary 5.	+259	
Straight Fence Creek Tributary 6.	200 feet downstream of Williamson Road	+252	Unincorporated Areas of Hinds County.
	4,300 feet upstream of confluence with Straight Fence Creek Tributary 6–2.	+259	
Straight Fence Creek Tributary 6–1.	1,600 feet upstream of confluence with Straight Fence Creek Tributary 6.	+245	Unincorporated Areas of Hinds County.
	5,350 feet upstream of confluence with Straight Fence Creek Tributary 6.	+257	
Straight Fence Creek Tributary 6–2.	400 feet upstream of confluence with Straight Fence Creek Tributary 6.	+258	Unincorporated Areas of Hinds County.
	1,300 feet upstream of confluence with Straight Fence Creek Tributary 6.	+265	
Straight Fence Creek Tributary 7.	1,900 feet downstream of Pinehaven Place	+264	City of Clinton, Unincorporated Areas of Hinds County.
	100 feet downstream of Pinehaven Road	+285	
Stream B	400 feet upstream of Joe Cocker Road	+236	Unincorporated Areas of Hinds County.
	500 feet downstream of county boundary	+263	
Stream B Tributary 1	1,400 feet upstream of confluence with Stream B	+250	Unincorporated Areas of Hinds County.
	2,800 feet upstream of confluence with Stream B	+260	
Stream B Tributary 2	200 feet downstream of Clincy Road	+248	Unincorporated Areas of Hinds County.
	At county boundary	+258	
Straight Fence Creek Tributary 5.	2,800 feet upstream of confluence with Straight Fence Creek.	+236	Unincorporated Areas of Hinds County.
	6,800 feet upstream of confluence with Straight Fence Creek.	+274	
Terrell Creek	600 feet downstream of Fairchilds Road	+169	Unincorporated Areas of Hinds County.
	2,000 feet upstream of Unnamed Field Road	+194	
Town Creek	1,300 feet upstream of I–220	+350	City of Jackson.
	4,400 feet upstream of Forest Road	+369	
Town Creek Tributary 2	100 feet upstream of Michael Avalon Street	+328	City of Jackson.
	700 feet upstream of Michael Avalon Street	+328	
Trahon Creek Tributary 3	250 feet upstream of Lake Catherine Dam	+325	City of Jackson.
Turkey Creek	2,000 feet downstream of Mount Moriah Road	+167	Unincorporated Areas of Hinds County.
	4,200 feet upstream of US HWY 467	+244	
Turkey Creek Tributary 1	2,000 feet upstream of confluence with Turkey Creek	+206	Unincorporated Areas of Hinds County.
	4,200 feet upstream of US HWY 467	+235	
Turkey Creek Tributary 2	5,000 feet upstream of confluence with Turkey Creek	+227	Unincorporated Areas of Hinds County, Town of Terry.
	4,200 feet upstream of Natchez Trace Parkway	+245	
Twelvemile Creek	8,000 feet upstream of confluence with Fourteenmile Creek.	+155	Unincorporated Areas of Hinds County.
	3,400 feet upstream of confluence with Fourteenmile Creek.	+178	
Vaughn Creek	6,500 feet downstream of Volley Campbell Road	+286	Town of Terry, Unincorporated Areas of Hinds County.
	2,800 feet upstream of Volley Campbell Road	+308	
Vaughn Creek Tributary 1	4,200 feet upstream of confluence with Vaughn Creek	+272	Unincorporated Areas of Hinds County.
	300 feet upstream of Jack Johnson Road	+291	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
Vaughn Creek Tributary 1–1	2,700 feet upstream of confluence with Vaughn Creek Tributary 1.	+281	Unincorporated Areas of Hinds County.
	3,500 feet upstream of confluence with Vaughn Creek Tributary 1.	+285	
Vaughn Creek Tributary 3	1,600 feet upstream of confluence with Vaughn Creek	+292	Unincorporated Areas of Hinds County.
	2,000 feet upstream of confluence with Vaughn Creek Tributary 3.	+301	
	650 feet upstream of Jack Johnson Road	+314	
	5,500 feet upstream of confluence with Vaughn Creek Tributary 3.	+320	
Vaughn Creek Tributary 3–2	1,000 feet upstream of confluence with Vaughn Creek Tributary 3.	+308	Unincorporated Areas of Hinds County.
	150 feet upstream of Cassidy Road	+317	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

City of Clinton
Maps are available for inspection at City Hall, 300 Jefferson Street, Clinton, MS 39056.

City of Jackson
Maps are available for inspection at the Department of Public Works, 200 South President Street, Jackson, MS 39205.

Town of Bolton
Maps are available for inspection at the Town Hall, 202 Bolton-Raymond Road, Bolton, MS 39041.

Town of Learned
Maps are available for inspection at 521 Cherry Street, Learned, MS 39154

Town of Terry
Maps are available for inspection at the Town Hall, 315 Cunningham Avenue, Terry, MS 39170.

Unincorporated Areas of Hinds County
Maps are available for inspection at the Hinds County Permit and Zoning Office, 127 West Main Street, Raymond, MS 39154.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL) Modified	Communities affected
Commonwealth of Puerto Rico County, Puerto Rico, and Incorporated Areas Docket No.: FEMA–B–7765			
Atlantic Ocean—Entire Shoreline of the Commonwealth of Puerto Rico.	Lowest elevation located at approximately 0.8 kilometers northwest of intersection of Carretera 466 and Carretera Municipal.	^2.7	Commonwealth of Puerto Rico, Municipality of Ponce.
	Highest elevation located at shoreline, approximately 0.9 kilometer northwest of intersection of Carretera 681 and Calle B.	^13.7	
Caribbean Sea	Approximately 550 meters southwest of the intersection of Calle Dr Vidal and Calle 33.	^1.5	Commonwealth of Puerto Rico, Municipality of Ponce.
	Shoreline, approximately 2.7 kilometers southwest of the intersection of Carretera 307 and Calle A.	^4.6	
Isla Culebra/Atlantic Ocean	Approximately 1.6 kilometers northwest of the intersection of Calle 1 and Carretera 251.	^1.5	Commonwealth of Puerto Rico.
	Shoreline, approximately 3.0 kilometers northeast of the intersection of Calle 1 and Carretera 251 (Punta Flamenco).	^14.3	
Isla Culebra/Ensenada Honda ..	Approximately 90 meters southeast of the intersection of Calle Luis Munoz Marin and Carretera 250.	^3	Commonwealth of Puerto Rico.
	Shoreline, approximately 4.0 kilometers southeast of the intersection of Calle Luis Munoz Marin and Carretera 250.	^8.8	
Isla Vieques/Caribbean Sea	Approximately 3.0 kilometers southwest of the intersection of Carretera 200 and Camino Puerto Diablo.	^2.4	Commonwealth of Puerto Rico.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL) Modified	Communities affected
	Shoreline, approximately 6.9 kilometers southwest of the intersection of Carretera 201 and Carretera 996.	^3.8	
Isla Vieques/Vieques Passage	Approximately 9.2 kilometers northwest of the intersection of Carretera 201 and Carretera 996.	^2.4	Commonwealth of Puerto Rico.
	Shoreline, approximately 3.7 kilometers northwest of the intersection of Carretera 201 and Carretera 996.	^6.2	
Isla Vieques/Vieques Sound	Approximately 9.7 kilometers southeast of the intersection of Carretera 200 and Camino Puerto Diablo.	^2.7	Commonwealth of Puerto Rico.
	Shoreline, approximately 9.8 kilometers southeast of the intersection of Carretera 200 and Camino Puerto Diablo.	^4.1	
Quebrada Cambute	At confluence with Rio Canavanillas	^4.9	Commonwealth of Puerto Rico.
	Approximately 790 meters upstream of confluence with Rio Canovanillas.	^12.1	
Quebrada Honda	Approximately 2,800 meters upstream of the confluence with Rio Cibuco.	^17	Commonwealth of Puerto Rico.
	Approximately 2,330 meters upstream of Puerto Rico Route 2.	^74.2	
	At confluence with Rio Guanajibo	^89.5	
	Approximately 920 meters upstream of Sector Jeraldo	^106.1	
Quebrada Mabu	At confluence with Rio Humacao	^13.9	Commonwealth of Puerto Rico.
	Approximately 460 meters upstream of Calle B	^43.3	
Quebrada Mariana	At confluence with Rio Humacao	^19	Commonwealth of Puerto Rico.
	Approximately 3,400 meters upstream of Puerto Rico Highway 30.	^75.2	
Quebrada Mariana Tributary	At confluence with Quebrada Mariana	^20.5	Commonwealth of Puerto Rico.
	Approximately 110 meters upstream of Camino Manolo Lopez.	^32.2	
Quebrada la Mina	Approximately 220 meters downstream of Puerto Rico Route 997.	^6.1	Commonwealth of Puerto Rico.
	Approximately 930 meters upstream of Puerto Rico Route 201.	^77.7	
Quebrada la Mina Tributary	Confluence with Quebrada la Mina	^45.6	Commonwealth of Puerto Rico.
	Approximately 755 meters upstream of confluence with Quebrada la Mina.	^82.3	
Rio Bairoa	At confluence with Rio Grande de Loiza Reach 2	^50.9	Commonwealth of Puerto Rico.
	Approximately 290 meters upstream of Calle Gardena	^90.1	
Rio Caguitas	At confluence of Rio Grande de Loiza Reach 2	^51	Commonwealth of Puerto Rico.
	Approximately 1,830 meters upstream of Calle Canaboncito.	^81.2	
Rio Canas	Confluence with Rio Matilde	^10.4	Commonwealth of Puerto Rico, Municipality of Ponce.
	Approximately 520 meters upstream of Avenida Ponce De Leon.	^40.3	
Rio Culebrinas (at San Sebastian).	Approximately 1,120 meters downstream of Calle Jose Torres Pino.	^57.3	Commonwealth of Puerto Rico.
	Approximately 1,160 meters upstream of Carretera 119	^69	
Rio Culebrinas (at San Sebastian) Tributary.	At confluence with Rio Culebrinas (at San Sebastian)	^60.8	Commonwealth of Puerto Rico.
	Approximately 710 meters upstream of Calle Hostos Cabrera.	^64.1	
Rio Culebrinas (downstream reach).	Approximately 473 meters upstream of Puerto Rico Highway 2.	^8.7	Commonwealth of Puerto Rico.
	Approximately 1,210 meters upstream of Calle Concepcion Vera Ayala.	^18.6	
Rio Fajardo	Approximately 1,140 meters upstream of mouth	^1	Commonwealth of Puerto Rico.
	Approximately 2,050 meters upstream of Carretera 977	^60.7	
Rio Grande de Anasco	Approximately 300 meters upstream of mouth	^2	Commonwealth of Puerto Rico.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL) Modified	Communities affected
	Approximately 2,370 meters upstream of Carretera 406 ...	^20	
Rio Grande de Humacao	Approximately 230 meters above mouth	^2	Commonwealth of Puerto Rico.
	Approximately 1,920 meters upstream of Carretera 914 ...	^46.5	
Rio Grande de Loiza Reach 1 ..	Approximately 25 meters upstream of Puerto Rico Highway 3.	^13.1	Commonwealth of Puerto Rico.
	Approximately 5,120 meters upstream of Puerto Rico Highway 181.	^28.1	
Rio Grande de Loiza Reach 2 ..	Approximately 3,640 meters downstream of Puerto Rico Highway 30.	^49.5	Commonwealth of Puerto Rico.
	Approximately 2,700 meters upstream of Carretera 183 ...	^96.4	
Rio Grande de Manati	Approximately 130 meters upstream of mouth	^3	Commonwealth of Puerto Rico.
	Approximately 100 meters upstream of Puerto Rico Route 145.	^49	
Rio Guanajibo	Approximately 50 meters downstream of Carretera 102	^2.4	Commonwealth of Puerto Rico.
	Approximately 2,150 meters upstream of Carretera 368 ...	^113	
Rio Guatemala	At confluence with Rio Culebrinas (at San Sebastian)	^53.6	Commonwealth of Puerto Rico.
	Approximately 1,650 meters upstream of Carretera 111 ...	^71.4	
Rio Guayanes	Approximately 450 meters upstream of mouth	^3.3	Commonwealth of Puerto Rico.
	Approximately 4,330 meters upstream of Carretera 182 ...	^34.3	
Rio Guayo	Approximately 300 meters upstream of the confluence with Rio Inabon.	^45.8	Commonwealth of Puerto Rico, Municipality of Ponce.
	Approximately 44 meters upstream of Puerto Rico Route 512.	^156.1	
Rio Gurabo	At confluence with Rio Grande de Loiza Reach 2	^46.8	Commonwealth of Puerto Rico.
	Approximately 1,800 meters upstream of Carretera 31	^71.4	
Rio Inabon	Approximately 96 meters upstream of mouth	^2.4	Commonwealth of Puerto Rico, Municipality of Ponce.
	Approximately 7,005 meters upstream of Calle 1	^132.5	
Rio Jacaguas	Approximately 96 meters upstream of mouth	^2.4	Commonwealth of Puerto Rico, Municipality of Ponce.
	Approximately 162 meters upstream of Puerto Rico Route 149.	^77.4	
Rio Jacaguas (at Villalba)	Approximately 1,180 meters downstream of Puerto Rico Route 150.	^133.4	Commonwealth of Puerto Rico.
	Approximately 2,010 meters upstream of Puerto Rico Route 561.	^196	
Rio Limones	At confluence with Rio Guayanes	^14.8	Commonwealth of Puerto Rico.
	Approximately 120 meters upstream of Carretera 902	^37.6	
Rio Matilde	Approximately 800 meters downstream of Puerto Rico Route 52.	^2.1	Commonwealth of Puerto Rico.
	Confluence with Rio Canas and Rio Pastillo	^10.3	
Rio Pastillo	Confluence with Rio Matilde	^10.4	Commonwealth of Puerto Rico, Municipality of Ponce.
	Approximately 80 meters upstream of Puerto Rico Route 132.	^42	
Rio Sabana	Approximately 875 meters above mouth	^2.7	Commonwealth of Puerto Rico.
	Approximately 1,050 meters upstream of Carretera 983 ...	^26.5	
Rio Turabo	At confluence with Rio Grande de Loiza Reach 2	^57.4	Commonwealth of Puerto Rico.
	Approximately 7,500 meters upstream of Calle Georgetti ..	^105.8	
Rio Valenciano	At confluence with Rio Gurabo	^59.8	Commonwealth of Puerto Rico.
	Approximately 1,040 meters upstream of Carretera 928 ...	^70	
Vieques Passage	Approximately 3.9 kilometers southeast of the intersection of Carretera 3 and Carretera 31.	^1.8	Commonwealth of Puerto Rico.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL) Modified	Communities affected
	Shoreline, approximately 4.1 kilometers southeast of the intersection of Carretera 3 and Carretera 31 (Punta Lima).	^9.8	
Vieques Sound	At intersection of Forrestal Drive and Tarawa Drive	^3.4	Commonwealth of Puerto Rico.
	Shoreline, approximately 3.1 kilometers northeast of intersection of Avenida el Conquistador and Carretera Cabezas.	^5.2	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
^ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Commonwealth of Puerto Rico
Maps are available for inspection at the Puerto Rico Planning Board, Minilas Government Center, North Building, 16th Floor, East Jose de Diego Avenue, Stop 22, San Juan, PR 00940.

Municipality of Ponce
Maps are available for inspection at Ponce City Hall, 23 Calle Villa, Ponce, PR 00731.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
Yakima County, Washington, and Incorporated Areas Docket No.: FEMA–B–1010			
Naches River	Approximately 300 feet downstream of I–82	+1,185	Unincorporated Areas of Yakima County, City of Yakima, Town of Naches, Town of Selah.
	Approximately 0.74 mile upstream of Hwy 12	+1,632	
Naches River Split Flow A	Approximately at Pence Road	+1,170	Unincorporated Areas of Yakima County.
	Approximately 0.57 miles upstream of Cypress Road	+1,241	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

City of Yakima
Maps are available for inspection at 129 North 2nd Street, Yakima, WA 98901.

Town of Naches
Maps are available for inspection at 29 East 2nd Street, Naches, WA 98937.

Town of Selah
Maps are available for inspection at 115 West Naches Avenue, Selah, WA 98942.

Unincorporated Areas of Yakima County
Maps are available for inspection at 128 North 2nd Street, Yakima, WA 98901.

Roane County, Tennessee, and Incorporated Areas Docket No.: FEMA–B–1014			
Caney Creek	143 feet downstream of confluence with Postoak Creek	+746	Unincorporated Areas of Roane County.
	2,087 feet upstream of confluence with Tennessee River	+746	
Clinch River	2,372 feet upstream of confluence with Tennessee River	+747	City of Oak Ridge, City of Harriman, Unincorporated Areas of Roane County.
	964 feet downstream of confluence with Young Creek	+747	
Clinch River	144 feet downstream of confluence with Caney Creek East.	+748	Unincorporated Areas of Roane County.
	6.3 miles upstream up SH 95	+796	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
Emory River	1,463 feet upstream of confluence with Clinch River	+747	City of Kingston, Unincorporated Areas of Roane County.
	600 feet upstream of confluence with Swan Pond Creek	+748	
Smith Creek	3,150 feet upstream of confluence with Tennessee River	+747	Unincorporated Areas of Roane County, City of Kingston.
	411 feet downstream of Paint Rock Ferry Road	+747	
Tennessee River	5,880 feet downstream of confluence with Caney Creek	+746	Unincorporated Areas of Roane County, City of Kingston.
	1,140 Feet upstream of confluence with Hines Creek	+750	
Whites Creek	2.6 miles downstream of confluence with Black Creek	+746	Unincorporated Areas of Roane County.
	1,900 feet upstream of confluence with Black Creek	+791	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

City of Harriman
Maps are available for inspection at 300 North Roane Street, Harriman, TN 37748.

City of Kingston
Maps are available for inspection at 125 West Cumberland Street, Kingston, TN 37763.

City of Oak Ridge
Maps are available for inspection at 200 South Tulane Avenue, Oak Ridge, TN 37830.

Unincorporated Areas of Roane County
Maps are available for inspection at 200 East Race Street, Kingston, TN 37763.

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

[FR Doc. E9–27113 Filed 11–9–09; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2008–0020]

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Base (1% annual-chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

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

FOR FURTHER INFORMATION CONTACT: Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2820.

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

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community. The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

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

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

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

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

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

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

■ 1. The authority citation for part 67 continues to read as follows:

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

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
Orange County, California, and Incorporated Areas Docket No.: FEMA–B–1004			
Aliso Creek	At confluence with Pacific Ocean	+14	City of Laguna Beach, Unincorporated Areas of Orange County.
	Approximately 1.09 mile upstream of confluence with Pacific Ocean.	+41	
Bluebird Canyon	At confluence with Pacific Ocean	+17	City of Laguna Beach.
	Approximately 0.55 mile upstream of confluence with Pacific Ocean.	+124	
Canyon Acres Wash	Approximately 70 feet upstream of confluence with Laguna Canyon.	+81	City of Laguna Beach.
	Approximately 1,460 feet upstream of Lewellyn Drive	+185	
Laguna Canyon	At confluence with Pacific Ocean	+15	City of Laguna Beach, Unincorporated Areas of Orange County.
	Approximately 0.72 mile upstream of upstream-most State Highway 73 crossing.	+344	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

City of Laguna Beach

Maps are available for inspection at City Hall, 505 Forest Avenue, Laguna Beach, CA 92651.

Unincorporated Areas of Orange County

Maps are available for inspection at the Orange County Public Works Department, 300 North Flower Street, Santa Ana, CA 92703.

Anderson County, Kentucky, and Incorporated Areas Docket No.: FEMA–B–1007			
Kentucky River	Anderson County and Franklin County corporate limits	+509	Unincorporated Areas of Anderson County.
	Anderson County and Mercer County corporate limits	+527	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

Unincorporated Areas of Anderson County

Maps are available for inspection at 139 Main Street, Lawrenceburg, KY 40342.

Graves County, Kentucky, and Incorporated Areas Docket No.: FEMA–1013			
Camp Creek	Approximately 2,000 feet upstream KY–348	+352	Unincorporated Areas of Graves County.
	Approximately 800 feet upstream of railroad	+370	
Kess Creek	At Paris Road	+456	Unincorporated Areas of Graves County, City of Mayfield.
	Approximately 750 downstream of South 10th Street	+470	
Obion Creek	Approximately 2,100 feet downstream of railroad (West County Boundary).	+378	Unincorporated Areas of Graves County.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
	At US–45	+410	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

City of Mayfield
Maps are available for inspection at 211 East Broadway, Mayfield, KY 42066.

Unincorporated Areas of Graves County
Maps are available for inspection at 101 East South Street, Mayfield, KY 42066.

Van Buren County, Michigan, and Incorporated Areas
Docket No.: FEMA–1002

Maple Creek	Approximately 0.4 mile upstream of Ollie Hosier Drive	+645	Township of Bangor.
	Approximately 800 feet downstream of 34th Avenue	+648	
South Branch Black River	Approximately 900 feet upstream of Kal-Haven Trail	+585	City of South Haven.
	Downstream side of 71½ Street	+585	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

City of South Haven
Maps are available for inspection at 539 Phoenix Street, South Haven, MI 49090.

Township of Bangor
Maps are available for inspection at 32550 CR 687, Bangor, MI 49013.

Watauga County, North Carolina, and Incorporated Areas
Docket Nos.: FEMA–B–1004 and FEMA–D–7808

Beech Creek	At the confluence with Watauga River	+2,446	Unincorporated Areas of Watauga County.
	Approximately 1,080 feet upstream of the confluence of Buckeye Creek.	+2,776	
Boone Creek	At the confluence with Winkler Creek	+3,122	Town of Boone.
	Approximately 350 feet upstream of West King Street	+3,311	
Brushy Fork	Approximately 100 feet downstream of US 421 Highway N.	+2,724	Unincorporated Areas of Watauga County.
	Approximately 700 feet upstream of Adams Cemetery Road (State Road 1375).	+2,893	
Buckeye Creek	At the confluence with Beech Creek	+2,731	Unincorporated Areas of Watauga County.
	Approximately 0.7 mile upstream of Blevins Road	+2,940	
Cobb Creek	At the confluence with Meat Camp Creek	+3,169	Unincorporated Areas of Watauga County.
	Approximately 1,540 feet upstream of Cobbs Creek Road (State Road 1325).	+3,307	
Cove Creek	At the confluence with Watauga River	+2,637	Unincorporated Areas of Watauga County.
	Approximately 620 feet upstream of Hill Road	+3,083	
Elk Creek	Approximately 100 feet downstream of the Watauga/Wilkes County boundary.	+1,349	Unincorporated Areas of Watauga County.
	Approximately 1.1 miles upstream of Jakes Mountain Road.	+2,135	
Elk Creek (into South Fork River).	Approximately 50 feet upstream of Big Hill Road (State Road 1350).	+2,955	Unincorporated Areas of Watauga County.
	Approximately 250 feet upstream of State Road 194	+2,982	
Flannery Fork	At the confluence with Winkler Creek	+3,253	Unincorporated Areas of Watauga County, Town of Boone.
	Approximately 430 feet upstream of Sky Ranch Road	+3,469	
Gap Creek	At the Watauga/Ashe County boundary	+2,952	Unincorporated Areas of Watauga County.
	Approximately 160 feet upstream of James Parsons Road	+3,076	
Hodges Creek	Approximately 430 feet upstream of the confluence with Boone Creek.	+3,127	Town of Boone.
	Approximately 140 feet upstream of NC 105 Highway	+3,286	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
Howard Creek	Approximately 1,440 feet upstream of Moss Hill Road	+3,212	Unincorporated Areas of Watauga County.
	Approximately 0.6 mile upstream of Millers Pond Lane	+3,418	
Laurel Fork	At the confluence with Watauga River	+2,739	Unincorporated Areas of Watauga County, Town of Boone.
	Approximately 1,400 feet upstream of George Wilson Road.	+3,357	
Left Prong Stony Fork	At the Watauga/Wilkes County boundary	+1,639	Unincorporated Areas of Watauga County.
	Approximately 220 feet upstream of the confluence of Wildcat Creek.	+1,947	
Meat Camp Creek	At the confluence with South Fork New River	+3,058	Unincorporated Areas of Watauga County.
	Approximately 1.1 miles upstream of Bryan Hollow Road (State Road 1339).	+3,495	
Meat Camp Creek Tributary	At the confluence with Meat Camp Creek	+3,156	Unincorporated Areas of Watauga County.
	Approximately 1,160 feet upstream of NC 194 Highway North.	+3,213	
Middle Fork	Approximately 500 feet downstream of Shoppes On The Parkway Road.	+3,455	Unincorporated Areas of Watauga County, Town of Blowing Rock.
	Approximately 0.4 mile upstream of Goforth Road	+3,630	
Norris Fork	At the confluence with Meat Camp Creek	+3,200	Unincorporated Areas of Watauga County.
	Approximately 0.4 mile upstream of the confluence with Meat Camp Creek.	+3,248	
Pine Orchard Creek	At the confluence with Elk Creek (into South Fork New River).	+2,974	Unincorporated Areas of Watauga County.
	Approximately 0.7 mile upstream of the confluence with Elk Creek (into South Fork New River).	+3,041	
Stony Fork	At the Watauga/Wilkes County boundary	+1,975	Unincorporated Areas of Watauga County.
	Approximately 40 feet downstream of Stoney Fork Road (State Road 1505).	+2,265	
Stony Fork Tributary	At the confluence with Stony Fork	+2,260	Unincorporated Areas of Watauga County.
	Approximately 1,470 feet upstream of Stoney Fork Road	+2,341	
Unnamed Tributary to Middle Fork.	At the confluence with Middle Fork	+3,477	Unincorporated Areas of Watauga County, Town of Blowing Rock.
	Approximately 0.7 mile upstream of Chetola Lake Drive	+3,546	
Watauga River	At the Watauga County boundary	+2,142	Unincorporated Areas of Watauga County.
	Approximately 30 feet upstream of The Glens Boulevard	+3,596	
Wildcat Creek	At the confluence with Left Prong Stony Fork	+1,941	Unincorporated Areas of Watauga County.
	Approximately 0.6 mile upstream of Bill Miller Lane	+2,469	
Winkler Creek	At the upstream side of Blowing Rock Road	+3,114	Unincorporated Areas of Watauga County, Town of Boone.
	Approximately 300 feet upstream of Rainbow Mountain Road.	+3,442	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

Town of Blowing Rock

Maps are available for inspection at the Town Hall, 1036 Main Street, Blowing Rock, NC 28605.

Town of Boone

Maps are available for inspection at the Boone Town Planning and Inspections Office, 1500 Blowing Rock Road, Boone, NC 28607.

Unincorporated Areas of Watauga County

Maps are available for inspection at the Watauga County Planning and Inspections Department, 331 Queen Street, Suite 8, Boone, NC 28607

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground Modified	Communities affected
Barron County, Wisconsin, and Incorporated Areas Docket No.: FEMA–B–1014			
Bear Creek	191 feet downstream of Main Street (Haugen)	+1,198	Village of Haugen, Unincorporated Areas of Barron County.
	Just downstream of Bear Lake Dam	+1,207	
Beaver Dam Lake	Entire shoreline	+1,233	City of Cumberland.
Big Moon Lake	Entire shoreline	+1,171	Unincorporated Areas of Barron County.
Buck Lake	Entire shoreline	+1,233	City of Cumberland, Unincorporated Areas of Barron County.
Devils Lake	Entire shoreline	+1,262	Unincorporated Areas of Barron County.
Duck Lake	Entire shoreline	+1,236	City of Cumberland, Unincorporated Areas of Barron County.
Frankenburg Slough	Entire shoreline	+1,040	Village of Cameron.
Granite Lake	Entire shoreline	+1,238	Unincorporated Areas of Barron County.
Lake Montanis	Entire shoreline	+1,119	City of Rice Lake, Unincorporated Areas of Barron County.
Little Sand Lake	Entire shoreline	+1,250	Unincorporated Areas of Barron County.
Lower Turtle Lake	Entire shoreline	+1,165	Unincorporated Areas of Barron County.
Lower/Upper Vermillion Lake	Entire shoreline	+1,184	Unincorporated Areas of Barron County.
Peterson Lake	Entire shoreline	+1,189	Unincorporated Areas of Barron County.
Poskin Lake	Entire shoreline	+1,157	Unincorporated Areas of Barron County.
Red Cedar River	6,000 feet downstream of State Hwy 48	+1,126	Unincorporated Areas of Barron County.
	Outlet of Red Cedar Lake	+1,177	
Red Cedar River Tributary 16	Confluence with Red Cedar River	+1,112	City of Rice Lake, Unincorporated Areas of Barron County.
	750 feet upstream of US Hwy 53	+1,191	
Sand Lake	Entire shoreline	+1,226	Unincorporated Areas of Barron County.
Shallow Lake	Entire shoreline	+1,240	Unincorporated Areas of Barron County.
Silver Lake	Entire shoreline	+1,258	Unincorporated Areas of Barron County.
Tuscobia Lake/Stump Lake	Entire shoreline	+1,129	Unincorporated Areas of Barron County.
Upper Turtle Lake	Entire shoreline	+1,174	Unincorporated Areas of Barron County.

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

City of Cumberland
Maps are available for inspection at 1356 2nd Avenue Cumberland, WI 54829.

City of Rice Lake
Maps are available for inspection at 30 East Eau Claire Street, Rice Lake, WI 54868.

Unincorporated Areas of Barron County
Maps are available for inspection at 330 East LaSalle Avenue, Barron, WI 54812.

Village of Cameron
Maps are available for inspection at 300 North 1st Street, Cameron, WI 54822.

Village of Haugen
Maps are available for inspection at 104 West 3rd Street, Haugen, WI 54841.

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

Deborah S. Ingram,

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

[FR Doc. E9–27112 Filed 11–9–09; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 09100091344–9056–02]

RIN 0648–XS79

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod in the Central Regulatory Area of the Gulf of Alaska

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

ACTION: Temporary rule; prohibition of retention.

SUMMARY: NMFS is prohibiting retention of Pacific cod by vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the Gulf of Alaska (GOA). NMFS is requiring that catch of Pacific cod in this area be treated in the same manner as prohibited species and discarded at sea with a minimum of injury.

This action is necessary because the amount of the 2009 total allowable catch (TAC) of Pacific cod apportioned to vessels catching Pacific cod for processing by the inshore component in this area has been reached.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), November 5, 2009, through 2400 hrs, A.l.t., December 31, 2009.

FOR FURTHER INFORMATION CONTACT: Obren Davis, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The amount of the 2009 Pacific cod TAC apportioned to vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area (Statistical Areas 620 and 630, between 147 degrees and 159 degrees W. longitudes) of the GOA is 21,277 metric tons (mt) as established by the final 2009 and 2010 harvest specifications for groundfish of the GOA (74 FR 7333, February 17, 2009).

In accordance with § 679.20(d)(2), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the amount of the 2009 Pacific cod TAC apportioned to vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the GOA has been reached. Therefore, NMFS is requiring that further catches of Pacific cod caught by vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the GOA be treated as prohibited species in accordance with § 679.21(b). This inseason action does not apply to vessels fishing under a cooperative quota permit in the cooperative fishery in the Rockfish Program for the Central GOA.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the prohibition of retention of Pacific cod by any vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of November 4, 2009.

The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 5, 2009.

James P. Burgess,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E9–27042 Filed 11–5–09; 4:15 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register

Vol. 74, No. 216

Tuesday, November 10, 2009

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

FEDERAL TRADE COMMISSION

16 CFR Part 305

[RIN 3084-AB03]

Appliance Labeling Rule

AGENCY: Federal Trade Commission (''FTC'' or ''Commission'').

ACTION: Notice of proposed rulemaking; request for public comment.

SUMMARY: Section 321 of the Energy Independence and Security Act of 2007 requires the Commission to conduct a rulemaking to consider the effectiveness of current labeling requirements for lamps (commonly referred to as ''light bulbs'') and to consider alternative labeling approaches. After reviewing public comments and consumer research, the Commission seeks comments on proposed changes to the existing labeling requirements for lamp products.

DATES: Written comments must be received on or before December 28, 2009.

ADDRESSES: Interested parties are invited to submit written comments electronically or in paper form by following the instructions in the **SUPPLEMENTARY INFORMATION** section below. Comments in electronic form should be submitted by using the following weblink: (*https://public.commentworks.com/ftc/lampamendmentsNPRM*) (and following the instructions on the web-based form). Comments filed in paper form should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H-135(Annex N), 600 Pennsylvania Avenue, N.W., Washington, DC 20580, in the manner detailed in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: Hampton Newsome, (202) 326-2889, or Lemuel Dowdy, (202) 326-2981, Attorneys, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Room NJ-2122, 600 Pennsylvania Avenue, N.W., Washington, DC 20580.

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I. Introduction

In accordance with the Energy Independence and Security Act of 2007 (Pub. L. 110-140) (''EISA''), the Commission has considered the effectiveness of current requirements and alternative approaches for labeling lamps, commonly referred to as light bulbs.[1] After reviewing public comments and conducting consumer research, the Commission now proposes amendments to the Appliance Labeling Rule (16 CFR Part 305) that would require light bulb packages to display brightness and energy cost information on the front panel and a detailed ''Lighting Facts'' label on the side or rear. The proposed amendments also would require certain disclosures on the bulbs. These new labeling requirements should help consumers choose energy efficient bulbs that meet their lighting needs. The Commission seeks comments on these proposed changes.

To facilitate comment, this Notice provides background on the EISA provisions, the current labeling requirements, the public comments, and the FTC consumer research; details the proposed changes to the labeling, reporting, website and catalog requirements; discusses proposed consumer education measures; provides a section by section description of the proposed changes; and analyzes the impact of the proposed changes pursuant to the Paperwork Reduction Act and the Regulatory Flexibility Act.

II. Background

EISA directs the Department of Energy (''DOE'') to issue stringent energy efficiency standards for lighting products. These standards will eliminate low efficiency incandescent light bulbs from store shelves. The remaining high efficiency light bulbs will include products widely available now, such as compact fluorescent lamps (''CFLs''), as well as products that are likely to become increasingly available in the future such as improved incandescent bulbs and very high efficiency solid-state lighting (*e.g.*, light-emitting diode (LED) products).

Given these changes, Congress directed the FTC to consider the effectiveness of its current light bulb disclosure requirements and possible alternative labeling disclosures that could help consumers understand new high-efficiency bulbs and help them choose bulbs that meet their needs.[2] In particular, the law directs the Commission to consider labeling disclosures that address consumer needs for information about lighting level, light quality, lamp life, and total lifecycle cost. The Commission must complete this effort by June 2010.[3] EISA (section 321(c)) also requires DOE, in cooperation with the FTC and other agencies, to conduct a ''proactive

[1] This Notice uses the terms lamp, light bulb, and bulb interchangeably.

[2] Section 321(b) of EISA amends section 324(a)(2)(C) of the Energy Policy and Conservation Act (EPCA) (42 U.S.C. 6294(a)(2)(C)). Additional amendments in EISA redesignate 6294(a)(2)(C) as 6294(a)(2)(D) (*see* section 324(d) of EISA).

[3] Section 321(b) of EISA (42 U.S.C. 6294(a)(2)(D)) also gives the Commission the discretion to ''consider reopening the rulemaking not later than 180 days before the effective dates of the standards for general service incandescent lamps [implemented by DOE], if the Commission determines that further labeling changes are needed to help consumers understand lamp alternatives.''

national program of consumer awareness, information, and education'' to help consumers understand new light bulb labels and make energy-efficient lighting choices that meet their needs.

To begin fulfilling this mandate, the Commission published an Advance Notice of Proposed Rulemaking (''ANPR'') on July 18, 2008 (73 FR 40988) seeking comment, and then held a public roundtable on September 15, 2008.[4] Commenters and roundtable participants discussed the effectiveness of current labeling requirements, as well as whether labeling alternatives would help consumers in their purchasing decisions. Using this information, the Commission conducted a consumer research study to aid in determining what revisions, if any, it should make to existing labeling requirements.[5]

III. Current FTC Labeling

Current FTC regulations require that most incandescent and compact fluorescent lamp packages display information about the product's light output (in lumens), energy use (in watts), and lamp life (in hours).[6] The package disclosures also must provide the following statement: ''To save energy costs, find the bulbs with the light output you need, then choose the one with the lowest watts.'' Additionally, catalog retailers (including websites) must disclose this information for the covered lamps they sell.[7] The current rule provides manufacturers flexibility regarding the size, font, and style in which the information is presented, but otherwise mandates the wording, relative size, and order of the disclosures.[8] Figure 1 provides one example of how the disclosures required by the current rule may appear on the package.

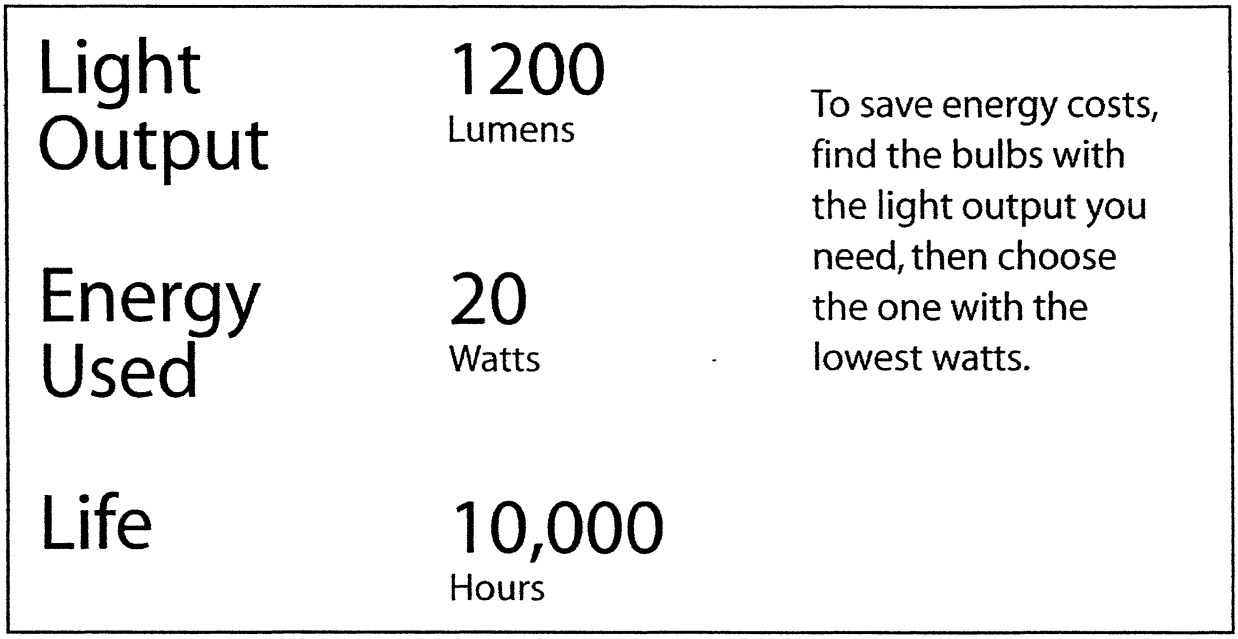


Figure 1

Example of Current Disclosures

The current rule also requires manufacturers to possess and rely upon a reasonable basis consisting of competent and reliable scientific tests to substantiate the information on their labels. For lamp life and light output representations, the rule states that the Commission will accept as substantiation data derived from applicable IES (''Illuminating Engineering Society'') test protocols.[9] The rule, however, does not require manufacturers to use these protocols.

IV. Consumer Research

In its ANPR, the Commission requested that commenters provide consumer research related to lighting disclosures. However, no commenters submitted or identified any recent, comprehensive consumer studies. Therefore, the FTC, through a contractor, conducted a consumer focus group about various light bulb attributes in October 2008.[10] After considering the results of this focus group, the FTC conducted a quantitative label study in the Spring of 2009.[11]

[4] The comments received in response to the ANPR are at (*http://www.ftc.gov/os/comments/lightbulbs/index.shtm*). A transcript of the Roundtable can be found at (*http://www.ftc.gov/bcp/workshops/lamp/transcript.pdf*).

[5] *See* 73 FR 72800 (Dec. 1, 2008); 74 FR 7894 (Feb. 20, 2009). *See* comments at (*http://www.ftc.gov/os/comments/lampstudypra2/index.shtm*).

[6] The FTC issued the current lighting disclosure requirements in 1994 (*see* 16 CFR §§ 305.15(a), (b), & (c)). *See* 59 FR 25176 (May 13, 1994). Figure 1 contains a sample of the current label.

[7] 16 CFR 305.20.

[8] In addition to the requirements for common household (medium screw base) light bulbs, the rule directs manufacturers of fluorescent lamp ballasts and luminaires, metal halide lamp fixtures, and certain tube-type (''general service'') fluorescent lamps to mark their products with an encircled ''E,'' a symbol signifying compliance with DOE minimum efficiency standards. *See* 16 CFR 305.15. Packages for incandescent reflector lamps must also display the encircled ''E'' as well as information on light output, energy use, and watts.

[9] *See* 16 CFR 305.5. For fluorescent lamp ballasts, the rule requires manufacturers to derive energy consumption information using specific DOE test procedures (10 CFR Part 430, subpart B, 430.23(q)). There were no DOE test procedures available for other lighting products when the FTC first published the lamp labeling rules in 1994.

[10] A report on the focus group (''FTC Focus Group Report''), prepared by FTC's contractor, Synovate, Inc., is available at (*http://www.ftc.gov/os/comments/lightbulbs/index.shtm*).

[11] The Commission announced this study in a December 1, 2008 notice (73 FR 72800) and provided details regarding the research in a February 20, 2009 notice (74 FR 7894). Comments received in response to the February 20, 2009 notice are available at (*http://www.ftc.gov/os/comments/lampstudypra2/index.shtm*).

The label study employed standard consumer survey methodologies, including choice experiments, to explore how different disclosure approaches impact consumer decision-making.[12] The FTC analyzed the data using a multi-variate probit model to determine which disclosure approaches were most successful in helping respondents choose correct answers, holding other factors constant.[13] The study did not generate information about national public opinion and did not provide nationally representative results. Instead, the results provided the FTC with information about the comparative effectiveness of various label approaches.[14]

In addition to the FTC research, the Commission considered concurrent research conducted in 2009 by Natural Resources Canada (''NRCan'').[15] NRCan's research sought to gather information on 'Canadians' knowledge, perceptions and understanding of household lighting, both in terms of the product and the terminology used to describe it.'' Specifically, NRCan conducted ten focus groups and an online survey. The survey explored Canadian consumers' experiences with different bulb types, their understanding of energy efficiency related to lighting options, their understanding of lighting terminology, the criteria they use in the selection of light bulbs, and their reaction to different labeling concepts.[16]

V. Effectiveness of Current Labeling Requirements

In considering the effectiveness of the current label, the Commission reviewed comments, information provided at the fall roundtable, and the consumer research. The review yielded two primary conclusions. First, the use of watts in the required disclosure is problematic because consumers tend to use watts (instead of lumens) as a measure of brightness. Second, the current FTC disclosures do not provide some types of information that may be important to consumers.

The comments and research show that consumers interpret wattage to measure brightness even though wattage is a measure of energy use. For instance, the Focus Group Report concluded that ''respondents mistakenly understood the measure of brightness to be wattage, and this was how they selected bulbs.''[17] In the FTC label study, respondents viewing label variations including watts on the front panel, who were asked to choose the brightest bulb, were somewhat more likely to pick the incorrect bulb than respondents viewing labels with other energy descriptors.[18] Thus, a significant number of respondents viewing those variations appear to have based their brightness determination on wattage information, rather than criteria intended to communicate light output. Similarly, the Canadian research concluded that the majority of respondents in Canada think of ''watts as a measure of brightness or both as a measure of brightness and energy use.''[19]

Consumers' use of watts, and not lumens, to gauge light output worked in a market dominated by incandescent bulbs because the wattage (*i.e.*, energy use) of incandescent lamps provides a consistent proxy for brightness (*i.e.*, light output). For example, a ''100-watt'' incandescent bulb typically provides enough light for reading while a ''40-watt'' incandescent bulb typically provides sufficient brightness to light a hallway or utility room. However, a wattage based approach does not work in a market that includes different high efficiency bulbs because the wattage needed to attain a particular light output can differ substantially across these technologies.[20]

In addition to concerns about wattage disclosures, the Commission's review identified three types of important information the current disclosures do not address. First, the current disclosures do not provide consumers with energy cost information. Many commenters identified energy cost as important information for the FTC label.[21] Second, the current rule does not require color temperature information (*i.e.*, the cool or warm appearance of a bulb's light). Color temperature garnered significant attention in the comments and during the roundtable because, as more color temperature variations become available, particularly for high efficiency bulbs, uniform color temperature information may become increasingly important.[22] Finally, some commenters noted that there are no current federal disclosures regarding the mercury content in CFLs.[23] They argued that such information is important to help consumers understand how to safely use and dispose of these products.

VI. Proposed Rule Changes

The Commission is proposing significant changes to its light bulb labeling requirements. These changes affect the rule's product coverage, the required package and product disclosures, reporting, and website (catalog) disclosures. In drafting these requirements, the Commission considered the severe space limitations on typical light bulb packaging and sought to propose simple, straightforward disclosures.

A. Proposed Product Coverage

The proposed amendments apply to common household (medium screw base) light bulbs, including general service incandescent bulbs and CFLs. These two technologies are the most commonly available bulbs presently on the market. The amendments also would apply to medium screw base light emitting diode (LED) lamps, which

[12] The FTC's contractor administered questions over the Internet to a sample of approximately 5,600 respondents who were at least 18 years old and were recent or likely future light bulb purchasers.

[13] A probit analysis is a statistical technique that uses several independent variables to predict the probability of some outcome, such as the probability that a correct answer will be selected. In some cases, the FTC staff also performed Pearson's chi-squared tests to test for significant differences across treatment groups in the proportion of respondents selecting the correct answer.

[14] The complete results (''Lamp Labeling Consumer Research Supplement to Notice of Proposed Rulemaking Related to the Effectiveness of the Current Lamp Labeling Requirements (16 CFR Part 305)''), including the questionnaire and all other study details, are available at (*www.ftc.gov/energy*).

[15] ''Lighting Survey: Combined Executive Summary,'' Sage Research Corporation (prepared for the Canadian Electricity Association and Natural Resources Canada) (''NRCan Lighting Survey'') May 2009, at 2.

[16] *See* generally NRCan Lighting Survey.

[17] FTC Focus Group Report at 6.

[18] Question 201 asked respondents to choose the bulb that would fill their room with as much light as possible. Question 202 asked them to give their second choice. Of the respondents who viewed watts as the only descriptor on the front panel, 59.28% and 49.72% correctly answered Questions 201 and 202, respectively; whereas 66.72% and 52.92% of respondents who did not view watts on the front panel correctly answered Questions 201 and 202, respectively. *See* Consumer Research Supplement at 356.

[19] The NRCan research study states: ''When asked to describe in their own words their understanding of ''watts,'' less than half (42%) of respondents mentioned something approximating the correct definition of energy/power use, while 64% mentioned brightness (or synonyms).'' NRCan Lighting Survey at 17. The NRCan research also found that the majority of Canadians ''still have an incandescent mindset in how they tend to think about lighting choices, the terminology they use, and the criteria they use to make decisions about what they buy.'' NRCan Lighting Survey at 14.

[20] For example, a traditional, standard incandescent bulb typically uses 100 watts to provide 1,600 lumens of light output. A CFL, on the other hand, can provide the same light output using only 25 watts, while an LED lamp may use even less energy to produce the same light output.

[21] See, *e.g.*, sample labels from Philips, GE, OSRAM, and NRDC at (*http://www.ftc.gov/bcp/workshops/lamp/index.shtml*).

[22] For example, session two of the Roundtable addressed color disclosures. *See* (*http://www.ftc.gov/bcp/workshops/lamp/index.shtml*).

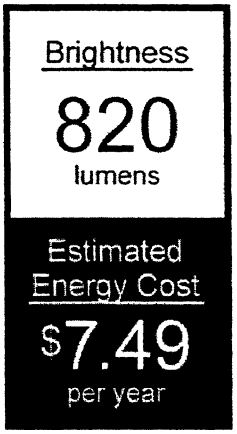
[23] *See* GE (#540385-00002) and NEMA (#540385-00005).

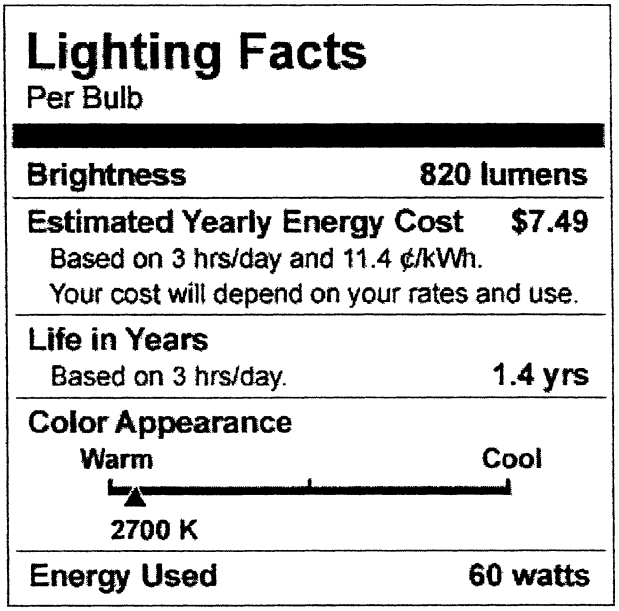
are likely to become widely available over the next few years.[24] Though the EISA amendments do not expressly require labeling for LEDs (42 U.S.C. 6294),[25] the Commission proposes to cover them using its general authority to label consumer products under 42 U.S.C. 6294(a)(6).[26]

To effect the coverage of these three bulb types, the proposed rule requires the new labels for any ''general service lamp,'' a term defined in the proposed rule to include any medium screw base lamp that is a general service incandescent, CFL, or general service LED.[27] This proposed coverage is consistent with commenter suggestions urging the Commission to require consistent disclosures for lamps regardless of technologies.[28]

B. Proposed Package Labeling

The proposed package labeling amendments create a two-panel labeling format: a front panel with brightness and energy cost information and a Lighting Facts label with additional information on the side or rear panel (see Figure 2). This two-panel approach benefits consumers by providing the most important information in a simple-to-read format on the package front and more detailed information on the side or rear panel. The proposed required disclosures are brightness, energy cost, life, color appearance, wattage, mercury content, and, for non-standard voltage bulbs, voltage information. The proposed amendments also allow manufacturers the discretion to provide the ENERGY STAR logo (if applicable). Additionally, the amendments expand the current rules for voluntary cost and life claims, and do not require manufacturers to make disclosures regarding a light bulb's lifecycle or its color rendering index. Finally, in addition to changing the disclosures on package labels, the amendments would require the bulbs themselves to display brightness and mercury information.





[24] LED products are more efficient and last longer than both incandescent and CFL bulbs and can replace those bulbs in common residential fixtures. The U.S. Department of Energy (''DOE'') is currently supporting domestic research and development for new solid-state lighting technologies. For more information about DOE's efforts and LED technology in general, *see* (*http://www1.eere.energy.gov/buildings/ssl/*).

[25] The EISA amendments included definitions for solid-state lighting products (*e.g.*, LED), but did not alter the scope of lighting products for which labeling is required. Therefore, the current law does not specifically direct the FTC to require labeling for solid-state lighting products. (*See* 42 U.S.C. 6291(30)(BB-DD) and 42 U.S.C. 6294(a)).

[26] Section 6294(a)(6) gives the Commission authority to require disclosures for consumer products not subject to specific labeling requirements in section 6294 (*i.e.*, products ''not specified'' under existing labeling requirements). The law defines ''consumer product'' as any article (other than an automobile) which ''in operation consumes, or is designed to consume energy'' and ''which, to any significant extent is distributed in commerce for personal use or consumption by an individual.'' 42 U.S.C. 6291(1). The Commission believes that labeling for LED bulbs is likely to assist consumers in their purchasing decisions because they are substitutes for incandescents and CFLs and are likely to become increasingly available for household use.

[27] The Commission also plans to use section 6294(a)(6) to require labeling for two types of incandescent bulbs: reflector lamps and 3-way incandescent lamps. Prior to EISA, the Commission's rules covered such products because they fell under the statutory definition of ''general service incandescent lamp.'' The EISA amendments, however, appear to have inadvertently removed these products from the labeling section by excluding them from the definition of ''general service incandescent lamps.'' *See* 42 U.S.C. 6291(30)(D). The Commission proposes to continue required labeling for reflector lamps and 3-way incandescent lamps because they have been labeled by the FTC for more than a decade, because they remain common products for which continued labeling would assist consumers, and because no comments suggest any reason for excluding them. The Commission seeks comment on this proposal, including any reasons why these lamps should not be subject to the labeling requirements.

[28] See, *e.g.*, Phillips (#536795-00015), Energy Solutions (#536795-00010), NRDC (#536795-0003), and CEE (#536795-00011). The Commission also seeks comment on whether there are other types of consumer lamps that the Commission should include under the new labeling requirements proposed in this Notice.

FRONT PANEL

REAR PANEL

Figure 2

Front Panel and Lighting Facts

1. Front and Rear Panel Format

Under the proposed rule, the front panel displays brightness in the form of lumens and energy information in the form of annual energy cost. Brightness and energy information warrant placement on the front panel because both are particularly important to consumers. Participants in the FTC focus group identified ''brightness'' as the most important bulb attribute.[29] In the FTC label study, respondents gave high scores to the importance of brightness as well as energy information.[30] Similarly, the NRCan research indicated that the ''two top pieces of information people look for on light bulb packaging are brightness and energy usage or efficiency.''[31] The prominent disclosure of these two key pieces of information on the front panel should allow consumers to make quick comparisons in the store.

The rear or side panel features a more detailed Lighting Facts label similar in format to the ''Nutrition Facts'' and ''Drug Facts'' labels required by the Food and Drug Administration. Each of these proposed disclosures is discussed in detail in Section B.2. To ensure uniformity, the proposed rule limits the permissible disclosures on the Lighting Facts label.

The Lighting Facts label has several benefits.[32] First, it provides a format consistent with other government mandated labels, which should help consumers find information to compare bulbs. Second, the label reinforces the brightness and cost information on the front of the package, including detail about the electricity rate and usage assumptions underlying the energy cost estimate. Third, the label provides detailed information in a small space, which is a particular concern given the size of typical light bulb packages. Finally, it provides uniform information that online sellers would be able to use to comply with the catalog disclosure requirements (section 305.20).

The Commission considered requiring only a Lighting Facts label (with no required disclosures on the front of the package). In the FTC label study, however, the label variation which contained only the Lighting Facts label did not perform as well as two-panel variations in aiding respondents to answer questions regarding light output.[33]

The Commission seeks comment on whether the rule should require a front and back label format as proposed. The Commission also seeks comment on whether the Lighting Facts label will fit on existing packages and whether the FTC needs to specify an alternative format for packages that are too small for the proposed label.

2. Required Package Disclosures

The proposed amendments require six mandatory disclosures on the package: brightness, energy cost, bulb life, color temperature (appearance), wattage, and, in some cases, voltage and mercury information.

a. Brightness/Light Output

Two significant problems with the current labeling requirements shaped the Commission's approach to light output disclosures. First, as discussed in section V, the current label highlights bulb wattage on the front of the package as an energy descriptor, but consumers tend to use it to measure light output. Second, many consumers do not understand that lumens provides a consistent measurement of light output. For example, in the FTC label study, even when provided with lumens information, roughly one-fifth of respondents mistakenly chose the dimmest bulb when asked to choose the brightest model.[34] Similarly, the majority of respondents in the NRCan study did not understand that ''lumens'' or even ''light output'' convey brightness.[35]

To address these two concerns and enhance consumer understanding of the light output of high efficiency bulbs, the Commission proposes two changes to the labeling requirements. First, the amended rule would remove mandatory wattage information from the front of the package, while maintaining a prominent lumens disclosure. This change should help consumers focus on lumens, instead of watts, to determine light output. A less prominent wattage disclosure would appear on the Lighting Facts label for consumers and professionals who want to know the wattage of a bulb. Second, the proposed amendments change the term describing lumens from ''light output'' to ''brightness.''[36] Both the FTC focus group and NRCan research suggest that consumers prefer the term ''brightness'' to ''light output,''[37] and participants at the FTC's Roundtable routinely used the term ''brightness'' when describing the light output of lamps.[38]

In addition to these labeling changes, the Commission recommends education efforts to help consumers understand how to use lumens. When properly understood, lumens permit consumers to determine whether a bulb provides sufficient light to meet their needs across technologies. The DOE-led consumer education programs required by section 321(c)(1)(C) of EISA provide an opportunity to improve consumer understanding of lumens, and the FTC plans to work with DOE as it implements these programs. In addition, the FTC may develop its own consumer education materials and strategies.

[29] FTC Focus Group Report at 6.

[30] Respondents in the FTC label study also scored bulb life high in terms of importance. However, the Canadian research indicated that consumers refer to bulb life only ''on occasion'' when buying light bulbs and ranked life below brightness and energy efficiency as a descriptor that ''must'' appear on the label. NRCan Lighting Survey at 13. Given the contradictory research results and the need to minimize disclosures on the front package, the Commission proposes to require life information on the Lighting Facts label, but not on the package front.

[31] NRCan Lighting Survey at 13. When asked what information must appear on the label, the Canadian opinion survey results indicated an 83% response rate for brightness, 74% for energy efficiency, and 69% for bulb life.

[32] ''Lighting Facts'' is a trademark held by the U.S. Government through the DOE solid-state lighting program. During the Roundtable and in comments, several commenters suggested a uniform label consistent with the ''Nutrition Facts.'' See, *e.g.*, Roundtable Tr. at 107, 108, 120, and 121; Philips #536795-00015.

[33] Question 201 asked respondents to choose the bulb that would fill their room with as much light as possible. Question 202 asked them to give their second choice. Of respondents who viewed the Lighting Facts label only, 52.56% and 39.49% correctly answered Questions 201 and 202, respectively; whereas 66.17% and 53.17% of respondents who viewed two panel label formats correctly answered the questions, respectively. *See* Consumer Research Supplement at 357.

[34] In Question 201, 17.9% of all respondents chose the dimmest bulb when asked to choose the bulb that would fill their room with the most light. *See* Consumer Research Supplement at 89.

[35] NRCan Lighting Survey Combined Executive Summary at 17. The NRCan focus group report indicated that ''quite a few'' participants ''said they were not sure what 'light output' means.'' Lighting Research Focus Groups Final Report, Sage Research Corporation (for NRCan and the Canadian Electrical Association), May 20, 2009 (''NRCan Focus Group Report'') at 22.

[36] The Commission recognizes that the technical term to describe a light source's lumen output is ''luminous flux,'' not ''brightness'' (or even ''light output''). However, this technical distinction is unlikely to be material to consumers.

[37] FTC Focus Group Report at 3; and NRCan Lighting Survey at 17. The FTC Focus Group Report concluded that: ''All respondents agreed that 'Brightness' was a far superior communication than 'Light Output.' 'Brightness' was direct, easy to understand, and most importantly, the word respondents already use when referring to this attribute.'' The NRCan survey report recommended that lumen disclosures be prefaced with a widely understood term such as ''brightness.'' The NRCan focus group indicated that several participants stated that they would have paid more attention to package information it if had been labeled ''brightness'' because that is a much more familiar term. NRCan Focus Group Report at 22.

[38] See, *e.g.*, Roundtable Tr. at 32, 35, 41, 67, and 121.

The Commission also considered whether to require watt equivalence information to help consumers compare the light output of high efficiency bulbs to incandescent bulbs. Manufacturers routinely communicate light output on CFL packages by providing conspicuous comparisons to incandescent lamps (*e.g.*, ''this bulb is a '100-watt' equivalent'' or ''13W=60W'').[39] Although both industry practice and the NRCan research suggest that watt equivalence information aids consumers in understanding the brightness of high efficiency bulbs,[40] the proposed rule does not require such information for two reasons. First, watt-equivalence information is likely to become much less important as the new DOE energy standards render most incandescent bulbs obsolete. Indeed, by the time any new FTC labeling rules become effective, the DOE standards eliminating traditional low efficiency incandescent bulbs will be close at hand. Second, mandatory wattage equivalence information could perpetuate consumer reliance on outdated incandescent watt information and hinder their transition to using lumens.[41]

b. Energy Use/Efficiency

As discussed in Section VI.b.1., a bulb's energy information is important to consumers whether they are concerned about their electricity bills, improving the environment by using less energy, or both. The current rule provides energy information to consumers in the form of watts. However, the FTC looked for an alternative because of consumers' tendency to equate watts with brightness.

Commenters suggested three alternatives: annual energy cost, lumens per watt, and a five-star rating system.[42] In general, annual energy cost is a measure of energy use while lumens per watt and the star rating are measures of energy efficiency (*i.e.*, energy the product uses for a given light output). More specifically, annual energy cost communicates a bulb's energy use by converting watts to dollars per year based on a given electricity rate and daily usage estimate; lumens per watt communicates a bulb's energy efficiency by providing the number of lumens the bulb produces for a single watt of energy; and the five-star system communicates the energy efficiency of the bulb by assigning a star rating (*e.g.*, three stars) to a bulb's energy efficiency (as measured in lumens per watt). The FTC consumer research explored each of these approaches in conjunction with the ENERGY STAR logo, which also communicates energy efficiency information.

After considering the research results and the comments, the Commission proposes to require annual energy cost as the primary energy disclosure on the front package panel and on the rear (or side panel) Lighting Facts label. Specifically, the proposed rule would require that the front panel display ''estimated energy cost'' in an annual dollar figure (*e.g.*, $7.49 per year). The proposed Lighting Facts label also provides this information with rate and usage assumptions (*i.e.*, 3 hours per day and 11.4 cents per kWh),[43] and a disclosure that actual cost depends on a consumer's electricity rates and usage.

The Commission has decided to propose requiring annual energy cost for three reasons. First, estimated annual energy cost provides a simple way to convey how much energy a bulb is likely to use.[44] In essence, the disclosure is a conversion of wattage to the amount of money the bulb costs to operate in a year. Second, in the label study, compared to the five-star rating and the lumens per watt disclosure, energy cost information performed well in enabling respondents to answer energy questions correctly.[45] Specifically, for questions asking respondents to pick the bulb that used the least (or, for some questions, most) energy, the energy cost descriptor somewhat outperformed the five-star rating and substantially outperformed the lumens per watt disclosure.[46] For most questions asking respondents to pick the most energy efficient bulb, energy cost performed as well as the

[39] Several comments recommend that the FTC require watt-equivalence information on the label. See, *e.g.*, CEE (#536795-00011), NRDC (#536795-00003), and ACEEE (#536795-00012). In addition, NRDC urged the Commission to set standards for watt equivalence claims. NRDC (#536795-0003). NRDC also suggested the creation of categories similar to batteries (such as A, AAA, C, etc.), to describe light output. Roundtable Tr. at 29 (Horowitz). However, the Commission believes it is better to focus on educating consumers about lumens, a descriptor that already exists and may have some consumer recognition, rather than to create an entirely new system.

[40] NRCan Lighting Survey at 13. In the FTC label study, wattage equivalent information included on the Lighting Facts labels did not make a difference in respondents' ability to choose the brightest bulb. The study, however, did not explore whether such information helped consumers relate CFL brightness to their experience with the wattage (and associated brightness) of incandescent bulbs.

[41] The Commission expects that, in the short term, manufacturers will continue to make watt equivalence representations voluntarily. As the market rapidly changes over the next few years, manufacturers can adjust such voluntary representations to evolving consumer understanding and reevaluate the need for watt equivalence disclosures with greater flexibility than the Commission can through rulemaking. Nevertheless, to avoid consumer confusion, when making such claims manufacturers should ensure that the incandescent bulb they are comparing is similar to the CFL (or LED) they are selling not only in brightness, but also in other material respects such as bulb type and color appearance. Manufacturers, of course, must also substantiate all other material claims they make about the product.

[42] *See* sample labels from Philips, GE, OSRAM, and NRDC at (*http://www.ftc.gov/bcp/workshops/lamp/index.shtml*). *See* also, *e.g.*, EPA comments (#536795-00006), NRDC comments (suggesting five star system and energy cost) (#536795-00003), and NEMA (suggesting energy cost) (#536795-00007). Some comments also suggested consideration of lifetime cost (see, *e.g.*, NEMA (#536795-00007). However, the Commission has not explored lifetime cost in detail because the tremendous variability of bulb life makes it a confusing descriptor. For example, an efficient bulb that lasts 20 years and costs $1 per year to operate would have a lifetime cost of $20 whereas a lower efficiency bulb that last 2 years and costs $2 per year to run would have a lifetime cost of $4. The labels in this scenario could lead consumers to choose the lower efficiency bulb simply because the cost printed on its label is lower.

[43] The general consensus at the Roundtable was that 3 hours per day was a reasonable figure to use for such estimates. Roundtable Tr. at 54. The electricity cost figure is based on 2009 DOE data. *See* 74 FR 26675 (June 3, 2009). Consistent with the Commission's approach on the EnergyGuide label (16 CFR 305.10), the Commission would change the cost rate every five years based on DOE data. This approach minimizes label changes while ensuring that cost information is based on a reasonable estimate of national average electricity costs. However, as with appliance labeling, the Commission may revisit the energy cost estimate sooner than five years should such costs change significantly.

[44] The NRCan Focus Group Report stated that ''some participants liked the idea of expressing energy usage in terms of operating cost per year, as they felt dollar figures are tangible, easily understood, and motivating.'' NRCan Focus Group Report at 8.

[45] Respondents in the label study who viewed watts were somewhat more likely to answer correctly most energy-related questions in the FTC labeling study (Questions 213, 213.1, 214, 214.1, 215, 216, and 216.1) than respondents who viewed other energy descriptors. *See* Consumer Research Supplement at 360-362. However, the proposed rule does not require such information on the front of the package because of the significant confusion it causes related to light output as discussed in Section IV.A.2.b. The proposed rule retains a less prominent watts disclosure on the Lighting Facts label because such precise wattage information may be important to some consumers.

[46] Two questions (213 and 215) asked respondents to view three bulbs and choose the one that used the least amount of energy. In Question 213, the percentage of respondents who answered the question correctly, grouped by front-panel energy descriptor, were: energy cost (74.5%); stars (69.94%); and lumens per watt (50.62%). For Question 215, the results were: energy cost (79.9%); stars (70.42%); and lumens per watt (41.71%). Two other questions (214 and 216) asked respondents to view three bulbs and choose the one that used the most energy. In Question 214, the percentage of respondents who answered the question correctly, grouped by front-panel energy descriptor, were: energy cost (71.83%); stars (67.58%); and lumens per watt (47.68%). For Question 216, the results were: energy cost (71.61%); stars (68.34%); and lumens per watt (48.91%). *See* Consumer Research Supplement at 363-366.

five-star rating and substantially better than lumens per watt.[47]

Third, unlike efficiency ratings, an energy cost disclosure should help consumers avoid buying bulbs that are brighter than necessary. In many cases, a higher energy efficiency rating for a particular bulb equates to lower energy costs or energy use - but not always. For example, a bright bulb with a high efficiency rating may cost much more to operate than a dimmer bulb with a lower efficiency rating.[48] Thus, reliance on efficiency information alone may lead consumers, in some cases, to purchase bulbs that are brighter than needed and thus use more energy and pay more money than necessary. The annual energy cost descriptor helps avoid this problem.

The proposed rule also allows manufacturers to place the ENERGY STAR logo on the Lighting Facts label if the product meets ENERGY STAR criteria. This approach is consistent with the EnergyGuide label for appliances and allows manufacturers to place relevant information about the product in one place.[49]

The Commission is not proposing to require lumens per watt on the Lighting Facts label. As discussed above, in the FTC label study, respondents viewing lumens per watt information were less likely to provide correct answers to most energy use and efficiency questions (*e.g.*, accurately pick the most efficient bulb) than respondents viewing the other energy descriptors. Additionally, as discussed above, lumens per watt information could lead consumers to choose bulbs that are brighter than needed. Lumens per watt, however, is a common efficiency metric used in the lighting industry and serves as the yardstick for the DOE efficiency standards and for performance criteria in the ENERGY STAR program. It also appears on the existing Lighting Facts label developed by DOE under its LED program. Therefore, the Commission seeks comment on whether lumens per watt should appear as an energy descriptor on the Lighting Facts label either as a mandatory or voluntary disclosure.

The Commission also is not proposing to include a five-star rating system on the Lighting Facts Label even though the FTC's research suggests some benefits to this approach. Specifically, respondents viewing this descriptor were somewhat more likely to spend more for a higher efficiency bulb; in addition, all respondents scored this descriptor 's usefulness and trustworthiness somewhat higher than other descriptors.[50] However, four problems with the five-star rating system outweigh these benefits. First, the star-system did not perform better than energy cost in helping consumers answer the energy questions in the label study. Second, the star system may have a greater tendency inadvertently to communicate quality information. Specifically, in the label study, respondents viewing the five-star label were somewhat more likely than other respondents to say one bulb was more reliable than the others, even though the label did not contain information about reliability.[51] Third, the five-star system potentially would create confusion over time as bulb technology changes. For instance, after 2012, the FTC would have to reconfigure the star levels as inefficient incandescent bulbs leave the market, which could confuse consumers. Finally, the five-star system may raise problems in terms of its interaction with ENERGY STAR. Specifically, respondents viewing the five-star label were more likely to identify incorrectly a bulb as ENERGY STAR qualified even when the question displayed no bulbs with the ENERGY STAR logo.[52] Given these issues, the Commission sees no compelling need to create a five level energy efficiency rating system.[53]

c. Life

Bulb life information helps consumers compare the value of competing bulbs. For instance, if two bulbs have the same purchase price and energy use, the longer lasting bulb provides a better value. Bulb life information also helps consumers reduce the time spent replacing bulbs, particularly those located in remote areas. The current rule (§ 305.15(b)) requires bulb life to be expressed in hours. However, several

[47] For example, Question 213.1 asked respondents to view three bulbs and choose the most energy efficient one. The percentage of respondents who answered that question correctly, grouped by front-panel descriptor, were: stars (81.66%); energy cost (81.09%); and lumens per watt (63.22%). Both Questions 214.1 and 216.1 asked respondents to choose the least efficient bulb (though each question displayed a different set of bulbs). The percentage of respondents who answered Question 214.1 correctly were: energy cost (77.17%); stars (76.28%); and lumens per watt (57.91%). For Question 216.1, the results were: stars (80.25%); energy cost (78.02%); and lumens per watt (63.51%). The differences between the cost and star descriptor results, however, are not statistically significant. *See* Consumer Research Supplement at 367-371.

[48] For example, compare the characteristics of high efficiency bulb ''A'' to lower efficiency bulb ''B''. Bulb A= 1750 lumens, 26 watts, 67 lumens per watt, and $3.25 per year (assuming 11.4 cents per kWh) and Bulb B= 825 lumens, 13 watts, 63 lumens per watt, and $1.62. Therefore, bulb ''A'' has a higher efficiency rating in lumens per watt but uses more energy and thus costs more to operate.

[49] Manufacturers would continue to have the discretion to place the ENERGY STAR logo elsewhere on the package consistent with EPA's criteria.

[50] In the FTC label study, respondents answered questions about whether they would be willing to pay more for a higher efficiency bulb of similar brightness (Questions 217). The percentages of respondents willing to pay more, grouped by energy descriptor, were: stars (73.16%); energy cost (68.65%); watts (66.57%); and lumens per watt (65.02%). *See* Consumer Research Supplement at 372-373.

The questionnaire also asked respondents who indicated they would pay more how much they would pay for the higher efficiency bulb (Question 218). Even though the more efficient bulb could save over $6.00 in energy cost during the first year, and about $140 over the entire life of the bulb, the average price that all subjects in the various treatment groups were willing to pay were as follows, as grouped by front-panel energy descriptor: star ($2.92); energy cost ($2.58); lumens per watt ($2.42); and watts ($2.16). The difference between the star ($2.92) and energy cost ($2.58) willingness-to-pay numbers is not statistically significant. *See* Consumer Research Supplement at 377-378.

Respondents also scored the ''usefulness'' of various energy descriptors (Question 220b) on a 1 to 10 scale. The average scores were: stars (8.69); energy cost (8.53); and lumens per watt (8.21). Additionally, on average, respondents scored the ''trustworthiness'' of the same information (Question 220c) as follows: stars (8.04); lumens per watt (7.80); and energy cost (7.60). *See* Consumer Research Supplement at 379-380.

[51] Likewise, when asked to identify the most reliable bulb (Question 701), respondents who viewed the star descriptor on the front panel were somewhat less likely than respondents who viewed other energy descriptors to provide correct responses, which were ''can't tell'' or ''not sure.'' The percentages of respondents who correctly answered Question 701, grouped by front-panel energy descriptor, were: energy cost (29.36%), lumens per watt (26.16%), and stars (21.83%). *See* Consumer Research Supplement at 376.

[52] Question 403 asked respondents to review three bulb labels and identify the ENERGY STAR models. None of the models, however, displayed the ENERGY STAR logo. The rates at which respondents mistakenly identified at least one of the bulbs as an ENERGY STAR were as follows, as grouped by front panel: stars (48.87%); energy cost (37.59%); and lumens per watt (37.44%). There were no significant differences in correct responses, however, between stars and other treatments when the ENERGY STAR logo appeared on bulbs (Question 402). *See* Consumer Research Supplement at 374-375.

[53] This conclusion is consistent with prior Commission consideration of the five-star rating in the context of EnergyGuide labels for appliances. 72 FR 6836, 6844-6846 (Feb. 13, 2007). At that time, the Commission concluded that the FTC label should complement, not detract from, the ENERGY STAR program. The Commission explained that the combination of the FTC label and the ENERGY STAR program appears to provide a sound framework for conveying energy information to consumers and promoting energy efficiency. The FTC label displays detailed energy information about all products regardless of energy efficiency. ENERGY STAR provides the U.S. Government's imprimatur for high efficiency products. This system, as a whole, provides a robust source of energy efficiency information to consumers. The consumer research on light bulb labeling reinforces these earlier findings.

commenters urged the Commission to consider requiring bulb life in years.[54]

In the label study, consumers correctly identified longer lasting bulbs whether life was expressed in years or hours. However, when asked about the usefulness of life information (Question 208b), respondents showed a slight preference for life in years (8.74) over life in hours (8.31). In addition, the NRCan research noted that consumers ''find it difficult to relate stated numbers of hours to actual experience of bulb life'' (NRCan Labeling Survey at 14). Therefore, the Commission is proposing to require a ''life in years'' disclosure on the Lighting Facts label based on a usage rate of three hours per day.

d. Color Appearance

Some bulbs have a warm appearance while others have a cooler appearance. Different color appearances are scientifically expressed as correlated color temperature (''CCT'').[55] While many consumers are unfamiliar with color appearance, it may become a more important factor for consumers as new products with a wide variety of color temperatures increasingly become available.[56] Several comments noted the growing importance of color appearance and suggested the FTC include on the label a uniform method of communicating color temperature. Specifically, some commenters suggested the label require a consistent set of terms for conveying color temperature (*e.g.*, ''soft white'' or ''daylight'') (DOE (#536795-00001) and NRDC (#536795-00003).[57] Others urged consideration of a graphical approach for color temperature such as a range (GE (#536795-00005) or the color scale system considered in earlier research funded by DOE and EPA.[58] Accordingly, the Commission explored three approaches for communicating color temperature: a word descriptor (*e.g.*, soft white and daylight), a simple ''warm-cool'' black and white scale, and a color scale consisting of six colored boxes.[59]

After considering these approaches, the Commission proposes to require a black and white warm-cool scale with a Kelvin number on the Lighting Facts Label. In the FTC label study, a scale performed somewhat better than word descriptors.[60] Moreover, unlike word descriptors, a scale provides both an empirical Kelvin measurement that consumers can use to compare bulbs across technologies, as well as information about whether that Kelvin rating is associated with a ''warmer'' or ''cooler'' appearance. Manufacturers would have the discretion to non-deceptively supplement the required scale with word descriptors elsewhere on the package or in other marketing.

The Commission proposes a black and white warm-cool scale, instead of a color scale, because the former holds down costs.[61] The color scale, however, performed somewhat better in the label study.[62] Therefore, the Commission seeks comment on whether the FTC should require a scale printed in color, including any benefits of a color scale and any costs or other burdens associated with a color scale, particularly for small manufacturers. The Commission also seeks comment on whether the label should use the term ''Light Appearance'' on the label instead of ''Color Appearance'' to minimize the possibility that consumers will interpret the label to convey information about colored lights (*e.g.*, red, green, etc.).

[54] See, *e.g.*, NEMA (#536795-00007); Philips (#536795-00015); and GE (#540385-00005). Roundtable participants appeared to be comfortable with using 3 hours as a usage pattern for expressing life in years. Roundtable Tr. at 54.

[55] Light color measurements, expressed in Kelvin (''K''), range generally from 2700K to 6500K. A bulb with lower kelvin numbers (*e.g.*, 2700K or 3000K) produces light that has a yellowish appearance, such as light provided by traditional incandescent bulbs. Bulbs with higher Kelvin numbers produce light that is whiter (*e.g.*, 4100K) or blueish (*e.g.*, 6500K).

[56] The research results suggest that consumers are generally unfamiliar with color temperature. For example, the FTC's focus group indicated there was little awareness of ''color'' among respondents. And, according to the focus group report, respondents ''had no idea of how light color was measured'' and were largely unfamiliar with the term ''color temperature'' and entirely unfamiliar with the Kelvin scale. FTC Focus Group Report at 3. However, after exposure to color appearance concepts in the FTC label study, respondents on average assigned color appearance a score of 7.6 on a 10 point scale designed to rate the importance of particular light bulb attributes (0 = not important; 10 = very important) (Question 211). This suggests that, once consumers become aware of color appearance, it is an important issue.

[57] It is common for bulb packages to provide various descriptions of color temperature or appearance on their packages and in marketing materials, such as ''soft white,'' ''cool white,'' and ''daylight.''

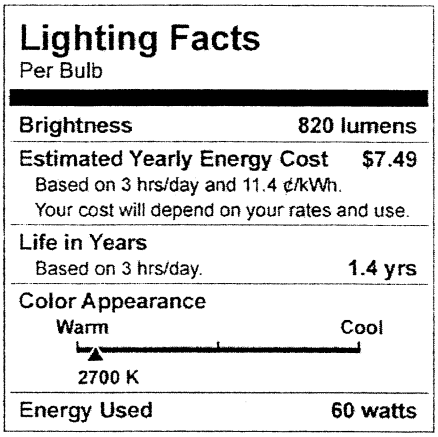
[58] *See* Leslie, R., and Rea, M., ''A System for Communicating Color: What Do Consumers Think,'' Lighting Research Center, Rensselaer Polytechnical Institute (*http://www.lrc.rpi.edu/programs/lightingTransformation/colorCommunication/pdf/whatDoConsumersThink.pdf*).

[59] In the label study, respondents viewed three photographs of a table lamp, each displaying a bulb with a different color temperature. The questionnaire then asked respondents to pick the bulb label that would provide the light displayed in each photograph.

[60] Questions 209 and 210 asked respondents to match the color appearance of several photographs to specific labels bearing color appearance information. Of respondents who viewed a scale communicating color appearance information, 48.30% and 43.89% correctly answered Questions 209 and 210, respectively; whereas 30.58% and 34.47% of respondents who viewed the color appearance word descriptor on the front panel correctly answered Questions 209 and 210, respectively. *See* Consumer Research Supplement at 358.

[61] Because there is no test procedure in DOE's regulations for measuring color temperature, the proposed rule requires manufacturers to substantiate their CCT and color appearance claims with competent and reliable evidence. Should DOE publish applicable test procedures in the future, the Commission will consider amending its rules.

[62] Of respondents who viewed the color scale on the front panel, 53.4% and 48.58% correctly answered Questions 209 and 210 (questions related to color appearance), respectively; whereas 46.84% and 42.54% of respondents who viewed the black and white warm-cool scale on the front panel correctly answered Questions 209 and 210, respectively. *See* Consumer Research Supplement at 359.



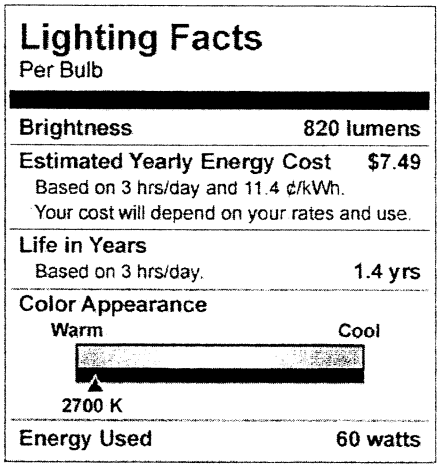


Figure 3

Proposed (Left) and Alternative (Right) Color Appearance Scales[63]

e. Voltage

Voltage is a measure of the electromotive force of electricity and can affect the operation of a light bulb.[64] For instance, for a given bulb, the higher the voltage, the higher the light output in lumens, the higher the wattage, and the shorter the life. In the U.S. residential market, the voltage provided by electric utilities for lighting purposes is primarily 120 volts. As a result, under the current rule, manufacturers do not have to disclose the design voltage of a bulb unless it is other than 120.

No comments urged the FTC to amend this approach. Accordingly, the amendments would maintain the current rule's requirements. If the manufacturer must disclose voltage under the rule, because it is not 120, it must do so on the Lighting Facts panel. For 120 volt bulbs for which no voltage disclosure is required, manufacturers may disclose voltage voluntarily elsewhere on the package. The Commission seeks comment on whether the voluntary disclosure of 120 volts also should be permitted on the Lighting Facts label.

f. Mercury Disclosure

Mercury is an essential component of compact fluorescent light bulbs (CFLs).[65] CFLs do not release mercury when the bulbs are intact (not broken) or in use, but they can release mercury vapor, and thus create environmental concerns, if they break after being dropped, roughly handled, or disposed of improperly.[66] Therefore, two commenters urged the FTC to consider requiring mercury disclosures for CFL bulbs. GE (#540385-00002) wrote that "a uniform national approach is needed for mercury content labeling" and the FTC should consider a consistent notice that would clearly convey mercury content. NEMA (#540385-00005) also encouraged the FTC to require a nationwide mercury label and suggested that the FTC require the disclosure NEMA recommends for its members (*i.e.*, the symbol "Hg," a statement such as "Manage in accordance with disposal laws," and a link to NEMA's website "www.lamprecycle.org").[67] NEMA noted that their disclosure is consistent with state requirements.

Given the mercury content of CFLs, it is important for consumers to have access to information about proper disposal and handling of these products. Thus, the Commission proposes requiring disclosures for light bulbs containing mercury.[68] The proposed language would appear on the Lighting Facts label (see Figure 4) as follows: "Contains Mercury: Manage in accordance with local, state, and federal disposal laws. For more information see *epa.gov/bulbrecycling* or call 1-800-XXX-XXXX. Hg [encircled]." This language is consistent with disclosures that already appear on many packages as a result of existing ENERGY STAR criteria and language recommended by NEMA to its members.[69] Accordingly, the Commission expects that most manufacturers already provide information about mercury on their packages. In addition, as detailed in subsection C below, the proposed amendments require a shorter mercury disclosure on the bulbs themselves to help consumers properly dispose of CFLs.

Unlike NEMA's disclosure, which uses the website *www.lamprecycle.org*, the proposed FTC language directs consumers to EPA's website and EPA's telephone hotline. This link would ensure that the disclosure leads consumers to information provided by the U.S. government. Such an approach is consistent with the FTC's alternative fuel vehicle label which directs

[63] Color versions of these graphics are available at *www.ftc.gov/energy*.

[64] *See* discussion at 59 FR 25184 (May 13, 1994).

[65] Although lighting manufacturers have greatly reduced the amount of mercury used in CFLs over the past 20 years, they have not eliminated it. Currently, on average, CFLs contain about 5 milligrams or about 1/100th of the amount of mercury found in a mercury fever thermometer. Therefore, CFLs can affect the environment during disposal. *See* (*http://www.epa.gov/epawaste/hazard/wastetypes/universal/lamps/basic.htm*).

[66] EPA provides consumers with recommendations for cleaning up and disposing of broken bulbs to help minimize any exposure to released mercury vapor. It also encourages consumers to recycle burned out fluorescent bulbs rather than dispose of them in regular household trash. According to EPA, "[r]ecycling of burned out CFLs is one of the best ways to help prevent the release of mercury to the environment by keeping mercury out of landfills and incinerators." *See* (*http://epa.gov/mercury/consumerinfo.htm#cfl*).

[67] See, NEMA, "The Labeling of Mercury Containing Lamps, October 2004," (*http://www.nema.org/gov/env_conscious_design/lamps/upload/Labeling%20White%20Paper%20Final%2010%2004-2.pdf*).

[68] The EISA amendments provided the Commission with general authority to consider "alternative labeling approaches that will help consumers to understand new high efficiency lamp products" including CFLs. *See* 42 U.S.C. 6294(a)(2)(D)(iii)(I)(bb).

[69] ENERGY STAR, which covers a large majority of CFLs in the market, requires all participating manufacturers to label their packages with:

(1) the symbol "Hg" within a circle;

(2) "Lamp Contains Mercury"; and

(3) (*www.epa.gov/bulbrecycling*). ENERGY STAR provides manufacturers the option of using (*www.lamprecycle.org*) instead of the EPA website. NEMA recommends that its members use the following language: "Hg - LAMP CONTAINS MERCURY; MANAGE IN ACCORD WITH DISPOSAL LAWS; *See* (*www.lamprecycle.org*)."

consumers to EPA's website for information on vehicle emissions.[70] Finally, the Commission notes that several states have issued mercury disclosure requirements. The Commission intends for the proposed rule to be as consistent with state requirements for mercury disclosure as possible. Therefore, the Commission seeks comment on the impact of the proposed labeling on existing state requirements. Further, if any inconsistencies exist between the proposed disclosure and existing state requirements, the Commission seeks comment on whether, how, and why the Commission should address such inconsistencies.

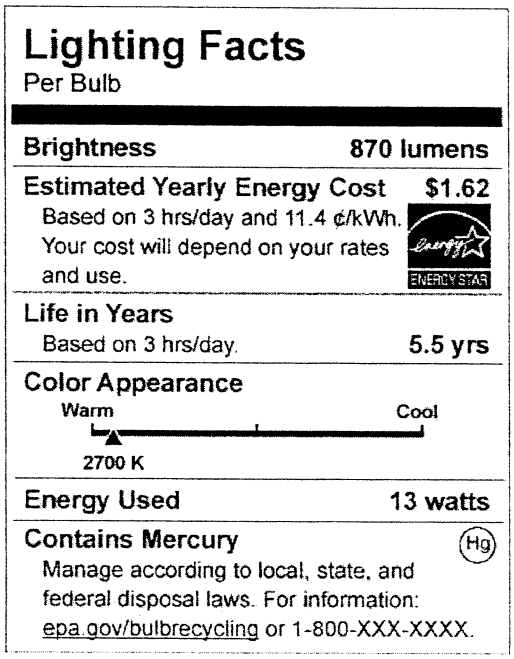


Figure 4

Lighting Facts with Mercury Disclosure

3. Affirmative Disclosures for Energy Cost and Life Claims on Package

The Commission is concerned that consumer confusion and deception could arise from voluntary claims on bulb packages about energy cost savings and life that are based on different assumptions than those used for the required disclosures. In particular, if the assumptions behind an energy cost-related claim are different from those used for the Lighting Facts label, consumers may have difficulty comparing claims across products. For instance, if a manufacturer makes an energy saving claim using a significantly higher electricity rate than the rate used for the mandatory energy cost disclosures, consumers may be confused or even misled regarding the energy performance of that bulb.[71] To address this concern, some commenters urged the Commission to create uniform requirements for cost and life-related claims made by manufacturers.[72]

After considering these comments, the Commission is not proposing to require uniform cost and life-related assumptions because it does not appear that such claims would be deceptive in all cases. However, the proposed rule[73] requires manufacturers that make any energy cost-related claim based on an electricity rate or usage rate other than the rate required on the Lighting Facts label to make an equally conspicuous disclosure calculated using the required electricity rate.[74] This approach should ensure that consumers can easily compare voluntary energy cost-related claims across products. The same rationale also applies to life claims. Specifically, if a manufacturer provides any life claim based on an annual usage rate other than the rate required on the label, the manufacturer also must provide, equally conspicuously, the bulb life calculated with the usage rate required on the Lighting Facts label (*i.e.*, 3 hours per day).

4. Total Lifecycle Cost (Not Proposed for Label)

The EISA amendments directed the Commission to consider total lifecycle cost disclosures in developing alternative labeling approaches.[75] After consideration, the Commission has decided not to propose such a requirement. Several participants at the Roundtable suggested that the numerous potential criteria related to assessing lifecycle cost make attaining an accurate, uniform measurement problematic at this time. For example, one participant explained that different retail prices, alone, severely impede any effort to accurately communicate a useful disclosure of total lifecycle cost (Roundtable Tr., Horowitz at 50). Another participant explained that differences in disposal costs similarly hamper efforts to present an accurate measurement.[76] Given these concerns and the absence of comments urging the Commission to explore this issue in detail, the proposed amendments do not require total lifecycle cost disclosures

[70] *See* 16 CFR Part 309 (Appendix A, Figure 4).

[71] The current rule (section 350.14(b)(4)) already contains a provision that requires manufacturers to disclose the assumptions upon which any operating cost claim is based, including, for example, purchase price, unit cost of electricity, hours of use, and patterns of use.

[72] See, *e.g.*, NEMA #536795-00007 and NRDC #536795-00003.

[73] Proposed section 305.15(c)(4).

[74] The FTC's Guide Concerning Fuel Economy Advertising for New Automobiles follows a similar approach for mileage claims based on non-EPA test procedures. *See* 16 CFR 259.2(c).

[75] *See* 42 U.S.C. 6294(a)(2)(D)(iii)(I)(bb).

[76] Roundtable Tr. 58 (Karney); *see* also Roundtable Tr. at 59 and NEMA Comments.

on the label. However, if manufacturers and other sellers make advertising claims related to lifecycle costs, they must have competent and reliable scientific evidence to support such claims.

5. Color Rendering Index (Not Proposed for Label)

The color rendering index (''CRI'') measures how the colors of an object look when the object is illuminated by a particular bulb using a rating of 0 to 100.[77] A standard incandescent bulb has a CRI of 100. In the ANPR and at the Roundtable, the FTC sought comments about the inclusion of CRI on the required labels. Commenters explained there is no need for mandatory CRI disclosures because EISA sets a minimum CRI standard of 80 for all bulbs beginning in 2012 and distinctions between the CRIs of bulbs at such high ratings are not significant enough to warrant mandatory disclosures.[78] Therefore, the Commission is not proposing to require such a disclosure, but seeks comment on whether the rule should allow manufacturers to place CRI information on the proposed Lighting Facts label.[79] The Commission seeks comment on what benefits and costs such voluntary information would provide to consumers, as well as on whether consumers will understand its meaning.

C. Product Labeling

In addition to the proposed package labeling requirements, some commenters suggested that the FTC require manufacturers to include light output on the bulb itself. For example, NRDC (#536795-00003) explained that ''[p]utting the light output directly on the bulb will help the consumer when they need to replace the existing bulb when it fails.'' NRDC also indicated that manufacturers already disclose a bulb's energy use in watts on the glass and that it should not be difficult also to include lumens information. Similarly, Energy Solutions (#536795-00010) stated that lumens information on the bulb will ''ensure that consumers can find a product of equivalent light output when returning to the store to replace a burned out bulb.''

The Commission agrees that having lumens information on the bulb should help consumers in purchasing appropriate replacement bulbs. It also should reinforce the importance of lumens as the key measure of light output for high efficiency bulbs. Because bulbs already typically display information such as watts, the addition of lumens should not impose a significant burden on manufacturers so long as they are given sufficient time to implement such changes. Therefore, the proposed rule requires that bulbs be labeled with lumens.

As discussed above, the proposed rule also requires manufacturers of mercury-containing lamps to print somewhere on the product itself the following information: ''Contains MERCURY. See epa.gov/bulbrecycling or 1-800-XXX-XXXX.'' Because it is highly unlikely consumers will have the package available to them when a bulb burns out, mercury information on the bulb itself will be useful to them at the time of disposal.[80] The Commission seeks comment on these proposals.

D. Reporting Requirements

EPCA indicates that each manufacturer of a labeled product ''shall annually, at a time specified by the Commission,'' supply to the Commission relevant data respecting energy consumption or water use developed in accordance with ''applicable DOE test procedures.''[81]

The Commission's current rule does not require such reporting because the Commission stayed the reporting requirement (section 305.8) for lighting products in 1994 due to the absence of a DOE test procedure. See 59 FR 25176, 25201-25202 (May 13, 1994). Since then, DOE has issued test procedures for general service incandescent lamps and medium base compact fluorescent lamps (see 10 CFR Subpart B, App. R and W). Accordingly, the Commission now proposes requiring energy data reporting for CFL and incandescent lighting products.[82] To minimize burden, the proposed rule requires these reports beginning in 2012 to coincide with the effective date of DOE standards (which will require the same testing). The reports will be due on March 1 of each year.

The Commission seeks comments on whether the specific reporting requirements, which are currently stayed, should be modified. The current rule indicates that annual reports for CFLs and incandescent lamps should include: (1) the name and address of the manufacturer; (2) all trade names under which the lamps are marketed; (3) the model or other identification numbers; (4) the starting serial number, date code, or other means of identifying the date of manufacture (date of manufacture information must be included only with the first submission for each basic model or type); and (5) the test results for the wattage and light output ratings of each lamp model or type, and for each model or type of covered fluorescent lamp, test results for the color rendering index, measured according to the DOE test procedure.[83]

E. Website and Paper Catalog Requirements

Section 305.20 of the current rule requires any manufacturer, distributor, retailer, or private labeler who advertises a covered product in a catalog, including a website that qualifies as a catalog, to disclose energy information about the product to consumers. For lamp products, the current rule (section 305.20(c)) requires catalog sellers to disclose the information that is required on the package label (except for the number of units in the package).[84]

The proposed rule requires website and paper catalog sellers to disclose the same information that appears on the proposed Lighting Facts label.[85] This requirement should ensure that online consumers have the same information available in stores. To encourage uniform disclosures and reduce burden on catalog sellers, the proposed rule would allow catalog sellers to comply

[77] Under the current law (EPCA), the term ''color rendering index'' or ''CRI'' means ''the measure of the degree of color shift objects undergo when illuminated by a light source as compared with the color of those same objects when illuminated by a reference source of comparable color temperature.'' (42 U.S.C. 6291(30)(J)).

[78] *See* Roundtable Tr., Horowitz at 91 (''Within the lighting industry, it's assumed if you're 80, you're giving at least pretty good color rendering.''); Howley at 100. *See* 42 U.S.C. 6295(i)(B)(ii).

[79] Several commenters, however, did suggest that CRI should be allowed as a voluntary disclosure. NRDC (#540385-00003); and Roundtable Tr., Horowitz at 83; Karney at 100; Howley at 100.

[80] The FTC's current labeling requirements apply to the bulb package and not the product itself (*see* 42 U.S.C. 6294(a)(2)(C)). In passing EISA, however, Congress directed the Commission to consider ''alternative labeling approaches.'' This broad directive provides the Commission with authority to consider requiring labeling on the bulb.

[81] 42 U.S.C. 4296(b)(4).

[82] In conjunction with lifting the stay on reporting requirements for CFLs and general service incandescent lamps, the Commission proposes to amend the testing provisions in section 305.5 to make them consistent with DOE test procedures in 10 CFR Part 430 covering general service incandescent lamps, general service fluorescent lamps, and medium base CFLs.

[83] The DOE tests currently do not include procedures for measuring correlated color temperature. Therefore, consistent with 42 U.S.C.6296(b), the proposed rule would not require reporting for such information.

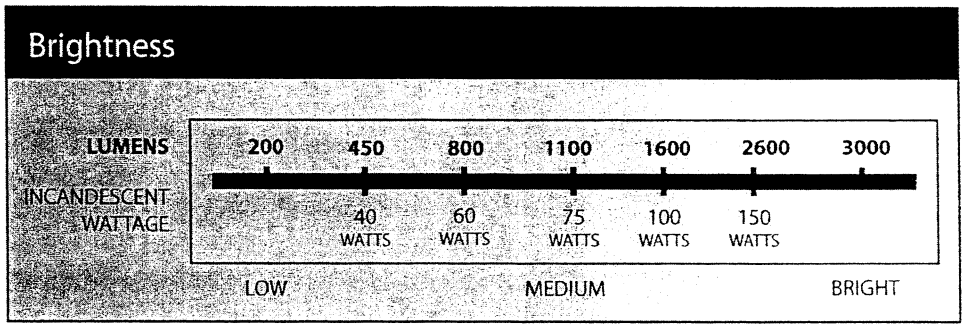
[84] EPCA indicates that catalogs must ''contain all information required to be displayed on the label, except as otherwise provided by the rule of the Commission.'' (42 U.S.C. 6296(a)).

[85] The Commission is not proposing to require the same two-panel disclosure for websites or catalogs that is being proposed for product packages. Although the two-panel format will be helpful for consumers examining physical packages in stores, the format is likely to be repetitive and cumbersome for consumers navigating information on the internet.

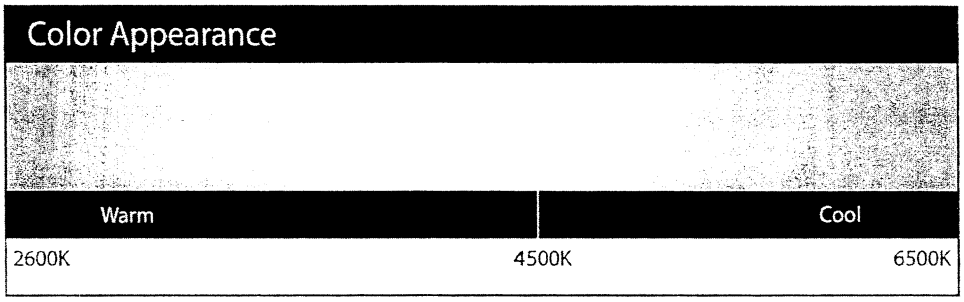
with the rule by posting the manufacturer's Lighting Facts label for each covered lamp model. The rule currently allows this approach for appliances (see section 305.20(a)). The Commission seeks comments on this proposal.

VII. Consumer Education

Section 321(c) of EISA directs the Department of Energy, in cooperation with the FTC and other agencies, to conduct a proactive national program of "consumer awareness, information, and education" to help consumers understand light bulb labels and make energy-efficient lighting choices that meet their needs. In response, the Commission is considering ways to communicate general consumer guidance that does not fit easily on the average lamp package. In particular, such education material could include a detailed watt-equivalence scale as suggested in comments (*e.g.*, NRDC (#536795-00003)) and a detailed color temperature scale similar to that considered in NRCan's research and currently used under the Department of Energy's solid-state lighting program.[86] Figure 5 contains a draft of such information. The Commission seeks comments on such an approach, how such information should be presented, and whether there is additional information that can be provided to consumers.



Typical brightness (in lumens) of traditional incandescent bulbs.



The color appearance of light bulbs can range from warm to cool depending on color temperature (in Kelvin). This scale illustrates different color appearances and corresponding Kelvin temperatures.

Figure 5

Sample Graphs for Consumer Education Materials[87]

VIII. Section by Section Description of Proposed Changes

Lamp Coverage (section 305.3): The proposed labeling requirements apply to medium screw base general service incandescent (including halogen and reflector), compact fluorescent, and LED lamps. The proposed amendments group these products under the term "general service lamp."

Front Package Panel (section 305.15(b) & (c)): The proposed amendments require two disclosures on the front package panel: brightness in lumens and energy cost in dollars per year.

Rear or Side Package Panel (section 305.15(b) & (c)): The back (or side) panel contains detailed disclosures in the form of a Lighting Facts label similar to the Nutrition Facts label required on food packaging. The disclosures on the Lighting Facts label would detail brightness, energy cost, life, color temperature, watts, and, in some cases, voltage, and mercury information. *Cost and Life Claims on Packages (section 305.15(c))*: Manufacturers that make a cost or life-related claim on the package based on an electricity cost figure or usage rate other than that required on the Lighting Facts label have to include an equally clear and conspicuous disclosure of the same information using the electricity cost figure and usage assumption on the Lighting Facts label.

Product Labeling (section 305.15(b)): The proposed amendments require manufacturers to print the lumen output and, where applicable, mercury information on the product.

Catalog Requirements (section 305.20): Catalog sellers (including websites) have to provide, for each bulb, the same information required on the Lighting Facts label.

[86] *See http://www.lighting-facts.com/.*

[87] Color versions of these graphics are available at *www.ftc.gov/energy.*

Substantiating Required Disclosures (section 305.5): Effective January 1, 2012, the proposed amendments require manufacturers to follow DOE test procedures if such procedures are applicable to their products to substantiate claims required by the rule. For lamp types or information not covered by the DOE test procedure but required by the rule, manufacturers would have to possess and rely upon competent and reliable scientific tests to substantiate their representations on the label.

Testing, Reporting, and Sampling Requirements (section 305.5, 305.6, and 305.8): Beginning in 2012, manufacturers would have to submit data for their labeled lamps based on applicable DOE test procedures. The amendments also contain a minor change to the terms used in the sampling requirements.

IX. Request for Comment

The Commission invites interested persons to submit written comments on any issue of fact, law, or policy that may bear upon the Commission's lamp labeling requirements. These issues include the overall effectiveness of existing disclosures on lamp labels, alternative labeling disclosures, and the labeling of lamp types not currently covered by the rule. Please provide explanations for your answers and supporting evidence where appropriate.

All comments should be filed as prescribed below, and must be received on or before December 28, 2009. In addition to the questions and requests for comment found throughout this Notice, the Commission also asks that commenters address the following questions: What costs or burdens, and any other impacts, would the proposed requirements impose, and on whom? What regulatory alternatives to the proposed requirements are available that would reduce the burdens and/or increase the benefits of the proposed requirements?

Interested parties are invited to submit written comments electronically or in paper form. Comments should refer to ''Proposed Lamp Labeling Amendments, P084206'' to facilitate the organization of comments. Please note that your comment – including your name and your state – will be placed on the public record of this proceeding, including on the publicly accessible FTC website, at (*http://www.ftc.gov/os/publiccomments.shtm*).

Because comments will be made public, they should not include any sensitive personal information, such as any individual's Social Security Number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. Comments also should not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, comments should not include ''[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential'' as provided in Section 6(f) of the Federal Trade Commission Act (''FTC Act''), 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). Comments containing matter for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c).[88]

Because paper mail addressed to the FTC is subject to delay due to heightened security screening, please consider submitting your comments in electronic form. Comments filed in electronic form should be submitted using the following weblink: (*https://public.commentworks.com/ftc/lampamendmentsNPRM*) (and following the instructions on the web-based form). To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the weblink (*https://public.commentworks.com/ftc/lampamendmentsNPRM*). If this Notice appears at (*http://www.regulations.gov/search/Regs/home.html#home*), you may also file an electronic comment through that website. The Commission will consider all comments that regulations.gov forwards to it. You may also visit the FTC Website at (*http://www.ftc.gov*) to read the Notice and the news release describing it.

A comment filed in paper form should include the ''Proposed Lamp Labeling Amendments, P084206'' reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H-135 (Annex N), 600 Pennsylvania Avenue, N.W., Washington, DC 20580. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

Comments on any proposed filing, recordkeeping, or disclosure requirements that are subject to the paperwork burden review under the Paperwork Reduction Act should additionally be submitted to: Office of Information and Regulatory Affairs, Office of Management and Budget (''OMB''), Attention: Desk Officer for Federal Trade Commission. Comments should submitted via facsimile to (202) 395-5167 because U.S. postal mail at the OMB is subject to delays due to heightened security precautions.

The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC website, to the extent practicable, at (*http://www.ftc.gov/os/publiccomments.shtm*). As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at (*http://www.ftc.gov/ftc/privacy.htm*).

Because written comments appear adequate to present the views of all interested parties, the Commission has not scheduled an oral hearing regarding these proposed amendments. Interested parties may request an opportunity to present views orally. If such a request is made, the Commission will publish a document in the **Federal Register** stating the time and place for such oral presentation(s) and describing the procedures that will be followed. Interested parties who wish to present oral views must submit a hearing request, on or before November 30, 2009, in the form of a written comment that describes the issues on which the party wishes to speak. If there is no oral hearing, the Commission will base its decision on the written rulemaking record.

X. Communications by Outside Parties to the Commissioners or Their Advisors

Written communications and summaries or transcripts of oral communications respecting the merits of this proceeding, from any outside party to any Commissioner or Commissioner's advisor, will be placed

[88] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* FTC Rule 4.9(c), 16 CFR § 4.9.(c).

on the public record. See 16 CFR 1.26(b)(5).

XI. Paperwork Reduction Act

The rule contains disclosure requirements that constitute ''information collection requirements'' as defined by 5 CFR § 1320.7(c), the regulation that implements the Paperwork Reduction Act (''PRA'').[89] OMB has approved the rule's existing information collection requirements through May 31, 2011 (OMB Control No. 3084-0069). The proposed amendments make changes in the current rule's labeling requirements.[90] Accordingly, the Commission has submitted this proposed rule and a Supporting Statement to OMB for review under the PRA.

Burden estimates for the proposed rule are based on data previously submitted by manufacturers to the FTC under the Rule's existing requirements and on the staff's general knowledge of manufacturing practices.

Package and Product Labeling: The proposed rule requires manufacturers to change their light bulb packages and light bulbs to include new disclosures. The new requirements would require a one-time change for manufacturers. The Commission estimates that this one-time change will take 80 hours per manufacturer. Annualized for a single year reflective of a prospective 3-year clearance, this averages to 26.67 hours per year. Therefore, the label design change will result in cumulative burden of 1,334 hours (50 manufacturers x 26.67 hours). In estimating the associated labor cost, the Commission assumes that the label design change will be implemented by graphic designers at an hourly wage rate of $22.70 per hour based on Bureau of Labor Statistics information.[91] Thus, the Commission estimates labor cost for this new label design change will total $30,282 (1,334 hours × $22.70 per hour).

Color Temperature: The proposed rule may require additional testing for correlated color temperature, if such testing has not already been conducted in the normal course of business. Although the Commission expects that many manufacturers conduct such testing for other purposes (*e.g.*, ENERGY STAR criteria), the Commission assumes, based on past estimates of basic models, that manufacturers will have to test 2,100 basic models at 0.5 hours for each model for a total of 1,050 hours. In calculating the associated labor cost estimate, the Commission assumes that the label design change will be implemented by electrical engineers at an hourly wage rate of $39.79 per hour based on Bureau of Labor Statistics information (see footnote 90). Thus, the Commission estimates that the new label design change will result in associated labor cost of approximately $41,780 (1,050 hours × $39.79 per hour).

Accordingly, the estimated total burden of the proposed amendments is 2,384 hours (1,334 hours for packaging and labeling + 1,050 hours for additional testing for correlated color temperature).

The Commission invites comments that will enable it to: (1) evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) evaluate the accuracy of the Commission's estimate of the burden of the proposed collections 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 collections of information on those who must comply, including through the use of appropriate automated, electronic, mechanical, or other technological techniques or other forms of information technology.

XII. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601-612, requires that the Commission provide an Initial Regulatory Flexibility Analysis (''IRFA'') with a proposed rule and a Final Regulatory Flexibility Analysis (''FRFA''), if any, with the final rule, unless the Commission certifies that the rule will not have a significant economic impact on a substantial number of small entities. See 5 U.S.C. 603-605.

The Commission does not anticipate that the proposed rule will have a significant economic impact on a substantial number of small entities. The Commission recognizes that some of the affected manufacturers may qualify as small businesses under the relevant thresholds. However, the Commission does not expect that the economic impact of the proposed amendments will be significant. In any event, to minimize any burden, the Commission plans to provide manufacturers with ample time to implement the proposed changes.

The Commission estimates that these new requirements will apply to about 50 product manufacturers and an additional 150 online and paper catalog sellers of covered products. The Commission expects that approximately 150 qualify as small businesses.

Accordingly, this document serves as notice to the Small Business Administration of the FTC's certification of no effect. To ensure the accuracy of this certification, however, the Commission requests comment on whether the proposed rule will have a significant impact on a substantial number of small entities, including specific information on the number of entities that would be covered by the proposed rule, the number of these companies that are ''small entities,'' and the average annual burden for each entity. Although the Commission certifies under the RFA that the rule proposed in this notice would not, if promulgated, have a significant impact on a substantial number of small entities, the Commission has determined, nonetheless, that it is appropriate to publish an IRFA in order to inquire into the impact of the proposed rule on small entities. Therefore, the Commission has prepared the following analysis:

A. Description of the Reasons That Action by the Agency Is Being Taken

Section 321(b) of the Energy Independence and Security Act of 2007 (Pub. L. 110-140) requires the Commission to conduct a rulemaking to consider the effectiveness of the lamp labeling and to consider alternative labeling approaches.

B. Statement of the Objectives of, and Legal Basis for, the Proposed Rule

The objective of the proposed rule is to improve the effectiveness of the current lamp labeling program. EISA directs the Commission to consider whether alternative labeling approaches would help consumers better understand new high-efficiency lamp products and help them choose lamps that meet their needs. In particular, the law directs the Commission to consider labeling disclosures that address consumer needs for information about lighting level, light quality, lamp lifetime, and total lifecycle cost. The

[89] 44 U.S.C. 3501-3521.

[90] Although the current reporting requirements in the rule for these products is currently stayed (as discussed in section IV.D. of this notice), the existing PRA clearance for the rule's information collection requirements includes burdens associated with those requirements.

[91] *See* (*http://www.bls.gov/ncs/ncswage2008.htm#Wage_Tables*) (National Compensation Survey: Occupational Earnings in the United States 2008, U.S. Department of Labor (August 2009), Bulletin 272004, Table 3 (''Full-time civilian workers,'' mean and median hourly wages), at 3-12).

Commission must complete this effort by June of 2010.[92]

C. Small Entities to Which the Proposed Rule Will Apply

Under the Small Business Size Standards issued by the Small Business Administration, lamp manufacturers qualify as small businesses if they have fewer than 1,000 employees (for other household appliances the figure is 500 employees). Lamp catalog sellers qualify as small businesses if their sales are less than $8.0 million annually. The Commission estimates that there are approximately 150 entities subject to the proposed rule's requirements qualify as small businesses. The Commission seeks comment and information with regard to the estimated number or nature of small business entities for which the proposed rule would have a significant economic impact

D. Projected Reporting, Recordkeeping and Other Compliance Requirements

The Commission recognizes that the proposed labeling rule will involve some increased drafting costs and reporting requirements for appliance manufacturers. As discussed in this notice, the increase reporting burden should be *de minimis*. The transition to the use of a new label design should represent a one-time cost that will not be substantial. The Commission does not expect that the labeling requirements will impose significant additional costs on catalog sellers. All of these burdens are discussed in Section XI of this notice and there should be no difference in that burden as applied to small businesses. The Commission invites comment and information on these issues.

E. Duplicative, Overlapping, or Conflicting Federal Rules

The Commission has not identified any other federal statutes, rules, or policies that would duplicate, overlap, or conflict with the proposed rule. The Commission invites comment and information on this issue.

F. Significant Alternatives to the Proposed Rule

The Commission seeks comment and information on the need, if any, for alternative compliance methods that, consistent with the statutory requirements, would reduce the economic impact of the rule on small entities. As one alternative to reduce the burden, the Commission could delay the rule's effective date to provide additional time for small business compliance. The Commission could also consider further reductions in the amount of information catalog sellers must provide. If the comments filed in response to this notice identify small entities that are affected by the rule, as well as alternative methods of compliance that would reduce the economic impact of the rule on such entities, the Commission will consider the feasibility of such alternatives and determine whether they should be incorporated into the final rule.

[92] Section 321(b) of EISA (42 U.S.C. 6294(a)(2)(D)) also gives the Commission the discretion to ''consider reopening the rulemaking not later than 180 days before the [statutorily mandated] effective dates of the standards for general service incandescent lamps established under section 325(i)(1)(A) [and implemented by DOE], if the Commission determines that further labeling changes are needed to help consumers understand lamp alternatives.''

XIII. Proposed Rule Language

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

For the reasons set out above, the Commission proposes the following amendments to 16 CFR Part 305:

PART 305—RULE CONCERNING DISCLOSURES REGARDING ENERGY CONSUMPTION AND WATER USE OF CERTAIN HOME APPLIANCES AND OTHER PRODUCTS REQUIRED UNDER THE ENERGY POLICY AND CONSERVATION ACT (''APPLIANCE LABELING RULE'')

1. The authority citation for Part 305 continues to read as follows:

Authority: 42 U.S.C. 6294.

2. In § 305.3, paragraphs (l) and (m) are revised, paragraphs (n), (o), (p), (q), (r), (s), and (t) are redesignated as (r), (s), (t), (u), (v), (w), and (x) respectively, and new paragraphs (n), (o), (p), and (q) are added to read as follows:

§ 305.3 Description of covered products.

* * * * *

(l) *General service lamp* means:

(1) A lamp that is:

(i) A general service incandescent lamp;

(ii) A medium base compact fluorescent lamp;

(iii) A general service light-emitting diode (LED or OLED) lamp; or

(iv) Any other lamp that the Secretary of Energy determines is used to satisfy lighting applications traditionally served by general service incandescent lamps.

(2) Exclusions. The term *general service lamp* does not include—

(i) Any lighting application or bulb shape described in paragraphs (n)(3)(A) through (T) of this section; and(ii) any general service fluorescent lamp.

(m) *Medium base compact fluorescent lamp* means an integrally ballasted fluorescent lamp with a medium screw base, a rated input voltage range of 115 to 130 volts and which is designed as direct replacement for a general service incandescent lamp; however, the term does not include—

(1) Any lamp that is—

(i) Specifically designed to be used for special purpose applications; and

(ii) Unlikely to be used in general purpose applications, such as the applications described in the definition of ''General Service Incandescent Lamp'' in this paragraph (n)(3)(ii) of this section; or

(2) Any lamp not described in the definition of ''General Service Incandescent Lamp'' in this section that is excluded by the Department of Energy, by rule, because the lamp is—

(i) Designed for special applications; and

(ii) Unlikely to be used in general purpose applications.

(n) *Incandescent lamp:* (1) Means a lamp in which light is produced by a filament heated to incandescence by an electric current, including only the following:

(i) Any lamp (commonly referred to as lower wattage nonreflector general service lamps, including any tungsten-halogen lamp) that has a rated wattage between 30 and 199 watts, has an E26 medium screw base, has a rated voltage or voltage range that lies at least partially within 115 and 130 volts, and is not a reflector lamp;

(ii) Any lamp (commonly referred to as a reflector lamp) which is not colored or designed for rough or vibration service applications, that contains an inner reflective coating on the outer bulb to direct the light, an R, PAR, or similar bulb shapes (excluding ER or BR) with E26 medium screw bases, a rated voltage or voltage range that lies at least partially within 115 and 130 volts, a diameter which exceeds 2.75 inches, and is either—

(A) A low(er) wattage reflector lamp which has a rated wattage between 40 and 205 watts; or

(B) A high(er) wattage reflector lamp which has a rated wattage above 205 watts;

(iii) Any general service incandescent lamp (commonly referred to as a high- or higher-wattage lamp) that has a rated wattage above 199 watts (above 205 watts for a high wattage reflector lamp); but

(2) *Incandescent lamp* does not mean any lamp excluded by the Secretary of Energy, by rule, as a result of a

determination that standards for such lamp would not result in significant energy savings because such lamp is designed for special applications or has special characteristics not available in reasonably substitutable lamp types; and

(3) *General service incandescent lamp* means

(i) In general, a standard incandescent or halogen type or reflector lamp that—

(A) Is intended for general service applications;

(B) Has a medium screw base;

(C) Has a lumen range of not less than 310 lumens and not more than 2,600 lumens; and

(D) Is capable of being operated at a voltage range at least partially within 110 and 130 volts.

(ii) Exclusions.—The term 'general service incandescent lamp' does not include the following incandescent lamps:

(A) An appliance lamp as defined at 42 U.S.C. 6291(30);

(B) A black light lamp;

(C) A bug lamp;

(D) A colored lamp as defined at 42 U.S.C. 6291(30);

(E) An infrared lamp;

(F) A left-hand thread lamp;

(G) A marine lamp;

(H) A marine signal service lamp;

(I) A mine service lamp;

(J) A plant light lamp;

(K) A rough service lamp as defined at 42 U.S.C. 6291(30));

(L) A shatter-resistant lamp (including a shatter-proof lamp and a shatter-protected lamp);

(M) A sign service lamp;

(N) A silver bowl lamp;

(O) A showcase lamp;

(P) A traffic signal lamp;

(Q) A vibration service lamp as defined at 42 U.S.C. 6291(30);

(R) A G shape lamp (as defined in ANSI C78.20–2003 and C79.1–2002) with a diameter of 5 inches or more;

(S) A T shape lamp (as defined in ANSI C78.20–2003 and C79.1–2002) and that uses not more than 40 watts or has a length of more than 10 inches; or

(T) A B, BA, CA, F, G16–1/2, G–25, G30, S, or M–14 lamp (as defined in ANSI C79.1–2002 and ANSI C78.20–2003) of 40 watts or less.

(4) *Incandescent reflector lamp* means a lamp described in paragraph (n)(1)(ii) of this section; and

(5) *Tungsten-halogen lamp* means a gas-filled tungsten filament incandescent lamp containing a certain proportion of halogens in an inert gas.

(o) *Light-emitting diode (LED)* means a p-n junction solid state device the radiated output of which is a function of the physical construction, material used, and exciting current of the device. The output of a light-emitting diode may be in—

(1) The infrared region;

(2) The visible region; or

(3) The ultraviolet region.

(p) *Organic light-emitting diode (OLED)* means a thin-film light-emitting device that typically consists of a series of organic layers between 2 electrical contacts (electrodes).

(q) *General service light-emitting diode (LED or OLED)* lamps means any light-emitting diode (LED or OLED) lamp that:

(1) Is intended for general service applications;

(2) Has a medium screw base;

(3) Has a lumen range of not less than 310 lumens and not more than 2,600 lumens; and

(4) Is capable of being operated at a voltage range at least partially within 110 and 130 volts.

3. In § 305.5, paragraphs (a)(12), (13), and (14) are added and paragraph (b) is revised to read as follows:

Testing

§ 305.5 Determinations of estimated annual energy consumption, estimated annual operating cost, and energy efficiency rating, and of water use rate.

(a) * * *

(12) General Service Incandescent Lamps - § 420.23(r) (Beginning Jan. 1, 2012).

(13) General Service Fluorescent Lamps - § 420.23(r) (Beginning Jan. 1, 2012).

(14) Medium Base Compact Fluorescent Lamps - § 420.23(w) (Beginning Jan. 1, 2012).

(b) Unless otherwise provided in paragraph (a), manufacturers and private labelers of any covered product that is a general service fluorescent lamp, general service lamp, or metal halide lamp fixture, must, for any representation required by this Part including but not limited to of the design voltage, wattage, energy cost, light output, life, correlated color temperature, or color rendering index of such lamp or for any representation made by the encircled ''E'' that such a lamp is in compliance with an applicable standard established by section 325 of the Act, possess and rely upon a reasonable basis consisting of competent and reliable scientific tests substantiating the representation. For representations of the light output and life ratings of any covered product that is a general service lamp, unless otherwise provided by paragraph (a), the Commission will accept as a reasonable basis scientific tests conducted according to the following applicable IES test protocols that substantiate the representations:

For measuring light output (in lumens):	
General Service Fluorescent	IES LM 9
Compact Fluorescent	IES LM 66
General Service Incandescent (Other than Reflector Lamps)	IES LM 45
General Service Incandescent (Reflector Lamps)	IES LM 20
For measuring laboratory life (in hours): General Service Fluorescent	IES LM 40
Compact Fluorescent	IES LM 65
General Service Incandescent (Other than Reflector Lamps)	IES LM 49
General Service Incandescent (Reflector Lamps)	IES LM 49

* * * * *

4. Section 305.6 is revised to read as follows:

§ 305.6 Sampling.

(a) For any covered product (except general service fluorescent lamps or general service lamps), any representation with respect to or based upon a measure or measures of energy consumption incorporated into §305.5 shall be based upon the sampling procedures set forth in §430.24 of 10 CFR part 430, subpart B.

(b) For any covered product that is a general service lamp, any representation required by § 305.15 and, for any covered product that is a general service fluorescent lamp or incandescent reflector lamp, any representation made by the encircled ''E'' that such lamp is in compliance with an applicable standard established by section 325 of the Act, shall be based upon tests using a competent and reliable scientific sampling procedure. The Commission will accept ''Military Standard 105—Sampling Procedures and Tables for Inspection by Attributes'' as such a sampling procedure.

5. Section 305.8 is amended as follows:

a. In paragraph (a)(1), remove the phrase ''medium base compact fluorescent lamps or general service incandescent lamps including, incandescent reflector lamps'' wherever

it appears and add in its place ''and general service lamps;''

b. In paragraph (a)(3), remove the phrase ''medium base compact fluorescent lamp, or general service incandescent lamp (including an incandescent reflector lamp)'' wherever it appears and add in its place ''and general service lamps.''

c. Revise paragraph (b)(1) to read as follows:

§ 305.8 Submission of data.

* * * * *

(b)(1) All data required by §305.8(a) except serial numbers shall be submitted to the Commission annually, on or before the following dates:

Product category	Deadline for data submission
Refrigerators	Aug. 1
Refrigerators-freezers	Aug. 1
Freezers	Aug. 1
Central air conditioners	July 1
Heat pumps	July 1
Dishwashers	June 1
Water heaters	May 1
Room air conditioners	May 1
Furnaces	May 1
Pool heaters	May 1
Clothes washers	Oct. 1
Fluorescent lamp ballasts	Mar. 1
Showerheads	Mar. 1
Faucets	Mar. 1
Water closets	Mar. 1
Ceiling fans	Mar. 1
Urinals	Mar. 1
Metal halide lamp fixtures	Sept. 1
General Service Fluorescent lamps	Mar. 1 (beginning 2012)
Medium Base Compact Fluorescent Lamps	Mar. 1 (beginning 2012)
General Service Incandescent Lamps	Mar. 1 (beginning 2012)

* * * * *

6. Section 305.15 is amended as follows:

a. Paragraph (c) is redesignated as paragraph (e).

b. Paragraphs (b) is revised and paragraphs (c) and (d) are added to read as follows:

§ 305.15 Labeling for lighting products.

* * * * *

(b) *General Service Lamps* — (1) Principal Display Panel Content: Any covered product that is a general service lamp shall be labeled clearly and conspicuously on the product's principal display panel with the following information:

(i) The light output of each lamp included in the package, expressed as ''Brightness'' in average initial lumens; and

(ii) The estimated annual energy cost of the lamp, expressed as ''Estimated Energy Cost'' in dollars and based on usage of 3 hours per day and 11.4 cents ($0.114) per kWh.

(2) Principal Panel Format: The light output (brightness) and energy cost of any covered product that is a general service lamp shall appear in that order and with equal clarity and conspicuousness on the product's principal display panel. The format, terms, specifications, and minimum sizes shall follow the specifications and minimum sizes displayed in Prototype Label 5 to Appendix L.

(3) Lighting Facts Label Content: Any covered product that is a general service lamp shall be labeled clearly and conspicuously on the product's side or rear display panel with a Lighting Facts label that contains the following information in the following order:

(i) The light output of each lamp included in the package, expressed as ''Brightness'' in average initial lumens.

(ii) The estimated annual energy cost of the lamp based on the average initial wattage, a usage rate of 3 hours per day and 11.4 cents ($0.114) per kWh and explanatory text as illustrated in Prototype Labels 6 and 7 to Appendix L.

(iii) The life, as defined in § 305.2(w), of each lamp included in the package, expressed in years (based on 3 hours operation per day).

(iv) The correlated color temperature, as measured in degrees Kelvin and expressed as ''Color Appearance'' and by a number and a marker in the form of a scale as illustrated in Prototype Labels 6 and 7 to Appendix L placed proportionately on the scale where the left end equals 2,600 K and the right end equals 6,600 K;

(v) The wattage, as defined in § 305.2(hh), for each lamp included in the package, expressed as energy used in average initial wattage;

(vi) The ENERGY STAR logo as illustrated in Prototype Label 7 to Appendix L for qualified products, if desired by the manufacturer. Only manufacturers that have signed a Memorandum of Understanding with the Department of Energy or the Environmental Protection Agency may add the ENERGY STAR logo to labels on qualifying covered products; such manufacturers may add the ENERGY STAR logo to labels only on those products that are covered by the Memorandum of Understanding.

(vii) The design voltage of each lamp included in the package, if other than 120 volts.

(viii) For any general service lamp containing mercury, the following statement: Contains Mercury ''Hg [Encircled]: Manage in accordance with local, state, and federal disposal laws. For information: epa.gov/bulbrecycling or 1-800-XXX-XXXX.''

(ix) No marks or information other than that specified in this part shall appear on the Lighting Facts label.

(4) Lighting Facts Label Format: Information specified in subsection (b)(3) shall be presented on covered lamp packages in the format, terms, explanatory text, specifications, and minimum sizes as shown in Prototype Labels 6 and 7 to Appendix L. The text and lines shall be all black or one color type, printed on a white or other neutral contrasting background whenever practical.

(i) The Lighting Facts information shall be set off in a box by use of hairlines and shall be all black or one color type, printed on a white or other neutral contrasting background whenever practical.

(ii) All information within the Lighting Facts label shall utilize:

(A) Arial or an equivalent type style,

(B) Upper and lower case letters,

(C) Leading as indicated in Prototype Labels 6 and 7 to Appendix L,

(D) Letters should never touch,

(E) The box and hairlines separating information as illustrated in Prototype Labels 6 and 7 to Appendix L.

(F) The minimum font sizes and line thicknesses as illustrated in Prototype Labels 6 and 7 to Appendix L. No information on the Lighting Facts label shall be in type smaller than 6 point.

(5) Product Labeling: Any general service lamp shall be labeled legibly on the product itself with the following information:

(i) The lamp's average initial lumens, expressed as a number followed by the word ''lumens''; and

(ii) For general service lamps containing mercury, the following statement: ''Contains Mercury. See epa.gov/bulbrecycling or 1-800-XXX-XXXX.''

(c)(1) The required disclosures of any covered product that is a general service lamp shall be measured at 120 volts, regardless of the lamp's design voltage. If a lamp's design voltage is 125 volts or 130 volts, the disclosures of the wattage, light output and life ratings shall in each instance be:

(i) At 120 volts and followed by the phrase ''at 120 volts.'' In such case, the labels for such lamps also may disclose the lamp's wattage, light output and life at the design voltage (*e.g.*, ''Light Output 1710 Lumens at 125 volts''); or

(ii) At the design voltage and followed by the phrase ''at (125 volts/130 volts)'' if the ratings at 120 volts are disclosed clearly and conspicuously on another panel of the package, and if all panels of the package that contain a claimed light output, wattage or life clearly and conspicuously identify the lamp as ''(125 volt/130 volt),'' and if the principal display panel clearly and conspicuously discloses the following statement:

This product is designed for (125/130) volts. When used on the normal line voltage of 120 volts, the light output and energy efficiency are noticeably reduced. See (side/back) panel for 120 volt ratings.

(2) For any covered product that is an incandescent reflector lamp, the required disclosures of light output shall be given for the lamp's total forward lumens.

(3) For any covered product that is a compact fluorescent lamp, the required light output disclosure shall be measured at a base-up position; but, if the manufacturer or private labeler has reason to believe that the light output at a base-down position would be more than 5% different, the label also shall disclose the light output at the base-down position or, if no test data for the base-down position exist, the fact that at a base-down position the light output might be more than 5% less.

(4) For any covered product that is a general service incandescent lamp and operates with multiple filaments, the light output, energy cost, and wattage disclosures required by § 305.15(b) must be provided at each of the lamp's levels of light output and the lamp's life provided on the basis of the filament that fails first. The multiple numbers shall be separated by a ''/'' (*e.g.*, 800/1600/2500 lumens).

(5) A manufacturer or private labeler who distributes general service fluorescent lamps, or general service lamps without labels attached to the lamps or without labels on individual retail-sale packaging for one or more lamps may meet the package disclosure requirements of this section by making the required disclosures, in the manner and form required by those paragraphs, on the bulk shipping cartons that are to be used to display the lamps for retail sale.

(6) Any manufacturer or private labeler who makes any representation, other than those required by this section, on a package of any covered product that is a general service fluorescent lamp or general service lamp regarding the cost of operation or life of such lamp shall clearly and conspicuously disclose in close proximity to such representation the assumptions upon which it is based, including, *e.g.*, purchase price, unit cost of electricity, hours of use, patterns of use. If those assumptions differ for those required for cost and life information on the Lighting Facts label (11.4 cents per kWh and 3 hours per day), the manufacturer or private labeler must also disclose, with equal clarity and conspicuousness, the same representation based on those required on the Lighting Facts label.

(d)(1) Any covered product that is a general service fluorescent lamp or an incandescent reflector lamp shall be labeled clearly and conspicuously with a capital letter ''E'' printed within a circle and followed by an asterisk. The label shall also clearly and conspicuously disclose, either in close proximity to that asterisk or elsewhere on the label, the following statement:

*[The encircled ''E''] means this bulb meets Federal minimum efficiency standards.

(A) If the statement is not disclosed on the principal display panel, the asterisk shall be followed by the following statement:

See [Back, Top, Side] panel for details.

(B) For purposes of this paragraph, the encircled capital letter ''E'' shall be clearly and conspicuously disclosed in color-contrasting ink on the label of any covered product that is a general service fluorescent lamp and will be deemed ''conspicuous,'' in terms of size, if it appears in typeface at least as large as either the manufacturer's name or logo or another logo disclosed on the label, such as the ''UL'' or ''ETL'' logos, whichever is larger.

(2) Instead of labeling any covered product that is a general service fluorescent lamp with the encircled ''E'' and with the statement described in paragraph (d)(1) of this section, a manufacturer or private labeler who would not otherwise put a label on such a lamp may meet the disclosure requirements of that paragraph by permanently marking the lamp clearly and conspicuously with the encircled ''E''.

(3) Any cartons in which any covered products that are general service fluorescent lamps and general service lamps are shipped within the United States or imported into the United States shall disclose clearly and conspicuously the following statement:

These lamps comply with Federal energy efficiency labeling requirements.

* * * * *

§ 305.19 [Amended]

7. In § 305.19, remove the phrase ''medium base compact fluorescent lamps, or general service incandescent lamps including incandescent reflector lamps'' and add in its place ''general service lamps'' wherever it appears.

8. Section 305.20 is amended as follows:

a. In paragraph (a)(1), remove the phrase ''medium base compact fluorescent lamps, general service incandescent lamps including incandescent reflector lamps'' and add in its place ''general service lamps'' wherever it appears;

b. In paragraph (a)(3), remove the phrase ''medium base compact fluorescent lamp, or general service incandescent lamp (including an incandescent reflector lamp)'' and add in its place ''general service lamps'' wherever it appears.

c. Revise paragraph (c)(1) to read as follows:

§ 305.20 Paper catalogs and websites.

* * * * *

(c)(1) Any manufacturer, distributor, retailer, or private labeler who advertises in a catalog a covered product that is a general service fluorescent lamp or general service lamp shall disclose clearly and conspicuously in such catalog:

(i) On each page listing any covered product that is a general service lamp, all the information concerning that lamp required by § 305.15 of this part to be disclosed on the lamp's label either in the form of the manufacturer's Lighting Facts label prepared pursuant to § 305.15 or otherwise in a clear and conspicuous manner; and

(ii) On each page listing a covered product that is a general service fluorescent lamp or an incandescent reflector lamp, all the information required by § 305.15 of this part to be disclosed on the lamp's label according to the following format:

(A) The encircled ''E'' shall appear with each lamp entry; and

(B) The accompanying statement described in § 305.15(d)(1) shall appear at least once on the page.

* * * * *

§ 305.21 [Amended]

9. In § 305.21, add the term ''correlated color temperature,'' after the term ''energy usage.''

10. In Appendix L:

a. Add Prototype Labels 5 through 7; and

b. Remove all sections labeled Lamp Packaging Disclosures

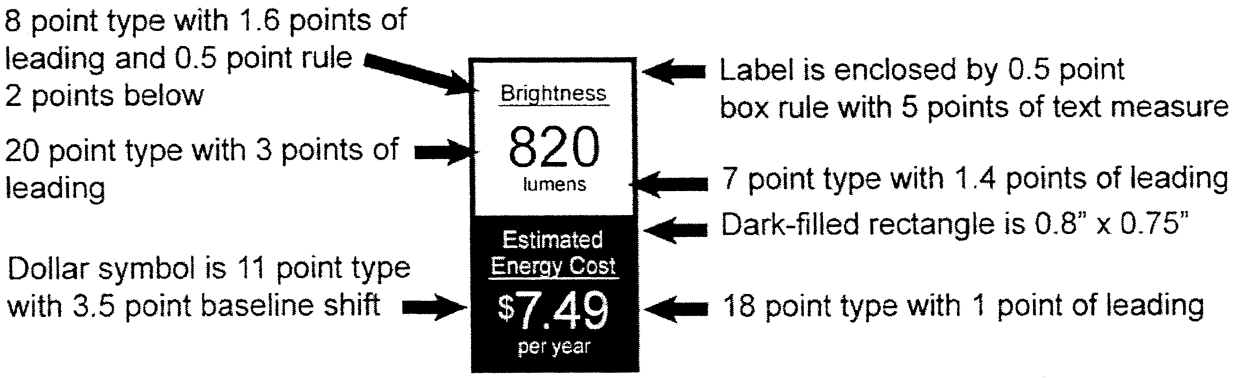
The Additions read as follows:

Appendix L to Part 305

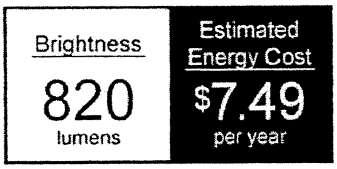
Sample Labels

* * * * *

* Typeface is Arial or equivalent type style. Type is black or one color printed on a white or other neutral contrasting background.



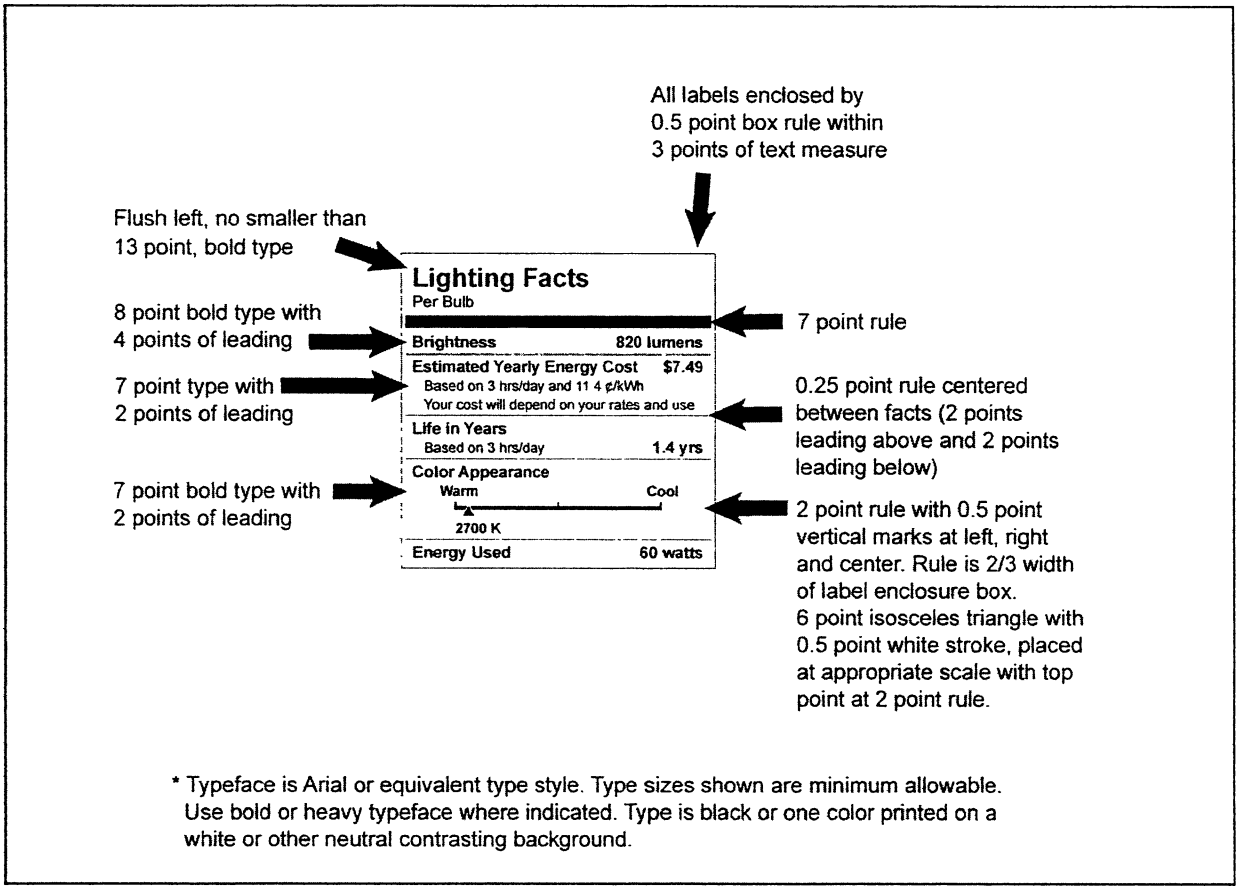
* Minimum size for vertical label is 0.8" x 1.5". Scale label and all text proportionally.



* Minimum size for vertical label is 1.6" x 0.75". Scale label and all text proportionally.

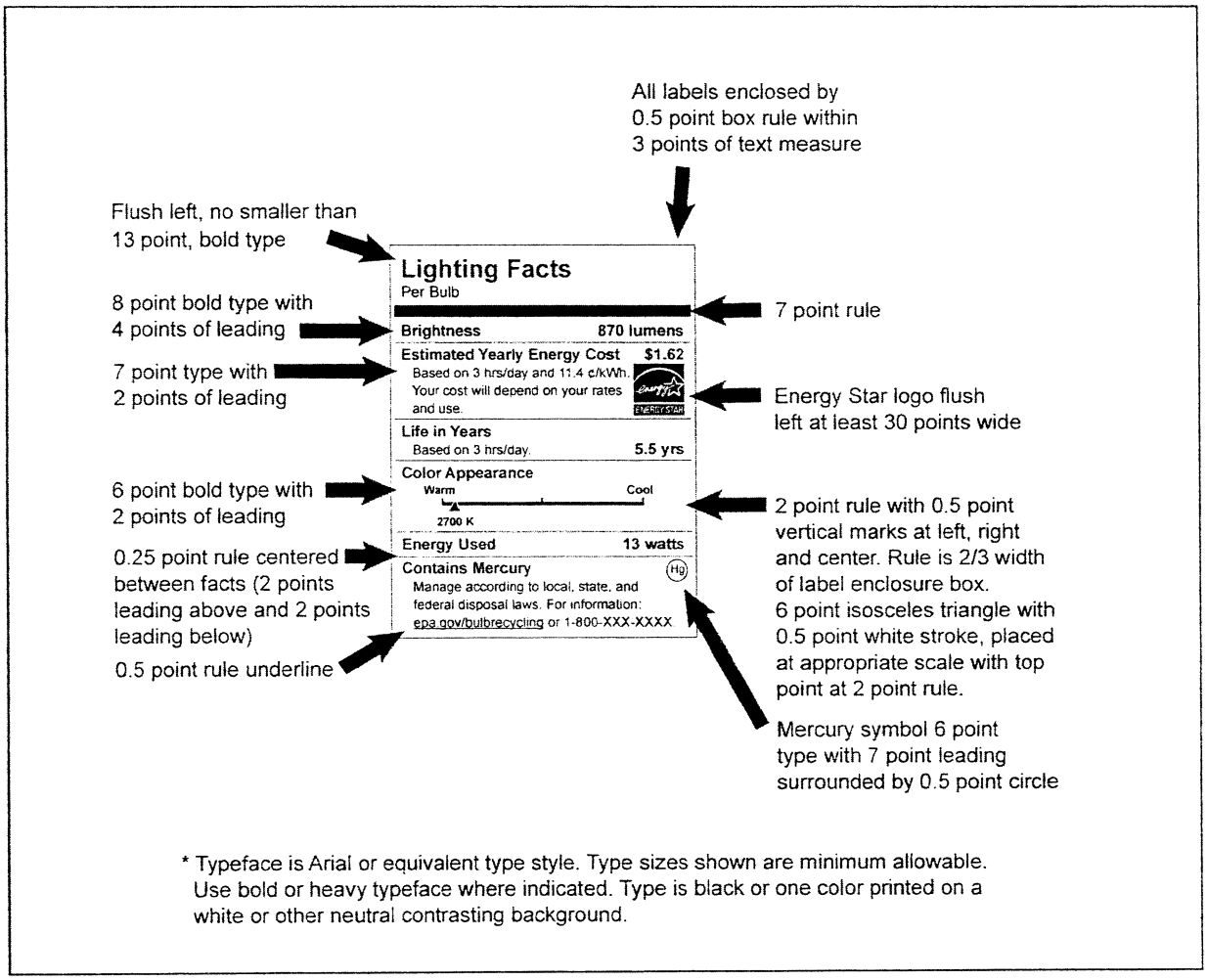
PROTOTYPE LABEL 5

FRONT PACKAGE DISCLOSURE FOR GENERAL SERVICE LAMPS



PROTOTYPE LABEL 6

LIGHTING FACTS LABEL FOR GENERAL SERVICE LAMPS NOT CONTAINING MERCURY



PROTOTYPE LABEL 7

LIGHTING FACTS LABEL FOR GENERAL SERVICE LAMP CONTAINING MERCURY

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. E9–27036 Filed 11–9–09; 2:25 pm]

BILLING CODE 6750–01–S

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 404

[Docket No. SSA–2009–0038]

RIN 0960–AH03

Revised Medical Criteria for Evaluating Genitourinary Impairments

AGENCY: Social Security Administration.

ACTION: Advance Notice of Proposed Rulemaking.

SUMMARY: We are requesting your comments on whether and how we should revise the criteria in our Listing of Impairments (the listings) for evaluating genitourinary impairments in adults and children. We are requesting your comments as part of our ongoing effort to ensure that our listings reflect current medical knowledge. If we propose specific revisions, we will publish a Notice of Proposed Rulemaking in the **Federal Register.**

DATES: To be sure that we consider your comments, we must receive them by no later than January 11, 2010.

ADDRESSES: You may submit comments by any one of three methods—Internet, fax, or mail. Do not submit the same comments multiple times or by more than one method. Regardless of which method you choose, please state that your comments refer to Docket No. SSA–2009–0038 so that we may associate your comments with the correct regulation.

Caution: You should be careful to include in your comments only information that you wish to make publicly available. We strongly urge you not to include in your comments any personal information, such as Social Security numbers or medical information.

1. *Internet:* We strongly recommend that you submit your comments via the Internet. Please visit the Federal eRulemaking portal at *http://www.regulations.gov*. Use the *Search* function to find docket number SSA–2009–0038. The system will issue a tracking number to confirm your submission. You will not be able to view your comment immediately because we must post each comment manually. It may take up to a week for your comment to be viewable.

2. *Fax:* Fax comments to (410) 966–2830.

3. *Mail:* Mail your comments to the Office of Regulations, Social Security Administration, 137 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401.

Comments are available for public viewing on the Federal eRulemaking portal at *http://www.regulations.gov* or in person, during regular business hours, by arranging with the contact person identified below.

FOR FURTHER INFORMATION CONTACT: Paul Scott, Social Insurance Specialist, Office of Medical Listings Improvement, Social

Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–1020. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at: *http://www.socialsecurity.gov*.

SUPPLEMENTARY INFORMATION:

Electronic Version

The electronic file of this document is available on the date of publication in the **Federal Register** at *http://www.gpoaccess.gov/fr/index.html*.

What is the purpose of this Advance Notice of Proposed Rulemaking (ANPRM)?

This ANPRM gives you an opportunity to send us comments and suggestions on whether and how we might revise the listings and other criteria in sections 6.00 and 106.00 for evaluating genitourinary impairments. We last published final rules revising the criteria that we use to evaluate genitourinary impairments on July 5, 2005. 70 FR 38582. We are publishing this ANPRM as part of our ongoing effort to ensure that our criteria reflect the latest advances in medicine.

On which rules are we inviting comments and suggestions?

You can find our current rules on which we are inviting comments and suggestions on the Internet at the following locations:

- Sections 6.00 and 106.00 are in the Listing of Impairments in appendix 1 to subpart P of part 404 of our regulations at *http://www.ssa.gov/OP_Home/cfr20/404/404-ap10.htm* or at *http://www.ssa.gov/disability/professionals/bluebook/*.

Who should send us comments and suggestions?

We invite comments and suggestions from people who apply for or receive benefits from us, members of the general public, advocates and organizations who represent people who have genitourinary impairments, State agencies that make disability determinations for us, experts in the evaluation of genitourinary impairments, and researchers.

What should you comment about?

We are interested in any comments and suggestions on how we might revise sections 6.00 and 106.00 of our listings. For example, we are interested in knowing if:

- You have concerns about any of the provisions in the current genitourinary impairments listings, such as whether you believe we should change any of our criteria or whether you believe a listing is difficult to use or to understand.
- You would like to see our genitourinary impairments listings include something that is not currently included, such as other genitourinary impairments, additional medical technologies, specific laboratory studies, or new medical criteria.
- You believe our genitourinary impairments listings should include functional criteria and what those criteria should be.

Will we respond to your comments from this notice?

We will not respond directly to the comments you send in response to this ANPRM. After we have considered all comments and suggestions, as well as information about advances in medical knowledge, treatment, and methods of evaluating genitourinary impairments, and our program experience using the current listings, we will determine whether we should revise any of the listings or other criteria in sections 6.00 or 106.00. If we decide to propose specific revisions, we will publish a Notice of Proposed Rulemaking in the **Federal Register**, and you will have a chance to comment on the revisions we propose.

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

Dated: September 28, 2009.

Michael J. Astrue,

Commissioner of Social Security.

[FR Doc. E9–27032 Filed 11–9–09; 8:45 am]

BILLING CODE 4191–02–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 404

[Docket No. SSA–2009–0039]

RIN 0960–AH04

Revised Medical Criteria for Evaluating Impairments That Affect Multiple Body Systems

AGENCY: Social Security Administration.

ACTION: Advance Notice of Proposed Rulemaking.

SUMMARY: We are requesting your comments on whether and how we should revise the criteria in our Listings of Impairments (the listings) for evaluating impairments that affect multiple body systems in adults and children. We are requesting your comments as part of our ongoing effort to ensure that our listings reflect current medical knowledge. If we propose specific revisions; we will publish a Notice of Proposed Rulemaking in the **Federal Register.**

DATES: To be sure that we consider your comments, we must receive them by no later than January 11, 2010.

ADDRESSES: You may submit comments by any one of three methods—Internet, fax, or mail. Do not submit the same comments multiple times or by more than one method. Regardless of which method you choose, please state that your comments refer to Docket No. SSA–2009–0039 so that we may associate your comments with the correct regulation.

Caution: You should be careful to include in your comments only information that you wish to make publicly available. We strongly urge you not to include in your comments any personal information, such as Social Security numbers or medical information.

1. *Internet:* We strongly recommend that you submit your comments via the Internet. Please visit the Federal eRulemaking portal at *http://www.regulations.gov*. Use the *Search* function to find docket number SSA–2009–0039. The system will issue a tracking number to confirm your submission. You will not be able to view your comment immediately because we must post each comment manually. It may take up to a week for your comment to be viewable.

2. *Fax:* Fax comments to (410) 966–2830.

3. *Mail:* Mail your comments to the Office of Regulations, Social Security Administration, 137 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401.

Comments are available for public viewing on the Federal eRulemaking portal at *http://www.regulations.gov* or in person, during regular business hours, by arranging with the contact person identified below.

FOR FURTHER INFORMATION CONTACT: Marva Franklin, Social Insurance Specialist, Office of Medical Listings Improvement, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–1020. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov*.

SUPPLEMENTARY INFORMATION:

Electronic Version

The electronic file of this document is available on the date of publication in the **Federal Register** at *http://www.gpoaccess.gov/fr/index.html*.

What is the purpose of this Advance Notice of Proposed Rulemaking (ANPRM)?

This ANPRM gives you an opportunity to send us comments and suggestions on whether and how we might update and revise the listings and other criteria in sections 10.00 and 110.00 for evaluating impairments that affect multiple body systems. We last published final rules revising the criteria that we use to evaluate impairments that affect multiple body systems on August 30, 2005. 70 FR 51252. We are publishing this ANPRM as part of our ongoing effort to ensure that our criteria reflect the latest advances in medicine.

On which rules are we inviting comments and suggestions?

You can find our current rules on which we are inviting comments and suggestions on the Internet at the following locations:

- Sections 10.00 and 110.00 are in the Listing of Impairments in appendix 1 to subpart P of part 404 of our regulations at *http://www.ssa.gov/OP_Home/cfr20/404/404-ap10.htm* or at *http://www.ssa.gov/disability/professionals/bluebook/*.

Who should send us comments and suggestions?

We invite comments and suggestions from people who apply for or receive benefits from us, members of the general public, advocates and organizations who represent people who have impairments that affect multiple body systems, State agencies that make disability determinations for us, experts in the evaluation of impairments that affect multiple body systems, and researchers.

What should you comment about?

We are interested in any comments and suggestions on how we might revise sections 10.00 and 110.00 of our listings. For example, we are interested in knowing if:

- You have concerns about any of the provisions in the current impairments that affect multiple body systems listings, such as whether you believe we should change any of our criteria or whether you believe a listing is difficult to use or to understand.
- You would like to see our impairments that affect multiple body systems listings include something that is not currently included, such as other impairments, additional medical technologies, specific laboratory studies, or new medical criteria.
- You believe our impairments that affect multiple body systems listings should include functional criteria and what those criteria should be.

Will we respond to your comments from this notice?

We will not respond directly to the comments you send in response to this ANPRM. After we have considered all comments and suggestions, as well as information about advances in medical knowledge, treatment, and methods of evaluating impairments that affect multiple body systems, and our program experience using the current listings, we will determine whether we should revise any of the listings or other criteria in sections 10.00 or 110.00. If we decide to propose specific revisions, we will publish a Notice of Proposed Rulemaking in the **Federal Register** and you will have a chance to comment on the revisions we propose.

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

Dated: September 28, 2009.

Michael J. Astrue,

Commissioner of Social Security.

[FR Doc. E9–27031 Filed 11–9–09; 8:45 am]

BILLING CODE 4191–02–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 404

[Docket No. SSA 2009–0057]

RIN 0960–AG91

Revised Medical Criteria for Evaluating Skin Disorders

AGENCY: Social Security Administration.

ACTION: Advance Notice of Proposed Rulemaking.

SUMMARY: We are requesting your comments on whether and how we should revise the criteria in our Listing of Impairments (the listings) for evaluating skin disorders in adults and children. We are requesting your comments as part of our ongoing effort to ensure that our listings reflect current medical knowledge. If we propose specific revisions, we will publish a Notice of Proposed Rulemaking in the **Federal Register**.

DATES: To be sure that we consider your comments, we must receive them by no later than January 11, 2010.

ADDRESSES: You may submit comments by any one of three methods—Internet, fax, or mail. Do not submit the same comments multiple times or by more than one method. Regardless of which method you choose, please state that your comments refer to Docket No. SSA–2009–0057 so that we may associate your comments with the correct regulation.

Caution: You should be careful to include in your comments only information that you wish to make publicly available. We strongly urge you not to include in your comments any personal information, such as Social Security numbers or medical information.

1. *Internet:* We strongly recommend that you submit your comments via the Internet. Please visit the Federal eRulemaking portal at *http://www.regulations.gov*. Use the *Search* function to find docket number SSA–2009–0057. The system will issue a tracking number to confirm your submission. You will not be able to view your comment immediately because we must post each comment manually. It may take up to a week for your comment to be viewable.

2. *Fax:* Fax comments to (410) 966–2830.

3. *Mail:* Mail your comments to the Office of Regulations, Social Security Administration, 137 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401.

Comments are available for public viewing on the Federal eRulemaking portal at *http://www.regulations.gov* or in person, during regular business hours, by arranging with the contact person identified below.

FOR FURTHER INFORMATION CONTACT: Jane Deweib, Social Insurance Specialist, Office of Medical Listings Improvement, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, (410) 965–1020. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet site, Social Security Online, at *http://www.socialsecurity.gov*.

SUPPLEMENTARY INFORMATION:

Electronic Version

The electronic file of this document is available on the date of publication in the **Federal Register** at *http://www.gpoaccess.gov/fr/index.html*.

What is the purpose of this Advance Notice of Proposed Rulemaking (ANPRM)?

This ANPRM gives you an opportunity to send us comments and suggestions on whether and how we might revise the listings and other criteria in sections 8.00 and 108.00 for evaluating skin disorders. We last published final rules revising the criteria that we use to evaluate skin disorders on June 9, 2004, 69 FR 32260. We are publishing this ANPRM as part of our ongoing effort to ensure that our criteria reflect the latest advances in medicine.

On which rules are we inviting comments and suggestions?

You can find our current rules on which we are inviting comments and suggestions on the Internet at the following locations:

- Sections 8.00 and 108.00 are in the Listing of Impairments in appendix 1 to subpart P of part 404 of our regulations at *http://www.ssa.gov/OP_Home/cfr20/404/404-ap10.htm* or at *http://www.ssa.gov/disability/professionals/bluebook/*.

Who should send us comments and suggestions?

We invite comments and suggestions from people who apply for or receive benefits from us, members of the general public, advocates and organizations who represent people who have skin disorders, State agencies that make disability determinations for us, experts in the evaluation of skin disorders, and researchers.

What should you comment about?

We are interested in any comments and suggestions on how we might revise sections 8.00 and 108.00 of our listings. For example, we are interested in knowing if:

- You have concerns about any of the provisions in the current skin impairments listings, such as whether you believe we should change any of our criteria or whether you believe a listing is difficult to use or to understand.
- You would like to see our skin impairments listings include something that is not there now, such as other skin disorders, additional medical technologies, specific laboratory studies, or new medical criteria.
- You believe our skin impairments listings should include functional criteria and, if so, what those criteria should be.

Will we respond to your comments from this notice?

We will not respond directly to the comments you send in response to this ANPRM. After we have considered all comments and suggestions, as well as information about advances in medical knowledge, treatment, and methods of evaluating skin disorders, and our program experience using the current listings, we will determine whether we should revise any of the listings or other criteria in sections 8.00 or 108.00. If we decide to propose specific revisions, we will publish a Notice of Proposed Rulemaking in the **Federal Register** and you will have a chance to comment on the revisions we propose.

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

Dated: September 28, 2009.

Michael J. Astrue,

Commissioner of Social Security.

[FR Doc. E9–27033 Filed 11–9–09; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 4

[Docket No. FDA–2009–N–0435]

Current Good Manufacturing Practice Requirements for Combination Products; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending to February 5, 2010, the comment period for the proposed rule that appeared in the **Federal Register** of September 23, 2009. In the proposed rule, FDA requested comments on current good manufacturing practice (CGMP) requirements applicable to combination products. The agency is taking this action in response to requests for an extension to allow interested persons additional time to submit comments.

DATES: The comment period for the proposed rule publishied September 23, 2009 (74 FR 48423), is extended. Submit electronic or written comments by February 5, 2010.

ADDRESSES: You may submit comments, identified by Docket No. FDA–2009–N–0435, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following way:

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

Written Submissions

Submit written submissions in the following ways:

- FAX: 301–827–6870.
- Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions): Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

To ensure more timely processing of comments, FDA is no longer accepting comments submitted to the agency by e-mail. FDA encourages you to continue to submit electronic comments by using the Federal eRulemaking Portal, as described previously, in the **ADDRESSES** portion of this document under *Electronic Submissions*.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received may be posted without change to *http://www.regulations.gov*, including any personal information provided. For additional information on submitting comments, see the ''Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: John Barlow Weiner, Office of Combination Products (HFG–3), Food and Drug Administration, 15800 Crabbs Branch Way, Suite 200, Rockville, MD 20855 301–427–1934.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of September 23, 2009 (74 FR 48423), FDA published a proposed rule with a 90-day comment period to request comments on CGMP requirements applicable to combination products. Comments on the proposed rule will inform FDA's rulemaking to establish regulations for current good manufacturing practices for combination products.

The agency has received requests for a 45-day extension of the comment period for the proposed rule. Each request conveyed concern that the current 90-day comment period does not allow sufficient time to develop a meaningful or thoughtful response to the proposed rule.

FDA has considered the requests and is extending the comment period for the proposed rule for 45 days, until February 5, 2010. The agency believes that a 45-day extension allows adequate time for interested persons to submit comments without significantly delaying rulemaking on these important issues.

II. Request for Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) electronic or written comments on 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.

Dated: November 4, 2009.

David Horowitz,

Assistant Commissioner for Policy.

[FR Doc. E9–26966 Filed 11–9–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

RIN 1218–AC41

Combustible Dust

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of stakeholder meetings.

SUMMARY: OSHA invites interested parties to participate in informal stakeholder meetings on the workplace hazards of combustible dust. OSHA plans to use the information gathered at these meetings in developing a proposed standard for combustible dust.

DATES: Dates and locations for the stakeholder meetings are:

- December 14, 2009, at 9 a.m., in Washington, DC.
- December 14, 2009, at 1 p.m., in Washington, DC.
- Additional meetings are planned for early 2010, and will be announced in one or more subsequent notices.

ADDRESSES:

I. Registration

Submit your notice of intent to participate in one of the scheduled or future stakeholder meetings by one of the following:

- *Electronic.* Register at *https://www2.ergweb.com/projects/conferences/osha/register-osha-stakeholder.htm* (follow the instructions online).
- *Facsimile.* Fax your request to: (781) 674–2906, and label it ''Attention: OSHA Combustible Dust Stakeholder Meeting Registration.''
- *Regular mail, express delivery, hand (courier) delivery, and messenger service.* Send your request to: ERG, Inc., 110 Hartwell Avenue, Lexington, MA 02421; Attention: OSHA Combustible Dust Stakeholder Meeting Registration.

II. Meetings

The December 14, 2009, meetings will be held at the Marriott at Metro Center, 775 12th Street, NW., Washington, DC, 20005.

The 2010 meeting dates and locations will be announced in one or more subsequent notices.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

- *Press inquiries.* Contact Jennifer Ashley, Director, OSHA Office of Communications, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–1999.
- *General and technical information.* Contact Don Pittenger, Director, Office of Safety Systems, OSHA Directorate of Standards and Guidance, Room N–3609, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–2255.
- *Copies of this Federal Register notice.* Electronic copies are available at *http://www.regulations.gov.* This **Federal Register** notice, as well as news releases and other relevant information, also are available on the OSHA Web page at *http://www.osha.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The hazards of combustible dust encompass a wide array of materials, industries, and processes. Any combustible material can burn rapidly when in a finely divided form. Materials that may form combustible dust include, but are not limited to, wood, coal, plastics, biosolids, candy, sugar, spice, starch, flour, feed, grain, fertilizer, tobacco, paper, soap, rubber, drugs, dried blood, dyes, certain textiles, and metals (such as aluminum and magnesium). Industries that may have combustible dust hazards include, among others: Animal food manufacturing, grain handling, food manufacturing, wood product manufacturing, chemical manufacturing, textile manufacturing, furniture manufacturing, metal processing, fabricated metal products and machinery manufacturing, pesticide manufacturing, pharmaceutical manufacturing, tire manufacturing, production of rubber and plastics, plastics and rubber products manufacturing, recycling, wastewater treatment, and coal handling.

OSHA is developing a standard that will comprehensively address the fire and explosion hazards of combustible dust. The Agency has issued an Advanced Notice of Proposed Rulemaking (ANPR) (74 FR 54334) requesting comments, including data and other information, on issues related to the hazards of combustible dust in the workplace. OSHA plans to use the information received in response to the ANPR and at the stakeholder meetings in developing a proposed standard for combustible dust.

II. Stakeholder Meetings

The stakeholder meetings will be conducted as a group discussion on views, concerns, and issues surrounding the hazards of combustible dust. To facilitate as much group interaction as possible, formal presentations will not be permitted. Formal input should be submitted as indicated in the ANPR referenced earlier in this notice. OSHA believes the stakeholder meeting discussion should center on major issues such as:

- Possible regulatory approaches.
- Scope.
- Organization of a prospective standard.
- The role of consensus standards.
- Economic impacts.
- Additional topics as time permits.

OSHA plans to hold additional meetings in the early part of 2010, after the ANPR comment period has closed and the Agency has begun to analyze the comments received. One or more additional notices will be published with the information for those meetings. Stakeholders interested in participating in a 2010 meeting may express their intent through one of the methods specified in the **ADDRESSES** section of this notice under Registration. You will be contacted regarding the dates and locations of the future meetings.

III. Public Participation

Approximately 35 participants will be accommodated in each meeting, and three hours will be allotted for each meeting. Members of the general public may observe, but not participate in, the meetings on a first-come, first-served basis as space permits. OSHA staff will be present to take part in the discussions. Logistics for the meetings are being managed by Eastern Research Group, which will provide a facilitator and compile notes summarizing the discussion; these notes will not identify individual speakers. ERG also will make an audio recording of each session to ensure that the summary notes are accurate; these recordings will not be transcribed. The summary notes will be posted on the docket for the Combustible Dust ANPR, Docket ID: OSHA2009–0023, available at the Web site *http://www.regulations.gov.*

The meetings are as follows:

- December 14, 2009, 9 a.m., Marriott at Metro Center, 775 12th Street, NW., Washington, DC 20005.
- December 14, 2009, 1 p.m., Marriott at Metro Center, 775 12th Street, NW., Washington, DC 20005.
- The 2010 meeting dates and locations will be announced in one or more subsequent notices.

You may submit notice of intent to participate in one of the stakeholder meetings electronically, by facsimile, or by hard copy. See the **ADDRESSES** section of this notice for the registration Web site, facsimile number, and address. To register electronically, follow the instructions provided on the Web site. To register by mail or facsimile, please indicate the following:

- Name, address, phone, fax, and e-mail.
- First and second preferences of meeting time.
- Organization for which you work.
- Organization you represent (if different).
- Stakeholder category: government, industry, standards-developing organization, research or testing agency, union, trade association, insurance, fire protection equipment manufacturer, consultant, or other (if other, please be specific).
- Industry sector (if applicable): metals, wood products, grain or wet corn milling, food (including sugar), pharmaceutical or chemical manufacturing, paper products, rubber or plastics, coal, or other (if other, please be specific).

Electronic copies of this **Federal Register** notice, as well as news releases and other relevant documents, are available on the OSHA Web page at: *http://www.osha.gov.*

IV. Authority and Signature

This document was prepared under the direction of Jordan Barab, Acting Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, pursuant to sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), 29 CFR part 1911, and Secretary's Order 5–2007 (72 FR 31160).

Signed at Washington, DC, on November 5th, 2009.

Jordan Barab,

Acting Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. E9–27003 Filed 11–9–09; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2009–0686]

RIN 1625–AA09

Drawbridge Operation Regulation; Lower Grand River, Iberville Parish, LA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the regulations governing the operation of the LA 75 pontoon bridge and the LA 77 swing bridge across the Lower Grand River, mile 38.4 and 47.0 respectively, in Iberville Parish, Louisiana. The Iberville Parish School Board has requested that the operating regulations of these bridges be changed to allow an additional 30 minutes to the end of each scheduled closure period to provide more time for school buses to transit across the bridge.

DATES: Comments, requests for public meetings, and related material must be received by the Coast Guard on or before January 11, 2010.

ADDRESSES: You may submit comments identified by docket number USCG–2009–0686 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *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.

(4) *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.

To avoid duplication, please use only one of these methods. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail Lindsey Middleton, Bridge Administration Branch, Eighth Coast Guard District; telephone 504–671–2128, e-mail *Lindsey.R.Middleton@uscg.mil.* 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 materials. All comments received will be posted, without change to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2009–0686), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (*http://www.regulations.gov*), or by fax, mail or hand delivery, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a 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.

To submit your comment online, go to *http://www.regulations.gov,* click on the ''submit a comment'' box, which will then become highlighted in blue. In the ''Document Type'' drop down menu select ''Proposed Rules'' and insert ''USCG–2009–0686'' in the ''Keyword''

box. Click ''Search'' then click on the balloon shape in the ''Actions'' column. If you submit your comments by mail or hand 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 and may change the rule based on your comments.

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,* click on the ''read comments'' box, which will then become highlighted in blue. In the ''Keyword'' box insert ''USCG–2009–0686'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. 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, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of 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 notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one using one of the four methods specified under **ADDRESSES**. Please explain 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 Iberville Parish School Board has requested a change in the operation regulation for the LA 75 pontoon bridge and the LA 77 swing bridge across the Lower Grand River, mile 38.4 and 47.0, respectively, in Iberville Parish, Louisiana. The change would add an additional 30 minutes to the end of each scheduled closure period to provide more time for school buses to transit across the bridge. Extra time is now needed because one of Iberville Parish's high schools has been closed. As a result, students have been redistricted creating the need for buses to have more time to transit the students over the bridges to get to and from school.

Presently, 33 CFR 117.478 (a) states: The draw of the LA 75 bridge, mile 38.4 (Alternate Route) at Bayou Sorrel, shall open on signal; except that, from about August 15 to about June 5 (the school year), the draw need not be opened from 6 a.m. to 7:30 a.m. and from 3 p.m. to 4:30 p.m., Monday through Friday except holidays. The draw shall open on signal at any time for an emergency aboard a vessel.

Presently, 33 CFR 117.478 (b) states: The draw of the LA 77 bridge, mile 47.0 (Alternate Route) at Grosse Tete, shall open on signal; except that from about August 15 to about June 5 (the school year), the draw need not be opened from 6 a.m. to 8 a.m. and from 2:30 p.m. to 4:30 p.m., Monday through Friday except Federal holidays. The draw shall open on signal at any time for an emergency aboard a vessel.

Discussion of Proposed Rule

The proposed changes will allow the bridges to operate as follows: The draw of the LA 75 bridge, mile 38.4 (Alternate Route) at Bayou Sorrel, shall open on signal; except that, from about August 15 to about June 5 (the school year), the draw need not be opened from 6 a.m. to 8 a.m. and from 3 p.m. to 5 p.m., Monday through Friday except holidays. The draw shall open on signal at any time for an emergency aboard a vessel. The draw of the LA 77 bridge, mile 47.0 (Alternate Route) at Grosse Tete, shall open on signal; except that from about August 15 to about June 5 (the school year), the draw need not be opened from 6 a.m. to 8:30 a.m. and from 2:30 p.m. to 5 p.m., Monday through Friday except Federal holidays. The draw shall open on signal at any time for an emergency aboard a vessel.

A Test Deviation, following the aforementioned operating schedules under docket number USCG–2009–0686, is being issued in conjunction with this Notice of Proposed Rulemaking to test the proposed schedules and to obtain data and public comments. The test period will be in effect from November 25, 2009 until December 28, 2009. The Coast Guard will review the logs of the drawbridges and evaluate public comments for this Notice of Proposed Rulemaking and the above referenced Temporary Deviation to determine if a permanent special drawbridge operating regulation is warranted.

Regulatory Analyses

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

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary. The proposed changes would allow the bridges to remain closed-to-navigation for an additional 30 minutes in the morning and afternoon. Very few vessels will be impacted or backed up, and those few vessels should be able to modify their transit times accordingly.

Small Entities

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

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

The proposed rule would affect the following entities, some of which might be small entities: The owners or operators of vessels needing to transit through the LA 75 bridge from 6 a.m. to 8 a.m. and from 3 p.m. to 5 p.m. on weekdays and the owners or operators of vessels needing to transit through the LA 77 bridge from 6 a.m. to 8:30 a.m. and from 2:30 p.m. to 5 p.m. on weekdays. Due to the minimal time adjustment of each bridge closure there should only be a small number of vessels that may be impacted by the proposed rule.

This action will not have a significant economic impact on a substantial number of small entities for the

following reasons: This rule will be in effect for only 30 additional minutes in the morning and in the afternoon on weekdays when school is in session. Once that time period has ended, vessels can safely transit through the bridge. Before the effective period, we will issue maritime advisories which will be widely available to users of the river.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lindsey Middleton, Bridge Administration Branch, at 504–671–2128 or e-mail at *Lindsey.R.Middleton@uscg.mil.* The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01, and Commandant Instruction M16475.lD which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment because it simply promulgates the operating regulations or procedures for drawbridges. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 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. In § 117.478 revise paragraph (a) and paragraph (b) to read as follows:

§ 117.478 Lower Grand River.

(a) The draw of the LA 75 bridge, mile 38.4 (Alternate Route) at Bayou Sorrel, shall open on signal; except that from about August 15 to about June 5 (the school year), the draw need not be opened from 6 a.m. to 8 a.m. and from 3 p.m. to 5 p.m., Monday through Friday except holidays. The draw shall open on signal at any time for an emergency aboard a vessel.

(b) The draw of the LA 77 bridge, mile 47.0 (Alternate Route) at Grosse Tete, shall open on signal; except that, from about August 15 to about June 5 (the school year), the draw need not be opened from 6 a.m. to 8:30 a.m. and from 2:30 p.m. to 5 p.m., Monday through Friday except Federal holidays. The draw shall open on signal at any time for an emergency aboard a vessel.

* * * * *

Dated: October 14, 2009.

J.E. Tunstall,

Captain, U.S. Coast Guard Commander, 8th Coast Guard District, Acting.

[FR Doc. E9–26985 Filed 11–9–09; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2008–0783; FRL–8972–1]

Approval and Promulgation of Air Quality Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve sulfur dioxide, particulate matter, and nitrogen oxides emission limitations and related requirements for a Warrick County electrical generating unit. The provisions, which will be added for the Southern Indiana Gas and Electric Company's F.B. Culley Generating Station, are contained in a Federal consent decree. Indiana requested revising its State Implementation Plan (SIP) to include the provisions on September 11, 2008. Adding these limitations will strengthen the Indiana SIP.

DATES: Comments must be received on or before December 10, 2009.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2008–0783, by one of the following methods:

1. *http://www.regulations.gov*: Follow the on-line instructions for submitting comments.
2. *E-mail: mooney.john@epa.gov*.
3. *Fax:* (312) 692–2551.
4. *Mail:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Matt Rau, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6524, *rau.matthew@epa.gov*.

SUPPLEMENTARY INFORMATION: In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: October 13, 2009.

Walter W. Kovalick Jr.,

Acting Regional Administrator, Region 5.

[FR Doc. E9–26950 Filed 11–9–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2005–AL–0002–200924; FRL–8979–7]

Approval and Promulgation of Implementation Plans: Alabama: Proposed Approval of Revisions to the Visible Emissions Rule and Alternative Proposed Disapproval of Revisions to the Visible Emissions Rule; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of comment period.

SUMMARY: EPA is announcing an extension of the public comment period for the proposed rule entitled ''Approval and Promulgation of Implementation Plans; Alabama: Proposed Approval of Revisions to the Visible Emissions Rule and Alternative Proposed Disapproval of Revisions to the Visible Emissions Rule.'' The proposed rule was initially published in the **Federal Register** on October 2, 2009. Written comments on the proposed rule were to be submitted to EPA on or before November 16, 2009 (45-day comment period). EPA is extending the public comment period until December 16, 2009.

DATES: The comment period for the proposed rule published on October 2, 2009 (74 FR 50930), is extended. Comments must be received on or before December 16, 2009.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2005–AL–0002, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: benjamin.lynorae@epa.gov.*
3. *Fax:* 404–562–9019.
4. *Mail:* ''EPA–R04–OAR–2005–AL–0002,'' Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Lynorae Benjamin, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through

Friday, 8:30 to 4:30, excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. ''EPA–R04–OAR–2005–AL–0002.'' EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *http://www.regulations.gov* or e-mail, information that you consider to be CBI or otherwise protected. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2005–AL–0002. All documents in the docket are listed on the *http://www.regulations.gov index.* Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, 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 *http://www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that, if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Lynorae Benjamin, Chief, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9040. Ms. Benjamin can also be reached via electronic mail at *benjamin.lynorae@epa.gov.*

SUPPLEMENTARY INFORMATION: The proposed rule was signed by the Acting Regional Administrator on September 10, 2009, and published in the **Federal Register** on October 2, 2009 (74 FR 50930). The proposed action provided a 45-day public comment period. EPA has received a request for an additional 15 days to comment on the proposed rule from one requester, and 90 days from another requester. EPA has considered these requests and has decided to extend the comment period an additional 30 days until December 16, 2009.

Dated: November 2, 2009.

Beverly H. Banister,

Acting Regional Administrator, Region 4.

[FR Doc. E9–27045 Filed 11–9–09; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2008–0020; Internal Agency Docket Nos. FEMA–B–1060 and FEMA–B–1062]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule; correction.

SUMMARY: FEMA is correcting a table for Black Hawk County, Iowa, and Incorporated Areas. Further, on July 8, 2009, FEMA published a proposed rule that properly addressed St. Charles County, Missouri, and Incorporated Areas, but incorrectly indicated that St. Charles County had not been included in any previously published proposed rule. FEMA seeks to correct and clarify that statement.

FOR FURTHER INFORMATION CONTACT: Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2820 or (e-mail) *kevin.long@dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) proposes determinations of Base (1% annual-chance) Flood Elevations (BFEs) and modified BFEs for communities participating in the National Flood Insurance Program (NFIP), in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a). These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are minimum requirements. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

Need for Corrections

FEMA is correcting a table in a proposed rule which published on July 2, 2009, at 74 FR 31656, and correcting an incorrect statement made in the preamble to a proposed rule that published on July 8, 2009, at 74 FR 32480. On July 2, 2009, FEMA published a proposed rule that contained two errors: first, a table for Black Hawk County, Iowa, and Incorporated Areas contained incorrect information; and second, a table for St. Charles County, Missouri, and Incorporated Areas should not have been included in the rule and published in error. On July 8, 2009, at 74 FR 32480, FEMA published a separate proposed rule which properly addressed St. Charles County, Missouri, and Incorporated Areas. However, the July 8 rule incorrectly indicated that St. Charles County had not been included in any previous proposed rule. FEMA seeks to correct and clarify that statement.

The July 2, 2009, proposed rule contained a table entitled ''Black Hawk County, Iowa, and Incorporated Areas,'' which contained errors. For flooding source ''Dry Run Creek Diversion,'' the table contained inaccurate information as to the location of referenced elevation, effective and modified elevation in feet, or communities affected. Also, for flooding source ''Ponded Area No. 2, from Elk Run Creek, landside of levee,'' the table contained a misspelling for Lafayette Road. FEMA is now publishing a revised table for Black Hawk County, Iowa, and Incorporated Areas, containing the accurate information, to address these prior errors. The information provided in the table below should be used in lieu of the table published on July 2, 2009.

In addition, the July 2, 2009 proposed rule also contained a table entitled, ''St. Charles County, Missouri, and Incorporated Areas.'' The table was erroneously included in the July 2 rule, and should not have published at that time. Base flood elevations for St. Charles County properly published in a subsequent proposed rule on July 8, 2009, at 74 FR 32480; the proposed table in the July 8 rule effectively replaced the July 2 proposed table.

The July 8 proposed rule addressed communities in the greater St. Louis, Missouri, area, that are the subject of an act of Congress that required FEMA to delay the statutory appeals process, required under Section 1363 of the National Flood Insurance Act of 1968, until certain publication requirements were met for each of these communities. (Consolidated Security, Disaster Assistance, and Continuing Appropriations Act 2009, Public Law 110–329, Div. B, Sec. 10503, 122 Stat. 3574, 3593 (2008)). The preamble of the July 8 proposed rule contained an incorrect statement which FEMA seeks to clarify here. The proposed rule stated that it was the first publication of proposed BFEs for the affected Missouri counties. This statement was inaccurate; as explained above, St. Charles County, Missouri, and Incorporated Areas had been inadvertently included in the July 2 rule. However, the inadvertent publication of the July 2 table for St. Charles County will not affect FEMA's determination to run concurrent comment and appeal periods for all of the communities affected by the July 8 proposed rule. Therefore, counties should consider the July 2 tables for St. Charles County, Missouri, and Incorporated Areas withdrawn and replaced by the July 8 proposed tables. All comment periods and associated time deadlines shall be calculated using the dates and information published in the July 8 proposed rule.

Correction

In the proposed rule published July 2, 2009 (74 FR 31656), on page 31658, revise the table for Black Hawk County, Iowa, and Incorporated Areas to read as follows:

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Black Hawk County, Iowa, and Incorporated Areas				
Big Woods Creek	Approximately 88 feet upstream of Lone Tree Road	None	+864	City of Cedar Falls, Unincorporated Areas of Black Hawk County.
	Just downstream of Cedar-Wapsi Road	None	+920	
Big Woods Creek Upper Diversion.	Approximately 0.5 mile upstream of Mount Vernon Road.	None	+870	Unincorporated Areas of Black Hawk County.
	Approximately 0.6 mile upstream of Cedar-Wapsi Road.	None	+875	
Black Hawk Creek	Just upstream of West Shaulis Road	+872	+870	Unincorporated Areas of Black Hawk County, City of Hudson, City of Waterloo.
	Approximately 975 feet downstream of Zaneta Road	+890	+891	
Cedar River	Just upstream of Lone Tree Road and Interstate 218	None	+864	City of Cedar Falls.
	East of Big Woods Road and approximately 0.3 mile south of Dunkerton Road along Illinois Central Gulf Railroad.	None	+864	
Cedar River	Approximately 0.6 mile downstream of Interstate 218	+858	+859	City of Cedar Falls, City of Waterloo, Unincorporated Areas of Black Hawk County.
	Approximately 2.1 miles upstream of Center Street	+868	+869	
Cedar River Diversion Channel.	Approximately 440 feet downstream of State Highway 57.	+859	+860	City of Cedar Falls.
	Approximately 1.3 miles upstream of Illinois Central Railroad.	+864	+865	
City View Branch	Approximately 0.3 mile downstream of Independence Avenue.	+853	+847	City of Waterloo.
	Just downstream of Chicago and North Western Railroad.	+857	+859	
Crane Creek	Approximately 117 feet downstream of Wheeler Road	None	+936	Unincorporated Areas of Black Hawk County, City of Dunkerton.
	Just downstream of East Cedar-Wapsi Road	None	+967	

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Crossroads Creek	Approximately 91 feet downstream of Hess Road	None	+845	City of Waterloo.
	Approximately 514 feet upstream of Alexander Drive	None	+871	
Crossroads Creek Diversion	Approximately 91 feet downstream of Hess Road	+846	+849	City of Waterloo.
	Approximately 0.3 mile upstream of Sarah Drive	+866	+867	
Dry Run Creek Diversion	Approximately 25 feet upstream of 20th Street	+867	+864	City of Cedar Falls.
	Approximately 225 feet downstream of Seerley Boulevard.	+868	+866	
Dry Run Creek at Cedar Falls.	Approximately 293 feet downstream of Illinois Central Gulf Railroad.	+860	+852	City of Cedar Falls.
	Approximately 540 feet downstream of U.S. Route 20	+927	+928	
Dry Run Creek at Waterloo	Approximately 664 feet downstream of Commercial Street.	#1	#2	City of Waterloo.
	Approximately 106 feet upstream of Byron Avenue	+868	+861	
	Approximately 0.5 mile upstream of Kimball Avenue	None	+942	
Maywood Branch	Approximately 0.4 mile downstream of Bishop Avenue	+856	+855	City of Waterloo.
	Just upstream of Bishop Avenue	+858	+857	
Myers Lake	West end of lake	+826	+838	City of Evansdale.
	East end of lake	+826	+838	
Ponded Area No. 2, from Elk Run Creek, landside of levee.	North end of ponding area, approximately 0.3 mile downstream of Lafayette Road.	+833	+836	City of Evansdale.
	South end of ponding area, approximately 0.4 mile upstream of Gilbert Road.	+833	+836	
Ponded Area No.1 from Elk Run Creek, landside of levee.	North end of ponding area, approximately 150 feet downstream of Gilbert Drive.	+831	+836	City of Evansdale.
	South end of ponding area, approximately 350 feet upstream of State Route 380.	+831	+836	
South West Branch of Dry Run Creek.	Approximately 279 feet downstream of Main Street	+870	+865	City of Cedar Falls.
	Approximately 1.8 miles upstream of Future Greenhill Road.	+917	+921	
Stream No. 13	Approximately 1.0 mile downstream of Wagner Road	+857	+856	City of Waterloo.
	Approximately 364 feet upstream of Airline Highway	+864	+863	
Stream No. 36	Approximately 1.0 mile downstream of Wagner Road	+864	+863	City of Waterloo, Unincorporated Areas of Black Hawk County.
	Approximately 0.4 mile downstream of Dunkerton Road.	None	+870	
Sunnyside Creek	Approximately 0.3 mile downstream of Martin Road	None	+855	City of Waterloo.
	Approximately 130 feet upstream of 4th Street	None	+878	
Sunnyside Creek Bypass	Approximately 0.6 mile downstream of Marine Avenue	+858	+861	City of Waterloo.
	Approximately 450 feet upstream of Marine Avenue	None	+869	
Unnamed Tributary to Big Woods Creek.	Just downstream of Dunkerton Road	None	+864	City of Cedar Falls.
	Approximately 408 feet west of Interstate 218	None	+864	
Unnamed Tributary to Big Woods Creek.	Approximately 0.5 mile upstream of Mount Vernon Road.	None	+871	Unincorporated Areas of Black Hawk County.
	Just upstream of Dunkerton Road	None	+871	
Unnamed Tributary to Cedar River.	Approximately 182 feet downstream of Dunkerton Road.	+863	+864	City of Cedar Falls.
	Just upstream of Lone Tree Road	+863	+864	
Wolf Creek	Approximately 0.6 mile downstream of Bike Path	+814	+815	City of La Porte City.
	Approximately 1.3 miles upstream of Main Street	None	+824	
Wolf Creek Overflow	Approximately 0.4 mile downstream of 8th Street	+814	+815	City of La Porte City, Unincorporated Areas of Black Hawk County.
	Approximately 1.3 miles upstream of Poplar Street	+822	+823	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Flooding source(s)	Location of referenced elevation**	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧Elevation in meters (MSL)		Communities affected
		Effective	Modified	

Send comments to Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Cedar Falls
Maps are available for inspection at 220 Clay Street, Cedar Falls, IA 50613.

City of Dunkerton
Maps are available for inspection at 200 Tower Street, Dunkerton, IA 50626.

City of Evansdale
Maps are available for inspection at 123 North Evans Road, Evansdale, IA 50707.

City of Hudson
Maps are available for inspection at 525 Jefferson Street, Hudson, IA 50643.

City of La Porte City
Maps are available for inspection at 202 Main Street, La Porte City, IA 50651.

City of Waterloo
Maps are available for inspection at 715 Mulberry Street, Waterloo, IA 50703.

Unincorporated Areas of Black Hawk County
Maps are available for inspection at 316 East 5th Street, Suite 203, Waterloo, IA 50703.

Deborah S. Ingram,

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

[FR Doc. E9–27114 Filed 11–9–09; 8:45 am]

BILLING CODE 9110–12–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 36 and 54

[WC Docket No. 05–337; FCC 09–89]

High-Cost Universal Service Support

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this notice of proposed rulemaking, the Commission addresses the effect of line loss on universal service Local Switching Support (LSS) received by incumbent local exchange carriers (LECs) that are designated as eligible telecommunications carriers (ETCs). Pursuant to the LSS mechanism, an incumbent LEC ETC serving 50,000 or fewer lines in a study area may recover a portion of its switching costs from the universal service fund. Under the Commission's rules, as an incumbent LEC ETC's access lines increase above certain thresholds, the amount of LSS it may receive decreases, but its support does not increase if its number of access lines falls below the same thresholds. In this notice of proposed rulemaking, the Commission tentatively concludes that the LSS rules should be modified to permit incumbent LEC ETCs that lose lines to increase their LSS, and we seek comment on these proposed rule changes.

DATES: Comments are due on or before November 24, 2009 and reply comments are due on or before December 1, 2009.

ADDRESSES: You may submit comments, identified by WC Docket No. 05–337, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Federal Communications Commission's Web Site: http://www.fcc.gov/cgb/ecfs/*. Follow the instructions for submitting comments.
- *E-mail: ecfs@fcc.gov*, and include the following words in the body of the message, ''get form.'' A sample form and directions will be sent in response. Include the docket number in the subject line of the message.
- *Mail:* Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.
- *People With Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Ted Burmeister, Wireline Competition Bureau, Telecommunications Access Policy Division, 202–418–7389 or TTY: 202–418–0484.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rulemaking in WC Docket No. 05–337, FCC 09–89, adopted October 2, 2009, and released October 9, 2009. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554.

The document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (800) 378–3160 or (202) 863-2893, facsimile (202) 863–2898, or via e-mail at: *http://www.bcpiweb.com*. It is also available on the Commission's Web site at: *http://www.fcc.gov*.

Initial Paperwork Reduction Act of 1995 Analysis

This notice of proposed rulemaking does not contain new, modified, or proposed information collections subject to the Paperwork Reduction Act of 1995. In addition, therefore, it does not contain any new, modified, or proposed ''information collection burden for small business concerns with fewer than 25 employees'' pursuant to the Small Business Paperwork Relief Act of 2002.

Synopsis of the Notice of Proposed Rulemaking

Introduction

1. In this order and notice of proposed rulemaking, the Commission addresses the effect of line loss on universal service Local Switching Support (LSS) received by incumbent local exchange carriers (LECs) that are designated as eligible telecommunications carriers (ETCs). Pursuant to the LSS mechanism, an incumbent LEC ETC serving 50,000 or fewer lines in a study area may recover a portion of its switching costs from the universal service fund. 47 CFR 54.301. Under the Commission's rules, as an incumbent LEC ETC's access lines increase above certain thresholds, the amount of LSS it may receive decreases. 47 CFR 36.125, 54.301. In the order portion of this item, the Commission denies the Coalition for Equity in Switching Support's (Coalition's) petition seeking clarification that the Commission's rules also allow an incumbent LEC ETC's LSS to increase if the carrier's access lines decrease below those thresholds. As described below, the Commission finds no basis in the rules or the record of the Commission's proceedings to support the clarification the Coalition seeks. In the notice of proposed rulemaking portion of this item, however, the Commission tentatively concludes that the LSS rules should be modified to permit incumbent LEC ETCs that lose lines to increase their LSS, and the Commission seeks comment on these proposed rule changes.

Background

2. Pursuant to the Commission's jurisdictional separations rules, *see* 47 CFR 36.1 *et seq.,* incumbent LECs apportion their switching costs to the interstate jurisdiction based on the ratio of interstate dial equipment minutes of use (DEM) to total DEM. 47 CFR 36.125(f). The incumbent LECs then recover their interstate switching costs through interstate tariffs, and recover the remaining intrastate switching costs as provided by the relevant state ratemaking authority. Incumbent LECs serving 50,000 access lines or fewer are permitted to allocate a higher portion of their switching costs to the interstate jurisdiction. 47 CFR 36.125(f), (j). The precise amount of the extra allocation depends on a weighting factor determined by the number of access lines served by the incumbent LEC, with key thresholds established at 10,000, 20,000, and 50,000 lines. *See* 47 CFR 36.125(f). A smaller DEM weighting factor allowed fewer switching costs to be recovered through interstate access charges and a larger DEM weighting factor allowed more switching costs to be recovered through interstate access charges. Prior to 1998, the costs allocated to the interstate jurisdiction, including the higher portion allocated pursuant to DEM weighting, were recovered through interstate access charges.

3. In the *Universal Service First Report and Order,* the Commission determined that recovering switching costs allocated based on the weighted DEM factor through interstate access charges constituted an implicit support mechanism disfavored by Congress when it adopted the Telecommunications Act of 1996. Telecommunications Act of 1996, Public Law 104–104, 110 Stat. 56 (1996). Accordingly, the Commission created LSS, which explicitly supports the additional switching costs allocated to the interstate jurisdiction through the universal service fund. *Universal Service First Report and Order,* 62 FR 32861. LSS retained DEM weighting as the method of calculating switching support with minor modifications. Specifically relevant to the discussion below, the Commission adopted the rule, now codified in nearly identical language at both § 36.125(j) (governing the allocation of switching costs) and § 54.301 (LSS), that ''if * * * the number of a study area's access lines increased or will increase such that * * * the weighting factor would be reduced, that lower weighting factor shall be applied to the study area's 1996 unweighted interstate DEM factor to derive a new local switching support factor.'' 47 CFR 36.125(j). Under this rule section, if an incumbent LEC ETC's access lines exceeded the relevant threshold, the DEM weighting factor would decrease and this would also decrease the amount of LSS received by the incumbent LEC ETC.

4. In the 2001 *Separations Freeze Order,* the Commission froze the jurisdictional allocation factors used by incumbent LECs, while it considered comprehensive jurisdictional separations reform. *Separations Freeze Order,* 66 FR 33202. It codified the extension by adding effective dates, ending June 30, 2006, to each of the relevant rules. In 2006, the Commission adopted the *Separations Freeze Extension Order,* extending the effective date of the freeze to June 30, 2009, or upon completion of comprehensive jurisdictional separations reform, whichever occurred earlier. *2006 Separations Freeze Extension Order,* 71 FR 29882. Recently, the Commission adopted an order extending the freeze again, to June 30, 2010. *2009 Separations Freeze Extension Order,* 74 FR 23956.

5. *Coalition for Equity in Switching Support Petition.* The Coalition contends that there is no clear evidence of the Commission's intent to create a ''one-way rule'' that would limit the amount of LSS available to an incumbent LEC ETC if its number of access lines increased, but would not correspondingly increase its amount of LSS if its access lines decreased, and that the rules themselves are silent on the treatment of carriers that experience declining line counts. The Coalition argues that its proposed clarification, or in the alternative, an amendment to the Commission's rules, is necessary to provide incumbent LEC ETCs the level of support consistent with the rationale for LSS, thereby avoiding hardship to those carriers and inconsistent treatment of those carriers as compared to other carriers of similar size. Citing the *Universal Service First Report and Order,* the Coalition argues that the Commission has recognized that ''rural carriers generally serve fewer subscribers, serve more sparsely populated areas, and do not generally benefit [as much] from economies of scale and scope.'' The Coalition maintains that the one-way rule prevents some small incumbent LEC ETCs from receiving the full amount of LSS intended by the Commission when it adopted the rule.

6. The Coalition also asserts that the ''best reading'' of § 36.125(j) is that the one-way rule expired on June 30, 2006. Specifically, the Coalition notes that, on its face, the rule adopted in the *2006 Separations Freeze Order* is effective ''during the period * * * through June 30, 2006.'' It asserts that the rule therefore ''fails to provide guidance for carriers whose number of access lines decreases below a threshold after June 30, 2006.'' It further asserts that because the Commission did not revise § 36.125 or specifically discuss LSS eligibility in the *2006 Separations Freeze Extension Order,* § 36.125 is ambiguous with respect to ''what happens after June 30, 2006.'' The Coalition argues that, given this ambiguity, the phrase ''during the duration of the freeze period'' in the final sentence of § 36.125(j) should not be read to include the extended freeze period, only the initial freeze period ending June 30, 2006, as that would be consistent with the date certain in the first sentence.

Discussion

7. We deny the Coalition's petition seeking clarification that §§ 36.125 and 54.301 of the Commission's rules allow an incumbent LEC ETC's DEM

weighting factor and LSS to increase if the carrier's access lines decrease below the thresholds set out in the rules. We do not agree that the existing rules are ambiguous or otherwise provide a basis for the clarification the Coalition seeks.

8. We find that the Coalition's contention that § 36.125(j) did not apply after June 30, 2006, is not supported by the record in the Commission's proceedings. Prior to the adoption of the *2009 Separations Freeze Extension Order* the text of that section stated:

> If during the period from January 1, 1997, through June 30, 2006, the number of a study area's access lines increased or will increase such that, under § 36.125(f) the weighting factor would be reduced, that lower weighting factor shall be applied to the study area's 1996 unweighted interstate DEM factor to derive a new local switching support factor. The study area will restate its Category 3, Local Switching Equipment factor under § 36.125(f) and use that factor for the duration of the freeze period. 47 CFR 36.125(j) (2008).

The Coalition argues that, given the specific date reference in the first sentence of the paragraph, the ''duration of the freeze'' should be read to refer only to the initial freeze period and not the extended freeze period. It further notes that there is no specific discussion or reference to § 36.125 in the *Separations Freeze Extension Order.*

9. The Coalition mistakenly believes that the June 30, 2006 date in the first sentence of § 36.125(j) is unaffected by the extended separations freeze. The Commission first codified the separations freeze by amending literally dozens of rules in part 36 to read ''through June 30, 2006.'' *See Separations Freeze Order,* 66 FR 33202. When it later adopted the *2006 Separations Freeze Extension Order,* the Commission did not change the text of each affected rule. *2006 Separations Freeze Extension Order,* 71 FR 29882. However, although the Commission did not specifically reference § 36.125 or any other specific rule in the *2006 Separations Freeze Extension Order,* it expressly extended the entire freeze beyond June 30, 2006. The extended freeze therefore applied to all affected part 36 rules, including § 36.125. Accordingly, limiting the applicability of § 36.125(j) only to June 30, 2006, as the Coalition suggests, is inconsistent with the Commission's action in the *2006 Separations Freeze Extension Order.*

10. Moreover, under the Coalition's interpretation of the freeze period's application to § 36.125, incumbent LEC ETCs would be subject to different DEM weighting factors for jurisdictional separations (under § 36.125) and LSS (under § 54.301). If the one-way rule ceased to apply to § 36.125(j), an incumbent LEC ETC might be able to shift additional switching costs to the interstate jurisdiction if its number of access lines decreased below a relevant threshold under the part 36 separations rules, but the one-way rule in § 54.301(a)(2)(ii) would still apply and the carrier could not recover those additional switching costs from LSS under the part 54 universal service rules. We find no evidence that the Commission intended such an anomaly.

11. Although the Coalition explicitly argues that the Commission should adopt the Coalition's interpretation of the June 30, 2006 limitation on § 36.125 discussed above, many of its arguments suggest that the Commission should instead clarify that the DEM weighting thresholds were always intended to apply to carriers with either increasing or decreasing numbers of access lines. We find no evidence that the Commission intended its rules to be so construed, nor do we find that the rules contain any ambiguity that would permit such a clarification. The plain language of § 54.301(a)(2)(ii) refers only to increases in line counts, and is silent on decreases in line counts:

> If the number of a study area's access lines increases such that, under § 36.125(f) of this chapter, the weighted interstate DEM factor for 1997 or any successive year would be reduced, that lower weighted interstate DEM factor shall be applied to the carrier's 1996 unweighted interstate DEM factor to derive a new local switching support factor. 47 CFR 54.301(a)(2)(ii).

Similarly, in the *Universal Service First Report and Order,* the Commission is silent on decreases in line counts, concluding only that ''[i]f the number of a carrier's lines increases during 1997 or any successive year, either through the purchase of exchanges or through other growth in lines, such that the current DEM weighting factor would be reduced, the carrier must apply the lower weighting factor to the 1996 unweighted interstate DEM factor in order to derive the local switching support factor used to calculate universal service support.'' *Universal Service First Report and Order,* 62 FR 32861.

12. The Coalition notes that the Commission likely did not consider a circumstance in which incumbent LECs suffered declining numbers of access lines, noting that ''local exchange carriers' access lines had risen virtually without exception for over half a century.'' Assuming, *arguendo,* that this is true, the fact that the Commission never considered such a circumstance would likely indicate that it never intended to adopt a specific rule to govern declining numbers in access lines. We do not find, in this case, that silence results in ambiguity, as the Coalition contends. We further do not find any basis for applying the rule in a manner that is manifestly contrary to the rule's express language.

Notice of Proposed Rulemaking

13. The Coalition requests, in the alternative, that the Commission amend its rules to permit an incumbent LEC ETC with declining numbers of access lines to use a higher DEM weighting factor in performing jurisdictional separations and calculating LSS. We believe that public policy supports doing so. We therefore tentatively conclude that §§ 36.125(j) and 54.301(a)(2)(ii) should be amended accordingly. We seek comment on this tentative conclusion, on the proposed rules attached in the appendix, and on the analysis below. We emphasize that this analysis applies only to our current consideration of a relatively minor change to an existing rule, and nothing herein is intended to reflect or prejudge our consideration of LSS as part of any comprehensive universal service reform. In support of this request, the Coalition states that the one-way rule provides small incumbent LEC ETCs that suffer declining numbers of access lines with less LSS than they would be eligible to receive if their number of access lines had not exceeded the thresholds established in the rules. The Coalition states in addition that the calculation of LSS and the DEM weighting factors assume that small incumbent LEC ETCs have higher local switching costs than larger carriers. Thus, the Coalition asserts that if size is a driving factor behind high switching costs, then the fact that a carrier has gained and later lost access lines does not mitigate those high costs.

14. The Coalition has provided evidence that failing to provide the higher level of LSS has caused or threatens to cause small incumbent LEC ETCs some hardship. Moreover, the Coalition asserts that a small carrier that gains, then loses, access lines is not in a meaningfully different situation than a similarly-sized small carrier that suffers no gain or loss. Indeed, a carrier that purchases equipment designed to support a greater number of access lines but then loses those access lines may be even more disadvantaged than a carrier that had never made purchasing decisions based upon a higher access line count.

15. We therefore seek comment on amending our rules to allow an incumbent LEC ETC's DEM weighting

factor and LSS to increase if the carrier's access lines decrease below the thresholds set out in the rules. We seek comment on the potential effect of such a change, and ask commenters to provide specific data regarding the amount by which such a change will increase universal service high-cost support disbursements, and an analysis as to why any such increase in the size of the universal service fund is justified.

Procedural Matters

16. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS); (2) the Federal Government's eRulemaking Portal; or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121, May 1, 1998.

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: *http://www.fcc.gov/cgb/ecfs/* or the Federal eRulemaking Portal: *http://www.regulations.gov.* Filers should follow the instructions provided on the Web site for submitting comments.
  - For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to *ecfs@fcc.gov,* and include the following words in the body of the message, ''get form.'' A sample form and directions will be sent in response.
  - *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.
- Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
  - The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
  - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
  - U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

17. In addition, one copy of each pleading must be sent to the Commission's duplicating contractor, Best Copy and Printing, Inc, 445 12th Street, SW., Room CY–B402, Washington, DC 20554; Web site: *http://www.bcpiweb.com;* phone: 1–800–378–3160. Furthermore, three copies of each pleading must be sent to Antoinette Stevens, Telecommunications Access Policy Division, Wireline Competition Bureau, 445 12th Street, SW., Room 5–B521, Washington, DC 20554; e-mail: *antoinette.stevens@fcc.gov.*

18. Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. Copies may also be purchased from the Commission's duplicating contractor, BCPI, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Customers may contact BCPI through its Web site: *http://www.bcpiweb.com,* by e-mail at: *fcc@bcpiweb.com,* by telephone at (202) 488–5300 or (800) 378–3160 (voice), (202) 488–5562 (tty), or by facsimile at (202) 488–5563.

19. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice) or (202) 418–0432 (TTY). Contact the FCC to request reasonable accommodations for filing comments (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov*; phone: (202) 418–0530 or TTY: (202) 418–0432.

20. For further information regarding this proceeding, contact Ted Burmeister, Attorney Advisor, Telecommunications Access Policy Division, Wireline Competition Bureau at (202) 418–7389, or *theodore.burmeister@fcc.gov.*

Ex Parte Presentations

21. This proceeding shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. 47 CFR 1.1200–1.1216. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. 47 CFR 1.1206(b)(2). Other requirements pertaining to oral and written presentations are set forth in § 1.1206(b) of the Commission's rules. 47 CFR 1.1206(b).

Initial Regulatory Flexibility Act Certification

22. The Regulatory Flexibility Act (RFA), *See* 5 U.S.C. 603, requires that an agency prepare a regulatory flexibility analysis for notice-and-comment rulemaking proceedings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' *See* 5 U.S.C. 605(b). The RFA generally defines ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' 5 U.S.C. 601(6). In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. 5 U.S.C. 601(3). A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). 15 U.S.C. 632.

23. In this notice of proposed rulemaking we propose to revise two of the Commission's rules to permit small incumbent LECs whose access lines decrease below specific thresholds to receive LSS based on their current number of lines. The revisions do not increase the incumbent LECs' administrative burdens.

24. The Commission therefore certifies, pursuant to the RFA, that the proposals in this notice of proposed

rulemaking, if adopted, will not have a significant economic impact on a substantial number of small entities. If commenters believe that the proposals discussed in the notice of proposed rulemaking require additional RFA analysis, they should include a discussion of these issues in their comments and additionally label them as RFA comments. The Commission will send a copy of the notice of proposed rulemaking, including a copy of this initial certification, to the Chief Counsel for Advocacy of the SBA. In addition, a copy of the notice of proposed rulemaking and this initial certification will be published in the **Federal Register**. *See* 5 U.S.C. 605(b).

Ordering Clauses

25. Accordingly, *it is ordered* that, pursuant to the authority contained in §§ 1, 2, 4(i), 4(j), 201–205, 214, 220, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 154(j), 201–205, 214, 220, and 254, the petition for clarification filed by the Coalition for Equity in Switching Support is denied as discussed herein.

26. *It is further ordered* that, pursuant to the authority contained in §§ 1, 2, 4(i), 4(j), 201–205, 214, 220, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 154(j), 201–205, 214, 220, and 254, this notice of proposed rulemaking is adopted.

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

28. *It is further ordered* that, pursuant to §§ 1.103(a) and 1.4(b)(1) of the Commission's rules, 47 CFR 1.103(a) and 1.4(b)(1), this notice of proposed rulemaking shall be effective upon publication in the **Federal Register**.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 parts 36 and 54 as follows:

PART 36—[AMENDED]

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

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

2. Section 36.125 is amended by revising paragraph (j) to read as follows:

§ 36.125 Local switching equipment—Category 3.

* * * * *

(j) If the number of a study area's access lines increases or decreases such that, under § 36.125(f) of this part, the weighted interstate DEM factor for 1997 or any successive year would change, the weighted interstate DEM factor appropriate to the study area's current access line count shall be applied to the study area's 1996 unweighted interstate DEM factor to derive a new local switching support factor.

PART 54—[AMENDED]

3. The authority citation for Part 54 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 201, 205, 214, and 254 unless otherwise noted.

4. Section 54.301 is amended by revising paragraph (a)(2)(ii) to read as follows:

§ 54.301 Local switching support.

(a) * * *

(2) * * *

(ii) If the number of a study area's access lines increases or decreases such that, under section 36.125(f) of this chapter, the weighted interstate DEM factor for 1997 or any successive year would change, the weighted interstate DEM factor appropriate to the study area's current access line count shall be applied to the study area's 1996 unweighted interstate DEM factor to derive a new local switching support factor.

* * * * *

[FR Doc. E9–27050 Filed 11–9–09; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 633

[Docket No. FTA–2009–0030]

RIN 2132–AA92

Capital Project Management

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Advance Notice of Proposed Rulemaking; extension of comment period.

SUMMARY: The Federal Transit Administration (FTA) is extending the public comment period by sixty (60) days for its Advance Notice of Proposed Rulemaking; request for comments. Additionally, FTA hereby provides notice that it intends to host two Webinars to discuss the Advance Notice of Proposed Rulemaking.

DATES: The comment period for the proposed rule published September 10, 2009 (74 FR 46515), is extended. Comments must be received no later than January 8, 2010. FTA will host two Webinar meetings: Tuesday, November 17, 2009, from 2 to 4 p.m. Eastern; and Thursday, December 3, 2009, from 2 p.m. to 4 p.m. Eastern.

ADDRESSES:

I. Public Comments

You may submit comments by one of the following methods.

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *United States Post or Express Mail:* United States Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* United States Department of Transportation, West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m. Eastern, Monday through Friday, except Federal holidays.

Instructions: You must include the agency name (Federal Transit Administration), and Docket number (FTA–2009–0030) or Regulatory Identification Number (RIN 2132–AA92) for this rulemaking at the beginning of your comments. All comments received will be posted, without change and including any personal information provided, to *www.regulations.gov* and *http://dms.dot.gov.*, where they will be available to Internet users. *Please see* the Privacy Act.

You should submit two copies of your comments if you submit them by mail. If you wish to receive confirmation that FTA received your comments, you must include a self-addressed, stamped postcard. Due to security procedures in effect since October 2001 regarding mail deliveries, mail received through the U.S. Postal Service may be subject to delays. Parties submitting comments should consider using an express mail firm to ensure the prompt filing of any submissions not filed electronically or by hand.

For access to the DOT docket to read materials relating to this notice, please go to *http://dms.dot.gov* at any time or the Docket Management System.

II. Public Meetings

FTA will host two Webinar meetings: Tuesday, November 17, 2009, from 2 to 4 p.m. Eastern; and Thursday, December 3, 2009, from 2 p.m. to 4 p.m. Eastern.

FOR FURTHER INFORMATION CONTACT: For program questions, please contact Aaron C. James, Sr. at (202) 493–0107 or *aaron.james@dot.gov*, or Carlos M. Garay at (202) 366–6471 or *carlos.garay@dot.gov.* For legal questions, please contact Jayme L. Blakesley at (202) 366–0304 or *jayme.blakesley@dot.gov*. The principal office of FTA is located at 1200 New Jersey Avenue, SE., Washington, DC 20590. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

I. Background

On September 10, 2009 (74 FR 46515), FTA issued an Advance Notice of Proposed Rulemaking (ANPRM) to start the process of revising its Project Management Oversight rule at 49 CFR Part 633. This Project Management rulemaking emphasizes a set of standards and principles for sound project management that will affect all FTA-funded fixed guideway capital projects and major capital projects. Specifically, FTA seeks to restructure the current Part 633 to incorporate the best practices in the transit industry with respect to reasonable project management performance measures. When final, this project management rule should articulate the criteria and skills expectations necessary to ensure a project sponsor's successful implementation of a fixed guideway capital project, including a major capital project. Also, the new Part 633 will be updated to reflect oversight tools and methodologies that have been developed since the original rule went into effect. Initially, FTA established a sixty (60) day public comment period for its ANPRM, with a closing date of November 9, 2009. At the request of several interested parties, however, FTA has chosen to extend the comment period for two months and to host two Webinars for the purpose of answering questions about the ANPRM.

II. Extension of Public Comment Period

The Federal Transit Administration (FTA) hereby provides notice that it is extending the public comment period for its Advance Notice of Proposed Rulemaking by approximately sixty (60) days. Comments must be received no later than January 8, 2010.

III. Public Meeting via Webinar

A. Notice

FTA hereby provides notice that it will be holding two public meetings, via webinar, to discuss the subject Advance Notice of Proposed Rulemaking. Through the webinar meetings, FTA will answer questions from interested parties. However, FTA notes that the webinar meetings will be for informational purposes only. In order to be fully considered, all comments must be submitted in writing according to the procedures outlined above. FTA encourages all interested parties to participate in the webinar meetings. The meetings are open to the public on a space-available basis. There is no cost to attend. Details will be published on FTA's web site at *http://www.dot.fta.gov.*

B. Agenda and Format

FTA intends to lead a discussion of the following subjects at the Webinar meetings: (1) The definition of ''major capital project,'' (2) the definition of ''technical capacity and capability,'' (3) principles and requirements for fixed guideway capital projects (4) project management plans, (5) FTA oversight of fixed guideway and major capital projects, (6) any other related subjects. The first webinar will focus primarily on project management (topics 1–4 above). The second webinar will focus on FTA oversight.

C. Registration

FTA requests all parties interested in attending the Webinar meeting to RSVP for the event with Carlos M. Garay at (202) 366–6471 or *carlos.garay@dot.gov*. All RSVPs for the November 17, 2009, Webinar must be received by November 13, 2009. RSVPs for the December 3, 2009, Webinar must be received by November 20, 2009.

Notice of Meeting

FTA will host two Webinar meetings: Tuesday, November 17, 2009, from 2 to 4 p.m. Eastern; and Thursday, December 3, 2009, from 2 p.m. to 4 p.m. Eastern. The meetings are open to the public and there is no cost to attend.

If you need an accommodation because of a disability, or if you require additional information to attend the meeting, please contact Carlos M. Garay at (202) 366–6471 or *carlos.garay@dot.gov.*

Issued in Washington, DC, on this 5th day of November, 2009.

Peter M. Rogoff,

Administrator.

[FR Doc. E9–27107 Filed 11–6–09; 11:15 am]

BILLING CODE 4910–57–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS-R9-IA-2009-12]
[96100-1671-000–B6]

[RIN 1018–AV75]

Endangered and Threatened Wildlife and Plants; Proposed Rule To List Five Foreign Bird Species in Colombia and Ecuador, South America, Under the Endangered Species Act

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of the public comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public comment period on our July 7, 2009, proposal to list four species of birds from Colombia — the blue-billed curassow (*Crax alberti*), the brown-banded antpitta (*Grallaria milleri*), the Cauca guan (*Penelope perspicax*), and the gorgeted wood-quail (*Odontophorus strophium*) — and one bird species from Ecuador — the Esmeraldas woodstar (*Chaetocercus berlepschi*) — as endangered under the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*). This proposal, if made final, would extend the Act's protection to these species.

DATES: We are reopening the public comment period. To allow us adequate time to consider and incorporate submitted information into our review, we request that we receive information on or before December 10, 2009.

ADDRESSES: You may submit comments by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- U.S. mail or hand-delivery: Public Comments Processing, Attn: FWS-R9-IA-2009-12; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will post all comments on *http://www.regulations.gov*. This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

FOR FURTHER INFORMATION CONTACT: Douglas Krofta, Chief, Branch of Listing, Endangered Species Program, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 420, Arlington, VA 22203; telephone 703-358-2171; facsimile 703-

358-1735. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 800-877-8339.

SUPPLEMENTARY INFORMATION:

Public Comments

We reopen the public comment period on our July 7, 2009, proposal (74 FR 32308) to list four species of birds from Colombia — the blue-billed curassow (*Crax alberti*), the brown-banded antpitta (*Grallaria milleri*), the Cauca guan (*Penelope perspicax*), and the gorgeted wood-quail (*Odontophorus strophium*) — and one bird species from Ecuador — the Esmeraldas woodstar (*Chaetocercus berlepschi*) — as endangered under the Act (16 U.S.C. 1531 *et seq.*). Some peer review comments have already been received during the initial comment period on the proposal and may be found at *http://www.regulations.gov*. In order to allow for additional peer review, we are reopening the comment period for an additional 30 days. Comments previously received on this proposal need not be resubmitted, as they are already incorporated in the public record and will be fully considered in the final determination. We request information from the public, other concerned governmental agencies, the scientific community, industry, or any other interested parties concerning the status of these species. We are seeking information regarding:

(1) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to these species and regulations that may be addressing those threats.

(2) Additional information concerning the taxonomy, range, distribution, and population size of these species, including the locations of any additional populations of these species.

(3) Any information on the biological or ecological requirements of these species.

(4) Current or planned activities in the areas occupied by these species and possible impacts of these activities on these species.

(5) Any information concerning the effects of climate change on these species or their habitats.

Please note that submissions merely stating support for or opposition to the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs that determinations as to whether any species is a threatened or endangered species must be made ''solely on the basis of the best scientific and commercial data available.'' Information previously submitted need not be resubmitted as it has already been incorporated into the public record and will be fully considered.

You may submit your comments and materials by one of the methods listed in the **ADDRESSES** section.

If you submit information via *http://www.regulations.gov*, your entire submission—including any personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov*. Please include sufficient information with your comments to allow us to verify any scientific or commercial information you include.

Comments and materials we receive, as well as supporting documentation we used in preparing our proposed rule, will be available for public inspection on *http://www.regulations.gov*, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Endangered Species Program, 4401 N. Fairfax Drive, Room 420, Arlington, VA 22203; telephone 703-358-2171 (see **FOR FURTHER INFORMATION CONTACT**).

Background

On July 7, 2009, we published a proposed rule to list five foreign bird species in Colombia and Ecuador, South America as endangered throughout their range under the Act: four species of birds from Colombia — the blue-billed curassow (*Crax alberti*), the brown-branded antpitta (*Grallaria milleri*), the Cauca guan (*Penelope perspicax*), and the gorgeted wood-quail (*Odontophorus strophium*) – and one bird species from Ecuador – the Esmeraldas woodstar (*Chaetocercus berlepschi*) (74 FR 32308). This proposal, if made final, would extend the Act's protection to these species. The Service seeks data and comments from the public on our proposed rule. We received multiple peer review comments. In order to allow for the public to review these comments and have an opportunity to comment, we are reopening the public comment period for 30 days.

Authority

The authority for this action is section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: November 3, 2009

Rowan W. Gould,

Deputy Director, U.S. Fish and Wildlife Service

[FR Doc. E9–27056 Filed 11–9–09; 8:45 am]

BILLING CODE 4310–55–S

Notices

Federal Register

Vol. 74, No. 216

Tuesday, November 10, 2009

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCIES: Rural Housing Service, Rural Business-Cooperative Service, Farm Service Agency, USDA.

ACTION: Proposed collection; comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of USDA Farm Service Agency's (FSA) and Rural Development, henceforth collectively known as Rural Development, or individually as Housing and Community Programs, Business and Cooperative Programs, and Utility Programs, to request an extension for a currently approved information collection in support of compliance with the National Environmental Policy Act (NEPA) and other applicable environmental requirements.

DATES: Comments on this notice must be received by January 11, 2010 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Juliet Bochicchio, Environmental Protection Specialist, Program Support Staff, Housing and Community Facilities Programs, U.S. Department of Agriculture, Stop 0761, 1400 Independence Ave., SW., Washington, DC 20250–0761, Telephone (202) 205–8242, e-mail: *juliet.bochicchio@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: 7 CFR Part 1940 Subpart G, ''Environmental Program.''

OMB Number: 0575–0094.

Expiration Date of Approval: November 28, 2010.

Type of Request: Extension of a currently approved information collection.

Abstract: The information collection under OMB Number 0575–0094 enables the Agencies to effectively administer the policies, methods, and responsibilities for compliance with the NEPA and other applicable environmental laws, executive orders, and regulations.

The NEPA requires Federal agencies to consider the potential environmental impacts of proposed major Federal actions on the quality of the human environment during agency planning and decision-making processes. For Rural Development and FSA to comply, it is necessary that they have information on the types of environmental resources on site or in the vicinity of an Applicant's proposed project that could be impacted by Rural Development or FSA's Federal action. The Applicant is the logical source for providing this information. In fact, the vast majority of Federal Agencies that assist non-Federal Applicants in sponsoring projects require their Applicants to submit such environmental data to allow the agency to make an informed decision.

Both Rural Development and FSA provide forms and/or other guidance to assist in the collection and submission of necessary information. The information is usually submitted via e-mail, U.S. Postal Service, or hand delivery to the appropriate Agency office.

The information is used by the Agency official who is processing the application for financial assistance or request for approval. Having environmental information on the Applicant's proposed project and the construction and operation activities enables the Agency official to determine the magnitude of any potential environmental impacts and to take such impacts into consideration during planning and decision-making as required by NEPA. The analysis of potential environmental impacts of an Applicant's proposed project and Rural Development or FSA's decision is a full disclosure process, and therefore, can involve public information meetings and public notification.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 4 hours per response.

Respondents: Individuals, non-Federal agency governments, farmers, ranchers, business owners, for-profit or non-profit institutions, and organizations.

Estimated Number of Respondents: 1,771.

Estimated Number of Responses per Respondent: 1.

Estimated Number of Responses: 4,427.

Estimated Total Annual Burden on Respondents: 18,029 hours.*

***Note:** This estimate is not exact due to rounding.

Copies of this information collection can be obtained from Linda Watts Thomas, Regulations and Paperwork Management Branch, at (202) 692–0226.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agencies, including whether the information will have practical utility; (b) the accuracy of Agencies' estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to Linda Watts Thomas, Regulations and Paperwork Management Branch, Support Services Division, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave., SW., Washington, DC 20250–0742. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: November 4 2009.

Tammye Treviño,

Administrator, Rural Housing Service.

[FR Doc. E9–26977 Filed 11–9–09; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, and Farm Service Agency, USDA.

ACTION: Proposed collection: Comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of USDA Farm Service Agency's (FSA) and Rural Development, henceforth collectively known as Rural Development, or individually as Housing and Community Programs, Business and Cooperative Programs, Utility Programs, to request an extension for a currently approved information collection in support of compliance with applicable acts for planning and performing construction and other development work.

DATES: Comments on this notice must be received by January 11, 2010 to be assured consideration.

FOR FURTHER INFORMATION CONTACT: William R. Downs, Supervisory Architect, Program Support Staff, RHS, U.S. Department of Agriculture, Stop 0761, 1400 Independence Avenue, SW., Washington, DC 20250–0761, Telephone (202) 720–1499 or (202) 720–9619 or via e-mail at *william.downs@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: RD 1924–A, ''Planning and Performing Construction and Other Development''.

OMB Number: 0575–0042.

Expiration Date of Approval: January 31, 2010.

Type of Request: Extension of a currently approved information collection.

Abstract: The information collection under OMB Number 0575–0042 enables the Agencies to effectively administer the policies, methods, and responsibilities in the planning and performing of construction and other development work for the related construction programs.

Section 501 of Title V of the Housing Act of 1949, as amended, authorizes the Secretary of Agriculture to extend financial assistance to construct, improve, alter, repair, replace, or rehabilitate dwellings; farm buildings; and/or related facilities to provide decent, safe, and sanitary living conditions, as well as adequate farm buildings and other structures in rural areas.

Section 506 of the Act requires that all new buildings and repairs shall be constructed in accordance with plans and specifications as required by the Secretary and that such construction be supervised and inspected.

Section 509 of the Act grants the Secretary the power to determine and prescribe the standards of adequate farm housing and other buildings. The Housing and Urban Rural Recovery Act of 1983 amended section 509(a) and section 515 to require residential buildings and related facilities to comply with the standards prescribed by the Secretary of Agriculture, the standard prescribed by the Secretary of Housing and Urban Development, or the standards prescribed in any of the nationally recognized model building codes.

Similar authorizations are contained in sections 303, 304, 306, and 339 of the Consolidated Farm and Rural Development Act, as amended, which authorized loans and grants for essential community services.

In several sections of both acts, loan limitations are established as percentages of development cost, requiring careful monitoring of those costs. Also, the Secretary is authorized to prescribe regulations to ensure that Federal funds are not wasted or dissipated and that construction will be undertaken in an economic manner and will not be of elaborate or extravagant design or materials.

The Rural Utilities Service (RUS) is the credit Agency for rural water and wastewater development within Rural Development of the United States Department of Agriculture (USDA). The Rural-Business-Cooperative Service (RBS) is the credit Agency for rural business development within Rural Development of USDA. These Agencies adopted use of forms in RD Instruction 1924–A. Information for their usage is included in this report.

Other information collection is required to conform to numerous Pubic Laws applying to all Federal agencies, such as: Civil Rights Acts of 1964 and 1968, Davis-Bacon Act, Historic Preservation Act, Environmental Policy Act, and to conform to Executive Orders governing use of Federal funds. This information is cleared through the appropriate enforcing Agency or other executive Departments.

The Agencies provide forms and/or guidelines to assist in the collection and submission of information; however, most of the information may be collected and submitted in the form and content which is accepted and typically used in normal conduct of planning and performing development work in private industry when a private lender is financing the activity. The information is usually submitted via hand delivery or U.S. Postal Service to the appropriate Agency office. Electronic submittal of information is also possible through e-mail or USDA's Service Center eForms Web site.

The information is used by the Agencies to determine whether a loan/grant can be approved, to ensure that the Agency has adequate security for the loans financed, to provide for sound construction and development work, and to determine that the requirements of the applicable acts have been met. The information is also used to monitor compliance with the terms and conditions of the Agencies' loan/grant programs and to monitor the prudent use of Federal funds.

If the information were not collected and submitted, the Agencies would not have control over the type and quality of construction and development work planned and performed with Federal funds. The Agencies would not be assured that the security provided for loans is adequate, nor would the Agencies be certain that decent, safe, and sanitary dwelling or other adequate structures were being provided to rural residents as required by the different acts.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .31 hours per response.

Respondents: Individuals or households, farms, business or other for-profit, non-profit institutions, and small businesses or organizations.

Estimated Number of Respondents: 23,643.

Estimated Number of Responses per Respondent: 2.

Estimated Number of Responses: 418,432.

Estimated Total Annual Burden on Respondents: 132,998 hours.

Copies of this information collection can be obtained from Linda Watts Thomas, Regulations and Paperwork Management Branch, at (202) 692–0226.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the function of the Agencies, including whether the information will have practical utility; (b) the accuracy of the Agencies' estimate of the burden of the proposed collection of information, including the validity of methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the

information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Linda Watts Thomas, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, Stop 0742, 1400 Independence Avenue, SW., Washington, DC 20250–0742. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: November 4, 2009.

Tammye Treviño,

Administrator, Rural Housing Service.

[FR Doc. E9–26978 Filed 11–9–09; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Buckeye Flood Retarding Structure (FRS) No. 1 Supplemental Watershed Plan, Maricopa County, AZ

AGENCY: Natural Resources Conservation Service.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR part 1500); and the Natural Resources Conservation Service (NRCS) Regulations (7 CFR part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Buckeye Flood Retarding Structure (FRS) No. 1 Supplemental Watershed Plan, Maricopa County, Arizona.

FOR FURTHER INFORMATION CONTACT: David L. McKay, State Conservationist, USDA–NRCS, 230 North First Avenue, Suite 509, Phoenix, Arizona 85003, telephone (602) 280–8801.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. Based on evidence presented, David L. McKay, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project proposes to rehabilitate the Buckeye FRS No. 1 to provide for continued flood protection for the Town of Buckeye, while meeting NRCS and State of Arizona safety and performance standards.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. Copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Don Paulus, Assistant State Conservationist for Programs, at the above address.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

Dated: November 3, 2009.

David L. McKay,

State Conservationist.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904, Watershed Protection and Flood Prevention, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials.)

[FR Doc. E9–27062 Filed 11–9–09; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Forest Service

Eastern Washington Cascades Provincial Advisory Committee and the Yakima Provincial Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Eastern Washington Cascades Provincial Advisory Committee and the Yakima Provincial Advisory Committee will meet on December 2, 2009 at the Okanogan-Wenatchee National Forest Headquarters office, 215 Melody Lane, Wenatchee, WA. During this meeting information will be shared about prescribed burning and long-term trail maintenance in the Okanogan-Wenatchee National Forest, fish stocking in National Park Service lakes and an update on the Bureau of Land Management Resource Management Plan. All Eastern Washington Cascades and Yakima Province Advisory Committee meetings are open to the public.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Becki Heath, Designated Federal Official, USDA, Okanogan-Wenatchee National Forest, 215 Melody Lane, Wenatchee, Washington 98801, 509–664–9200.

Dated: November 4, 2009.

Rebecca Lockett Heath,

Designated Federal Official, Okanogan-Wenatchee National Forest.

[FR Doc. E9–27030 Filed 11–9–09; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Idaho Panhandle Resource Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 110–343) the Idaho Panhandle National Forest's Idaho Panhandle Resource Advisory Committee will meet Friday, November 20, 2009, at 9 a.m. in Coeur d'Alene, Idaho for a business meeting. The business meeting is open to the public.

DATES: November 4, 2009.

ADDRESSES: The meeting location is the Idaho Panhandle National Forests' Supervisor's Office, located at 3815 Schreiber Way, Coeur d'Alene, Idaho 83815.

FOR FURTHER INFORMATION CONTACT: Ranotta K. McNair, Forest Supervisor and Designated Federal Official, at (208) 765–7369.

SUPPLEMENTARY INFORMATION: The meeting agenda will focus on reviewing proposals for forest projects and recommending funding during the business meeting.

The public forum begins at 11 a.m.

Dated: November 4, 2009.

Ranotta K. McNair,

Forest Supervisor.

[FR Doc. E9–27064 Filed 11–9–09; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Solicitation of Nominations for Members of the USDA Grain Inspection Advisory Committee

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice to solicit nominees.

SUMMARY: The Department of Agriculture's (USDA) Grain Inspection, Packers and Stockyards Administration (GIPSA) is seeking nominations for individuals to serve on the USDA Grain Inspection Advisory Committee (Advisory Committee). The Advisory Committee meets twice annually to advise GIPSA on the programs and services it delivers under the U.S. Grain Standards Act (USGSA). Recommendations by the Advisory Committee help GIPSA better meet the needs of its customers who operate in a dynamic and changing marketplace.

DATES: GIPSA will consider nominations received by January 11, 2010.

ADDRESSES: Submit nominations for the Advisory Committee by completing form AD–755. Nominations may be submitted by:

- *E-Mail: Terri.L.Henry@usda.gov.*
- *Mail:* Terri Henry, GIPSA, USDA, 1400 Independence Ave., SW., Room 1633–S, Stop 3642, Washington, DC 20250–3642.
- *Fax:* (202) 690–2173.
- *Hand Delivery or Courier:* Terri Henry, GIPSA, USDA, 1400 Independence Ave., SW., Room 1633–S, Stop 3642, Washington, DC 20250–3642.
- *Internet:* Go to *http://www.regulations.gov* and follow the online instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT: Terri L. Henry, telephone (202) 205–8281 or e-mail *Terri.L.Henry@usda.gov.*

SUPPLEMENTARY INFORMATION: As required by section 21 of the USGSA (7 U.S.C. 87j), as amended, the Secretary of Agriculture established the Grain Inspection Advisory Committee on September 29, 1981, to provide advice to the GIPSA Administrator on implementation of the USGSA. The current authority for the Advisory Committee expires on September 30, 2015. As specified in the USGSA, each member's term is 3 years and no member may serve successive terms.

The Advisory Committee consists of 15 members, appointed by the Secretary, who represent the interests of grain producers, processors, handlers, merchandisers, consumers, exporters, and scientists with expertise in research related to the policies in section 2 of the USGSA (7 U.S.C. 74). Members of the Advisory Committee serve without compensation. USDA may reimburse members for travel expenses, including per diem in lieu of subsistence, for travel away from their homes or regular places of business in performance of Advisory Committee service (*see* 5 U.S.C. 5703).

A list of current Advisory Committee members and other relevant information are available on the GIPSA Web site at *http://www.gipsa.usda.gov.* Under the section ''I Want To * * *'' select ''Learn about the Advisory Committee.''

GIPSA is seeking nominations for individuals to serve on the Advisory Committee to replace five members and eight alternate members whose terms will expire in March 2010.

Persons interested in serving on the Advisory Committee or nominating another individual to serve, may contact: Terri L. Henry by telephone at 202–205–8281, by fax at 202–690–2173, or by electronic mail at *Terri.L.Henry@usda.gov* to request Form AD–755. Form AD–755 may also be obtained via GIPSA's Web site at: *http://www.gipsa.usda.gov.* Under the section ''I Want To * * *'' select ''Learn about the Advisory Committee,'' then select Form—AD–755. Nominations are open to all individuals without regard to race, color, religion, gender, national origin, age, mental or physical disability, marital status, or sexual orientation. To ensure that recommendations of the Advisory Committee take into account the needs of the diverse groups served by the USDA, membership shall include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

The final selection of Advisory Committee members and alternates is made by the Secretary of Agriculture.

J. Dudley Butler,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. E9–26922 Filed 11–9–09; 8:45 am]

BILLING CODE 3410–KD–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Missouri Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a meeting of the Missouri Advisory Committee to the Commission will convene on Saturday, November 14, 2009 at 9:30 a.m. and adjourn at approximately 5 p.m. at the Kauffman Conference Center. The purpose of the meeting is to conduct a community public briefing meeting concerning the ''Civil Rights Implications of Educational Opportunities in Urban Public School Settings and Education Reform in Missouri * * * Kansas City Missouri School District.''

Members of the public are entitled to submit written comments. The comments must be received in the regional office by December 23, 2009. The address is U.S. Commission on Civil Rights, 400 State Avenue, Suite 908, Kansas City, Kansas 66101. Persons wishing to e-mail their comments, or to present their comments verbally at the meeting, or who desire additional information should contact Farella E. Robinson, Regional Director, Central Regional Office, at (913) 551–1400, (or for hearing impaired TDD 913–551–1414), or by e-mail to *frobinson@usccr.gov.*

Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

Records generated from this meeting may be inspected and reproduced at the Central Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *http://www.usccr.gov,* or to contact the Central Regional Office at the above e-mail or street address.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA.

Dated in Washington, DC, November 4, 2009.

Peter Minarik,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. E9–26979 Filed 11–9–09; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Southeast Region Logbook Family of Forms

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, 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.

DATES: Written comments must be submitted on or before January 11, 2010.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov).*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Steve Turner, (305) 361–4482 or *Steve.Turner@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The participants in most Federally-managed fisheries in the Southeast Region are required to keep and submit catch and effort logbooks from their fishing trips. A subset of these vessels also provide information on the species and quantities of fish, shellfish, marine turtles, and marine mammals that are caught and discarded or have interacted with the vessel's fishing gear. A subset of these vessels also provide information about dockside prices, trip operating costs, and annual fixed costs.

The data are used for scientific analyses that support critical conservation and management decisions made by national and international fishery management organizations. Interaction reports are needed for fishery management planning and to help protect endangered species and marine mammals. Price and cost data will be used in analyses of the economic effects of proposed regulations.

II. Method of Collection

The information is submitted on paper forms.

III. Data

OMB Control Number: 0648–0016.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations; individuals or households.

Estimated Number of Respondents: 9,325.

Estimated Time per Response: Annual fixed-cost reports, 30 minutes; headboat and Colombian fishery logbooks, 18 minutes; live rock and discard logbooks, 18 minutes; golden crab, reef fish-mackerel, economic cost/trip, charterboat, wreckfish, and shrimp logbooks, 10 minutes; no-fishing responses for golden crab, reef fish-makerel, charterboat, wreckfish and Colombian fisheries, 2 minutes.

Estimated Total Annual Burden Hours: 33,948.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: November 4, 2009.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–26955 Filed 11–9–09; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–807]

Polyethylene Terephthalate Film, Sheet, and Strip from the Republic of Korea: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On July 6, 2009 the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping order on polyethylene terephthalate film, sheet and strip (PET film) from the Republic of Korea (Korea). *See Polythylene Terephthalate Film, Sheet, and Strip from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review*, 74 FR 31922 (July 6, 2009) (*Preliminary Results*). This review covers one manufacturer/exporter of the subject merchandise to the United States, Kolon Industries, Inc. (Kolon). The period of review (POR) is October 2, 2007, through May 31, 2008.

Based on our analysis of the comments received, we have made changes in the margin calculation for Kolon. Therefore, the final results differ from the preliminary results. The final weighted–average dumping margin is listed below in the section entitled ''Final Results of Review.''

EFFECTIVE DATE: November 10, 2009.

FOR FURTHER INFORMATION CONTACT: Michael J. Heaney or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4475 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

This review covers one manufacturer/exporter of the subject merchandise, Kolon. On July 6, 2009, the Department published in the **Federal Register** the preliminary results of the October 2, 2007, through May 31, 2008, administrative review of the antidumping order on PET film from Korea. *See Preliminary Results*.

We invited interested parties to comment on the preliminary results of review. On August 5, 2009, we received comments from Kolon. We received no rebuttal comments. The Department has conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

Imports covered by this review are shipments of all gauges of raw, pretreated, or primed polyethylene terephthalate film, sheet, and strip, whether extruded or coextruded. The films excluded from this review are metallized films and other finished films that have had at least one of their surfaces modified by the application of a performance enhancing resinous or inorganic layer of more than 0.00001 inches (0.254 micrometers) thick. PET film is currently classifiable under Harmonized Tariff Schedule (HTS) subheading 3920.62.00.90 The HTS subheading is provided for convenience and for customs purposes. The written description remains dispositive as to the scope of the product coverage.

Analysis of Comments Received

All issues raised in the case brief submitted by Kolon are addressed in the ''Issues and Decision Memorandum'' (Decision Memorandum) from Edward M. Yang, Senior Executive Coordinator,

China/NME Unit, to Ronald K. Lorentzen, Acting Assistant Secretary for Import Administration, dated November 3, 2009, which is adopted by this notice. A list of issues which parties have raised is in the Decision Memorandum and is attached to this notice as an appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in the Decision Memorandum which is on file in the Central Records Unit, Room 1117, of the main Commerce Building. In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at *http://www.ia.ita.doc.gov/frn*. The paper copy and the electronic version of the Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on our analysis of the comments received, we have made certain changes in the margin calculations. These changes are discussed in the relevant sections of the Decision Memorandum and the Memorandum to the File from Michael J. Heaney dated November 3, 2009 (Analysis Memorandum). Specifically, for these final results:

1) We have deducted from NV the inland freight expenses incurred by Kolon in shipping PET film from its plant to its warehouse.
2) We have calculated a single, importer–specific assessment rate for Kolon's CEP sales.

Final Results of Review

We determine that the following weighted–average margin percentage exists for the period October 2, 2007, through May 31, 2008:

Manufacturer / Exporter	Margin
Kolon Industries, Inc.	0.13 percent (*de minimis*)

Assessment

Since the final rate for Kolon Industries, Inc. is *de minimis*, the Department will instruct Customs and Border Protection (CBP) to assess no dumping duties on the entries covered by this review. The Department intends to issue appraisement instructions to CBP 15 days after the date of publication of these final results of review.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of this final results of review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) because the rate for Kolon is *de minimis*, *i.e.*, less than 0.5 percent, no cash deposit will be required for Kolon; (2) if the exporter is not a firm covered in this review or the less than fair value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (3) if neither the exporter nor the manufacturer is a firm covered in this or any previous review, the cash deposit rate will be the all–others rate of 21.50 percent from the LTFV investigation. *See Polyethylene Terephthalate Film, Sheet, and Strip From the Republic of Korea; Notice of Final Court Decision and Amended Final Determination of Anti–Dumping Duty Investigation*, 62 FR 50557 (September 26, 1997).[1]

Notification to Interested Parties

The Department will disclose calculations performed in connection with the final results of review within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/disposition of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this determination in accordance with section 751(a)(1) and 777(i) of the Act.

Dated: November 3, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

Appendix–Comments in Decision Memo

1. Inland Freight incurred by Kolon from plant to warehouse
2. Calculation of a single, importer–specific assessment rate for Kolon's CEP sales
3. Zeroing

[FR Doc. E9–27078 Filed 11–09–09; 8:45 am]

BILLING CODE 3510–DS–S

[1] The Preliminary Results incorrectly listed the all others rate as 4.82 percent. However, that 4.82 cash deposit rate was amended because of judicial review to the 21.50 percent rate listed in this notice.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–849, A–821–808, A–823–808]

Continuation of Antidumping Duty Order on Certain Cut–to-Length Carbon Steel Plate from the People's Republic of China and Continuation of Suspended Antidumping Duty Investigations on Certain Cut–to-Length Carbon Steel Plate from the Russian Federation and Ukraine

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: As a result of the respective determinations by the Department of Commerce (''the Department'') and the International Trade Commission (''ITC'') that revocation of the antidumping duty order on certain cut–to-length carbon steel plate (''CTL plate'') from the People's Republic of China (''PRC'') and the termination of the suspension agreements and the underlying antidumping duty investigations on CTL plate from the Russian Federation (''Russia'') and Ukraine (collectively, ''the Agreements'') would likely lead to continuation or recurrence of dumping and material injury to an industry in the United States, the Department is publishing this notice of continuation of the antidumping duty order on CTL plate from the PRC and continuation of the Agreements on CTL plate from Russia and Ukraine.

EFFECTIVE DATE: November 10, 2009.

FOR FURTHER INFORMATION CONTACT: Wendy Frankel (PRC), Maureen Price (Russia) or Julie Santoboni (Ukraine), Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–5849, (202) 482–4271 or (202) 482–3063, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department initiated, and the ITC instituted, sunset reviews of the antidumping duty order on CTL plate from the PRC and the Agreements on CTL plate from Russia and Ukraine, pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). *See Initiation of Five-year (''Sunset'') Reviews*, 73 FR 44968 (August 1, 2008) and *Cut–To-Length Carbon Steel Plate From China, Russia, and Ukraine*, 73 FR 70368 (November 20, 2008).

As a result of its reviews, pursuant to sections 751(c) and 752 of the Act, the Department determined that revocation

of the antidumping duty order on CTL plate from the PRC and termination of the Agreements on CTL plate from Russia and Ukraine would likely lead to a continuation or recurrence of dumping and notified the ITC of the magnitude of the margins likely to prevail, should the order and the Agreements be revoked or terminated, respectively. *See Certain Cut–To-Length Carbon Steel Plate From the People's Republic of China: Notice of Final Results of Expedited Sunset Review of Antidumping Duty Order*, 73 FR 74143 (December 5, 2008), *Certain Cut–to-Length Carbon Steel Plate from Russia; Final Results of Expedited Sunset Review of the Suspension Agreement*, 73 FR 74461 (December 8, 2008), and *Certain Cut–to-Length Carbon Steel Plate from Ukraine; Final Results of Full Sunset Review of the Suspension Agreement*, 74 FR 11910 (March 20, 2009).

On October 13, 2009, pursuant to section 751(c) of the Act, the ITC determined that revocation of the antidumping duty order on CTL plate from the PRC and termination of the Agreements on CTL plate from Russia and Ukraine would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. *See Cut–to-Length Carbon Steel Plate From China, Russia, and Ukraine*, 74 FR 56666 (November 2, 2009).

Therefore, pursuant to section 351.218(f)(4) of the Department's regulations, the Department is publishing this notice of the continuation of the antidumping duty order on CTL plate from the PRC and continuation of the Agreements on CTL plate from Russia and Ukraine.

Scope

The products covered under the antidumping duty order and the Agreements are hot–rolled iron and non–alloy steel universal mill plates (i.e., flat–rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm and of a thickness of not less than 4 mm, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain iron and non–alloy steel flat–rolled products not in coils, of rectangular shape, hot–rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 mm or more in thickness and of a width which exceeds 150 mm and measures at least twice the thickness. Included as subject merchandise in this order and these Agreements are flat–rolled products of nonrectangular cross- section where such cross-section is achieved subsequent to the rolling process (i.e., products which have been ''worked after rolling'')--for example, products which have been bevelled or rounded at the edges. This merchandise is currently classified in the Harmonized Tariff Schedule of the United States (''HTSUS'') under item numbers 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000. Excluded from the subject merchandise within the scope of this order and these Agreements is grade X–70 plate. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of the order and the Agreements is dispositive.

Continuation

As a result of the respective determinations by the Department and the ITC that revocation of the antidumping duty order on CTL plate from the PRC and termination of the Agreements on CTL plate from Russia and Ukraine would likely lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby gives notice of the continuation of the antidumping duty order on CTL plate from the PRC and the continuation of the Agreements on CTL plate from Russia and Ukraine. The effective dates of continuation will be the date of publication in the **Federal Register** of this Continuation Notice. Pursuant to sections 751(c)(2) and 751(c)(6) of the Act, the Department intends to initiate the next five-year sunset reviews of the antidumping duty order on CTL plate from the PRC and the Agreements on CTL plate from Russia and Ukraine not later than October 2014.

These five-year (sunset) reviews and notice are in accordance with section 751(c) of the Act and published pursuant to section 777(i)(1) of the Act.

Dated: November 4, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. E9–27085 Filed 11–9–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–904]

First Administrative Review of Certain Activated Carbon from the People's Republic of China: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On May 7, 2009, the Department of Commerce (the ''Department'') published in the **Federal Register** the preliminary results of the first administrative review of the antidumping duty order on certain activated carbon from the People's Republic of China (''PRC''). *See Certain Activated Carbon From the People's Republic of China: Notice of Preliminary Results of the Antidumping Duty Administrative Review and Extension of Time Limits for the Final Results*, 74 FR 21317 (May 7, 2009) (''*Preliminary Results*''). We gave interested parties an opportunity to comment on the *Preliminary Results*. Based upon our analysis of the comments and information received, we made changes to the margin calculations for the final results. We continue to find that certain exporters have sold subject merchandise at less than normal value during the period of review (''POR''), October 11, 2006, through March 31, 2008.

EFFECTIVE DATE: November 10, 2009.

FOR FURTHER INFORMATION CONTACT: Robert Palmer, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–9068.

SUPPLEMENTARY INFORMATION:

Background

On June 4, 2008, the Department initiated this review with respect to 90 companies upon which an administrative review was requested. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 73 FR 31813 (June 4, 2008) (''*Initiation Notice*''). Subsequently, pursuant to section 351.213(d)(1) of the Department's regulations, the Department rescinded the administrative review with respect to 57 companies, based upon Petitioners'[1]

[1] Norit Americas Inc. and Calgon Carbon Corporation .

timely withdrawal of review requests. *See Certain Activated Carbon From the People's Republic of China: Notice of Partial Rescission of Antidumping Duty Administrative Review*, 73 FR 42550 (July 22, 2008). On October 1, 2008, the Department rescinded the administrative review with respect to an additional 19 companies, based on Petitioners' timely withdrawal of review requests. *See Certain Activated Carbon from the People's Republic of China: Notice of Partial Rescission of Antidumping Duty Administrative Review*, 73 FR 57058 (October 1, 2008). Thus, 14 companies remain subject to this review.

As noted above, on May 7, 2009, the Department published the *Preliminary Results* of this administrative review where we also extended the deadline for the final results by 60 days after publication of the *Preliminary Results*. *See Preliminary Results*. On July 20, 2009, Jacobi Carbons AB (''Jacobi''),[2] Ningxia Guanghua Cherishmet Activated Carbon Co., Ltd. (''Cherishmet''),[3] and Calgon Carbon (Tianjin) Co., Ltd. (''CCT'') submitted additional surrogate value information. On July 30, 2009, Petitioners submitted rebuttal surrogate value information.

On September 3, 2009, we set the deadline for interested parties to submit case briefs and rebuttal briefs to September 14, 2009, and September 21, 2009, respectively. On September 15, 2009, we extended the deadline for parties to submit rebuttal briefs to September 23, 2009. On September 14, 2009, the Petitioners, Jacobi, CCT, Cherishmet, Sorbent Technologies Corporation (''Sorbent'')[4] and certain SR Respondents[5] filed case briefs. On September 23, 2009, the Petitioners, Jacobi, CCT, and Cherishmet filed rebuttal briefs. The Department did not hold a public hearing pursuant to 19 CFR 351.310(d), as all hearing requests made by interested parties were withdrawn.

Verification

Pursuant to section 351.307(b)(iv) of the Department's regulations, we conducted multiple verifications of respondents' questionnaire responses.[6]

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to these reviews are addressed in the ''Administrative Review of Certain Activated Carbon from the People's Republic of China: Issues and Decision Memorandum for the Final Results,'' which is dated concurrently with this notice (''*Decision Memo*''). A list of the issues which parties raised and to which we respond in the *Decision Memo* is attached to this notice as an Appendix. The *Decision Memo* is a public document and is on file in the Central Records Unit (''CRU''), Main Commerce Building, Room 1117, and is accessible on the Department's website at http://www.trade.gov/ia. The paper copy and electronic version of the memorandum are identical in content.

Changes Since the Preliminary Results

Based on a review of the record as well as comments received from parties regarding our *Preliminary Results*, we have made revisions to certain surrogate values and the margin calculations for CCT, Jacobi, and Cherishmet in the final results. Specifically, we have updated the surrogate values for several inputs. *See Decision Memo* at Comments 2d, 3b, 3c, 3d, 3g, and 3h. We have also corrected various ministerial errors alleged by respondents. *See* Decision Memo at Comments 6–9, 13–15, and 19–20. Lastly, we have reapplied certain allocation methodologies for data submitted by respondents. *See Decision Memo* at Comments 11–12. For all changes to the calculations, *see Decision Memo* and the company specific analysis memoranda.

Scope Of The Order

The merchandise subject to this order is certain activated carbon. Certain activated carbon is a powdered, granular, or pelletized carbon product obtained by ''activating'' with heat and steam various materials containing carbon, including but not limited to coal (including bituminous, lignite, and anthracite), wood, coconut shells, olive stones, and peat. The thermal and steam treatments remove organic materials and create an internal pore structure in the carbon material. The producer can also use carbon dioxide gas (CO2) in place of steam in this process. The vast majority of the internal porosity developed during the high temperature steam (or CO2 gas) activated process is a direct result of oxidation of a portion of the solid carbon atoms in the raw material, converting them into a gaseous form of carbon.

The scope of this order covers all forms of activated carbon that are activated by steam or CO2, regardless of the raw material, grade, mixture, additives, further washing or post–activation chemical treatment (chemical or water washing, chemical impregnation or other treatment), or product form. Unless specifically excluded, the scope of this order covers all physical forms of certain activated carbon, including powdered activated carbon (''PAC''), granular activated carbon (''GAC''), and pelletized activated carbon.

Excluded from the scope of the order are chemically activated carbons. The carbon–based raw material used in the chemical activation process is treated with a strong chemical agent, including but not limited to phosphoric acid, zinc chloride sulfuric acid or potassium hydroxide, that dehydrates molecules in the raw material, and results in the formation of water that is removed from the raw material by moderate heat treatment. The activated carbon created by chemical activation has internal porosity developed primarily due to the action of the chemical dehydration agent. Chemically activated carbons are typically used to activate raw materials with a lignocellulosic component such

[2] Consisting of Jacobi Carbons AB and its affiliates, Tianjin Jacobi International Trading Co., Ltd. and Jacobi Carbons, Inc.

[3] Consisting of Ningxia Guanghua Cherishmet Activated Carbon Co., Ltd. (''GHC''), Beijing Pacific Activated Carbon Products Co., Ltd. (''Beijing Pacific''), and Cherishmet Inc.

[4] Currently known as ''Albemarle Sorbent Technologies Corp.,'' an interested party in this case.

[5] These respondents are Ningxia Lingzhou Foreign Trade Company (''Lingzhou''), Ningxia Huahui Activated Carbon Co, Ltd; (''Huahui '') and Tangshan Solid Carbon Co., Ltd. (''Tangshan'')

[6] *See* ''Memorandum to the File through Catherine Bertrand, Program Manager, Office 9, from Julia Hancock, Senior Case Analyst, Office 9, and Robert Palmer, Analyst, Office 9, re: Verification of the Sales Response of Jacobi Carbons AB, Tianjin Jacobi International Trading Co., Ltd., and Jacobi Carbons, Inc. in the First Antidumping Duty Administrative Review of Certain Activated Carbon from the People's Republic of China (''PRC''),'' dated September 2, 2009. On August 3 and 4, 2009, we conducted a verification of NXHH. *See* ''Memorandum to the File through Catherine Bertrand, Program Manager, Office 9 from Julia Hancock, Senior Case Analyst, Office 9, re: Verification of the Sales and Factors Response of Jacobi's Supplier, Ningxia Huahui Activated Carbon Co., Ltd. (''NXHH''), in the 1st Administrative Review of Certain Activated Carbon from the People's Republic of China (''PRC''),'' dated August 31, 2009. On August 5 and 6, 2009, we conducted a verification of NXGH FOP data. *See* ''Memorandum to the File through Catherine Bertrand, Program Manager, Office 9 from Julia Hancock, Senior Case Analyst, Office 9, re: Verification of the Sales and Factors Response of Jacobi's Supplier, Ningxia Guanghua Activated Carbon Co., Ltd. (''NXGH''), in the 1st Administrative Review of Certain Activated Carbon from the People's Republic of China (''PRC''),'' dated September 2, 2009. Finally, between August 7 and 11, 2009, we conducted a verification of GHC's sales and FOP data. *See* ''Memorandum to the File through Catherine Bertrand, Program Manager, Office 9 from Julia Hancock, Senior Case Analyst, Office 9, Irene Gorelik, Senior Case Analyst, Office 9, and Robert Palmer, Analyst, Office 9, re: Verification of the Sales and Factors Response of Ningxia Guanghua Cherishmet Activated Carbon Company, Ltd. in the First Antidumping Duty Administrative Review of Certain Activated Carbon from the People's Republic of China (''PRC''),'' dated August 31, 2009.

as cellulose, including wood, sawdust, paper mill waste and peat.

To the extent that an imported activated carbon product is a blend of steam and chemically activated carbons, products containing 50 percent or more steam (or CO2 gas) activated carbons are within this scope, and those containing more than 50 percent chemically activated carbons are outside this scope. This exclusion language regarding blended material applies *only* to mixtures of steam and chemically activated carbons.

Also excluded from the scope are reactivated carbons. Reactivated carbons are previously used activated carbons that have had adsorbed materials removed from their pore structure after use through the application of heat, steam and/or chemicals.

Also excluded from the scope is activated carbon cloth. Activated carbon cloth is a woven textile fabric made of or containing activated carbon fibers. It is used in masks and filters and clothing of various types where a woven format is required.

Any activated carbon meeting the physical description of subject merchandise provided above that is not expressly excluded from the scope is included within this scope. The products subject to the order are currently classifiable under the Harmonized Tariff Schedule of the United States (''HTSUS'') subheading 3802.10.00. Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

Separate Rates

In our *Preliminary Results*, we determined that the following companies met the criteria for separate rate status: Ningxia Huahui Activated Carbon Co., Ltd.; Ningxia Lingzhou Foreign Trade Co., Ltd.; Tangshan Solid Carbon Co., Ltd.; Tianjin Maijin Industries Co., Ltd.; Datong Municipal Yunguang Activated Carbon Co., Ltd.; and Hebei Foreign Trade Advertisement Company (and its successor company, Hebei Shenglun Import and Export Group Company) (''Hebei Foreign'').

Additionally, in the *Preliminary Results*, we also noted that, the Department received completed responses to the Section A portion of the NME questionnaire from the individually reviewed respondents (CCT, Jacobi, and GHC), which contained information pertaining to the companies' eligibility for a separate rate. With respect to CCT and Jacobi, we preliminarily determined that there is no PRC ownership of either company, and because the Department has no evidence indicating that either company is under the control of the PRC, a separate rates analysis is not necessary to determine whether they are independent from government control. With respect to GHC, we preliminarily granted separate rate status to it based on the submitted information. We also preliminarily determined that one of the exporters under review not selected for individual examination, Tangshan Solid Carbon Co., Ltd., reported that it is 100 percent foreign owned. Accordingly, the Department also preliminarily granted separate rate status to Tangshan Solid Carbon Co. Ltd. *See Preliminary Results* at 21323–4.

With the exception of Hebei Foreign, we have not received any information since the issuance of the *Preliminary Results* that provides a basis for the reconsideration of these preliminary determinations. Therefore, the Department continues to find that CCT, Jacobi, GHC, Tangshan Solid Carbon Co. Ltd., Datong Municipal Yunguang Activated Carbon Co., Ltd., Ningxia Huahui Activated Carbon Co., Ltd., Ningxia Lingzhou Foreign Trade Co., Ltd., Tangshan Solid Carbon Co., Ltd., and Tianjin Maijin Industries Co., Ltd. meet the criteria for a separate rate.

With respect to Hebei Foreign, the Department is revoking Hebei Foreign's separate rate for these final results following certain information placed on the record of this review after the *Preliminary Results* which demonstrate that Hebei Foreign's separate rate status was based upon incorrect information. For further details, *see Decision Memo* at Comment 22.

Additionally, in the *Preliminary Results*, we stated that Ningxia Mineral &Chemical Limited, one of the 14 companies with an active review request, did not submit either a separate–rate application or certification. Thus, we preliminarily determined that it did not demonstrate its eligibility for separate rate status, and was included as part of the PRC–wide entity. Because we have not received any information since the issuance of the *Preliminary Results* that provides a basis for a reconsideration of that finding, we continue to find that Ningxia Mineral & Chemical Limited did not meet the criteria for a separate rate for the final results. Thus, for these final results, Ningxia Mineral & Chemical Limited will remain subject to the PRC–wide entity rate.

Lastly, as noted in the *Preliminary Results*, because Jilin Bright Future Chemicals Company, Ltd. (''Jilin'') (including affiliate Jilin Province Bright Future Industry and Commerce Co., Ltd.) did not participate in this administrative review, we preliminarily assigned to Jilin total adverse facts available (''AFA''). See Preliminary Results, 74 FR at 21321–2. We further stated that, as a result of Jilin's termination of participation from the instant proceeding, we did not grant Jilin a separate rate and consider Jilin part of the PRC–wide entity. *See id.* Because we have not received any information since the *Preliminary Results* that provides a basis for a reconsideration of that finding, we continue to find that Jilin is not eligible for a separate rate for these final results and remains subject to the PRC–wide entity rate.

Facts Available

Section 776(a)(2) of the Act provides that if an interested party: (A) withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act; (C) significantly impedes a determination under the antidumping statute; or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Furthermore, section 776(b) of the Act provides that, if the Department finds that an interested party ''has failed to cooperate by not acting to the best of its ability to comply with a request for information,'' the Department may use information that is adverse to the interests of that party as facts otherwise available. Adverse inferences are appropriate ''to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' *See* Statement of Administrative Action (''SAA'') accompanying the URAA, H.R. Doc. No. 316, 103d Cong., 2d Session at 870 (1994). An adverse inference may include reliance on information derived from the petition, the final determination in the investigation, any previous review, or any other information placed on the record. *See* section 776(b) of the Act.

As noted in the *Preliminary Results*, the Department selected Jilin for individual examination in this review. However, Jilin did not respond to any of the Department's requests for information.[7] Because Jilin did not respond to the Department's requests for information and failed to demonstrate that it qualifies for separate rate status,

[7] *See Preliminary Results*, 74 FR at 21321.

we have determined Jilin to be a part of the PRC–wide entity.[8] Consequently, because the PRC–wide entity, including Jilin, withheld requested information, failed to provide information in a timely manner and in the form requested, and significantly impeded this proceeding, we continue to find that the PRC–wide entity, including Jilin, failed to cooperate to the best of its ability, and, accordingly, apply AFA to calculate a margin for the PRC–wide entity. The Department's determination is in accordance with sections 776(a)(2)(A), (B), (C) and 776(b) of the Act.[9]

In the *Initiation Notice*, we required that all companies listed therein wishing to qualify for separate rate status in this administrative review to submit, as appropriate, either a separate rate application or certification.[10] As noted above, the Department initiated this administrative review with respect to 90 companies, and rescinded the review on 76 of those 90 companies. Thus, including CCT, Jacobi, and GHC, 14 companies remain subject to this review. We note that one of the 14 companies, Ningxia Mineral & Chemical Limited, did not demonstrate its eligibility for separate rate status in this administrative review. In the *Preliminary Results*, the Department determined that those companies which did not demonstrate eligibility for a separate rate are properly considered part of the PRC–Wide entity.[11] Since the *Preliminary Results*, neither Ningxia Mineral & Chemical Limited nor Jilin submitted comments regarding these findings. Therefore, we continue to treat these entities as part of the PRC–Wide entity. Further, as stated above, since the *Preliminary Results*, the Department placed information on the record which shows evidence that Hebei Foreign's separate rate status was based on incorrect information, resulting in the revocation of Hebei Foreign's separate rate. Hebei Foreign has not submitted any information to contradict the evidence on the record. Thus, we have assigned Hebei Foreign the PRC–wide entity rate of 228.11 percent.*Affiliation – GHC*

In the *Preliminary Results*, we found Beijing Pacific, Cherishmet, GH and GHC to be a single entity for purposes of this administrative review. *See Preliminary Results* at 21319–21320; *see* 19 CFR 351.401(f). Because we have not received any information on the record that contradicts our preliminary finding, we shall continue to find Beijing Pacific, Cherishmet, GH and GHC to be a single entity for these final results.

Final Results Of Review

The weighted–average dumping margins for the POR are as follows:

CERTAIN ACTIVATED CARBON FROM THE PEOPLE'S REPUBLIC OF CHINA

Manufacturer/Exporter	Weighted Average Margin (Percent)
Calgon Carbon (Tianjin) Co., Ltd.	14.58 %
Jacobi Carbons AB[1]	18.22 %
Ningxia Guanghua Cherishmet Activated Carbon Co., Ltd.[2]	18.40 %
Datong Municipal Yunguang Activated Carbon Co., Ltd.	16.40 %
Ningxia Huahui Activated Carbon Co., Ltd.	16.40 %
Ningxia Lingzhou Foreign Trade Co., Ltd.	16.40 %
Tangshan Solid Carbon Co., Ltd.	16.40 %
Tianjin Maijin Industries Co., Ltd.	16.40 %
PRC–Wide Rate[3]	228.11 %

[1] And its affiliates, Tianjin Jacobi International Trading Co., Ltd. and Jacobi Carbons, Inc.

[2] Ningxia Guanghua Cherishment Activated Carbon Co., Ltd. and the following companies have been determined to be a single entity: Beijing Pacific Activated Carbon Products Co., Ltd., Ningxia Guanghua Activated Carbon Company, and Company A. Thus, the calculated margin applies to the single entity.

[3] The PRC–Wide entity includes Hebei Foreign Trade Advertisement Company, Ningxia Mineral & Chemical Limited, Jilin Bright Future Chemicals Company, Ltd. and its affiliate, Jilin Province Bright Future Industry and Commerce Co., Ltd.

Assessment

Upon issuance of these final results, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries covered by these reviews. The Department intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this review excluding any reported sales that entered during the gap period. In accordance with 19 CFR 351.212(b)(1), we calculated exporter/importer (or customer)-specific assessment rates for the merchandise subject to this review. Where the respondent has reported reliable entered values, we calculated importer (or customer)-specific ad valorem rates by aggregating the dumping margins calculated for all U.S. sales to each importer (or customer) and dividing this amount by the total entered value of the sales to each importer (or customer). *See* 19 CFR 351.212(b)(1). Where an importer (or customer)-specific ad valorem rate is greater than *de minimis*, we will apply the assessment rate to the entered value of the importers'/customers' entries during the POR. *See* 19 CFR 351.212(b)(1).

Where we do not have entered values for all U.S. sales, we calculated a per–unit assessment rate by aggregating the antidumping duties due for all U.S. sales to each importer (or customer) and dividing this amount by the total quantity sold to that importer (or customer). *See* 19 CFR 351.212(b)(1). To determine whether the duty assessment rates are *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer (or customer)-specific ad valorem ratios based on the estimated entered value. Where an importer (or customer)-specific ad valorem rate is zero or *de minimis*, we will instruct CBP to liquidate appropriate entries without regard to antidumping duties. *See* 19 CFR 351.106(c)(2).For the companies receiving a separate rate that were not selected for individual review, we will calculate an assessment rate based on the simple average of the cash deposit rates calculated for the companies selected for individual review pursuant to section 735(c)(5)(B) of the Act.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of these final results of administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) for the exporters listed above, the cash deposit rate will be established in the final results of this review (except, if the rate is zero or *de minimis, i.e.*, less than 0.5 percent, no cash deposit will be required for that company); (2) for previously investigated or reviewed PRC and non–PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter–specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise which

[8] *Id.*

[9] *See, e.g., Non–Malleable Cast Iron Pipe Fittings from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 71 FR 69546 (December 1, 2006) and accompanying Issues and Decision Memorandum at Comment 1. *See also Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Preliminary Results of the First Administrative Review and New Shipper Review*, 72 FR 10689, 10692 (March 9, 2007) (decision to apply total AFA to the NME–wide entity) unchanged in *Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Final Results of the First Antidumping Duty Administrative Review and First New Shipper Review*, 72 FR 52052 (September 12, 2007) (''Vietnam Shrimp AR1'').

[10] *See Initiation Notice.*

[11] *See Preliminary Results.*

have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC–wide rate of 228.11 percent; and (4) for all non–PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporters that supplied that non–PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Reimbursement of Duties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties has occurred and the subsequent assessment of doubled antidumping duties.

Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective orders (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this administrative review and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: November 3, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

Appendix I – Decision Memorandum

General Issues

*Comment 1:*Treatment of Sales with Negative Margins

*Comment 2:*Surrogate Financial Ratios a.Miscalculated Expenses b.Use of Indo German Carbons' Financial Statements c.Use of Core Carbons' Financial Statements d. Use of Quantum Active Carbons' Financial Statements

*Comment 3:*Surrogate Values a.Wage Rate Methodology b.Time Period Used for Surrogate Values c.Bituminous Coal d.Hydrochloric Acid e.Carbonized Materials f.Coal Tar g.Energy and Steam Coal h.Surrogate Value Applied to Activated Carbon i.HTS Numbers Used for Starch, Paint Thinner, and Ink Surrogate Values

Company–Specific Issues

CCT

Comment 4: Application of Total Adverse Facts Available

Comment 5: Corrections to Submitted Data a.Treatment of the Universe of Factor Data for Normal Value b.Treatment of U.S. Indirect Selling Expenses c.Treatment of Factor Data for Labor, Electricity, and Water d. Treatment of Freight for Tolling Operations

Comment 6: Freight Expense Calculation

Comment 7: Surrogate Margin for Further Manufactured Sales

Comment 8: Importer–Specific Assessment Rate

Comment 9: Ministerial Error for Units of Measure Conversions a.PE Film b.Plastic Strap/Packing String c.Plastic Rope

Jacobi

Comment 10: Application of Adverse Facts Available a.Application of Total AFA for Jacobi and NXHH b.Application of Total AFA for Jacobi and NXGH c.Application of Partial Adverse Facts Available for Jacobi and NXHH d. Application of Partial Adverse Facts Available for Jacobi and NXGH

Comment 11: Facts Available for Jacobi and DTHB

Comment 12: Yield Loss Reporting by Jacobi and DTHB and DTFW

Comment 13: Ministerial Error for Domestic Brokerage and Handling

Comment 14: Ministerial Error for Quantity Variable Used

Comment 15: Ministerial Error for Units of Measure Conversions

Cherishmet

*Comment 16:*Application of Total Adverse Facts Available

Comment 17: Application of Partial Adverse Facts Available a.Cherishmet and GHC b.Activated Carbon and Potassium c. Acid Washing Yield Loss

Comment 18: Columnar Coal

*Comment 19:*Ministerial Error for Units of Measure Conversion a.Plastic Bags b.Packing Freight

*Comment 20:*Ministerial Error for Domestic Inland Freight Calculation

Comment 21: Qualification for a Separate Rate

Hebei Foreign

Comment 22: Separate Rate Status

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–912]

Certain New Pneumatic Off–the-Road Tires from the People's Republic of China: Initiation of Changed Circumstances Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''Department'') has received information sufficient to warrant initiation of a changed circumstances review of the antidumping duty order on certain new pneumatic off–the-road tires from the People's Republic of China (''PRC''). Specifically, based upon a request filed by Mai Shandong Radial Tyre Co., Ltd. (''Mai Shandong''), the Department is initiating a changed circumstances review to determine whether Mai Shandong is the successor–in-interest to Shandong Jinyu Tyre Co., Ltd. (''Shandong Jinyu''), a separate–rate respondent in the original investigation.

EFFECTIVE DATE: November 10, 2009.

FOR FURTHER INFORMATION CONTACT: Raquel Silva, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: 202–482–6475.

SUPPLEMENTARY INFORMATION:

Background

On September 4, 2008, the Department published in the **Federal Register** an antidumping duty order on certain new pneumatic off–the-road tires from the PRC. *See Certain New Pneumatic Off–the-Road Tires from the People's Republic of China: Notice of Amended Final Affirmative Determination of Sales at Less Than Fair Value and Antidumping Duty Order*, 73 FR 51624 (September 4, 2008). As part of that order, Shandong Jinyu received the separate–rate respondent amended rate of 12.91 percent. *Id.* at 51627. On September 14, 2009, Mai Shandong filed a submission requesting that the Department conduct a changed circumstances review of the antidumping duty order on certain new pneumatic off–the-road tires from the PRC to confirm that it is the successor–in-interest to Shandong Jinyu.[1] In its

[1] See Letter from Mai Shandong to the Department regarding *Certain New Pneumatic Off-The-Road Tires from the People's Republic of China, Request for Changed Circumstances Review* (Case No. A-570-912) (September 14, 2009).

submission, Mai Shandong provided the Joint Venture Contract, Articles of Association and various other contracts relating to the transfer of assets from Shandong Jinyu to Mai Shandong. In addition, Mai Shandong provided narrative explanation and limited documentation relating to the management, production facilities and process, customer base, supplier relationships, distribution and marketing channels and product mix of both it and Shandong Jinyu. As part of its September 14, 2009 submission, Mai Shandong requested that the Department conduct an expedited review.

Scope of the Order

The products covered by the order are new pneumatic tires designed for off–the-road (OTR) and off–highway use, subject to exceptions identified below. Certain OTR tires are generally designed, manufactured and offered for sale for use on off–road or off–highway surfaces, including but not limited to, agricultural fields, forests, construction sites, factory and warehouse interiors, airport tarmacs, ports and harbors, mines, quarries, gravel yards, and steel mills. The vehicles and equipment for which certain OTR tires are designed for use include, but are not limited to: (1) agricultural and forestry vehicles and equipment, including agricultural tractors,[2] combine harvesters,[3] agricultural high clearance sprayers,[4] industrial tractors,[5] log–skidders,[6] agricultural implements, highway–towed implements, agricultural logging, and agricultural, industrial, skid–steers/mini–loaders;[7] (2) construction vehicles and equipment, including earthmover articulated dump products, rigid frame haul trucks,[8] front end loaders,[9] dozers,[10] lift trucks, straddle carriers,[11] graders,[12] mobile cranes,[13] compactors; and (3) industrial vehicles and equipment, including smooth floor, industrial, mining, counterbalanced lift trucks, industrial and mining vehicles other than smooth floor, skid–steers/mini–loaders, and smooth floor off–the-road counterbalanced lift trucks.[14] The foregoing list of vehicles and equipment generally have in common that they are used for hauling, towing, lifting, and/or loading a wide variety of equipment and materials in agricultural, construction and industrial settings. Such vehicles and equipment, and the descriptions contained in the footnotes are illustrative of the types of vehicles and equipment that use certain OTR tires, but are not necessarily all–inclusive. While the physical characteristics of certain OTR tires will vary depending on the specific applications and conditions for which the tires are designed (*e.g.*, tread pattern and depth), all of the tires within the scope have in common that they are designed for off–road and off–highway use. Except as discussed below, OTR tires included in the scope of the order range in size (rim diameter) generally but not exclusively from 8 inches to 54 inches. The tires may be either tube–type[15] or tubeless, radial or non–radial, and intended for sale either to original equipment manufacturers or the replacement market. The subject merchandise is currently classifiable under Harmonized Tariff Schedule of the United States (''HTSUS'') subheadings: 4011.20.10.25, 4011.20.10.35, 4011.20.50.30, 4011.20.50.50, 4011.61.00.00, 4011.62.00.00, 4011.63.00.00, 4011.69.00.00, 4011.92.00.00, 4011.93.40.00, 4011.93.80.00, 4011.94.40.00, and 4011.94.80.00. While HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope is dispositive.

Specifically excluded from the scope are new pneumatic tires designed, manufactured and offered for sale primarily for on–highway or on–road use, including passenger cars, race cars, station wagons, sport utility vehicles, minivans, mobile homes, motorcycles, bicycles, on–road or on–highway trailers, light trucks, and trucks and buses. Such tires generally have in common that the symbol ''DOT'' must appear on the sidewall, certifying that the tire conforms to applicable motor vehicle safety standards. Such excluded tires may also have the following designations that are used by the Tire and Rim Association:

Prefix letter designations:

- P - Identifies a tire intended primarily for service on passenger cars;
- LT - Identifies a tire intended primarily for service on light trucks; and,
- ST - Identifies a special tire for trailers in highway service.

Suffix letter designations:

- TR - Identifies a tire for service on trucks, buses, and other vehicles with rims having specified rim diameter of nominal plus 0.156'' or plus 0.250'';
- MH - Identifies tires for Mobile Homes;
- HC - Identifies a heavy duty tire designated for use on ''HC'' 15'' tapered rims used on trucks, buses, and other vehicles. This suffix is intended to differentiate among tires for light trucks, and other vehicles or other services, which use a similar designation.
- Example: 8R17.5 LT, 8R17.5 HC;
- LT - Identifies light truck tires for service on trucks, buses, trailers, and multipurpose passenger vehicles used in nominal highway service; and
- MC - Identifies tires and rims for motorcycles.

[2] Agricultural tractors are dual-axle vehicles that typically are designed to pull farming equipment in the field and that may have front tires of a different size than the rear tires.

[3] Combine harvesters are used to harvest crops such as corn or wheat.

[4] Agricultural sprayers are used to irrigate agricultural fields

[5] Industrial tractors are dual-axle vehicles that typically are designed to pull industrial equipment and that may have front tires of a different size than the rear tires.

[6] A log-skidder has a grappling lift arm that is used to grasp, lift and move trees that have been cut down to a truck or trailer for transport to a mill or other destination.

[7] Skid-steer loaders are four-wheel drive vehicles with the left-side drive wheels independent of the right-side drive wheels and lift arms that lie alongside the driver with the major pivot points behind the driver's shoulders. Skid-steer loaders are used in agricultural, construction and industrial settings.

[8] Haul trucks, which may be either rigid frame or articulated (*i.e.*, able to bend in the middle) are typically used in mines, quarries and construction sites to haul soil, aggregate, mined ore, or debris.

[9] Front loaders have lift arms in front of the vehicle. They can scrape material from one location to another, carry material in their buckets, or load material into a truck or trailer.

[10] A dozer is a large four-wheeled vehicle with a dozer blade that is used to push large quantities of soil, sand, rubble, *etc.*, typically around construction sites. They can also be used to perform ''rough grading'' in road construction.

[11] A straddle carrier is a rigid frame, engine-powered machine that is used to load and offload containers from container vessels and load them onto (or off of) tractor trailers.

[12] A grader is a vehicle with a large blade used to create a flat surface. Graders are typically used to perform ''finish grading.'' Graders are commonly used in maintenance of unpaved roads and road construction to prepare the base course onto which asphalt or other paving material will be laid.

[13] *i.e.*, ''on-site'' mobile cranes designed for off-highway use.

[14] A counterbalanced lift truck is a rigid framed, engine-powered machine with lift arms that has additional weight incorporated into the back of the machine to offset or counterbalance the weight of loads that it lifts so as to prevent the vehicle from overturning. An example of a counterbalanced lift truck is a counterbalanced fork lift truck. Counterbalanced lift trucks may be designed for use on smooth floor surfaces, such as a factory or warehouse, or other surfaces, such as construction sites, mines, *etc.*

[15] While tube-type tires are subject to the scope of this proceeding, tubes and flaps are not subject merchandise and therefore are not covered by the scope of this proceeding, regardless of the manner in which they are sold (*e.g.*, sold with or separately from subject merchandise).

The following types of tires are also excluded from the scope: pneumatic tires that are not new, including recycled or retreaded tires and used tires; non–pneumatic tires, including solid rubber tires; tires of a kind designed for use on aircraft, all–terrain vehicles, and vehicles for turf, lawn and garden, golf and trailer applications. Also excluded from the scope are radial and bias tires of a kind designed for use in mining and construction vehicles and equipment that have a rim diameter equal to or exceeding 39 inches. Such tires may be distinguished from other tires of similar size by the number of plies that the construction and mining tires contain (minimum of 16) and the weight of such tires (minimum 1,500 pounds).

Initiation of Changed Circumstances Review

Pursuant to section 751(b)(1) of the Tariff Act of 1930, as amended (''Act''), the Department will conduct a changed circumstances review upon receipt of information concerning, or a request from, an interested party for a review of an antidumping duty order which shows changed circumstances sufficient to warrant a review of the order.

In accordance with 19 CFR 351.216(d), the Department has determined that the information submitted by Mai Shandong constitutes sufficient evidence to conduct a changed circumstances review. In an antidumping duty changed circumstances review involving a successor–in-interest determination, the Department typically examines several factors including, but not limited to, changes in: (1) management; (2) production facilities; (3) supplier relationships; and (4) customer base. *See, e.g., Certain Activated Carbon from the People's Republic of China: Notice of Initiation of Changed Circumstances Review,* 74 FR 19934 (April 30, 2009). While no single factor or combination of factors will necessarily be dispositive, the Department generally will consider the new company to be the successor to the predecessor if the resulting operations are essentially the same as those of the predecessor company. *See, e.g., Notice of Initiation of Antidumping Duty Changed Circumstances Review: Certain Forged Stainless Steel Flanges from India*, 71 FR 327 (January 4, 2006). Thus, if the record demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same business entity as the predecessor company, the Department may assign the new company the cash deposit rate of its predecessor. *See, e.g., Fresh and Chilled Atlantic Salmon from Norway; Final Results of Changed Circumstances Antidumping Duty Administrative Review*, 64 FR 9979, 9980 (March 1, 1999).

Based on the information provided in its submission, Mai Shandong has provided sufficient evidence to warrant a review to determine if it is the successor–in-interest to Shandong Jinyu. Therefore, pursuant to section 751(b)(1) of the Act and 19 CFR 351.216(d), we are initiating a changed circumstances review. Although Mai Shandong submitted documentation related to the transfer of assets from Shandong Jinyu to it and some limited information and documentation regarding the four factors that the Department considers in its successor–in-interest analysis, it did not provide complete supporting documentation or conclusive evidence for the four elements listed above. Accordingly, the Department has determined that it would be inappropriate to expedite this action by combining the preliminary results of review with this notice of initiation. *See* 19 CFR 351.221(c)(3)(ii). Thus, the Department is not issuing the preliminary results of its antidumping duty changed circumstances review at this time. *See, e.g., Notice of Initiation of Antidumping Duty Changed Circumstances Review: Certain Pasta From Turkey*, 74 FR 681 (January 7, 2009).

The Department will issue questionnaires requesting additional information for the review and will publish in the **Federal Register** a notice of the preliminary results of the antidumping duty changed circumstances review, in accordance with 19 CFR 351.221(b)(2) and (4), and 19 CFR 351.221(c)(3)(i). That notice will set forth the factual and legal conclusions upon which our preliminary results are based and a description of any action proposed. Pursuant to 19 CFR 351.221(b)(4)(ii), interested parties will have an opportunity to comment on the preliminary results of review. In accordance with 19 CFR 351.216(e), the Department will issue the final results of its antidumping duty changed circumstances review not later than 270 days after the date on which the review is initiated.

This notice is published in accordance with sections 751(b)(1) and 777(i) of the Act and 19 CFR 351.216.

Dated: November 2, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–27071 Filed 11–9–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Application(s) for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be postmarked on or before November 30, 2009. Address written comments to Statutory Import Programs Staff, Room 3720, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. at the U.S. Department of Commerce in Room 3720.

Docket Number: 09–058. *Applicant:* Honolulu Police Department—SIS, 801 S. Beretania St., Honolulu, HI 96813. *Instrument:* Electron Microscope. *Manufacturer:* FEI Company, Czech Republic. *Intended Use:* The instrument will be used for forensic analysis of trace evidence samples, primarily for particle analysis of gunshot residue. *Justification for Duty-Free Entry:* No instruments of same general category are manufactured in the United States. *Application accepted by Commissioner of Customs:* October 9, 2009.

Docket Number: 09–060. *Applicant:* University of California at San Francisco, 1855 Folsom St., Suite 304, San Francisco, CA 94103. *Instrument:* Electron Microscope. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* The instrument will be used to study the ultrastructural characteristics of biological tissue, such as the number, size and shape of cellular connections and gap junctions in the brain. *Justification for Duty-Free Entry:* No instruments of same general category are manufactured in the United States. *Application accepted by Commissioner of Customs:* October 19, 2009.

Docket Number: 09–061. *Applicant:* Argonne National Laboratory, 9700 S. Cass Ave., Lemont, IL 60439.

Instrument: Electron Microscope. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* This instrument will be used for the study of nanoscale magnetic and ferroelectric materials. Specifically, it will be used to study the magnetic domain or ferroelectric domain behavior of the such materials. The resolution of the instrument is such that it can correlate domain behavior directly with microstructure. *Justification for Duty-Free Entry:* No instruments of same general category are manufactured in the United States. *Application accepted by Commissioner of Customs:* October 19, 2009.

Docket Number: 09–062. *Applicant:* Department of Homeland Security, Science & Technology Directorate, Office of National Labs, National Bio-defense analysis and Countermeasures Center, 8300 Research Plaza, Fort Detrick, Frederick, MD 21702. *Instrument:* Electron Microscope. *Manufacturer:* FEI Company, Czech Republic. *Intended Use:* The instrument will be used to study biological agents and specimens at the cellular and genomic level. *Justification for Duty-Free Entry:* No instruments of same general category are manufactured in the United States. *Application accepted by Commissioner of Customs:* October 21, 2009.

Dated: *November 3, 2009.*

Christopher Cassel,

Director, IA Subsidies Enforcement Office.

[FR Doc. E9–27070 Filed 11–9–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Application(s) for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be postmarked on or before November 30, 2009. Address written comments to Statutory Import Programs Staff, Room 3720, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. at the U.S. Department of Commerce in Room 3720.

Docket Number: 09–059. *Applicant:* Fermi Research Alliance LLC–Fermi National Accelerator Laboratory, Kirk Road & Wilson Street, P.O. Box 500, Batavia, IL 60510. *Instrument:* Wavelength Shifting Fiber. *Manufacturer:* Kuraray Co., Ltd.; Japan. *Intended Use:* This instrument will be used to observe the transmutation of muon neutrinos to electron neutrinos as they travel from their production point through the earth to a 20 kiloton detector. The instrument allows the light generated by neutrino interactions in the experiment's 18 kilotons of liquid scintillator to be captured, wavelength shifted and transmitted to photo-detectors. The fibers must be .7mm in diameter and 32 meters in length. Further, the light generated in the fiber must not suffer unacceptable attenuation in traveling down 16–20 m of the WLS fiber. As such, a pertinent characteristic of this instrument is that it have an attenuation length of >20m. *Justification for Duty-Free Entry:* There are instruments of the same general category being manufactured within the United States, but they could not be utilized for the purposes described above. *Application accepted by Commissioner of Customs:* October 9, 2009.

Docket Number: 09–063. Applicant: Argonne National Laboratory, 9700 S. Cass Ave., Lemont, IL 60439. *Instrument:* CEOS Spherical Aberration Corrector. *Manufacturer:* CEOS Corrected Electron Optical Systems, GmbH; Germany. *Intended Use:* This instrument will be installed on a transmission electron microscope and used for the study of nanoscale magnetic and ferroelectric materials. The aberration corrector greatly enhances the spatial resolution with which the experiments described above can be carried out. All experiments will be carried out in Lorentz mode, and will include imaging and electron diffraction combined with certain in-situ techniques. A pertinent characteristic of this instrument is that it must be capable of compensating completing the spherical aberration of the low field objective lens on the 2100F TEM to which it will be attached. The spherical aberration coefficient of this lens is 200 mm. In addition the CEOS aberration corrector can compensate this value of spherical aberration while only increasing the chromatic aberration by approximately 20%. *Justification for Duty-Free Entry:* There are no instruments of the same general category being manufactured within the United States. *Application accepted by Commissioner of Customs:* October 21, 2009.

Dated: November 3, 2009.

Christopher Cassel,

Acting Director, IA Subsidies Enforcement Office.

[FR Doc. E9–27067 Filed 11–9–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 47–2009]

Foreign-Trade Zone 121—Albany, NY; Application for Expansion and Reorganization Under Alternative Site Framework

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the Capital District Regional Planning Commission, grantee of FTZ 121, requesting authority to expand the zone and reorganize under the alternative site framework (ASF) adopted by the Board (74 FR 1170, 01/12/09; correction 74 FR 3987, 01/22/09). The ASF is an option for grantees for the establishment or reorganization of general-purpose zones and can permit significantly greater flexibility in the designation of new ''usage-driven'' FTZ sites for operators/users located within a grantee's ''service area'' in the context of the Board's standard 2,000-acre activation limit for a general-purpose zone project. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on November 3, 2009.

The grantee's proposed service area under the ASF would be Albany, Columbia, Greene, Fulton, Montgomery, Rensselaer, Saratoga, Schenectady, Warren and Washington counties, New York. If approved, the grantee would be able to serve sites throughout the service area based on companies' needs for FTZ designation. The proposed service area is adjacent to or within the Albany Customs and Border Protection port of entry.

FTZ 121 was approved by the Board on July 18, 1985 (Board Order 307, 50 FR 30986, July 31, 1985) and expanded on September 25, 1997 (Board Order 922, 62 FR 51830, October 3, 1997). The applicant is requesting to include its current sites as ''magnet sites'': Site 1, Northeastern Industrial Park, expanding the site from 20 acres to 514 acres; Site 2, Rotterdam Industrial Park, expanding the site from 7 acres to 225 acres; and

Site 3, Port of Albany, expanding the site from 35 acres to 277 acres. The applicant has requested that Site 4, Crossroads Industrial Park be removed from FTZ 121. The applicant is also requesting approval of the following additional ''magnet sites'': Site 5, 281 acres, Saratoga Technology + Energy Park, 10 Hermes Road, Malta, NY 12020; Site 6, 1192 acres, Luther Forest Technology Campus, 40 Rocket Test Station Road, Malta, NY 12020; Site 7, 133 acres, Florida Business Park Extension, State Highway 5S, Amsterdam, NY 12010. The applicant proposes that Site 6 be subject to a seven-year ''sunset'' time limit, instead of the standard five-year ''sunset'' time limit that would otherwise apply to magnet sites under the ASF.

In accordance with the Board's regulations, Maureen Hinman of the FTZ staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address listed below. The closing period for their receipt is January 11, 2010. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to January 25, 2010)

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's Web site, which is accessible via *http://www.trade.gov/ftz.* For further information, contact Maureen Hinman at *maureen.hinman@trade.gov* or (202) 482–0627.

Dated: November 3, 2009.

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. E9–27094 Filed 11–9–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

[Docket No. PTO–P–2009–0048]

Grant of Interim Extension of the Term of U.S. Patent No. 4,971,802; MIFAMURTIDE

AGENCY: United States Patent and Trademark Office.

ACTION: Notice of interim patent term extension.

SUMMARY: The United States Patent and Trademark Office has issued a certificate under 35 U.S.C. 156(d)(5) for a third one-year interim extension of the term of U.S. Patent No. 4,971,802.

FOR FURTHER INFORMATION CONTACT: Raul Tamayo by telephone at (571) 272–7728; by mail marked to his attention and addressed to the Commissioner for Patents, Mail Stop Hatch-Waxman PTE, P.O. Box 1450, Alexandria, VA 22313–1450; by fax marked to his attention at (571) 273–7728, or by e-mail to *Raul.Tamayo@uspto.gov.*

SUPPLEMENTARY INFORMATION: Section 156 of Title 35, United States Code, generally provides that the term of a patent may be extended for a period of up to five years if the patent claims a product, or a method of making or using a product, that has been subject to certain defined regulatory review, and that the patent may be extended for interim periods of up to a year if the regulatory review is anticipated to extend beyond the expiration date of the patent.

On September 30, 2009, IDM Pharma, agent/licensee of patent owner Novartis, timely filed an application under 35 U.S.C. 156(d)(5) for a third interim extension of the term of U.S. Patent No. 4,971,802. Claims of the patent cover muramyl tripeptide phosphatidyl ethanolamine, which is labeled as the active ingredient in the human drug product Mifamurtide. The application indicates, and the Food and Drug Administration has confirmed, that a New Drug Application for the human drug product Mifamurtide has been filed and is currently undergoing regulatory review before the Food and Drug Administration for permission to market or use the product commercially.

Review of the application indicates that, except for permission to market or use the product commercially, the subject patent would be eligible for an extension of the patent term under 35 U.S.C. 156, and that the patent should be extended for an additional year as required by 35 U.S.C. 156(d)(5)(B). Because it is apparent that the regulatory review period will continue beyond the extended expiration date of the patent (November 20, 2009), interim extension of the patent term under 35 U.S.C. 156(d)(5) is appropriate.

A third interim extension under 35 U.S.C. 156(d)(5) of the term of U.S. Patent No. 4,971,802 is granted for a period of one year from the extended expiration date of the patent, *i.e.,* until November 20, 2010.

Dated: October 30, 2009.

David J. Kappos,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. E9–26998 Filed 11–9–09; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

[Docket No. 0910271381–91382–01]

Impact of Implementation of the Chemical Weapons Convention on Commercial Activities Involving ''Schedule 1'' Chemicals Through Calendar Year 2009

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Notice of inquiry.

SUMMARY: The Bureau of Industry and Security (BIS) is seeking public comments on the impact that implementation of the Chemical Weapons Convention, through the Chemical Weapons Convention Implementation Act and the Chemical Weapons Convention Regulations, has had on commercial activities involving ''Schedule 1'' chemicals during calendar year 2009. The purpose of this notice of inquiry is to collect information to assist BIS in its preparation of the annual certification to the Congress, which is required under Condition 9 of Senate Resolution 75, April 24, 1997, in which the Senate gave its advice and consent to the ratification of the Chemical Weapons Convention.

DATES: Comments must be received by December 10, 2009.

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

- *E-mail: wfisher@bis.doc.gov.* Include the phrase ''Schedule 1 Notice of Inquiry'' in the subject line;
- *Fax:* (202) 482–3355 (Attn: Willard Fisher);
- *Mail or Hand Delivery/Courier:* Willard Fisher, U.S. Department of Commerce, Bureau of Industry and Security, Regulatory Policy Division,

14th Street & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: For questions on the Chemical Weapons Convention requirements for ''Schedule 1'' chemicals, contact James Truske, Treaty Compliance Division, Office of Nonproliferation and Treaty Compliance, Bureau of Industry and Security, U.S. Department of Commerce, Phone: (202) 482–1001. For questions on the submission of comments, contact Willard Fisher, Regulatory Policy Division, Office of Exporter Services, Bureau of Industry and Security, U.S. Department of Commerce, Phone: (202) 482–2440.

SUPPLEMENTARY INFORMATION:

Background

In providing its advice and consent to the ratification of the Convention on the Prohibition of the Development, Production, Stockpiling, and Use of Chemical Weapons and Their Destruction, commonly called the Chemical Weapons Convention (CWC) (the Convention), the Senate included in Senate Resolution 75 (S. Res. 75, April 24, 1997) several conditions to its ratification. Condition 9, titled ''Protection of Advanced Biotechnology,'' calls for the President to certify to Congress on an annual basis that ''the legitimate commercial activities and interests of chemical, biotechnology, and pharmaceutical firms in the United States are not being significantly harmed by the limitations of the Convention on access to, and production of, those chemicals and toxins listed in Schedule 1.'' On July 8, 2004, President Bush, by Executive Order 13346, delegated his authority to make the annual certification to the Secretary of Commerce.

The CWC is an international arms control treaty that contains certain verification provisions. In order to implement these verification provisions, the CWC established the Organization for the Prohibition of Chemical Weapons (OPCW). The CWC imposes certain obligations on countries that have ratified the Convention (*i.e.,* States Parties), among which are the enactment of legislation to prohibit the production, storage, and use of chemical weapons, and the establishment of a National Authority to serve as the national focal point for effective liaison with the OPCW and other States Parties for the purpose of achieving the object and purpose of the Convention and the implementation of its provisions. The CWC also requires each State Party to implement a comprehensive data declaration and inspection regime to provide transparency and to verify that both the public and private sectors of the State Party are not engaged in activities prohibited under the CWC.

''Schedule 1'' chemicals consist of those toxic chemicals and precursors set forth in the CWC ''Annex on Chemicals'' and in Supplement No. 1 to part 712 of the Chemical Weapons Convention Regulations (CWCR) (15 CFR parts 710–722). The CWC identified these toxic chemicals and precursors as posing a high risk to the object and purpose of the Convention.

The CWC restricts the production of ''Schedule 1'' chemicals for protective purposes to two facilities per State Party. The CWC Article-by-Article Analysis submitted to the Senate in Treaty Doc. 103–21 defined the term ''protective purposes'' to mean ''used for determining the adequacy of defense equipment and measures.'' Consistent with this definition, U.S. implementation, as authorized via Presidential Decision Directive (PDD) 70, December 17, 1999, assigned the responsibility to operate these two facilities to the Department of Defense (DOD), thereby precluding commercial production of ''Schedule 1'' chemicals for protective purposes in the United States. This action did not establish any limitations on ''Schedule 1'' chemical activities that are not prohibited by the CWC. However, the Department of Defense maintains strict controls on ''Schedule 1'' chemicals produced at its facilities in order to ensure the accountability and proper use of such chemicals, consistent with the object and purpose of the Convention.

The provisions of the CWC that affect commercial activities involving ''Schedule 1'' chemicals are implemented in the CWCR (*see* 15 CFR part 712) and in the Export Administration Regulations (EAR) (*see* 15 CFR 742.18 and 15 CFR part 745), both of which are administered by the Bureau of Industry and Security (BIS). Pursuant to CWC requirements, the CWCR restrict commercial production of ''Schedule 1'' chemicals to research, medical, or pharmaceutical purposes. The CWCR also contain other requirements and prohibitions that apply to ''Schedule 1'' chemicals and/or ''Schedule 1'' facilities. Specifically, the CWCR:

(1) Prohibit the import of ''Schedule 1'' chemicals from States not Party to the Convention (15 CFR 712.2(b));

(2) Require annual declarations by certain facilities engaged in the production of ''Schedule 1'' chemicals in excess of 100 grams aggregate per calendar year (*i.e.,* declared ''Schedule 1'' facilities) for purposes not prohibited by the Convention (15 CFR 712.5(a)(1) and (a)(2));

(3) Require government approval of ''declared Schedule 1'' facilities (15 CFR 712.5(f));

(4) Provide that ''declared Schedule 1'' facilities are subject to initial and routine inspection by the Organization for the Prohibition of Chemical Weapons (15 CFR 712.5(e) and 716.1(b)(1));

(5) Require 200 days advance notification of establishment of new ''Schedule 1'' production facilities producing greater than 100 grams aggregate of ''Schedule 1'' chemicals per calendar year (15 CFR 712.4);

(6) Require advance notification and annual reporting of all imports and exports of ''Schedule 1'' chemicals to, or from, other States Parties to the Convention (15 CFR 712.6, 742.18(a)(1) and 745.1); and

(7) Prohibit the export of ''Schedule 1'' chemicals to States not Party to the Convention (15 CFR 742.18(a)(1) and (b)(1)(ii)).

Request for Comments

In order to assist in determining whether the legitimate commercial activities and interests of chemical, biotechnology, and pharmaceutical firms in the United States are significantly harmed by the limitations of the Convention on access to, and production of, ''Schedule 1'' chemicals as described in this notice, BIS is seeking public comments on any effects that implementation of the Chemical Weapons Convention, through the Chemical Weapons Convention Implementation Act and the Chemical Weapons Convention Regulations, has had on commercial activities involving ''Schedule 1'' chemicals during calendar year 2009. To allow BIS to properly evaluate the significance of any harm to commercial activities involving ''Schedule 1'' chemicals, public comments submitted in response to this notice of inquiry should include both a quantitative and qualitative assessment of the impact of the CWC on such activities.

Submission of Comments

All comments must be submitted to one of the addresses indicated in this notice. The Department requires that all comments be submitted in written form.

The Department encourages interested persons who wish to comment to do so at the earliest possible time. The period for submission of comments will close on December 10, 2009. The Department will consider all comments received before the close of the comment period.

Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. The Department will not accept comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the persons submitting the comments and will not consider them. All comments submitted in response to this notice will be a matter of public record and will be available for public inspection and copying.

The Office of Administration, Bureau of Industry and Security, U.S. Department of Commerce, displays public comments on the BIS Freedom of Information Act (FOIA) Web site at *http://www.bis.doc.gov/foia.* This office does not maintain a separate public inspection facility. If you have technical difficulties accessing this Web site, please call BIS's Office of Administration, at (202) 482–1093, for assistance.

Dated: November 4, 2009.

Matthew S. Borman,

Acting Assistant Secretary for Export Administration.

[FR Doc. E9–27053 Filed 11–9–09; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency National Defense Intelligence College Board of Visitors Closed Meeting

AGENCY: National Defense Intelligence College, Defense Intelligence Agency, DoD.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the provisions of subsection (d) of section 10 of Public Law 92–463, as amended by section 5 of Public Law 94–409, notice is hereby given that a closed meeting of the Defense Intelligence Agency National Defense Intelligence College Board of Visitors has been scheduled for January 12 and 13, 2010.

DATES: The meeting will be held on Tuesday, January 12, 2010 (from 8 a.m. to 5 p.m.) and on Wednesday, January 13, 2010 (from 8 a.m. to 12 p.m.).

ADDRESSES: The meeting will be held at the National Defense Intelligence College, Washington, DC 20340–5100.

FOR FURTHER INFORMATION CONTACT: Dr. David R. Ellison, President, DIA National Defense Intelligence College, Washington, DC 20340–5100 (202/231–3344).

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in section 552b(c)(1), title 5 of the U.S. Code and therefore will be closed. The Board will discuss several current critical intelligence issues and advise the Director, DIA, as to the successful accomplishment of the mission assigned to the National Defense Intelligence College.

Dated: November 5, 2009.

Mitchell S. Bryman,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–26996 Filed 11–9–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Office of Postsecondary Education; Overview Information; International Research and Studies (IRS) Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2010

Catalog of Federal Domestic Assistance (CFDA) Numbers: 84.017A–1 and 84.017A–3.

DATES:

Applications Available: November 10, 2009.

Deadline for Transmittal of Applications: January 12, 2010.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The IRS Program provides grants to conduct research and studies to improve and strengthen instruction in modern foreign languages, area studies, and other international fields.

Priorities: In accordance with 34 CFR 75.105(b)(2)(ii), these priorities are from the regulations for this program (34 CFR 660.10 and 660.34).

Competitive Preference Priorities: For FY 2010, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i), we award an additional five points to an application that meets one or more of these priorities.

These priorities are:

Competitive Preference Priority 1—Instructional Materials Applications.

The development of specialized instructional or assessment materials focused on any of the following seventy-eight (78) languages selected from the U.S. Department of Education's list of Less Commonly Taught Languages (LCTLs):

Akan (Twi-Fante), Albanian, Amharic, Arabic (all dialects), Armenian, Azeri (Azerbaijani), Balochi, Bamanakan (Bamana, Bambara, Mandikan, Mandingo, Maninka, Dyula), Belarusian, Bengali (Bangla), Berber (all languages), Bosnian, Bulgarian, Burmese, Cebuano (Visayan), Chechen, Chinese (Cantonese), Chinese (Gan), Chinese (Mandarin), Chinese (Min), Chinese (Wu), Croatian, Dari, Dinka, Georgian, Gujarati, Hausa, Hebrew (Modern), Hindi, Igbo, Indonesian, Japanese, Javanese, Kannada, Kashmiri, Kazakh, Khmer (Cambodian), Kirghiz, Korean, Kurdish (Kurmanji), Kurdish (Sorani), Lao, Malay (Bahasa Melayu or Malaysian), Malayalam, Marathi, Mongolian, Nepali, Oromo, Panjabi, Pashto, Persian (Farsi), Polish, Portuguese (all varieties), Quechua, Romanian, Russian, Serbian, Sinhala (Sinhalese), Somali, Swahili, Tagalog, Tajik, Tamil, Telugu, Thai, Tibetan, Tigrigna, Turkish, Turkmen, Ukrainian, Urdu, Uyghur/Uigur, Uzbek, Vietnamese, Wolof, Xhosa, Yoruba, and Zulu.

Competitive Preference Priority 2—Research, Surveys, and Studies Applications.

Research, surveys, or studies relating to current needs for improving internationalization (including foreign language instruction, area studies, and international studies) in Historically Black Colleges and Universities (HBCUs), Predominantly Black Institutions (PBIs), Hispanic Serving Institutions (HSIs), Tribally Controlled Colleges and Universities (TCCUs), Asian American and Native American Pacific Islander-serving Institutions (AANAPISIs), Native American-serving Nontribal Institutions (NASNTIs), or Alaskan Native and/or Native Hawaiian institutions (as defined in Title III and Title V of the Higher Education Act of 1965, as amended).

Note: You will receive an additional five points for meeting a competitive preference priority in your application. Applicants are expected to address only one competitive preference priority in each application, but regardless of how many priorities are addressed, no more than five points in total can be awarded to a single application.

Program Authority: 20 U.S.C. 1125.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 82, 84, 85, 86, 97, 98, and 99. (b) The regulations for this program in 34 CFR parts 655 and 660.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Areas of National Need: In accordance with section 601(c) of the

Higher Education Act of 1965, as amended (HEA), 20 U.S.C. 1121(c), the Secretary has consulted with and received recommendations regarding national need for expertise in foreign languages and world regions from the head officials of a wide range of Federal agencies. The Secretary has taken these recommendations into account, and a list of foreign languages and world regions identified by the Secretary as areas of national need may be found on links on the following Web sites: *http://www.ed.gov/about/offices/list/ope/policy.html* and *http://www.ed.gov/programs/iegpsirs/legislation.html.*

Also included on these Web sites and links are the specific recommendations the Secretary received from Federal agencies.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: The Administration has requested $102,335,000 for the International Education and Foreign Language Studies: Domestic Programs for FY 2010, of which we intend to use an estimated $1,637,000 for awards under these competitions (84.017A–1 and 84.017A–3). The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Estimated Range of Awards: $50,000–$200,000 per year.

Estimated Average Size of Awards: $164,000.

Estimated Number of Awards: 10.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

III. Eligibility Information

1. *Eligible Applicants:* Public and private agencies, organizations, institutions, and individuals.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

IV. Application and Submission Information

1. *Address To Request Application Package:* Carla White, U.S. Department of Education, 1990 K Street, NW., Room 6085, Washington, DC 20006–8521. *Telephone:* (202) 502–7636; or by *e-mail: carla.white@ed.gov.*

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program. The IRS Program has two application packages. Research, surveys, and studies applicants must use the application package for 84.017A–1. Instructional materials applicants must use the application package for 84.017A–3.

Page Limit: The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the application narrative [Part III] to the equivalent of no more than 30 pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides. Page numbers and an identifier may be outside of the 1″ margin.
- Double space (no more than three lines per vertical inch) all text in the application narrative, except titles, headings, footnotes, quotations, references, captions, and all text in charts, tables, figures, and graphs. These items may be single-spaced. Charts, tables, figures, and graphs in the application narrative count toward the page limit.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch). However, you may use a 10 point font in charts, tables, figures, and graphs.
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman and Arial Narrow) will not be accepted.

The page limit does not apply to Part I, the Application for Federal Assistance face sheet (SF 424); the supplemental information form required by the Department of Education; Part II, the budget information summary form (ED Form 524); or Part IV, the assurances and certifications. The page limit also does not apply to a table of contents. If you include any attachments or appendices not specifically requested in the application package, these items will be counted as part of your application narrative [Part III] for purposes of the page limit requirement. You must include your complete response to the selection criteria in the application narrative.

We will reject your application if you exceed the page limit.

3. *Submission Dates and Times:*

Applications Available: November 10, 2009.

Deadline for Transmittal of Applications: January 12, 2010.

Applications for grants under this program must be submitted electronically using the Electronic Grant Application System (e-Application) accessible through the Department's e-Grants site. For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 6. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this program must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the IRS Program, CFDA number 84.017A, must be submitted electronically using e-Application, accessible through the Department's e-Grants Web site at: *http://e-grants.ed.gov.*

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement and submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks

before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

While completing your electronic application, you will be entering data online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

• You must complete the electronic submission of your grant application by 4:30:00 p.m., Washington, DC time, on the application deadline date. E-Application will not accept an application for this program after 4:30:00 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.

• The hours of operation of the e-Grants Web site are 6:00 a.m. Monday until 7:00 p.m. Wednesday; and 6:00 a.m. Thursday until 8:00 p.m. Sunday, Washington, DC time. Please note that, because of maintenance, the system is unavailable between 8:00 p.m. on Sundays and 6:00 a.m. on Mondays, and between 7:00 p.m. on Wednesdays and 6:00 a.m. on Thursdays, Washington, DC time. Any modifications to these hours are posted on the e-Grants Web site.

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

• You must submit all documents electronically, including all information you typically provide on the following forms: the Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password protected file, we will not review that material.

• Your electronic application must comply with any page limit requirements described in this notice.

• Prior to submitting your electronic application, you may wish to print a copy of it for your records.

• After you electronically submit your application, you will receive an automatic acknowledgment that will include a PR/Award number (an identifying number unique to your application).

• Within three working days after submitting your electronic application, fax a signed copy of the SF 424 to the Application Control Center after following these steps:

(1) Print SF 424 from e-Application.

(2) The applicant's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the SF 424.

(4) Fax the signed SF 424 to the Application Control Center at (202) 245–6272.

• We may request that you provide us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of e-Application Unavailability: If you are prevented from electronically submitting your application on the application deadline date because e-Application is unavailable, we will grant you an extension of one business day to enable you to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) You are a registered user of e-Application and you have initiated an electronic application for this competition; and

(2) (a) E-Application is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) E-Application is unavailable for any period of time between 3:30 p.m. and 4:30:00 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgment of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (*see* VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930. If e-Application is unavailable due to technical problems with the system and, therefore, the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application. Extensions referred to in this section apply only to the unavailability of e-Application.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through e-Application because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to e-Application; and

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application. If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Carla White, U.S. Department of Education, 1990 K Street, NW., room 6085, Washington, DC 20006–8521. *Fax:* (202) 502–7860.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, *Attention:* (CFDA Number 84.017A), LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application, by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, *Attention:* (CFDA Number 84.017A), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this grant notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *General:* Applications are divided into two groups, instructional materials (CFDA 84.017A–3) and research, surveys, and studies (CFDA 84.017A–1). Review panels will be assigned to read either instructional materials applications or research, surveys, and studies applications. The number of panels for each category will depend on the number of applications received. Each panel reviews, scores, and ranks its applications separately from the applications assigned to other panels. All instructional materials applications will be ranked together from the highest to the lowest score for funding purposes; and, all research, surveys, and studies applications will be ranked together from the highest to the lowest score for funding purposes.

2. *Selection Criteria:* The selection criteria for this program are from 34 CFR 655.31, 660.31, 660.32, and 660.33 and are as follows:

For instructional materials—

Need for the project (10 points); Potential for the use of materials in other programs (5 points); Account of related materials (10 points); Likelihood of achieving results (10 points); Expected contribution to other programs (5 points); Plan of operation (10 points); Quality of key personnel (5 points); Budget and cost effectiveness (5 points); Evaluation plan (15 points); Adequacy of resources (5 points); Description of final form of materials (5 points); and Provisions for pretesting and revision (15 points).

For research, surveys and studies—

Need for the project (10 points); Usefulness of expected results (10 points); Development of new knowledge (10 points); Formulation of problems and knowledge of related research (10 points); Specificity of statement of procedures (5 points); Adequacy of methodology and scope of project (10 points); Plan of operation (10 points); Quality of key personnel (10 points); Budget and cost effectiveness (5 points); Evaluation plan (15 points); and Adequacy of resources (5 points).

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. Grantees are required to use the electronic data instrument International Resource Information System (IRIS), to complete the final report. Electronically formatted instructional materials such as CDs, DVDs, videos, computer diskettes and books produced by the grantee as part of the grant approved activities are also acceptable as final reports. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* The objective for the IRS Program is to support surveys, studies, and the development of instructional materials to improve and strengthen instruction in modern foreign languages, area studies, and other international fields. The Department will use the following measures to evaluate the success of the IRS Program:

Performance Measure 1: Percentage of IRS Program projects judged to be successful by the program officer, based on a review of information provided in annual performance reports.

Performance Measure 2: Number of outreach activities that are adopted or disseminated within a year, divided by the total number of IRS outreach activities conducted in the current reporting period.

Efficiency Measure: Cost per high-quality, successfully completed IRS project.

The information provided by grantees in their performance reports submitted via IRIS will be the source of data for these measures. Reporting screens can be viewed at: *http://iris.ed.gov/iris/pdfs/IRS.pdf.*

VII. Agency Contact

For Further Information Contact: Beth MacRae, International Education Programs Service, U.S. Department of Education, 1990 K Street, NW., room 6088, Washington, DC 20006–8521. *Telephone:* (202) 502–7596; or by *e-mail: beth.macrae@ed.gov.*

If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register,** in text or Adobe Portable Document

Format (PDF) on the Internet at the following site: *www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Delegation of Authority: The Secretary of Education has delegated authority to Daniel T. Madzelan, Director, Forecasting and Policy Analysis for the Office of Postsecondary Education, to perform the functions and duties of the Assistant Secretary for Postsecondary Education.

Dated: November 4, 2009.

Daniel T. Madzelan,

Director, Forecasting and Policy Analysis.

[FR Doc. E9–27122 Filed 11–9–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Meeting

AGENCY: Department of Education, National Assessment Governing Board.

ACTION: Notice of open meeting and partially closed meetings.

SUMMARY: The notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under Section 10 (a) (2) of the Federal Advisory Committee Act. This document is intended to notify members of the general public of their opportunity to attend. Individuals who will need special accommodations in order to attend the meeting (e.g.; interpreting services, assistive listening devices, materials in alternative format) should notify Munira Mwalimu at 202–357–6938 or at Munira.Mwalimu@ed.gov no later than November 10, 2009. We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation. The meeting site is accessible to individuals with disabilities.

DATES: November 19–21, 2009.

Times:

November 19: Committee Meetings:

Ad Hoc Committee on NAEP Testing and Reporting on Students with Disabilities and English Language Learners: Open Session—2:00 p.m. to 4:00 p.m.

Executive Committee: Open Session—4:30 p.m. to 5:30 p.m.; Closed Session—5:30 p.m. to 6:00 p.m.

November 20:

Full Board: Open Session—8:30 a.m. to 11:15 a.m.; Closed Session—11:30 a.m. to 12:30 p.m.; Open Session—3:00 p.m. to 4:30 p.m.

Committee Meetings:

Assessment Development Committee: Closed Session—12:45 p.m. to 2:00 p.m.; Open Session—2:00 p.m. to 3:00 p.m.

Committee on Standards, Design and Methodology and Reporting and Dissemination Committee: Joint Closed Session—12:45 p.m. to 1:05 p.m.

Committee on Standards, Design and Methodology: Closed Session—1:05 p.m. to 2:00 p.m.; Open Session—2:00 p.m. to 3:00 p.m.

Reporting and Dissemination Committee: Open Session—1:05 p.m. to 3:00 p.m.

November 21:

Nominations Committee: Closed Session—7:45 a.m. to 8:15 a.m.

Full Board: Closed Session—8:30 a.m. to 9:30 a.m.; Open Session—9:30 a.m. to 11:00 a.m.

Location: Sheraton Raleigh Hotel, 421 S. Salisbury Street, Raleigh, NC 27601.

FOR FURTHER INFORMATION CONTACT: Munira Mwalimu, Operations Officer, National Assessment Governing Board, 800 North Capitol Street, NW., Suite 825, Washington, DC, 20002–4233, Telephone: (202) 357–6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 412 of the National Education Statistics Act of 1994, as amended.

The Board is established to formulate policy guidelines for the National Assessment of Educational Progress (NAEP). The Board's responsibilities include selecting subject areas to be assessed, developing assessment specifications and frameworks, developing appropriate student achievement levels for each grade and subject tested, developing standards and procedures for interstate and national comparisons, developing guidelines for reporting and disseminating results, and releasing initial NAEP results to the public.

On November 19, 2009, the Ad Hoc Committee on NAEP Testing and Reporting on Students with Disabilities (SD) and English Language Learners (ELL) will meet in open session from 2:00 p.m. to 4:00 p.m. Thereafter, the Executive Committee will meet in open session from 4:30 p.m. to 5:30 p.m. and in closed session from 5:30 p.m. to 6:00 p.m. During the closed session on November 19, 2009 the Executive Committee will receive a briefing from the National Center for Education Statistics (NCES) on options for NAEP contracts covering the 2010–2012 assessment years, based on funding for Fiscal Year 2010–2011. The discussion of contract options and costs will address the implications for congressionally mandated goals and adherence to Board policies on NAEP assessments. This part of the meeting must be conducted in closed session because public discussion of this information would disclose independent government cost estimates and contracting options, adversely impacting the confidentiality of the contracting process. Public disclosure of information discussed would significantly impede implementation of the NAEP contracts, and is therefore protected by exemption 9(B) of section 552b(c) of Title 5 U.S.C.

On November 20, the full Board will meet in open session from 8:30 a.m. to 10:00 a.m. The Board will review and approve the meeting agenda and meeting minutes from the August 2009 Board meeting. Newly appointed Board members will then be introduced. The Board will also be addressed by North Carolina educators. This session will be followed by a report from the Governing Board's Executive Director and an update from the Acting Commissioner of Education Statistics on the work of the National Center for Education Statistics (NCES).

From 10:15 a.m. to 11:15 a.m., the full Board will receive a briefing on public comments received on recommendations of the Expert Panels on SD and ELL students from the Ad Hoc Committee on NAEP Testing and Reporting. The full Board will then meet in closed session from 11:30 a.m. to 12:30 p.m. to receive a briefing from NCES on the 2009 Trend Results for Reading. The Board will be provided with embargoed data that cannot be discussed in an open meeting prior to their official release. Premature disclosure of data would significantly impede implementation of the NAEP Trend Assessment program, and is therefore protected by exemption 9(B) of section 552b(c) of Title 5 U.S.C.

From 12:45 p.m. to 2:00 p.m. on November 20, the Assessment Development Committee will meet in closed session to receive a briefing from Educational Testing Service on the 2009

reading trend, reading vocabulary items, grade 12 mathematics trend, science test items, and the 2011 writing computer-based assessment. The Board will be provided with embargoed data that cannot be discussed in an open meeting prior to their official release. Premature disclosure of data would significantly impede implementation of the NAEP assessments in the subjects, and is therefore protected by exemption 9(B) of section 552b(c) of Title 5 U.S.C. Thereafter the Committee will meet in open session till 3:00 p.m.

From 12:45 p.m. to 1:05 p.m. two of the Board's standing committees—the Committee on Standards, Design and Methodology (COSDAM) and the Reporting and Dissemination Committee—will meet in a joint closed session to receive a briefing on 2009 participation rates for 12th grade students and item response rates. In addition, members will be briefed on participation rates for private schools and students for all grades in subjects assessed in 2009. These data will provide information to help determine whether participation rates are sufficient to assure reliable test results and sufficiency of response rates for reliable measurement.

Following this joint session, the Reporting and Dissemination Committee will meet in open session from 1:05 p.m. to 3:00 p.m. COSDAM will continue to meet in closed session from 1:05 p.m. to 2:00 p.m. to receive a briefing on trend results for 2009 reading and grade 12 mathematics. Members will review secure data and results on trend analyses for 2009 reading and grade 12 mathematics with respect to achievement levels. The data will inform decisions on whether the evidence is sufficient to assure the technical feasibility of maintaining trend for reporting 2009 data. COSDAM will receive a briefing on preliminary results of the 2009 science achievement levels pilot study. Members will review secure science pilot results on the percentages of students scoring at or above the cut scores set in the science pilot study, and they will review item data.

These Committee meetings will be partially closed since disclosure of the secure data, not yet released to the public, would significantly impede implementation of the NAEP reading and science assessment programs at all grades and mathematics at grade 12, and is therefore protected by exemption 9(B) of section 552b(c) of Title 5 U.S.C.

The full Board will meet in open session on November 21 from 3:00 p.m. to 4:00 p.m. to receive a briefing on the NAEP Technological Literacy Framework project. This session will be followed by an ethics briefing conducted from 4:00 p.m. to 4:30 p.m., provided to Board members from the Office of General Counsel. The November 20 session of the Board meeting is scheduled to adjourn at 4:30 p.m.

On November 21, the Nominations Committee will meet in closed session from 7:45 a.m. to 8:15 a.m. to review and discuss confidential information on nominees (to include individual names and resumes) received for Board vacancies for terms beginning on October 1, 2010. These discussions pertain solely to internal personnel rules and practices of an agency and will disclose information of a personal nature where disclosure would constitute an unwarranted invasion of personal privacy. As such, the discussions are protected by exemptions 2 and 6 of section 552b(c) of Title 5 U.S.C.

The full Board will meet in closed session on November 21 from 8:30 a.m. to 9:30 a.m. to receive a briefing on the 2009 Trial Urban District Assessment (TUDA) Mathematics Report Card. The data has not been released to the public and cannot be discussed in an open meeting. Premature disclosure of the embargoed data would significantly impede implementation of the NAEP TUDA program, and is therefore protected by exemption 9(B) of section 552b(c) of Title 5 U.S.C. Thereafter, the Board will meet in open session from 9:45 a.m. to 11:00 a.m. to review and take action on Committee reports. The November 21, 2009 session of the Board meeting is scheduled to adjourn at 11:00 a.m.

Detailed minutes of the meeting, including summaries of the activities of the closed sessions and related matters that are informative to the public and consistent with the policy of section 5 U.S.C. 552b(c) will be available to the public within 14 days of the meeting. Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, Suite #825, 800 North Capitol Street, NW., Washington, DC, from 9:00 a.m. to 5:00 p.m. Eastern Standard Time, 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: *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.*

Dated: November 4, 2009.

Cornelia S. Orr,

Executive Director, National Assessment Governing Board, U.S. Department of Education.

[FR Doc. E9–27115 Filed 11–9–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC09–592–000]

Request for Comment on and Emergency Short-Term Clearance Extension of OMB Approval for FERC–592

November 3, 2009.

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Request for comment on emergency short-term clearance extension of OMB (Office of Management and Budget) approval for FERC–592.

SUMMARY: In compliance with the requirements of section 3507(j) (2) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), as amended by the Information Technology Reform Act of 1996 (Pub. L. 104–106), the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on FERC's request for an emergency short-term clearance extension of the OMB approval of FERC–592 (OMB Control No. 1902–0157; Marketing Affiliates of Interstate Pipelines, Standards of Conduct for Transmission Providers).

DATES: Comments related to FERC's request for an emergency short-term clearance extension of OMB approval are due November 30, 2009.[1]

[1] On September 23, 2009, in this Docket, the Commission issued a request (''Commission Information Collection Activities (FERC–592); Comment Request; Extension'') for public comment on the current reporting requirements with no change. (The Notice is available in FERC's eLibrary at *http://elibrary.ferc.gov/idmws/search/intermediate.asp?link_file=yes&doclist=13756416* and in the **Federal Register** at 74 FR 50176 (September 30, 2009).) The Notice provides

ADDRESSES: Address comments on the request for an emergency short-term clearance extension to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission Desk Officer. Comments to OMB should be filed electronically, c/o *oira_submission@omb.eop.gov* and include OMB Control Number 1902–0157 as a reference. The Desk Officer may be reached by telephone at 202–395–4638.

A copy of the comments should also be sent to the Federal Energy Regulatory Commission and should refer to Docket No. IC09–592–000. Comments may be filed either electronically or in paper format at FERC. Those persons filing electronically do not need to make a paper filing. Documents filed electronically via the Internet must be prepared in an acceptable filing format and in compliance with the Federal Energy Regulatory Commission submission guidelines. Complete filing instructions and acceptable filing formats are available at *http://www.ferc.gov/help/submission-guide.asp.* To file the document electronically, access the Commission's Web site and click on Documents & Filing, E-Filing (*http://www.ferc.gov/docs-filing/efiling.asp*), and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgement to the sender's e-mail address upon receipt of comments.

For paper filings, an original and two copies of the comments should be submitted to the Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426, and should refer to Docket No. IC09–592–000.

All comments may be viewed, printed or downloaded remotely via the Internet through FERC's homepage using the ''eLibrary'' link. For user assistance, contact *ferconlinesupport@ferc.gov* or toll-free at (866) 208–3676 or for TTY, contact (202) 502–8659.

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by telephone at (202)502–8663, by fax at (202)273–0873, and by e-mail at *ellen.brown@ferc.gov.*

SUPPLEMENTARY INFORMATION: FERC–592 includes the reporting, recordkeeping, and posting requirements in:

- 18 CFR Part 358 (Standards of Conduct),[2]
- 18 CFR 250.16, and
- FERC Form No. 592 log/format, that is posted at *http://www.ferc.gov/docs-filing/eforms.asp#592.*

This Notice refers to this group of collections of information as ''FERC–592.''

FERC does not have sufficient time after the pending comment period (ending November 30, 2009) to review and address public comments, to issue a subsequent 30-day Notice soliciting public comment, and to subsequently submit that Notice and a clearance package to OMB at least 60 days before the current expiration date (of December 31, 2009). Therefore, to ensure OMB clearance for the reporting requirements does not expire before the clearance process is concluded, FERC is requesting the following:

- An emergency short-term clearance extension of the current OMB expiration date to May 2, 2010 (the maximum of 180 days from this emergency request),
- Public comments, by November 30, 2009, on the FERC request for the emergency short-term OMB clearance extension, and
- The issuance, no later than December 3, 2009, of OMB's decision on the FERC request for an emergency short-term clearance extension.

Action: As described above, the Commission is requesting: (1) An emergency short-term OMB clearance extension, (2) public comments on the FERC request for an emergency short-term clearance extension of the OMB approval, and (3) an expedited OMB decision on the FERC emergency short-term clearance extension request.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–26971 Filed 11–9–09; 8:45 am]

BILLING CODE 6717–01–P

additional information and requests comments on the need for the reporting requirements; uses of the data; the accuracy of the burden estimate; ways to minimize the burden; and ways to enhance the quality, utility and clarity of the information to be collected. The comment period ends on November 30, 2009; those comments are to be submitted to FERC.

The Notice herein relates to FERC's request to OMB for an emergency short-term extension of the OMB clearance for the FERC–592 reporting requirements, and an expedited OMB decision on the request.

Comments related to issues in both Notices are due on November 30, 2009.

[2] The requirements in 18 CFR Part 358 that are related to the natural gas industry are included in OMB No. 1902–0157 and this Notice. However, the requirements in Part 358 that are related to the electric utility industry are covered by FERC–717 (OMB Control No. 1902–0173) and are not a subject of this Notice.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

October 29, 2009.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP10–74–000.
Applicants: Midwestern Gas Transmission Company.
Description: Midwestern Gas Transmission Company submits Sixth Revised Sheet 0 *et al.* to FERC Gas Tariff, Third Revised Volume 1, to be effective 12/1/09.
Filed Date: 10/26/2009.
Accession Number: 20091026–0284.
Comment Date: 5 p.m. Eastern Time on Monday, November 9, 2009.

Docket Numbers: RP10–76–000.
Applicants: Total Peaking Services, LLC.
Description: Total Peaking Services, LLC submits proposed revisions to FERC Gas Tariff to comply with Order No. 587–T.
Filed Date: 10/26/2009.
Accession Number: 20091027–0034.
Comment Date: 5 p.m. Eastern Time on Monday, November 9, 2009.

Docket Numbers: RP10–77–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: Algonquin Gas Transmission, LLC submits First Revised Sheet 10 *et al.* to FERC Gas Tariff, Fifth Revised Volume 1, to be effective 11/30/09.
Filed Date: 10/27/2009.
Accession Number: 20091028–0001.
Comment Date: 5 p.m. Eastern Time on Monday, November 9, 2009.

Docket Numbers: RP10–78–000.
Applicants: Transcontinental Gas Pipe Line Company.
Description: Transcontinental Gas Pipe Line Company, LLC submits Sixth Revised Sheet 21 *et al.* to FERC Gas Tariff, Fourth Revised Volume 1, to be effective 11/1/09.
Filed Date: 10/27/2009.
Accession Number: 20091028–0002.
Comment Date: 5 p.m. Eastern Time on Monday, November 9, 2009.

Docket Numbers: RP10–79–000.
Applicants: Equitrans, L.P.
Description: Equitrans, LP submits Fifth Revised Tariff Sheet 317 to FERC Gas Tariff, Original Volume 1 to be effective 11/1/09.
Filed Date: 10/28/2009.
Accession Number: 20091029–0025.
Comment Date: 5 p.m. Eastern Time on Monday, November 9, 2009.

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. E9–26980 Filed 11–9–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD09–9–000]

Small Hydropower Development in the United States; Supplemental Notice of Technical Conference

November 3, 2009.

As announced in the ''Notice of Technical Conference'' issued on August 14, 2009, a technical conference will be held on December 2, 2009, from 1 p.m. to 5 p.m. (EST) in the Commission Meeting Room at the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. The conference will be open for the public to attend and advance registration is not required. Members of the Commission will attend and participate in the conference.

The purpose of this conference is to explore issues related to licensing small non-federal hydropower projects in the United States. Specifically, the participants will discuss the Commission's program for granting licenses and exemptions from licensing, including 5-megawatt and conduit exemptions, for conventional hydropower projects. The conference will also provide an opportunity for industry, state and federal agencies, tribes, and other stakeholders to express their views and suggestions for processing applications for small hydropower projects. The agenda for this conference is attached.

A free webcast of this event is available through *http://www.ferc.gov.* Anyone with Internet access who desires to listen to this event can do so by navigating to the Calendar of Events at *http://www.ferc.gov* and locating this event in the Calendar. The event will contain a link to its webcast. The Capitol Connection provides technical support for webcasts and offers the option of listening to the conference via phone-bridge for a fee. If you have any questions, visit *http://www.CapitolConnection.org* or call (703) 993–3100.

Anyone without Internet access can view the conference via television from one of the Commission's regional offices. Please call or e-mail the following staff by November 16, 2009, to make arrangements. Seating capacity is limited.

Regional office	Staff contact	Telephone number	E-mail address
Atlanta	Charles Wagner	(678) 245–3065	*charles.wagner@ferc.gov*
Chicago	Peggy Harding	(312) 596–4438	*peggy.harding@ferc.gov*
New York	Peter Valeri	(212) 273–5930	*peter.valeri@ferc.gov*
Portland	Patrick Regan	(503) 552–2741	*patrick.regan@ferc.gov*
San Francisco	Ron Adhya	(415) 369–3368	*ron.adhya@ferc.gov*

This conference will be transcribed. Transcripts of the conference will be immediately available for a fee from Ace-Federal Reporters, Inc. (202) 347–3700 or (800) 336–6646.

Commission 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) 208–8659 (TTY), or send a FAX to (202) 208–2106 with the required accommodations.

For more information about this conference, please contact Steve Hocking at (202) 502–8753 or *steve.hocking@ferc.gov.*

Kimberly D. Bose,

Secretary.

[FR Doc. E9–26972 Filed 11–9–09; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2009–0234; FRL–8979–6]

Agency Information Collection Activities: Submission to OMB for Review and Approval; Comment Request; Information Collection Effort for New and Existing Coal- and Oil-fired Electric Utility Steam Generating Units; EPA ICR No. 2362.01, OMB Control No. 2060–New

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA)(44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request for a new collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before December 10, 2009.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2009–0234, to (1) EPA online using *http://www.regulations.gov* (our preferred method), by e-mail to a-and-r-*docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Air and Radiation Docket and Information Center, *Mailcode:* 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Attention:* Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: William Maxwell, Energy Strategies Group, Sector Policies and Program Division, D243–01, Environmental Protection Agency, Research Triangle Park, North Carolina 27711; *telephone number:* (919) 541–5430; *fax number:* (919) 541–5450; *e-mail address: maxwell.bill@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.10. On July 2, 2009 (74 FR 31725), EPA sought comments on a draft of this ICR pursuant to 5 CFR 1320.8(d). EPA received 53 comments during the comment period and revised this ICR in response to the comments. Comments received on the July 2, 2009 draft of this ICR and EPA's responses to those comments may be found in the public docket. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OAR–2009–0234, which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the Air and Radiation Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Air and Radiation Docket is 202–566–1742.

Use EPA's electronic docket and comment system at *http://www.regulations.gov* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov.*

Title: Information Collection Effort for Coal- and Oil-fired Electric Utility Steam Generating Units.

ICR numbers: EPA ICR No. 2362.01, OMB Control No. 2060–New.

ICR Status: This ICR is for a new information collection activity. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: This information collection will be conducted by EPA's Office of Air and Radiation (OAR) to assist the Administrator of EPA to determine the current population of affected coal- and oil-fired electric utility steam generating units and to develop emission standards for this source category as required by Clean Air Act (CAA) section 112(d).

To obtain the information necessary to identify and categorize all coal- and oil-fired electric utility steam generating units potentially affected by the CAA section 112(d) standard, this ICR will solicit information from all potentially affected units under authority of CAA section 114. EPA intends to provide the survey in electronic format; however, written responses will also be accepted. The survey will be submitted to all facilities identified as being coal- or oil-fired electric utility steam generating units through data bases available to the Agency. EPA envisions allowing recipients 3 months to respond to the survey. To further define the emission level being achieved by the top performing 12 percent of similar sources for the existing population, this ICR requires that certain units conduct emission testing concurrent with the survey. EPA envisions allowing recipients 6 to 8 months to respond to the emission testing requirement.

Burden Statement: The total burden for the coal- and oil-fired electric utility steam generating units' data gathering effort is estimated to be 86,881 hours and $96,541,879 (74 hours and $106,726 per respondent for approximately 1,334 units). Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Respondents affected by this action may be owners/operators of coal- and oil-fired electric utility steam generating units as defined under CAA section 112(a)(8).

Estimated Number of Respondents: 531.

Frequency of Response: One time.

Estimated Total Annual Hour Burden: 86,881.

Estimated Total Annual Cost: $96,541,879. This includes an estimated cost of $5,904,197 for the electronic survey component and an estimated cost for the stack testing component of $90,637,682. There are no capital or O&M costs.

Dated: November 3, 2009.

John Moses,

Director, Collection Strategies Division.

[FR Doc. E9–27047 Filed 11–9–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8978–5; Docket ID No. EPA–HQ–ORD–2009–0348]

Draft Toxicological Review of cis- and trans-1,2-Dichloroethylene: In Support of the Summary Information in the Integrated Risk Information System (IRIS)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of peer-review workshop.

SUMMARY: EPA is announcing that Versar, Inc., an EPA contractor for external scientific peer review, will convene an independent panel of experts and organize and conduct an external peer-review workshop to review the external review draft document titled, ''Toxicological Review of cis- and trans-1,2-Dichloroethylene: In Support of Summary Information on the Integrated Risk Information System (IRIS)'' (EPA/635/R–09/006). The draft document was prepared by the National Center for Environmental Assessment (NCEA) within EPA's Office of Research and Development. EPA previously announced the 60-day public comment period (ending November 23, 2009) for the draft document in the **Federal Register** on September 24, 2009 (74 FR 48733). EPA will consider public comments and recommendations from the expert panel workshop as EPA finalizes the draft document.

The public comment period and the external peer-review workshop are separate processes that provide opportunities for all interested parties to comment on the document. EPA intends to forward public comments submitted in accordance with the September 24, 2009, **Federal Register** notice (74 FR 48733) to Versar, Inc. for consideration by the external peer-review panel prior to the workshop.

EPA is releasing this draft document solely for the purpose of pre-dissemination peer review under applicable information quality guidelines. This document has not been formally disseminated by EPA. It does not represent and should not be construed to represent any Agency policy or determination.

Versar, Inc. invites the public to register to attend this workshop as observers. In addition, Versar, Inc. invites the public to give oral and/or provide written comments at the workshop regarding the draft document under review. Space is limited, and reservations will be accepted on a first-come, first-served basis. The draft document and EPA's peer-review charge are available primarily via the Internet on NCEA's home page under the Recent Additions and Publications menus at *http://www.epa.gov/ncea.* In preparing a final report, EPA will consider Versar's report of the comments and recommendations from the external peer-review workshop and any public comments that EPA receives.

DATES: The peer-review panel workshop will begin on December 17, 2009 at 8:30 a.m. and end at 4 p.m.

ADDRESSES: The peer-review workshop will be held at the Marriott Courtyard Arlington Crystal City/Reagan National Airport, 2899 Jefferson Davis Highway, Arlington, VA 22202, phone: 703–549–3434. The EPA contractor, Versar, Inc., is organizing, convening, and conducting the peer-review workshop. To attend the workshop, register by December 10, 2009, by calling Versar, Inc. at 703–750–3000, ext. 545, or toll free at 1–800–2–VERSAR (ask for Kathy Coon, the cis- and trans-1,2-Dichloroethylene peer review workshop coordinator), sending a facsimile to 703–642–6954 (please reference the ''cis- and trans-1,2-Dichloroethylene Workshop'' and include your name, title, affiliation, full address and contact information), or sending an e-mail to *kscoon@versar.com* (subject line: cis- and trans-1,2-Dichloroethylene Peer Review Workshop).

The draft ''Toxicological Review of cis- and trans-1,2-Dichloroethylene: In Support of Summary Information on the Integrated Risk Information System (IRIS)'' is available primarily via the Internet on the National Center for Environmental Assessment's home page under the Recent Additions and Publications menus at *http://www.epa.gov/ncea.* A limited number of paper copies are available from the Information Management Team, NCEA; telephone: 703–347–8561; facsimile: 703–347–8691. If you are requesting a paper copy, please provide your name, mailing address, and the document title, ''Toxicological Review of cis- and trans-1,2-Dichloroethylene: In Support of Summary Information on the Integrated Risk Information System (IRIS).'' Copies are not available from Versar, Inc.

Information on Services for Individuals with Disabilities: EPA welcomes public attendance at the ''cis- and trans-1,2-Dichloroethylene peer-review workshop'' and will make every effort to accommodate persons with disabilities. For information on access or services for individuals with disabilities, please contact Versar, Inc. by phone at (703) 750–3000, ext. 545, or toll free at 1–800–2–VERSAR (ask for Kathy Coon, the cis- and trans-1,2-Dichloroethylene peer review workshop coordinator), or by e-mail at *kscoon@versar.com* (subject line: cis- and trans-1,2-Dichloroethylene Peer Review Workshop), preferably at least 10 days prior to the meeting, to give as much time as possible to process your request.

FOR FURTHER INFORMATION CONTACT: Questions regarding information, registration, access or services for individuals with disabilities, or logistics for the external peer-review workshop should be directed to Versar, Inc., 6850 Versar Center, Springfield, VA 22151; telephone: 703–750–3000, ext. 545, or toll free at 1–800–2–VERSAR (ask for Kathy Coon, the cis- and trans-1,2-Dichloroethylene peer review workshop coordinator), facsimile: 703–642–6954 (please reference the ''cis- and trans-1,2-Dichloroethylene Workshop'' and include your name, title, affiliation, full address and contact information), or e-mail: *kscoon@versar.com* (subject line: cis- and trans-1,2-Dichloroethylene Peer Review Workshop). To request accommodation of a disability, please contact Kathy Coon (at the numbers and e-mail listed above), preferably at least 10 days prior to the meeting, to give as much time as possible to process your request.

If you have questions about the document, please contact Audrey Galizia, National Center for Environmental Assessment (NCEA), telephone: 732–906–6887; facsimile: 732–452–6429; or e-mail *galizia.audrey@epa.gov.*

SUPPLEMENTARY INFORMATION:

Information About IRIS

IRIS is a database that contains potential adverse human health effects information that may result from chronic (or lifetime) exposure to specific chemical substances found in the environment. The database (available on the Internet at *http://www.epa.gov/iris*) contains qualitative and quantitative health effects information for more than 540 chemical substances that may be used to support the first two steps (hazard identification and dose-response evaluation) of a risk assessment process. When supported by available data, the database provides oral reference doses (RfDs) and inhalation reference concentrations (RfCs) for chronic health effects, and oral slope factors and inhalation unit risks for carcinogenic effects. Combined with specific exposure information, government and private entities can use IRIS data to help characterize public health risks of chemical substances in a site-specific situation and thereby

support risk management decisions designed to protect public health.

Dated: October 29, 2009.

Rebecca Clark,

Acting Director, National Center for Environmental Assessment.

[FR Doc. E9–27049 Filed 11–9–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8978–7; Docket ID No. EPA–HQ–ORD–2009–0245]

Draft Toxicological Review of Hydrogen Cyanide and Cyanide Salts: In Support of the Summary Information on the Integrated Risk Information System (IRIS)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of peer-review workshop.

SUMMARY: EPA is announcing that Versar, Inc., an EPA contractor for external scientific peer review, will convene an independent panel of experts and organize and conduct an external peer-review workshop to review the external review draft document titled, ''Toxicological Review of Hydrogen Cyanide and Cyanide Salts: In Support of Summary Information on the Integrated Risk Information System (IRIS)'' (EPA/635/R–08/016). The draft document was prepared by the National Center for Environmental Assessment (NCEA) within EPA's Office of Research and Development. EPA previously announced the 60-day public comment period (ending November 23, 2009) for the draft document in the **Federal Register** on September 23, 2009 (74 FR 48539). EPA will consider public comments and recommendations from the expert panel workshop as EPA finalizes the draft document.

The public comment period and the external peer-review workshop are separate processes that provide opportunities for all interested parties to comment on the document. EPA intends to forward public comments submitted in accordance with the September 23, 2009, **Federal Register** notice (74 FR 48539) to Versar, Inc., for consideration by the external peer-review panel prior to the workshop.

EPA is releasing this draft document solely for the purpose of pre-dissemination peer review under applicable information quality guidelines. This document has not been formally disseminated by EPA. It does not represent and should not be construed to represent any Agency policy or determination.

Versar, Inc. invites the public to register to attend this workshop as observers. In addition, Versar, Inc. invites the public to give oral and/or provide written comments at the workshop regarding the draft document under review. Space is limited, and reservations will be accepted on a first-come, first-served basis. The draft document and EPA's peer-review charge are available primarily via the Internet on NCEA's home page under the Recent Additions and Publications menus at *http://www.epa.gov/ncea.* In preparing a final report, EPA will consider Versar Inc.'s report of the comments and recommendations from the external peer-review workshop and any public comments that EPA receives.

DATES: The peer-review panel workshop will begin on December 14, 2009, at 9 a.m. and end at 5 p.m.

ADDRESSES: The peer-review workshop will be held at Marriott Courtyard Arlington Crystal City/Reagan National Airport, 2899 Jefferson Davis Highway, Arlington, VA 22202, telephone 703–549–3434. The EPA contractor, Versar, Inc. is organizing, convening, and conducting the peer-review workshop. To attend the workshop, register by December 7, 2009, by calling Versar, Inc. at 703–750–3000 extension 6897, sending a facsimile to 703–642–6954 or sending an e-mail to *hriester@versar.com.* You may also register via the Internet at *http://epa.versar.com/hydrogencyanide.*

The draft ''Toxicological Review of Hydrogen Cyanide and Cyanide Salts: In Support of Summary Information on the Integrated Risk Information System (IRIS)'' is available primarily via the Internet on the National Center for Environmental Assessment's home page under the Recent Additions and Publications menus at *http://www.epa.gov/ncea.* A limited number of paper copies are available from the Information Management Team, NCEA; telephone: 703–347–8561; facsimile: 703–347–8691. If you are requesting a paper copy, please provide your name, mailing address, and the document title, ''Toxicological Review of Hydrogen Cyanide and Cyanide Salts: In Support of Summary Information on the Integrated Risk Information System (IRIS).'' Copies are not available from Versar, Inc.

Information on Services for Individuals with Disabilities: EPA welcomes public attendance at the ''Hydrogen Cyanide and Cyanide Salts peer-review workshop'' and will make every effort to accommodate persons with disabilities. For information on access or services for individuals with disabilities, please contact Versar, Inc, preferably at least 10 days prior to the meeting, to give as much time as possible to process your request.

FOR FURTHER INFORMATION CONTACT: Questions regarding information, registration, access or services for individuals with disabilities, or logistics for the external peer-review workshop should be directed to Versar.

If you have questions about the document, please contact Kathleen Newhouse, National Center for Environmental Assessment (NCEA), (8601P) 1200 Pennsylvania Ave., Washington DC, 20460; telephone: 703–347–8641; facsimile: 703–347–8689; or e-mail: *newhouse.kathleen@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Information About IRIS

IRIS is a database that contains potential adverse human health effects information that may result from chronic (or lifetime) exposure to specific chemical substances found in the environment. The database (available on the Internet at *http://www.epa.gov/iris*) contains qualitative and quantitative health effects information for more than 540 chemical substances that may be used to support the first two steps (hazard identification and dose-response evaluation) of a risk assessment process. When supported by available data, the database provides oral reference doses (RfDs) and inhalation reference concentrations (RfCs) for chronic health effects, and oral slope factors and inhalation unit risks for carcinogenic effects. Combined with specific exposure information, government and private entities can use IRIS data to help characterize public health risks of chemical substances in a site-specific situation and thereby support risk management decisions designed to protect public health.

Dated: October 29, 2009.

Rebecca Clark,

Acting Director, National Center for Environmental Assessment.

[FR Doc. E9–27051 Filed 11–9–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8978–6; Docket ID No. EPA–HQ–ORD–2009–0203]

Draft Toxicological Review of Trichloroacetic Acid: In Support of the Summary Information in the Integrated Risk Information System (IRIS)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of peer-review workshop.

SUMMARY: EPA is announcing that Versar, Inc., an EPA contractor for external scientific peer review, will convene an independent panel of experts and organize and conduct an external peer-review workshop to review the external review draft document titled, ''Toxicological Review of Trichloroacetic Acid: In Support of Summary Information on the Integrated Risk Information System (IRIS)'' (EPA/635/R–09/003A). The draft document was prepared by the National Center for Environmental Assessment (NCEA) within EPA's Office of Research and Development. EPA previously announced the 60-day public comment period (ending November 23, 2009) for the draft document in the **Federal Register** on September 24, 2009 (74 FR 48735). EPA will consider public comments and recommendations from the expert panel workshop as EPA finalizes the draft document.

The public comment period and the external peer-review workshop are separate processes that provide opportunities for all interested parties to comment on the document. EPA intends to forward public comments submitted in accordance with the September 24, 2009, **Federal Register** notice (74 FR 48735) to Versar, Inc. for consideration by the external peer-review panel prior to the workshop.

EPA is releasing this draft document solely for the purpose of pre-dissemination peer review under applicable information quality guidelines. This document has not been formally disseminated by EPA. It does not represent and should not be construed to represent any Agency policy or determination.

Versar, Inc. invites the public to register to attend this workshop as observers. In addition, Versar, Inc. invites the public to give oral and/or provide written comments at the workshop regarding the draft document under review. Space is limited, and reservations will be accepted on a first-come, first-served basis. The draft document and EPA's peer-review charge are available primarily via the Internet on NCEA's home page under the Recent Additions and Publications menus at *http://www.epa.gov/ncea.* In preparing a final report, EPA will consider Versar's report of the comments and recommendations from the external peer-review workshop and any public comments that EPA receives.

DATES: The peer-review panel workshop will be held on December 10, 2009, at 8:30 a.m. and end at 5 p.m.

ADDRESSES: The peer-review workshop will be held at the Marriott Courtyard Arlington Crystal City/Reagan National Airport, 2899 Jefferson Davis Highway, Arlington, VA 22202; phone: 703–549–3434. The EPA contractor, Versar, Inc., is organizing, convening, and conducting the peer-review workshop. To attend the workshop, register by December 4, 2009, by e-mail: *KRiley@versar.com* (subject line: Trichloroacetic Acid Peer Review Workshop), by phone: 703–750–3000, ext. 579 or toll free at 1–800–2–VERSAR (1–800–283–7727), ext. 579, ask for the Trichloroacetic Acid Peer Review Workshop Coordinator, Karie Riley, or by faxing a registration request to 703–642–6954 (please reference the ''Trichloroacetic Acid Peer Review Workshop'' and include your name, title, affiliation, full address, and contact information).

The draft ''Toxicological Review of Trichloroacetic Acid: In Support of Summary Information on the Integrated Risk Information System (IRIS)'' is available primarily via the Internet on the National Center for Environmental Assessment's home page under the Recent Additions and Publications menus at *http://www.epa.gov/ncea.* A limited number of paper copies are available from the Information Management Team, NCEA; telephone: 703–347–8561; facsimile: 703–347–8691. If you are requesting a paper copy, please provide your name, mailing address, and the document title, ''Toxicological Review of Trichloroacetic Acid: In Support of Summary Information on the Integrated Risk Information System (IRIS).'' Copies are not available from Versar, Inc.

Information on Services for Individuals with Disabilities: EPA welcomes public attendance at the ''trichloroacetic acid peer-review workshop'' and will make every effort to accommodate persons with disabilities. For information on access or services for individuals with disabilities, please contact Versar, Inc. by phone at 703–750–3000 ext. 579 or by e-mail at *KRiley@versar.com,* preferably at least 10 days prior to the meeting, to give as much time as possible to process your request.

FOR FURTHER INFORMATION CONTACT: Questions regarding information, registration, access or services for individuals with disabilities, or logistics for the external peer-review workshop should be directed to Versar, Inc., 6850 Versar Center, Springfield, VA 22151; by e-mail: *KRiley@versar.com* (subject line: Trichloroacetic Acid Peer Review Workshop), by phone: 703–750–3000, ext. 579 or toll free at 1–800–2–VERSAR (1–800–283–7727), ext. 579, or ask for the Trichloroacetic Acid Peer Review Workshop Coordinator, Karie Riley). To request accommodation of a disability, please contact Ms. Karie Riley of Versar, preferably at least 10 days prior to the meeting, to give as much time as possible to process your request.

If you have questions about the document, contact Diana Wong, National Center for Environmental Assessment, (8601P), U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone: 703–347–8633; facsimile: 703–347–8689; or e-mail: *wong.diana-m@epa.gov.*

SUPPLEMENTARY INFORMATION:

Information About IRIS

IRIS is a database that contains potential adverse human health effects information that may result from chronic (or lifetime) exposure to specific chemical substances found in the environment. The database (available on the Internet at *http://www.epa.gov/iris*) contains qualitative and quantitative health effects information for more than 540 chemical substances that may be used to support the first two steps (hazard identification and dose-response evaluation) of a risk assessment process. When supported by available data, the database provides oral reference doses (RfDs) and inhalation reference concentrations (RfCs) for chronic health effects, and oral slope factors and inhalation unit risks for carcinogenic effects. Combined with specific exposure information, government and private entities can use IRIS data to help characterize public health risks of chemical substances in a site-specific situation and thereby support risk management decisions designed to protect public health.

Dated: October 29, 2009.

Rebecca Clark,

Acting Director, National Center for Environmental Assessment.

[FR Doc. E9–27048 Filed 11–9–09; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

FEDERAL RESERVE SYSTEM

[Docket No. OP–1369]

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

[Docket ID OCC–2009–0013]

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[Docket ID OTS–2009–0016]

Correspondent Concentration Risks: Reopening of Comment Period

AGENCIES: Federal Deposit Insurance Corporation (FDIC); Board of Governors of the Federal Reserve System (the Board), Office of the Comptroller of the Currency, Treasury (OCC); and Office of Thrift Supervision, Treasury (OTS).

ACTION: Extension of Comment Period for Proposed Guidance.

SUMMARY: On September 25, 2009, the FDIC, Board, OCC, and OTS (the Agencies) published proposed guidance on correspondent concentration risks (Proposed Guidance) for public comment. The Agencies are reopening the comment period on the Proposed Guidance for an additional 30 days.

DATES: Comments must be submitted on or before November 27, 2009.

ADDRESSES: Comments should be directed to:

FDIC: You may submit comments by any of the following methods:

Agency Web Site: http://www.fdic.gov/regulations/laws/federal. Follow instructions for submitting comments on the Agency Web Site.

E-mail: Comments@FDIC.gov. Include ''Proposed Guidance on Correspondent Concentration Risks'' in the subject line of the message.

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

Hand Delivery/Courier: Guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m. (EST).

Public Inspection: All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal* including any personal information provided. Comments may be inspected and photocopied in the FDIC Public Information Center, 3501 North Fairfax Drive, Room E–1002, Arlington, VA 22226, between 9 a.m. and 5 p.m. (EST) on business days. Paper copies of public comments may be ordered from the Public Information Center by telephone at (877) 275–3342 or (703) 562–2200.

FRB: You may submit comments, identified by Docket No. OP–1369, by any of the following methods:

Agency Web site: http://www.federalreserve.gov. Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*

E-mail: regs.comments@federalreserve.gov. Include the docket number in the subject line of the message.

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Fax: (202) 452–3819 or (202) 452–3102.

Mail: Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

Public Inspection: All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed in electronic or paper form in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

OCC: You may submit comments by any of the following methods:

E-mail: regs.comments@occ.treas.gov.

Fax: (202) 874–5274.

Mail: Office of the Comptroller of the Currency, 250 E Street, SW., Mail Stop 2–3, Washington, DC 20219.

Hand Delivery/Courier: 250 E Street, SW., Attn: Public Information Room, Mail Stop 2–3, Washington, DC 20219.

Instructions: You must include ''OCC'' as the agency name and ''Docket ID OCC–2009–0013'' in your comment. In general, OCC will enter all comments received into the docket without change, including any business or personal information that you provide such as name and address information, e-mail addresses, or phone numbers. Comments, including attachments and other supporting materials, received are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials by any of the following methods:

Viewing Comments Personally: You may personally inspect and photocopy comments at the OCC, 250 E Street, SW., Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874–4700. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments. You may also view or request available background documents and project summaries using the methods described above.

OTS: You may submit comments, identified by docket number ID OTS–2009–0016, by any of the following methods:

E-mail: regs.comments@ots.treas.gov. Please include ID OTS–2009–0016 in the subject line of the message and include your name and telephone number in the message.

Fax: (202) 906–6518.

Mail: Regulation Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention: ID OTS–2009–0016.

Hand Delivery/Courier: Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9 a.m. to 4 p.m. on business days, Attention: Regulation Comments, Chief Counsel's Office, Attention: ID OTS–2009–0016.

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received will be entered into the docket without change, including any personal information provided. Comments including attachments and other supporting materials received are part of the public record and subject to public disclosure. Do not enclose any information in your comments or supporting materials that you consider confidential or inappropriate for public disclosure.

Viewing Comments On-Site: You may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment for access, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov,* or send a facsimile transmission to (202) 906–6518. (Prior notice identifying the materials you will be requesting will assist us in serving you.) We schedule appointments on business days between 10 a.m. and 4 p.m. In most cases,

appointments will be available the next business day following the date we receive a request.

FOR FURTHER INFORMATION CONTACT: *FDIC:* Beverlea S. Gardner, Senior Examination Specialist, Division of Supervision and Consumer Protection, (202) 898–3640; or Mark G. Flanigan, Counsel, Legal Division, (202) 898–7426.

FRB: Barbara J. Bouchard, Associate Director, (202) 452–3072; or Craig A. Luke, Supervisory Financial Analyst, Supervisory Guidance and Procedures, 202–452–6409. For users of Telecommunications Device for the Deaf (''TDD'') only, contact (202) 263–4869.

OCC: Fred D. Finke, Liaison, Midsize-Community Bank Supervision, (202) 874–4468; or Kurt S. Wilhelm, Director, Financial Markets Group, (202) 874–4479.

OTS: Lori J. Quigley, Managing Director, Supervision, (202) 906–6265; or William J. Magrini, Senior Project Manager of Credit Policy, (202) 906–5744.

SUPPLEMENTARY INFORMATION: On September 25, 2009, the Agencies published for comment proposed guidance entitled ''Correspondent Concentration Risks'' (Proposed Guidance) 74 FR 48955. The Proposed Guidance stated that any comments on the proposal must be submitted on or before October 26, 2009. In response to requests for an extension of the comment period, the Agencies have decided to reopen the comment period on the Proposed Guidance for 30 days. The comment period will now run through November 27, 2009.

Dated at Washington, DC, the 2nd day of November, 2009.

By order of the Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority, October 30, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

Dated: October. 27, 2009.

Office of the Comptroller of the Currency.

John C. Dugan,

Comptroller of the Currency.

Dated: October 28, 2009.

By the Office of Thrift Supervision.

John E. Bowman,

Acting Director.

[FR Doc. E9–27069 Filed 11–9–09; 8:45 am]

BILLING CODE 6714–01–P, 6210–01–P, 4810–33–P, 6720–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act; Notice of Agency Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10 a.m. on Thursday, November 12, 2009, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous Board of Directors' Meetings.

Summary reports, status reports, and reports of actions taken pursuant to authority delegated by the Board of Directors.

Memorandum and resolution re: Final Rule on Capital Maintenance: Residential Mortgage Loans Modified Pursuant to the Making Home Affordable Program of the U.S. Department of Treasury.

Discussion Agenda:

Memorandum and resolution re: Final Rule on Prepaid Assessments.

Memorandum and resolution re: Rulemaking on Treatment by the FDIC as Conservator Or Receiver of Financial Assets Transferred by an Insured Depository Institution in Connection with a Securitization.

Memorandum and resolution re: Joint Final Rule Implementing SAFE Mortgage Licensing Act Requirements.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC.

This Board meeting will be Webcast live via the Internet and subsequently made available on-demand approximately one week after the event. Visit *http://www.vodium.com/goto/fdic/boardmeetings.asp* to view the event. If you need any technical assistance, please visit our Video Help page at: *http://www.fdic.gov/video.html.*

The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should call (703) 562–6067 (Voice or TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–7043.

Dated: November 5, 2009.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. E9–27141 Filed 11–6–09; 11:15 am]

BILLING CODE P

FEDERAL ELECTION COMMISSION

Sunshine Act Notices

DATE AND TIME: Thursday, November 5, 2009, at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

TO BE DISCUSSED ITEMS: Correction and Approval of Minutes.

Draft Advisory Opinion 2009–25: Jennifer Brunner Committee, by Patrick M. Quinn, Esq.

Draft Advisory Opinion 2009–26: Illinois State Representative Elizabeth Coulson, Coulson for Congress, and Coulson Campaign Committee, by William J. McGinley and Kathryn Biter Chen, Esqs.

Final Rules on Campaign Travel.

Placing First General Counsel's Reports on the Public Record.

Continuation of Web site and Internet Communications Improvement Initiative.

Management and Administrative Matters.

Individuals who plan to attend and require special assistance, such as sign language interpretation or other reasonable accommodations, should contact Mary Dove, Commission Secretary, at (202) 694–1040, at least 72 hours prior to the hearing date.

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, *Telephone:* (202) 694–1220,

Mary W. Dove,

Secretary of the Commission.

[FR Doc. E9–26904 Filed 11–9–09; 8:45 am]

BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or

the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 4, 2009.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. EB Financial Group, Inc., Hinsdale, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Baytree National Bank & Trust Company, Lake Forest, Illinois.

Board of Governors of the Federal Reserve System, November 4, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–26942 Filed 11–9–09; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 7, 2009.

A. Federal Reserve Bank of Atlanta (Steve Foley, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. Community Bancorp of Louisiana, Inc., Raceland, Louisiana; to merge with United Community Bancshares, Inc., and thereby indirectly acquire United Community Bank, both of Gonzales, Louisiana.

Board of Governors of the Federal Reserve System, November 5, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–26993 Filed 11–9–09; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act; Notice of Meeting

TIME AND DATE: 9 a.m. (Eastern Time), November 16, 2009.

PLACE: 4th Floor Conference Room, 1250 H Street, NW., Washington, DC 20005.

STATUS: Parts will be open to the public and parts closed to the public.

MATTERS TO BE CONSIDERED:

Parts Open to the Public

1. Approval of the minutes of the October 19, 2009 Board member meeting.
2. Thrift Savings Plan activity report by the Executive Director:

a. Monthly Participant Activity Report.

b. Monthly Investment Performance Report.

c. Legislative Report.

Parts Closed to the Public

3. Proprietary Information.
4. Personnel.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: November 5, 2009.

Thomas K. Emswiler,

Secretary, Federal Retirement Thrift Investment Board.

[FR Doc. E9–27108 Filed 11–6–09; 11:15 am]

BILLING CODE 6760–01–P

FEDERAL TRADE COMMISSION

[File No. 091 0075]

Schering-Plough and Merck & Co., Inc.; Analysis of Agreement Containing Consent Order to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the complaint and the terms of the consent order — embodied in the consent agreement — that would settle these allegations.

DATES: Comments must be received on or before November 30, 2009.

ADDRESSES: Interested parties are invited to submit written comments electronically or in paper form. Comments should refer to ''Merck Schering, File No. 091 0075'' to facilitate the organization of comments. Please note that your comment — including your name and your state — will be placed on the public record of this proceeding, including on the publicly accessible FTC website, at (*http://www.ftc.gov/os/publiccomments.shtm*).

Because comments will be made public, they should not include any sensitive personal information, such as an individual's Social Security Number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. Comments also should not include any sensitive health information, such as medical

records or other individually identifiable health information. In addition, comments should not include any ''[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential. . . .,'' as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and Commission Rule 4.10(a)(2), 16 CFR 4.10(a)(2). Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c).[1]

Because paper mail addressed to the FTC is subject to delay due to heightened security screening, please consider submitting your comments in electronic form. Comments filed in electronic form should be submitted by using the following weblink: (*https://public.commentworks.com/ftc/0910075*) (and following the instructions on the web-based form). To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the (*https://public.commentworks.com/ftc/0910075*). If this Notice appears at (*http://www.regulations.gov/search/index.jsp*), you may also file an electronic comment through that website. The Commission will consider all comments that regulations.gov forwards to it. You may also visit the FTC website at (*http://www.ftc.gov*) to read the Notice and the news release describing it.

A comment filed in paper form should include the ''Merck Schering, File No. 091 0075'' reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H-135, 600 Pennsylvania Avenue, NW, Washington, DC 20580. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

The Federal Trade Commission Act (''FTC Act'') and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC website, to the extent practicable, at (*http://www.ftc.gov/os/publiccomments.shtm*). As a matter of discretion, the Commission makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at (*http://www.ftc.gov/ftc/privacy.shtm*).

FOR FURTHER INFORMATION CONTACT: Yolanda M. Gruendel, Bureau of Competition, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, (202) 326-2971.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for October 29, 2009), on the World Wide Web, at (*http://www.ftc.gov/os/2009/04/index.htm*). A paper copy can be obtained from the FTC Public Reference Room, Room 130-H, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, either in person or by calling (202) 326-2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before the date specified in the **DATES** section.

Analysis of Agreement Containing Consent Order to Aid Public Comment

I. Introduction

The Federal Trade Commission (''Commission'') has accepted for public comment an Agreement Containing Consent Order (''Consent Agreement'') from Schering-Plough Corporation (''Schering-Plough'') and Merck & Co., Inc. (''Merck''), and has issued a Complaint and the Decision and Order (''Order'') contained in the Consent Agreement. The Order seeks to remedy the anticompetitive effects that would otherwise result from the proposed merger of Schering-Plough and Merck in a number of U.S. markets. Under the terms of the Order, Merck is required to divest all of its interest in Merial Limited, an animal health joint venture with Sanofi-Aventis S.A. (''Sanofi-Aventis''), and Schering-Plough is required to divest assets related to rolapitant, a neurokinin 1 (''NK1'') receptor antagonist for chemotherapy-induced nausea and vomiting (''CINV'') and post-operative nausea and vomiting (''PONV'') in humans.

Pursuant to an Agreement and Plan of Merger dated March 8, 2009, Schering-Plough proposes to acquire Merck and rename the surviving entity Merck (the ''Acquisition''), in a transaction valued at approximately $41.1 billion. The Commission's Complaint alleges that the proposed Acquisition, if consummated, would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, by lessening competition in the market for the manufacture and sale of NK1 receptor antagonists for CINV and PONV in humans and the manufacture and sale of numerous animal health products in the United States, including live poultry vaccines, killed poultry vaccines and cattle gonadotropins. The Consent Agreement would remedy the alleged violations by replacing the competition that would be lost in these and other markets as a result of the proposed Acquisition.

II. The Parties

Merck is a global pharmaceutical firm that researches, develops, manufactures and markets a variety of human and animal health products. In 2008, Merck had worldwide revenues of $23.9 billion, of which 56 percent were derived from U.S. sales. In 1997, Merck and Rhône-Poulenc S.A. (now Sanofi-Aventis S.A.) combined their respective animal health businesses to form Merial Limited, a stand-alone equally-owned animal health company. Merial markets a comprehensive line of animal health pharmaceuticals and vaccines for a variety of species, including companion and production animals. The joint venture generated global revenues of approximately $2.6 billion in 2008.

Schering-Plough is a global pharmaceutical firm that researches, develops, manufactures and markets human prescription and over-the-counter medications, as well as animal health products. In 2008, the company

[1] FTC Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

reported worldwide revenues of approximately $18.5 billion, of which only $5.6 billion were derived from sales of products in the United States. The company's human pharmaceutical business, which includes oncology and women's health drugs, ranks sixteenth in sales in North America. In April 2007, Schering-Plough acquired the Intervet animal health business. The combined Schering-Plough/Intervet animal health portfolio consists of more than a thousand pharmaceuticals and vaccines for a variety of companion and production animals. Schering-Plough's animal health business generates worldwide annual revenues of approximately $3 billion.

III. Animal Health Products

Merck and Schering-Plough are two of the leading animal health suppliers in the United States, and the proposed Acquisition raises significant competitive concerns in numerous U.S. animal health markets where Merck, through Merial Limited, and Schering-Plough compete directly. Both companies have extensive animal health portfolios that include pharmaceutical and vaccine products for a variety of companion and production animals.

The Commission initially focused its animal health investigation on certain overlap markets in poultry and cattle that raised significant competitive concerns. In the United States, for example, Merial and Schering-Plough are the two largest producers of poultry vaccines, and together they account for approximately 75 percent of U.S. sales of poultry vaccines. Poultry vaccines are used extensively by poultry producers to prevent a variety of diseases that can either kill poultry or impede their growth or development.

For example, poultry producers routinely vaccinate their flocks for Marek's disease, Newcastle disease and infectious bronchitis, the most common diseases affecting poultry in the United States. Marek's disease is caused by a herpes virus that affects the central nervous system and can cause lesions on internal organs and feather follicles. When an outbreak occurs, Marek's disease can be deadly, and it is often necessary to condemn the entire flock. Newcastle disease is a highly contagious virus characterized by gastro-intestinal, respiratory and nervous signs. Because it is easily transmitted and can cause significant damage to poultry operations, vaccines against Newcastle are widely administered by poultry producers. A third poultry disease that is commonly vaccinated against is infectious bronchitis, which targets not only the respiratory tract but also the uro-genital tract. Because infection can result in drops in egg production, it is a particularly significant problem for layers and breeders.

In addition to these commonly used vaccines, there are a number of other vaccines that are used in poultry operations to a lesser degree that would be affected by the proposed transaction. These include vaccines for infectious bursal disease, reovirus, infectious laryngotracheitis, coccidiosis, fowl pox, avian encephalomyelitis, and infectious tenosynovitis. Even though they are not used as universally as the core vaccines, these more minor vaccines play an important role in many poultry operations, as an outbreak of the disease can have equally disastrous economic consequences for poultry producers. Because of the unique characteristics of live and killed versions of poultry vaccines, they are not considered substitutes for each other.

The anticompetitive implications of eliminating one of the two leading suppliers of poultry vaccines in the United States are significant. Poultry producers have benefitted from direct competition between Merial and Schering-Plough, which has resulted in, among other things, steeper discounts and lower prices for customers. The remaining three market participants are smaller than either Merial or Schering-Plough, and do not have the capacity that either of these firms currently enjoys. As a result, these other firms would not be able to replace the competition that the proposed Acquisition would eliminate. In addition, because of research, development and regulatory barriers, entry sufficient to deter or counteract the competitive effects of the proposed transaction is unlikely to occur within two years.

The proposed transaction is also likely to result in anticompetitive harm in the market for cattle gonadotropins. These products are used to treat follicular cysts in cattle and to synchronize the reproductive cycles of cattle undergoing artificial insemination. Although there are other reproductive products on the market, these other products are used in combination with, and not as substitutes for, cattle gonadotropins in order to achieve reproductive synchronization. The combination of Merial and Schering-Plough would result in a duopoly in the market for cattle gonadotropins leaving only Wyeth to compete with the combined firm. Thus, the proposed merger would eliminate a significant competitor in the U.S. market for cattle gonadotropins, and absent a remedy, customers would likely pay higher prices for these drugs.

The Commission's Complaint specifically identifies those markets that the Commission concluded would be adversely impacted by the transaction. The transaction likely affects competition in numerous other existing and future animal health product markets, but the Commission did not reach a conclusion with respect to these markets as the comprehensive settlement addressed any potential competitive concerns in these areas.

IV. NK1 Receptor Antagonists

The proposed Acquisition raises competitive concerns in the market for NK1 receptor antagonists for CINV and PONV. CINV is a common side effect of chemotherapy that can last up to six or seven days after treatment. The most widely prescribed class of drugs used to treat CINV is the 5-HT3 receptor antagonist class. For some patients, particularly those who receive highly emetogenic chemotherapy regimes, treatment with 5-HT3 receptor antagonists alone may not fully relieve CINV. For these patients, NK1 receptor antagonists in combination with 5-HT3 receptor antagonists appear to provide effective relief. Likewise, NK1 receptor antagonists in combination with 5-HT3 receptor antagonists can also benefit patients with PONV.

Merck introduced the first NK1 receptor antagonist, Emend® (aprepitant), in 2003, and remains the only firm in the United States with an approved drug in the class. A very limited number of other firms, including Schering-Plough with its rolapitant, have NK1 receptor antagonists in development for CINV and PONV. At the time the proposed Acquisition was announced, Schering-Plough was in the process of out-licensing rolapitant to a third party. The proposed Acquisition, however, would likely diminish the combined firm's incentive to license the product, as rolapitant's launch could have a significant impact on the revenues for Merck's first-to-market product. The proposed Acquisition could therefore delay or eliminate a future entrant into the U.S. market for NK1 receptor antagonists for CINV and PONV and any benefits associated with that additional competition.

V. Terms of the Order

The Order issued by the Commission effectively remedies the proposed Acquisition's likely anticompetitive effects in the human and animal health markets at issue. The Order requires Merck to divest all of its interest in Merial Limited to its joint venture

partner, Sanofi-Aventis, and requires Schering-Plough to divest all of the assets relating to its NK1 receptor antagonist for CINV and PONV, rolapitant, to Opko Health, Inc. (''Opko''), within ten (10) days after the proposed Acquisition is consummated. In mid-September, Merck completed the sale of its interest in Merial to Sanofi-Aventis and terminated the Merial joint venture in response to the competitive concerns raised by the proposed Acquisition as required by the Order.

The Commission is satisfied that the divestiture of Merck's interest in Merial to Sanofi-Aventis remedies any and all competitive concerns raised by the combination of the parties' animal health businesses. Because Merck has no animal health operations outside of Merial, the divestiture of Merck's interest in Merial and termination of the Merial joint venture effectively eliminates all of the animal health overlaps created by the proposed Acquisition. The Commission is also satisfied that Sanofi-Aventis is a well-qualified acquirer of Merck's interest in Merial. Sanofi-Aventis already owned 50 percent of Merial, as Merck's joint venture partner, and Merial has been operating as a stand-alone business for quite some time. Merial's operations, therefore, would continue without interruption despite the change in ownership.

The Order contains several provisions designed to preserve the remedial benefits of the animal health divestiture to Sanofi-Aventis, most important of which is the ''prior approval'' provision. At the time the parties entered into an agreement to divest Merck's shares in Merial to Sanofi-Aventis, they also entered into a call option agreement (''Call Option'') granting Sanofi-Aventis the right to combine the animal health businesses of Merial and Schering-Plough after the Acquisition is consummated and to recreate the 50/50 joint venture between Merck and Sanofi-Aventis. The effect of the Call Option, if exercised, would be to reverse the animal health remedy required by the Order. Consistent with Commission policy, the Order contains a prior approval provision to address the credible risk (here, the high likelihood) that the combined Merck/Schering-Plough and Sanofi-Aventis would combine their animal health businesses after the divestiture. The call option was entered into with the expectation that it is likely to be exercised, and the firms have publicly identified the advantages of such a combination. As a result, Merck is prohibited from acquiring any of Merial's animal health assets, or in any way combining the animal health businesses of Merck and Sanofi-Aventis without the prior approval of the Commission.

On the human health side, the Commission is satisfied that divestiture of the assets relating to Schering-Plough's NK1 receptor antagonist for CINV and PONV would remedy the competitive concerns raised by the proposed transaction in that market. The Commission is satisfied that Opko is a well-qualified acquirer of the rolapitant assets. Opko, headquartered in Florida, is a publicly traded healthcare company involved in the discovery, development and commercialization of pharmaceutical and biological products. Opko has the financial resources and experience to develop and launch rolapitant, and to serve as an effective competitor in the market for NK1 receptor antagonists for CINV and PONV in the United States. If the Commission determines that Opko is not an acceptable acquirer of the assets to be divested, or that the manner of the divestitures is not acceptable, the parties must unwind the sale and divest the assets to another Commission-approved acquirer within six months of the date the Order becomes final. If Merck fails to divest within the six months, the Commission may appoint a trustee to divest the relevant assets.

The Order includes certain provisions to ensure that the divestiture to Opko is successful. For example, the parties are required to provide transitional services, some of which may extend for up to 24 months, to enable Opko to complete clinical testing and obtain regulatory approval to market the product in the United States. The Order also allows the Commission to appoint an Interim Monitor to ensure that the parties fulfill all of their obligations related to the divestiture of the assets.

In order to ensure, among other things, that the Commission remains informed about the status of the rolapitant assets pending divestiture and about the efforts being made to accomplish the divestiture, as well as the divestiture of Merck's interest in Merial and termination of the joint venture, the Order requires the parties to file periodic reports with the Commission until the divestiture is accomplished.

VI. Effective Date of the Order and Opportunity for Public Comment

The Commission issued the Complaint and the Order, and served them upon respondents at the same time it accepted the Consent Agreement for public comment. As a result of this action, the Order has already become effective. The Commission adopted procedures in August 1999 to allow for immediate implementation of an Order prior to a public comment period. The Commission announced that it ''contemplates doing so only in exceptional cases where, for example, it believes that the allegedly unlawful conduct to be prohibited threatens substantial and imminent public harm.'' 64 Fed. Reg. 46267 (1999).

This case is an appropriate one in which to issue a final order before receiving public comment because of the risk that Sanofi-Aventis will exercise the Call Option shortly after the proposed Acquisition is consummated, which would reverse the animal health remedy of the Consent Agreement. Making the Order final immediately ensures that the safeguards embodied in the Order are implemented before the Call Option can be exercised and subjects the respondents to civil penalties for failing to comply with the Order.

The Consent Agreement and Order have also been placed on the public record for 30 days to solicit comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the Order and the comments received, and may determine that the Order should be modified.[2]

The Commission anticipates that the Order, as issued, will resolve the competitive problems alleged in the Complaint. The purpose of this analysis is to facilitate public comment on the Order and to aid the Commission in determining whether to modify the Order in any respect. This analysis is not intended to constitute an official interpretation of the Consent Agreement or the Order or to modify their terms in any way.

By direction of the Commission, with Commissioners Harbour and Kovacic recused.

Donald S. Clark

Secretary.

[FR Doc. E9–27034 Filed 11–9–09; 8:45 am]

BILLING CODE 6750–01–S

[2]If the respondents do not agree to such modifications, the Commission may (1) initiate a proceeding to reopen and modify the Order in accordance with Rule 3.72(b), 16 CFR § 3.72(b), or (2) commence a new administrative proceeding by issuing an administrative complaint in accordance with Rule 3.11, 16 CFR § 3.11. *See* 16 CFR § 2.34(e)(2).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Notice of Interest Rate on Overdue Debts

Section 30.18 of the Department of Health and Human Services' claims collection regulations (45 CFR part 30) provides that the Secretary shall charge an annual rate of interest, which is determined and fixed by the Secretary of the Treasury after considering private consumer rates of interest on the date that the Department of Health and Human Services becomes entitled to recovery. The rate cannot be lower than the Department of Treasury's current value of funds rate or the applicable rate determined from the ''Schedule of Certified Interest Rates with Range of Maturities.'' The Secretary of the Treasury may revise this rate quarterly. The Department of Health and Human Services publishes this rate in the **Federal Register**.

The current rate of 10 ⅞%, as fixed by the Secretary of the Treasury, is certified for the quarter ended September 30, 2009. This interest rate is effective until the Secretary of the Treasury notifies the Department of Health and Human Services of any change.

Dated: October 30, 2009.

Molly P. Dawson,

Director, Office of Financial Policy and Reporting.

[FR Doc. E9–27022 Filed 11–9–09; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator for Health Information Technology; HIT Standards Committee Advisory Meeting; Notice of Meeting

AGENCY: Office of the National Coordinator for Health Information Technology, HHS.

ACTION: Notice of meeting.

This notice announces a forthcoming meeting of a public advisory committee of the Office of the National Coordinator for Health Information Technology (ONC). The meeting will be open to the public.

Name of Committee: HIT Standards Committee.

General Function of the Committee: To provide recommendations to the National Coordinator on standards, implementation specifications, and certification criteria for the electronic exchange and use of health information for purposes of adoption, consistent with the implementation of the Federal Health IT Strategic Plan, and in accordance with policies developed by the HIT Policy Committee.

Date and Time: The meeting will be held on November 19, 2009, from 9 a.m. to 5:15 p.m. Eastern Time.

Location: The Holiday Inn-Capitol, 550 C Street, SW., Washington, DC 20008. The hotel telephone number is 202–479–4000.

Contact Person: Judy Sparrow, Office of the National Coordinator, HHS, 330 C Street, SW., Washington, DC 20201, 202–205–4528, Fax: 202–690–6079, e-mail: *judy.sparrow@hhs.gov.* Please call the contact person for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice.

Agenda: The Committee will discuss a report from its Implementation Workgroup. In addition, to inform the Committee they will hear testimony from stakeholder groups on security standards. ONC intends to make background material available to the public no later than two (2) business days prior to the meeting. If ONC is unable to post the background material on its Web site prior to the meeting, it will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on ONC's Web site after the meeting, at *http://healthit.hhs.gov.*

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before November 16, 2009. Oral comments from the public will be scheduled between approximately 4:30 and 5 p.m. Time allotted for each presentation will be limited. If the number of speakers requesting to comment is greater than can be reasonably accommodated during the scheduled open public hearing session, ONC will take written comments after the meeting until close of business.

Persons attending ONC's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

ONC welcomes the attendance of the public at its advisory committee meetings. Seating is limited at the location, and ONC will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Judy Sparrow at least seven (7) days in advance of the meeting.

ONC is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://healthit.hhs.gov* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., App. 2).

Dated: October 30, 2009.

Judith Sparrow,

Office of Programs and Coordination, Office of the National Coordinator for Health Information Technology.

[FR Doc. E9–26981 Filed 11–9–09; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS), Full Committee Meeting.

Time and Date:

November 19, 2009 9 a.m.–3:30 p.m.

November 20, 2009 9:30 a.m.–12:30 p.m.

Place: National Center for Health Statistics, 3311 Toledo Road, Hyattsville, MD 20782, Telephone: 301 458–4200.

Status: Open.

Purpose: At this meeting the Committee will hear presentations and hold discussions on several health data policy topics. On the morning of the first day, the Committee will hear updates from the Department, the HHS Data Council, and the Centers for Medicare and Medicaid Services. A discussion of the Meaningful Measures letter action item led by the Quality Subcommittee will also take place. There will also be a briefing on the Department's work on comparative effectiveness research under the Recovery Act. In the afternoon, a discussion is scheduled regarding enhancing health information capacity in the 21st century.

On the morning of the second day, an action item is scheduled on the Meaningful Measures letter. Updates are planned from the Office of the National Coordinator (ONC) and the Office for Civil Rights (OCR), and a review of a draft of the biannual report to Congress on the implementation of the Administrative Simplification Provisions of HIPAA. Also scheduled are an update from NCHS Board of Scientific Counselors and a status report regarding the NVCHS 60th Anniversary Symposium.

The times shown above are for the full Committee meeting. Subcommittee breakout sessions can be scheduled for late in the afternoon of the first day and second day and in the morning prior to the full Committee

meeting on the second day. Agendas for these breakout sessions will be posted on the NCVHS Web site (URL below) when available.

Contact Person for More Information: Substantive program information as well as summaries of meetings and a roster of committee members may be obtained from Marjorie S. Greenberg, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, 3311 Toledo Road, Room 2402, Hyattsville, Maryland 20782, telephone (301) 458–4245. Information also is available on the NCVHS home page of the HHS Web site: *http://www.ncvhs.hhs.gov/,* where further information including an agenda will be posted when available.

Should you require reasonable accommodation, please contact the CDC Office of Equal Employment Opportunity on (301) 458–4EEO (4336) as soon as possible.

Dated: November 2, 2009.

James Scanlon,

Deputy Assistant Secretary for Planning and Evaluation, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. E9–27023 Filed 11–9–09; 8:45 am]

BILLING CODE 4151–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–D–0528]

International Conference on Harmonisation; Draft Guidance on E7 Studies in Support of Special Populations; Geriatrics; Questions and Answers; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance entitled ''E7 Studies in Support of Special Populations: Geriatrics; Questions & Answers.'' The draft guidance was prepared under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The draft questions and answers (Q&A) guidance addresses the representation of geriatric patients in the clinical database, including representation of special characteristics of the geriatric patient population. The Q&As are intended to provide guidance on this issue.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit electronic or written comments on the draft guidance by January 11, 2010.

ADDRESSES: Submit electronic comments on the draft guidance to *http://www.regulations.gov*. Submit written comments on the draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993–0002; or the Office of Communication, Outreach and Development (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. The guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 301–827–1800. Send two self-addressed adhesive labels to assist the office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT:

Regarding the guidance: Nisha Jain, Center for Biologics Evaluation and Research (HFM–392), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20850, 301–827–6110; or Robert Temple, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, rm. 4212, 301–796–2270.

Regarding the ICH: Michelle Limoli, Office of International Programs (HFG–1), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4480.

SUPPLEMENTARY INFORMATION:

I. Background

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission; the European Federation of Pharmaceutical Industries Associations; the Japanese Ministry of Health, Labour, and Welfare; the Japanese Pharmaceutical Manufacturers Association; the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA; and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and the IFPMA, as well as observers from the World Health Organization, Health Canada, and the European Free Trade Area.

In September 2009, the ICH Steering Committee agreed that a draft guidance entitled ''E7 Studies in Support of Special Populations: Geriatrics; Questions & Answers'' should be made available for public comment. The draft guidance is the product of the E7(R1) Implementation Working Group of the ICH. Comments about this draft will be considered by FDA and the E7(R1) Implementation Working Group.

The draft Q&A guidance addresses the representation of geriatric patients in the clinical database, including special characteristics of the geriatric patient population. In view of the growing geriatric population (elderly and very elderly, i.e., over 75 years of age) and the recent advances in the field of geriatrics since the ICH E7 guidance issued (59 FR 39398, August 2, 1994), the importance of geriatric data (including data for the very elderly) in a drug evaluation program has increased. The Q&As are intended to provide guidance on this issue.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if

such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) electronic or written comments on the draft guidance. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in 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.

III. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.regulations.gov*, *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm*, or *http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm*.

Dated: November 5, 2009.

David Horowitz,

Assistant Commissioner for Policy.

[FR Doc. E9–27000 Filed 11–9–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): CDC Grants for Public Health Research Dissertation (Panel B), Funding Opportunity Announcement (FOA) PAR07–231, Initial Review

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 aforementioned SEP:

Time and Date: 8:30 a.m.–5 p.m., December 2, 2009 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the initial review, discussion, and evaluation of applications received in response to ''CDC Grants for Public Health Research Dissertation, Panel B, FOA PAR07–231.''

Contact Person for More Information: Susan B. Stanton, D.D.S., Scientific Review Administrator, CDC, 1600 Clifton Road, NE., Mailstop D72, Atlanta, GA 30333, Telephone (404) 639–4640.

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 both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: November 2, 2009.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E9–27038 Filed 11–9–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the NIH Scientific Management Review Board, November 12, 2009, 1 p.m. to November 13, 2009, 12 p.m., National Institutes of Health, Building 31, 6th Floor, Conference Room 6, 31 Center Drive, Bethesda, MD 20892 which was published in the **Federal Register** on October 22, 2009, 74 FR 54583–54584.

The notice is being amended to change the meeting date to November 13, 2009 from 8:30 a.m. to 3 p.m. Sign up for public comment will begin at 8 a.m. Please see the Scientific Management Review Board Web site for the schedule of upcoming meetings at: *http://smrb.od.nih.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Lyric Jorgenson, Office of Science Policy, Office of the Director, National Institutes of Health, Building 1, Room 218, MSC 0166, 9000 Rockville Pike, Bethesda, MD 20892, *smrb@mail.nih.gov,* (301) 496–6837.

Dated: November 4, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–27123 Filed 11–9–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences, Special Emphasis Panel, Phase II Clinical Trial in Septic Shock.

Date: December 4, 2009.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, Room 3AN34, 45 Center Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Brian R. Pike, PhD, Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN18, Bethesda, MD 20892, 301–594–3907, *pikbr@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives National Institutes of Health HHS)

Dated: November 2, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–26898 Filed 11–9–09; 8:45 am]

BILLING CODE M

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. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Neuro-Aids Training.

Date: November 17, 2009.

Time: 1:30 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Enid Light, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Boulevard, Room 6132, MSC 9608, Bethesda, MD 20852–9608, 301–443–0322, *elight@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. 93.242, 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: November 3, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–27124 Filed 11–9–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse, Special Emphasis Panel, CEBRA Review.

Date: November 19, 2009.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6101 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Gerald L. McLaughlin, PhD, Scientific Review Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Blvd., Bethesda, MD 20892–8401, 301–402–6626, *gm145a@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. 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: November 2, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–26903 Filed 11–9–09; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review, Special Emphasis Panel, Review of Small Business HIV/AIDS, Related Grant Applications.

Date: December 2, 2009.

Time: 10 a.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Mark P. Rubert, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892. 301–435–1775. *rubertm@csr.nih.gov.*

Name of Committee: Center for Scientific Review, Special Emphasis Panel, Pregnancy, Reproductive Biology, and Development.

Date: December 3–4, 2009.

Time: 9 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Ann A. Jerkins, PhD, ≤ Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6154, MSC 7892, Bethesda, MD 20892. 301–435–4514. *jerkinsa@csr.nih.gov.*

Name of Committee: Center for Scientific Review, Special Emphasis Panel, AIDS-Science Track Award for Research Transition, (R03)/Behavioral Interventions.

Date: December 4, 2009.

Time: 11 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Jose H. Guerrier, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892. 301–435–1137. *guerriej@csr.nih.gov.*

Name of Committee: Center for Scientific Review, Special Emphasis Panel, AIDS-Science Track Award for Research Transition, (A–START)/Biological.

Date: December 7–8, 2009.

Time: 11 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Jose H. Guerrier, PhD, Scientific Review Officer Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892. 301–435–1137. *guerriej@csr.nih.gov.*

Name of Committee: Center for Scientific Review, Special Emphasis Panel, PAR 08–160: Metabolic Effects of Psychotropic Medications.

Date: December 7, 2009.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Martha M. Faraday, PhD, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3110, MSC 7808, Bethesda, MD 20892. 301–435–3575. *faradaym@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 30, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–26897 Filed 11–9–09; 8:45 am]

BILLING CODE M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0667]
[FDA 225–09–0008]

Memorandum of Understanding Between the Food and Drug Administration, United States Department of Health and Human Services and the National Oceanic and Atmospheric Administration, United States Department of Commerce

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is providing notice of a memorandum of understanding (MOU) between FDA, U.S. Department of Health and Human Services and the National Oceanic and Atmospheric Administration, U.S. Department of Commerce. The purpose of the MOU is for cooperation and information sharing in the inspection of fish and fishery products and establishments.

DATES: The agreement became effective October 9, 2009.

FOR FURTHER INFORMATION CONTACT: William Jones, Center for Food Safety and Applied Nutrition Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2300.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 20.108(c), which states that all written agreements and MOUs between FDA and others shall be published in the **Federal Register**, the agency is publishing notice of this MOU.

Dated: November 2, 2009.

David Horowitz,

Assistant Commissioner for Policy.

BILLING CODE 4160–01–S

MOU Number 225-09-0008

MEMORANDUM OF UNDERSTANDING

BETWEEN

U.S. DEPARTMENT OF COMMERCE
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

AND

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
FOOD AND DRUG ADMINISTRATION

1. Purpose

Cooperation and information sharing in the inspection of fish and fishery products and establishments.

2. Background

The National Marine Fisheries Service's (NMFS) Seafood Inspection Program in the National Oceanic and Atmospheric Administration of the Department of Commerce, operating under authority of the Agriculture Marketing Act and the Fish and Wildlife Act, is responsible for the development and advancement of commercial grade standards for fishery products, better health and sanitation standards in the industry, and for furnishing inspection, evaluation, analytical, grading, and certification services to interested parties. The NMFS Seafood Inspection Program's major purpose is to encourage and assist the industry in improving the quality, wholesomeness, safety, proper labeling, and marketability of fish and fishery products for the benefit of the consumer.

The Food and Drug Administration (FDA) of the Department of Health and Human Services, operating under the authority of the Federal Food, Drug, and Cosmetic Act (the Act) and several related public health laws, is responsible for protecting and promoting the public health by, in part, helping to ensure that foods, including fish and fishery products, are safe, sanitary, wholesome, and honestly and otherwise properly labeled. FDA has the authority to establish regulatory standards, inspect facilities, and take action if there are violations, but it is primarily the responsibility of industry to ensure that food products are safe and meet applicable regulatory FDA requirements.

The two agencies have certain common and related objectives in carrying out their respective regulatory and service activities that lend themselves to cooperation under this Memorandum of Understanding (MOU). This MOU sets forth the working arrangements between the agencies that facilitate each agency's efforts to discharge its responsibilities related to the inspection of fish and fishery products. The MOU recognizes that NMFS inspection services contribute to consumer protection by helping establishments fulfill their responsibility to ensure that fish and fishery products are safe and meet

applicable FDA requirements. The MOU also recognizes that FDA may take into consideration information resulting from NMFS inspection services in making risk-based determinations, such as in establishing inspection priorities. In addition, the MOU recognizes that FDA is the competent authority in the United States for safety of fish and fishery products and that determinations made by NMFS inspection services do not change or diminish FDA's authority under the Act. Nothing in this MOU, or any determination made by NMFS, would restrict FDA from conducting its own inspection or taking regulatory action, nor would it affect the legal responsibilities of establishments under the Act.

3. Substance of the Agreement

A. The National Marine Fisheries Service will:

1. Maintain a complete list of *Approved Establishments* (those processing establishments or vessels that have voluntarily contracted with NMFS for inspection services and have been sanitarily inspected, approved, and certified by NMFS as being capable of producing safe, wholesome products in accordance with specific quality regulations promulgated by the U.S. Department of Commerce) on its website[1] or otherwise provide this list electronically to FDA upon request.

2. As part of its inspection, approval, and certification, verify that *Approved Establishments* are in compliance with FDA's Current Good Manufacturing Practice regulation,[2] FDA's seafood HACCP regulation,[3] and NMFS' Inspection and Certification regulations[4].

3. Verify that all *Approved Establishments* correct objectionable conditions and practices of public health significance, that have been listed in Inspectional Observations (FDA 483) issued by FDA or that have been identified by NMFS, in a timely manner, unless action is taken consistent with items A.4 and A.6, below.

4. Issue a written notice of suspension or termination of contract to an *Approved Establishment* in accordance with NMFS' Inspection and Certification regulations, if the establishment fails to correct objectionable conditions and practices of public health significance in a timely manner, unless otherwise agreed upon by each agency.

5. Issue a written notice of suspension or termination of contract to an *Approved Establishment* in accordance with NMFS' Inspection and Certification regulations, once FDA has informed NMFS in writing that FDA either 1) has sent a Warning Letter to the establishment unless that establishment has resolved the violations in the Warning Letter to FDA's satisfaction, or 2) intends to take or is taking a regulatory action (e.g., injunction or prosecution) against the operators of the establishment, unless otherwise agreed upon by each agency.

6. Immediately notify the appropriate FDA field office when a contract with an *Approved Establishment* has been terminated, or services have been suspended, as a result of items A.4 or A.5, above.

7. Reject all applications for inspection services from an establishment in accordance with NMFS' Inspection and Certification regulations, once FDA has informed NMFS in writing that FDA either 1) has sent a Warning Letter to the establishment unless that establishment has resolved the violations in the Warning Letter to FDA's satisfaction, 2) intends to take or is taking regulatory action (e.g., injunction or prosecution) against the operators of the establishment; or 3) intends to take or is taking seizure action against a product of the establishment, unless otherwise agreed upon by each agency.

8. As part of its inspection, approval, and certification, verify that all products that bear Federal inspection and grade marks from *Approved Establishments* are in compliance with FDA regulations (e.g., food labeling, food additive and standard of identity), where applicable.

9. Decline to permit the use of Federal inspection and grade marks on food products and prevent distribution of such products, if appropriate, that are known or believed by NMFS to be adulterated or misbranded under the Act or for which FDA has provided written notification that FDA intends to take or is taking a seizure action against the product as provided for in B.3 below.

10. Notify the appropriate FDA field office whenever any food products examined by NMFS are known or believed to be adulterated or misbranded under the Act, unless NMFS verifies that such products are appropriately reconditioned or relabeled to comply with FDA requirements or are segregated and disposed of for non-food use or otherwise lawfully shipped or sold.

11. Decline to examine, or reexamine, any food products once FDA has informed NMFS that FDA intends to take or is taking a seizure action against such products, or intends to take or is taking other regulatory action (e.g., injunction or prosecution) against the operators of the establishment that processed such products, unless otherwise agreed upon by each agency.

12. Provide information to FDA concerning specific establishments or products that have been inspected by NMFS relevant to compliance with FDA regulatory requirements, when requested by FDA.

13. For fish and fishery products for export to the European Union and the European Free Trade Association, or any other mutually agreed upon certification scheme, issue public health safety certifications only to those domestic seafood processors that have been identified by FDA on the list described in B.7, below.

14. Cooperate with FDA in responding to food safety emergencies involving fish and fishery products, within resource constraints.

15. Perform sample analysis and/or conduct inspections of fish and fishery product processors, as appropriate, on FDA's request and upon mutual agreement.

16. Notify FDA in writing whenever an employee or U.S. Department of Commerce inspector has been asked to testify in a case in which FDA is a party. Decline to testify for a private entity

unless that entity has complied with the Department of Commerce's "Touhy" regulations[5], including issuance of a subpoena.

B. The Food and Drug Administration will:

1. Maintain guidance documents on its website or otherwise provide these documents to NMFS upon request, which NMFS can use to help evaluate an establishment's compliance with FDA's Current Good Manufacturing Practice regulations and seafood HACCP regulation.

2. Maintain guidance documents on its website or otherwise provide these documents to NMFS upon request, which NMFS can use to assist NMFS in determining whether a product may be regarded as adulterated or misbranded under the Act

3. Notify NMFS in writing when FDA has sent a Warning Letter to a fish or fishery product establishment. Notify NMFS in writing when FDA intends to take or is taking a regulatory action (e.g., seizure, injunction or prosecution) against a fish or fishery product or establishment, except where it may be inappropriate in the context of a criminal action.

4. As resources permit, respond to inquiries from NMFS about whether process controls, product labels, legends, stamps, and other official marks for products packed under the various inspection services of NMFS conflict with the adulteration and/or misbranding provisions of the Act.

5. Invite the NMFS inspector assigned to and present in a processing plant to accompany the FDA investigator during his or her inspection of such plant, upon initiating an inspection.

6. Offer to discuss observations with the NMFS inspector assigned to and present in a processing plant at the conclusion of the inspection and prior to the discussion with plant management. Provide a copy of Inspectional Observations (FDA 483) to the NMFS inspector at the conclusion of the inspection, after the discussion with plant management. If the NMFS inspector is not present at the conclusion of the inspection, FDA will provide a copy of Inspectional Observations (FDA 483) to the appropriate NMFS field office.

7. Maintain a list of domestic seafood processors on its website or otherwise provide this list electronically to NMFS, which NMFS can use to assist NMFS in determining whether to issue public health safety certifications for establishments exporting fish or fishery products to the European Union and the European Free Trade Association, or any other mutually agreed upon certification scheme.

8. Invite NMFS personnel to attend training in FDA's Office of Regulatory Affairs (ORA) Investigator Certification Program and related activities, as resources permit.

9. Notify NMFS in writing whenever an employee or FDA inspector has been asked to testify in a case in which NMFS is a party. Decline to testify for a private entity unless that entity has complied with FDA's "Touhy" regulations[6], including issuance of a subpoena.

C. It is mutually agreed that:

1. Both agencies will maintain close working relations with each other, both in headquarters as well as in the field. Appropriate NMFS and FDA personnel will meet periodically, as resources permit, for purposes of program planning, coordination, evaluation, and review concerning inspectional matters of mutual interest and to serve as a clearinghouse for questions and problems as may arise.

2. Each agency will participate in meetings with industry, as resources permit, to promote better communication and understanding of regulations, policy, and statutory responsibilities, and to improve sanitation and food-handling practices in processing plants.

3. Each agency will cooperate in the development of the other's regulations and guidance related to fish or fishery products, as appropriate.

4. Each agency will make formal training courses available to the other's personnel, as resources permit.

5. Each agency will take advantage of the inspectional capabilities of the other to achieve the maximum utilization of resources, when appropriate and as resources permit.

6. Each agency will exchange with each other information concerning respective international fish or fishery product inspection related activities to facilitate achieving common goals and to promote efficient use of resources.

7. Each agency will immediately notify the other agency if it is unable to carry out any or all of its responsibilities under this MOU.

4. Information Sharing

The procedures established under Section 3 must include proper safeguards against unauthorized use and disclosure of the information exchanged under this MOU. Proper safeguards shall include the adoption of policies and procedures to ensure that the information shared under this MOU shall be used consistent with the Trade Secrets Act [18 U.S.C. § 1905], the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.], the Privacy Act of 1974, as amended [5 U.S.C. § 552a], the Freedom of Information Act [5 U.S.C. § 552], any other applicable Federal law and their implementing regulations. Pursuant to FDCA section 301(j) [21 U.S.C. 331(j)], FDA will not reveal to NMFS any method or process which is entitled to protection as a trade secret.

Access to the non-public information shared under this MOU shall be restricted to authorized FDA and NMFS employees, agents, and officials who require access to perform their official duties in accordance with the uses of the information as authorized in this MOU, unless authorized in writing by the agency that provided the information or otherwise required by law. Such personnel shall be advised of (1) the confidential nature of the information; (2) safeguards against unauthorized disclosure of confidential information, and (3) the administrative, civil and criminal penalties contained in applicable Federal laws for the unauthorized disclosure of confidential information.

If an agency that has received information under this MOU receives a Freedom of Information Act (FOIA) request for which there are responsive records that originated with the other agency, to the extent practicable, it will refer that request to the other agency for it to respond directly to the requestor regarding the releasability of the information. In such cases, the agency making the referral will notify the requestor that a referral has been made and that a response will issue directly from the other agency.

5. **Limitations**

This MOU represents the broad outline of the Parties' present intent to collaborate in areas of mutual interest to FDA and the NMFS. It does not create binding, enforceable obligations against either Agency. All activities undertaken pursuant to the MOU are subject to the availability of personnel, resources, and funds. With the exception of MOU number: 225-76-2001 (dated October 10, 1974), this MOU does not affect or supersede any existing agreements or arrangements between the Parties and does not affect the ability of the Parties to enter into other agreements or arrangements related to this MOU. This MOU and all associated agreements will be subject to the applicable policies, rules, regulations, and statutes under which FDA, and NMFS operate. Nothing in this MOU shall obligate FDA and the NMFS to any current expenditure or future expenditure of resources in advance of the availability of appropriations from Congress.

6. **Liaison Officers**

To facilitate the activities carried out under this MOU, each agency will establish a single agency liaison. The initial liaisons will be:

For FDA:

William Jones, Ph.D.
Director, Division of Seafood Safety, Office of Food Safety
Center for Food Safety and Applied Nutrition
5100 Paint Branch Parkway
College Park, MD 20740
301-436-2300
William.Jones@fda.hhs.gov

For NMFS:

Timothy E. Hansen
Director, Seafood Inspection Program
National Marine Fisheries Service
1315 East-West Highway
Silver Spring, MD 20910
301-713-2355
Timothy.Hansen@noaa.gov

Each agency may designate a new liaison at any time by notifying the other in writing. If at any time, an individual designated as a liaison under this agreement becomes unavailable to fulfill those functions, the agency will name a new liaison and notify the other agency through the designated liaison.

7. **Effective Date, Terms, Termination and Modification**

This agreement will become effective when signed by both parties and published in the Federal Register, and it will continue in effect unless modified by mutual written consent at any time or terminated by either party upon a 60 day advance written notice to the other. The parties agree that they will review this agreement every three years to determine whether it should be modified or terminated. This MOU supersedes the Memorandum of Understanding (MOU number: 225-76-2001) dated October 10, 1974.

(Signatures of Authorized Representatives Begin on the Next Page.)

MOU Number 225-09-0008

SIGNATURE OF RESPONSIBLE PARTIES

UNITED STATES FOOD AND DRUG ADMINISTRATION

BY: _____ 09/16/09
Signature of authorized representative Date

MARGARET A. HAMBURG, M.D.
Commissioner of Food and Drugs
Department of Health and Human Services

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

BY: _____ OCT -9 2009
Signature of authorized representative Date

JANE LUBCHENCO, Ph.D
Under Secretary of Commerce for Oceans and Atmosphere
National Oceanic and Atmospheric Administration

[1] Available at: http://seafood.nmfs.noaa.gov (*"USDC Participants List of Firms, Facilities and Products"*)
[2] Title 21 of the Code of Federal Regulations (CFR) Part 110 [21 CFR 110]
[3] Title 21 of the Code of Federal Regulations (CFR) Part 123 [21 CFR 123]
[4] Title 50 of the Code of Federal Regulations (CFR) Part 260 [50 CFR 260]
[5] Title 15 of the Code of Federal Regulations (CFR) § 15.11 *et seq.* [15 CFR 15.11 *et seq.*]
[6] Title 21 of the Code of Federal Regulations (CFR) §§ 20.1 and 20.2 [21 CFR 20.1 and 20.2]

[FR Doc. E9–27118 Filed 11–9–09; 8:45 am]

BILLING CODE 4160–01–C

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2009–0138]

Homeland Security Advisory Council

AGENCY: The Office of Policy, DHS.

ACTION: Notice of open teleconference Federal Advisory Committee Meeting.

SUMMARY: The Homeland Security Advisory Council (HSAC) will meet via teleconference for the purpose of reviewing the findings and recommendations of the HSAC's Sustainability and Efficiency Task Force (SETF).

DATES: The HSAC conference call will take place from 3 p.m. to 4 p.m. EST on Friday, December 4, 2009. The meeting is scheduled for one hour and all participating members of the public should promptly call-in at the beginning of the teleconference.

ADDRESSES: The HSAC will hold its formal meeting via teleconference. Members of the public interested in participating in this teleconference meeting may do so by following the process outlined below (see ''Public Attendance'').

The HSAC must receive all written comments by November 30, 2009. Comments must be identified by DHS–2009–0138 and may be submitted by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail*: *HSAC@dhs.gov.* Include docket number in the subject line of the message.
- *Fax:* 202–282–9207.
- *Mail:* Homeland Security Advisory Council, Department of Homeland Security, Mailstop 0850, 1100 Hampton Park Blvd., Capitol Heights, MD 20745.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and DHS–2009–0138, the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov*, including any personal information provided.

Docket: For access to the docket to read background documents or comments received by the DHS Homeland Security Advisory Council, go to *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: HSAC Staff at *hsac@dhs.gov* or 202–447–3135.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2. The HSAC provides independent advice to the Secretary of the Department of Homeland Security to aide in the creation and implementation of critical and actionable policies and capabilities across the spectrum of homeland security operations. The HSAC periodically reports, as requested, to the Secretary, on such matters. The Federal Advisory Committee Act requires **Federal Register** publication 15 days prior to a meeting.

Public Participation: Members of the public may register to participate in this HSAC teleconference via aforementioned procedures. Each individual must provide his or her full legal name, e-mail address and phone number no later than 5:00 p.m. EST on November 30, 2009, to a staff member of the HSAC via e-mail at *HSAC@dhs.gov* or via phone at 202–447–3135. HSAC conference call details will be provided to interested members of the public at this time.

Information on Services for Individuals with Disabilities: For information on facilities or services for individuals with disabilities, or to request special assistance at the meeting, contact the HSAC as soon as possible.

Dated: November 3, 2009.

Becca Sharp,

Executive Director, Homeland Security Advisory Council, DHS.

[FR Doc. E9–27098 Filed 11–9–09; 8:45 am]

BILLING CODE 9010–9M–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Accreditation of Commercial Testing Laboratories and Approval of Commercial Gaugers

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60–Day Notice and request for comments; Extension of an existing collection of information: 1651–0053.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the: Accreditation of Commercial Testing Laboratories and Approval of Commercial Gaugers. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before January 11, 2010, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs and Border Protection, *Attn:* Tracey Denning, Office of Regulations and Rulings, 799 9th Street, NW., 7th Floor, Washington, DC 20229–1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Office of Regulations and Rulings, 799 9th Street, NW., 7th Floor, Washington, DC 20229–1177, at 202–325–0265.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (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 estimates 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 including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Accreditation of Commercial Testing Laboratories; Approval of Commercial Gaugers.

OMB Number: 1651–0053.

Form Number: None.

Abstract: Commercial gaugers and laboratories seeking accreditation or approval must provide the information specified in 19 CFR 151.12 and/or 19 CFR 151.13 to CBP. CBP uses this information in deciding whether to approve individuals or businesses desiring to measure bulk products or to analyze importations.

Current Actions: There are no changes to the information collection. This

submission is being made to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses, Individuals.

Reporting:

Estimated Number of Respondents: 200.

Estimated Number of Responses per Respondent: 1.

Estimated Number of Total Responses: 200.

Estimated Time per Response: 75 minutes.

Estimated Total Burden Hours: 250.

Record Keeping:

Estimated Number of Record Keepers: 200.

Estimated Time per Record Keeper: 60 minutes.

Estimated Total Burden Hours: 200.

Dated: November 5, 2009.

Tracey Denning,

Agency Clearance Officer, Customs and Border Protection.

[FR Doc. E9–27117 Filed 11–9–09; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form G–646; Extension of an Existing Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review; Form G–646, Sworn Statement of Refugee Applying for Admission to the United States; OMB Control No. 1615–0097.

The Department Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until January 11, 2010.

During this 60 day period, USCIS will be evaluating whether to revise the Form G–646. Should USCIS decide to revise Form G–646 we will advise the public when we publish the 30-day notice in the **Federal Register** in accordance with the Paperwork Reduction Act. The public will then have 30 days to comment on any revisions to the Form G–646.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Products Division, Clearance Officer, 111 Massachusetts Avenue, NW., Washington, DC 20529–2210. Comments may also be submitted to DHS via facsimile to 202–272–8352 or via e-mail at *rfs.regs@dhs.gov.* When submitting comments by e-mail, please make sure to add OMB Control No. 1615–0097 in the subject box. Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of an existing information collection.

(2) *Title of the Form/Collection:* Sworn Statement of Refugee Applying for Admission to the United States.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form G–646; U.S. Citizenship and Immigration Services (USCIS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. The data collected by Form G–646 is used by USCIS to determine eligibility for the admission of applicants to the United States as refugees.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 75,000 responses at 20 minutes (.333) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 24,975 annual burden hours.

If you need a copy of the information collection instrument, please visit the Web site at: *http://www.regulations.gov/.*

We may also be contacted at: USCIS, Regulatory Products Division, 111 Massachusetts Avenue, NW., Washington, DC 20529–2210, Telephone number 202–272–8377.

Dated: November 4, 2009.

Sunday Aigbe,

Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. E9–27001 Filed 11–9–09; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form N–565; Extension of an Existing Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review; Form N–565, Application for Replacement Naturalization/Citizenship Document; OMB Control No. 1615–0091.

The Department Homeland of Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until January 11, 2010.

During this 60-day period, USCIS will be evaluating whether to revise the Form N–565. Should USCIS decide to revise Form N–565 we will advise the public when we publish the 30-day notice in the **Federal Register** in accordance with the Paperwork Reduction Act. The public will then have 30 days to comment on any revisions to the Form N–565.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory

Products Division, Clearance Officer, 111 Massachusetts Avenue, NW., Washington, DC 20529–2210. Comments may also be submitted to DHS via facsimile to 202–272–8352 or via e-mail at *rfs.regs@dhs.gov.* When submitting comments by e-mail, please make sure to add OMB Control No. 1615–0091 in the subject box. Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of an existing information collection.

(2) *Title of the Form/Collection:* Application for Replacement Naturalization/Citizenship Document.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form N–565; U.S. Citizenship and Immigration Services (USCIS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. Form N–565 is used to apply for a replacement of a Declaration of Intention, Certificate of Citizenship or Replacement Certificate, or to apply for a special certificate of naturalization as a U.S. citizen to be recognized by a foreign country.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 22,567 responses at 55 minutes (.916) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 20,671 annual burden hours.

If you need a copy of the information collection instrument,please visit the Web site at: *http://www.regulations.gov/* .

We may also be contacted at: USCIS, Regulatory Products Division, 111 Massachusetts Avenue, NW., Washington, DC 20529–2210, Telephone number 202–272–8377.

Dated: November 4, 2009.

Sunday Aigbe,

Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. E9–26999 Filed 11–9–09; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2009–0588]

Collection of Information Under Review by Office of Management and Budget: OMB Control Number: 1625–0012

AGENCY: Coast Guard, DHS.

ACTION: Thirty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this request for comments announces that the U.S. Coast Guard is forwarding an Information Collection Request (ICR), abstracted below, to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB) requesting an extension of its approval for the following collection of information: 1625–0012, Certificate of Discharge to Merchant Mariners. Our ICR describes the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

DATES: Please submit comments on or before December 10, 2009.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2009–0588] to the Docket Management Facility (DMF) at the U.S. Department of Transportation (DOT) or to OIRA. To avoid duplication, please submit your comments by only one of the following means:

(1) *Electronic submission.* (a) To Coast Guard docket at *http://www.regulation.gov.* (b) To OIRA by e-mail via: *oira_submission@omb.eop.gov.*

(2) *Mail or Hand delivery.* (a) DMF (M–30), DOT, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001. Hand deliver between the hours of 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329. (b) To OIRA, 725 17th Street NW., Washington, DC 20503, attention Desk Officer for the Coast Guard.

(3) *Fax.* (a) To DMF, 202–493–2251. (b) To OIRA at 202–395–5806. To ensure your comments are received in a timely manner, mark the fax, attention Desk Officer for the Coast Guard.

The DMF maintains the public docket for this Notice. Comments and material received from the public, as well as documents mentioned in this Notice as being available in the docket, will become part of the docket and will be available for inspection or copying at room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find the docket on the Internet at *http://www.regulations.gov.*

A copy of the ICR is available through the docket on the Internet at *http://www.regulations.gov.* Additionally, copies are available from: Commandant (CG–611), Attn Paperwork Reduction Act Manager, US Coast Guard, 2100 2nd St., SW., Stop 7101, Washington DC 20593–7101.

FOR FURTHER INFORMATION: Contact Mr. Arthur Requina, Office of Information Management, telephone 202–475–3523 or fax 202–475–3929, for questions on these documents. Contact Ms. Renee V. Wright, Program Manager, Docket Operations, 202–366–9826, for questions on the docket.

SUPPLEMENTARY INFORMATION: The Coast Guard invites comments on whether this ICR should be granted based on it being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the collections; (2) the accuracy of the estimated burden of the collections; (3) ways to enhance the quality, utility, and clarity of information subject to the collections; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology.

Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request, [USCG 2009–0588]. For your comments to

OIRA to be considered, it is best if they are received on or before the December 10, 2009.

Public participation and request for comments: We encourage you to respond to this request by submitting comments and related materials. We will post all comments received, without change, to *http://www.regulations.gov*. They will include any personal information you provide. We have an agreement with DOT to use their DMF. Please see the ''Privacy Act'' paragraph below.

Submitting comments: If you submit a comment, please include the docket number [USCG–2009–0588], indicate the specific section of the document to which each comment applies, providing a reason for each comment. We recommend you include your name, mailing address, an e-mail address, or other contact information in the body of your document so that we can contact you if we have questions regarding your submission. You may submit comments and material by electronic means, mail, fax, or delivery to the DMF at the address under **ADDRESSES**; but please submit them 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. In response to your comments, we may revise the ICR or decide not to seek an extension of approval for this collection. The Coast Guard and OIRA will consider all comments and material received during the comment period.

Viewing comments and documents: Go to *http://www.regulations.gov* to view documents mentioned in this Notice as being available in the docket. Click on the ''read comments'' box, which will then become highlighted in blue. In the ''Keyword'' box insert ''USCG–2009–0588'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. You may also visit the DMF in room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue SE., Washington, DC, 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 in 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 the Privacy Act statement regarding our public dockets in the January 17, 2008 issue of the **FEDERAL REGISTER** (73 FR 3316).

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard published the 60-day notice (74 FR 35201, July 20, 2009) required by 44 U.S.C. 3506(c)(2). That Notice elicited no comments.

Information Collection Request

Title: Certificate of Discharge to Merchant Mariners.

OMB Control Number: 1625–0012.

Type of Request: Extension of a currently approved collection.

Respondents: Masters and operators of vessels.

Abstract: In accordance with 46 U.S.C. 10311, each master or individual in charge of a vessel shall, for each merchant mariner being discharged from the vessel, prepare a certificate of discharge and two copies; whether by writing or typing on the prescribed form with permanent ink, or by using a computer-generated form to be signed with permanent ink.

Forms: CG–718A.

Burden Estimate: The estimated burden has increased from 1,743.33 hours to 2,443 hours a year.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended.

Dated: October 30, 2009.

M.B. Lytle,

Captain, U.S. Coast Guard, Acting Assistant Commandant for Command, Control, Communications, Computers and Information Technology.

[FR Doc. E9–26989 Filed 11–9–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2009–0560; OMB Control Number: 1625–0080]

Collection of Information Under Review by Office of Management and Budget

AGENCY: Coast Guard, DHS.

ACTION: Thirty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this request for comments announces that the U.S. Coast Guard is forwarding an Information Collection Request (ICR), abstracted below, to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB) requesting an extension of its approval for the following collection of information: 1625–0080, Customer Satisfaction Surveys. Our ICR describes the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

DATES: Please submit comments on or before December 10, 2009.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2009–0560] to the Docket Management Facility (DMF) at the U.S. Department of Transportation (DOT) or to OIRA. To avoid duplication, please submit your comments by only one of the following means:

(1) *Electronic submission.* (a) To Coast Guard docket at *http://www.regulations.gov.* (b) To OIRA by e-mail via: *oira_submission@omb.eop.gov.*

(2) *Mail or Hand delivery.* (a) DMF (M–30), DOT, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001. Hand deliver between the hours of 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329. (b) To OIRA, 725 17th Street, NW., Washington, DC 20503, attention Desk Officer for the Coast Guard.

(3) *Fax.* (a) To DMF, 202–493–2251. (b) To OIRA at 202–395–5806. To ensure your comments are received in a timely manner, mark the fax, attention Desk Officer for the Coast Guard.

The DMF maintains the public docket for this Notice. Comments and material received from the public, as well as documents mentioned in this Notice as being available in the docket, will become part of the docket and will be available for inspection or copying at room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find the docket on the Internet at *http://www.regulations.gov.*

A copy of the ICR is available through the docket on the Internet at *http://www.regulations.gov.* Additionally, copies are available from: Commandant (CG–611), Attn Paperwork Reduction Act Manager, U.S. Coast Guard, 2100 2nd St., SW., Stop 7101, Washington, DC 20593–7101.

FOR FURTHER INFORMATION CONTACT: Contact Mr. Arthur Requina, Office of Information Management, telephone 202–475–3523 or fax 202–475–3929, for questions on these documents. Contact Ms. Renee V. Wright, Program Manager,

Docket Operations, 202–366–9826, for questions on the docket.

SUPPLEMENTARY INFORMATION: The Coast Guard invites comments on whether this ICR should be granted based on it being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the collections; (2) the accuracy of the estimated burden of the collections; (3) ways to enhance the quality, utility, and clarity of information subject to the collections; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology.

Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request, [USCG 2009–0560]. For your comments to OIRA to be considered, it is best if they are received on or before December 10, 2009.

Public participation and request for comments: We encourage you to respond to this request by submitting comments and related materials. We will post all comments received, without change, to *http://www.regulations.gov.* They will include any personal information you provide. We have an agreement with DOT to use their DMF. Please see the ''Privacy Act'' paragraph below.

Submitting comments: If you submit a comment, please include the docket number [USCG–2009–0560], indicate the specific section of the document to which each comment applies, providing a reason for each comment. We recommend you include your name, mailing address, an e-mail address, or other contact information in the body of your document so that we can contact you if we have questions regarding your submission. You may submit comments and material by electronic means, mail, fax, or delivery to the DMF at the address under **ADDRESSES**; but please submit them 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. In response to your comments, we may revise the ICR or decide not to seek an extension of approval for this collection. The Coast Guard and OIRA will consider all comments and material received during the comment period.

Viewing comments and documents: Go to *http://www.regulations.gov* to view documents mentioned in this Notice as being available in the docket. Click on the ''read comments'' box, which will then become highlighted in blue. In the ''Keyword'' box insert ''USCG–2009–0560'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. You may also visit the DMF in room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue, SE., Washington, DC, 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 in 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 the Privacy Act statement regarding our public dockets in the January 17, 2008 issue of the **Federal Register** (73 FR 3316).

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard has published the 60-day notice (74 FR 34027, July 14, 2009) required by 44 U.S.C. 3506(c)(2). That Notice elicited no comments.

Information Collection Request

Title: Customer Satisfaction Surveys.

OMB Control Number: 1625–0080.

Type of Request: Extension of a currently approved collection.

Respondents: Recreational boaters, commercial mariners, industry groups, and State/local governments.

Abstract: Putting people first means ensuring the Federal Government provides the highest-quality of service possible to the American people. Executive Order 12862 requires that all executive departments and agencies providing significant public services seek to meet established standards for customer service by: (1) Identifying the customers who are, or should be, served by the agency and (2) surveying customers to determine the type/quality of services they want; and their level of satisfaction.

Forms: None.

Burden Estimate: The estimated burden has increased from 15,516 hours to 22,990 hours a year.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended.

Dated: October 30, 2009.

M.B. Lytle,

Captain, U.S. Coast Guard, Acting Assistant Commandant for Command, Control, Communications, Computers and Information Technology.

[FR Doc. E9–26990 Filed 11–9–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2009–0457]

Collection of Information Under Review by Office of Management and Budget: OMB Control Numbers: 1625–0057, 1625–0065, 1625–0104, and 1625–0105

AGENCY: Coast Guard, DHS.

ACTION: Thirty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this request for comments announces that the U.S. Coast Guard is forwarding four Information Collection Requests (ICRs), abstracted below, to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB) requesting an extension of its approval for the following collections of information: (1) 1625–0057, Small Passenger Vessels—Title 46 CFR Subchapters K and T; (2) 1625–0065, Offshore Supply Vessels—Title 46 CFR Subchapter L; (3) 1625–0104, Barges Carrying Bulk Hazardous Materials; and (4) 1625–0105, Regulated Navigation Area; Reporting Requirements for Barges Loaded with Certain Dangerous Cargoes, Inland Rivers, Eighth Coast Guard District and the Illinois Waterway, Ninth Coast Guard District. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

DATES: Please submit comments on or before December 10, 2009.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2009–0457] to the Docket Management Facility (DMF) at the U.S. Department of Transportation (DOT) or to OIRA. To avoid duplication, please submit your comments by only one of the following means:

(1) *Electronic submission.* (a) To Coast Guard docket at *http://www.regulation.gov.* (b) To OIRA by e-mail via: *oira_submission@omb.eop.gov.*

(2) *Mail or Hand delivery.* (a) DMF (M–30), DOT, West Building Ground Floor, Room W12–140, 1200 New Jersey

Avenue, SE, Washington, DC 20590–0001. Hand deliver between the hours of 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329. (b) To OIRA, 725 17th Street, NW., Washington, DC 20503, attention Desk Officer for the Coast Guard.

(3) *Fax.* (a) To DMF, 202–493–2251. (b) To OIRA at 202–395–5806. To ensure your comments are received in a timely manner, mark the fax, attention Desk Officer for the Coast Guard.

The DMF maintains the public docket for this Notice. Comments and material received from the public, as well as documents mentioned in this Notice as being available in the docket, will become part of the docket and will be available for inspection or copying at room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find the docket on the Internet at *http://www.regulations.gov.*

Copies of the ICRs are available through the docket on the Internet at *http://www.regulations.gov.* Additionally, copies are available from: Commandant (CG–611), Attn Paperwork Reduction Act Manager, U.S. Coast Guard, 2100 2nd St., SW., Stop 7101, Washington DC 20593–7101.

FOR FURTHER INFORMATION CONTACT: Contact Mr. Arthur Requina, Office of Information Management, telephone 202–475–3523 or fax 202–475–3929, for questions on these documents. Contact Ms. Renee V. Wright, Program Manager, Docket Operations, 202–366–9826, for questions on the docket.

SUPPLEMENTARY INFORMATION: The Coast Guard invites comments on whether these ICRs should be granted based on it being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the collections; (2) the accuracy of the estimated burden of the collections; (3) ways to enhance the quality, utility, and clarity of information subject to the collections; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology.

Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request, [USCG 2009–0457]. For your comments to OIRA to be considered, it is best if they are received on or before the December 10, 2009.

Public participation and request for comments: We encourage you to respond to this request by submitting comments and related materials. We will post all comments received, without change, to *http://www.regulations.gov.* They will include any personal information you provide. We have an agreement with DOT to use their DMF. Please see the ''Privacy Act'' paragraph below.

Submitting comments: If you submit a comment, please include the docket number [USCG–2009–0457], indicate the specific section of the document to which each comment applies, providing a reason for each comment. We recommend you include your name, mailing address, an e-mail address, or other contact information in the body of your document so that we can contact you if we have questions regarding your submission. You may submit comments and material by electronic means, mail, fax, or delivery to the DMF at the address under **ADDRESSES**; but please submit them 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. In response to your comments, we may revise the ICR or decide not to seek an extension of approval for this collection. The Coast Guard and OIRA will consider all comments and material received during the comment period.

Viewing comments and documents: Go to *http://www.regulations.gov* to view documents mentioned in this Notice as being available in the docket. Click on the ''read comments'' box, which will then become highlighted in blue. In the ''Keyword'' box insert ''USCG–2009–0457'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. You may also visit the DMF in room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue, SE., Washington, DC, 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 in 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 the Privacy Act statement regarding our public dockets in the January 17, 2008 issue of the **Federal Register** (73 FR 3316).

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard has published the 60-day notice (74 FR 30104, June 24, 2009) required by 44 U.S.C. 3506(c)(2). That Notice elicited no comments.

Information Collection Request

1. *Title:* Small Passenger Vessels—Title 46 CFR Subchapters K and T.

OMB Control Number: 1625–0057.

Type of Request: Revision of a currently approved collection.

Abstract: Under the authority of 46 U.S.C. 3305 and 3306, the Coast Guard prescribed regulations for the design, construction, alteration, repair and operation of small passenger vessels to secure the safety of individuals and property on board. The Coast Guard uses the information in this collection to ensure compliance with the requirements.

Forms: CG–841, CG–854, CG–948, CG–949, CG–3752, CG–5256.

Respondents: Owners and operators of small passenger vessels.

Frequency: On occasion.

Burden Estimate: The estimated burden has increased from 353,263 hours to 380,185 hours a year.

2. *Title:* Offshore Supply Vessels—Title 46 CFR Subchapter L.

OMB Control Number: 1625–0065.

Type of Request: Revision of a currently approved collection.

Abstract: The OSV posting/marking requirements are needed to provide instructions to those onboard of actions to be taken in the event of an emergency. The reporting/recordkeeping requirements verify compliance with regulations without Coast Guard presence to witness routine matters, including OSVs based overseas as an alternative to Coast Guard re-inspection.

Forms: None.

Respondents: Owners and operators of vessels.

Frequency: On occasion.

Burden Estimate: The estimated burden has decreased from 6,169 hours to 2,068 hours a year.

3. *Title:* Barges Carrying Bulk Hazardous Materials.

OMB Control Number: 1625–0104.

Type of Request: Revision of a currently approved collection.

Abstract: Title 46 U.S.C. 3703 authorizes the Coast Guard to prescribe rules related to the carriage of liquid bulk dangerous cargoes. Title 46 CFR Part 151 prescribes rules for barges carrying bulk liquid hazardous materials.

Forms: None.

Respondents: Owners and operators of tank barges.

Frequency: On occasion.

Burden Estimate: The estimated burden has increased from 13,255 hours to 29,281 hours a year.

4. *Title:* Regulated Navigation Area; Reporting Requirements for Barges Loaded with Certain Dangerous Cargoes (CDCs), Inland Rivers, Eighth Coast Guard District and the Illinois Waterway, Ninth Coast Guard District.

OMB Control Number: 1625–0105.

Type of Request: Revision of a currently approved collection.

Abstract: This information is used to ensure port safety and security, as well as the uninterrupted flow of commerce.

Forms: None.

Respondents: Owners, agents, masters, towing vessel operators, persons in charge of barges loaded with CDCs, or having CDC residue operating on the inland rivers within the Eighth and Ninth Coast Guard Districts.

Frequency: On occasion.

Burden Estimate: The estimated burden has increased from 1,179 hours to 2,196 hours a year.

Dated: October 30, 2009.

M.B. Lytle,

Captain, U.S. Coast Guard, Acting Assistant Commandant for Command, Control, Communications, Computers and Information Technology.

[FR Doc. E9–26994 Filed 11–9–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3306–EM; Docket ID FEMA–2008–0018]

Puerto Rico; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the Commonwealth of Puerto Rico (FEMA–3306–EM), dated October 24, 2009, and related determinations.

DATES: *Effective Date:* October 24, 2009.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated October 24, 2009, the President issued an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act), as follows:

I have determined that the emergency conditions in certain areas of the Commonwealth of Puerto Rico resulting from explosions and fire beginning on October 23, 2009, and continuing, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (''the Stafford Act''). Therefore, I declare that such an emergency exists in the Commonwealth of Puerto Rico.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives and to protect property and public health and safety, and to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide assistance for emergency protective measures (Category B), including direct Federal assistance under the Public Assistance program. This assistance excludes regular time costs for subgrantees' regular employees. In addition, you are authorized to provide such other forms of assistance under Title V of the Stafford Act as you may deem appropriate consistent with what has been approved. Category A debris removal is not authorized.

Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, Philip E. Parr, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

The following areas of the Commonwealth of Puerto Rico have been designated as adversely affected by this declared emergency:

The municipalities of Bayamón, Cataño, Guaynabo, San Juan, and Toa Baja for emergency protective measures (Category B), including direct Federal assistance under the Public Assistance program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. E9–27110 Filed 11–9–09; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Customs and Border Protection

Recordation of Trade Name ''Sony Ericsson Mobile Communications AB''

AGENCY: Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of application for recordation of trade name.

SUMMARY: Application has been filed pursuant to § 133.12, Customs and Border Protection (CBP) Regulations (19 CFR 133.12), for recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name ''Sony Ericsson Mobile Communications AB,'' used by Sony Ericsson Mobile Communications AB, incorporated in Sweden.

The applicant states that the trade name is used in connection with telephone apparatuses and instruments, which are manufactured in Brazil, China, India, France, Malaysia, and Mexico.

Before final action is taken on the application, consideration will be given to any relevant data, views, or arguments submitted in writing by any person in opposition to the recordation of this trade name. Notice of this action taken on the application for recordation of this trade name will be published in the **Federal Register**.

DATES: Comments must be received on or before January 11, 2010.

ADDRESSES: Written comments should be addressed to U.S. Customs and Border Protection, Regulations and Rulings, Intellectual Property Rights & Restricted Merchandise Branch, 799 9th Street, NW., 5th Floor, Washington, DC 20229–1179.

FOR FURTHER INFORMATION CONTACT: Suzanne E. Kane, Attorney-Advisor,

Intellectual Property Rights & Restricted Merchandise Branch, at (202) 325–0119.

Dated: November 4, 2009.

Charles R. Steuart,

Chief, Intellectual Property Rights & Restricted Merchandise Branch.

[FR Doc. E9–26982 Filed 11–9–09; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection for 1029–0080

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request approval to continue the collection of information under 30 CFR part 850 which allows the collection and review of new blaster certification programs. This information collection activity was previously approved by the Office of Management and Budget (OMB), and assigned control number 1029–0080.

DATES: Comments on the proposed information collection activity must be received by January 11, 2010, to be assured of consideration.

ADDRESSES: Comments may be mailed to Adrienne L. Alsop, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW., Room 202–SIB, Washington, DC 20240. Comments may also be submitted electronically to *aalsop@osmre.gov.*

FOR FURTHER INFORMATION CONTACT: To receive a copy of the information collection request, contact Adrienne Alsop, at (202) 208–2818 or by e-mail.

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8(d)]. This notice identifies an information collection that OSM will be submitting to OMB for renewed approval. This collection is contained in 30 CFR part 850, Permanent Regulatory Program Requirements—Standards for Certification of Blasters. The information submitted by respondents is required to obtain a benefit. OSM will request a 3-year term of approval for this information collection activity.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany OSM's submission of the information collection request to OMB.

Before including your address, phone number, email 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.

Title: 30 CFR part 850—Permanent Regulatory Program Requirements—Standards for Certification of Blasters.

OMB Control Number: 1029–0080.

Summary: The information is used to identify and evaluate new blaster certification programs.

Bureau Form Numbers: None.

Frequency of Collection: Once.

Description of Respondents: State regulatory authorities.

Total Annual Responses: 1.

Total Annual Burden Hours: 133 hours.

Dated: November 3, 2009.

John R. Craynon,

Chief, Division of Regulatory Support.

[FR Doc. E9–26917 Filed 11–9–09; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–960–09–L5101000.ER0000 LVRWB09B2400; CACA–48668, 49501, 49502, 49503]

Notice of Availability of the Draft Ivanpah Solar Electric Generation System Environmental Impact Statement and the Draft California Desert Conservation Area Plan Amendment

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969 (NEPA), as amended, and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) has prepared a Draft Environmental Impact Statement (DEIS) for the Ivanpah Solar Electric Generation System (ISEGS) and an associated Draft Resource Management Plan Amendment (DRMPA) for the California Desert Conservation Area. By this notice, the BLM is announcing the availability of these documents and the opening of the comment period.

DATES: To ensure that comments on the DEIS and DRMPA will be considered, the BLM must receive them within 90 days following the date the Environmental Protection Agency publishes its Notice of Availability in the **Federal Register.** The BLM will announce meetings or hearings and any other public involvement activities at least 15 days in advance through public notices, media releases, and/or mailings.

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

- *Web site: http://www.blm.gov/ca/st/en/info/nepa.html.*
- *E-mail: ca690@ca.blm.gov.*
- *Fax:* (760) 326–7099 Attn: George Meckfessel.
- *Mail:* George Meckfessel, Planning and Environmental Coordinator, Bureau of Land Management, Needles Field Office, 1303 South U.S. Highway 95, Needles, CA 92363.
- *In person:* At any public meeting and/or hearing that BLM schedules for the DEIS/DRMPA during the comment period.

Copies of the DEIS/DRMPA are available in the Needles Field Office at the above address; the California State Office, Public Room, 2800 Cottage Way, Suite W–1623, Sacramento, CA 95825; and electronically on the following Web site: *http://www.blm.gov/ca/st/en/info/nepa.html.*

FOR FURTHER INFORMATION CONTACT: Tom Hurshman, Project Manager, (970) 240–5345; Bureau of Land Management, 2465 South Townsend Ave., Montrose, CO 81401; e-mail *tom_hurshman@blm.gov.*

SUPPLEMENTARY INFORMATION:

Solar Partners I, LLC, Solar Partners II, LLC, Solar Partners IV, LLC and Solar Partners VIII, LLC, wholly owned subsidiaries of Bright Source Energy, Inc. (the applicant), have applied for right-of-way (ROW) grants on public lands to develop a 400 megawatt (MW) solar thermal power plant and a shared administrative complex/construction logistics area on approximately 4,073

acres of public land in Southern California. The proposed 400 MW generation project would be constructed in three phases: (1) 100 MW (Ivanpah 1) and the shared administrative complex/construction logistics area; (2) 100 MW (Ivanpah 2); and (3) 200 MW (Ivanpah 3). The project site is located entirely on public land approximately 4.5 miles southwest of Primm, Nevada. These concentrating solar energy power plants would use distributed power tower and heliostat (mirror) technology, in which heliostat fields focus solar energy on power tower receivers near the center of each heliostat array. The completed 400 MW project would incorporate seven 459-foot tall power towers and approximately 214,000 heliostats (each holding two flat mirrors). Each of the three proposed plants (Ivanpah 1, 2, and 3) would have an individual power block with steam turbine, air-cooled condenser, switchyard, and generation tie-line. The three plants would share access roads, two groundwater wells and water lines, an administrative/maintenance complex, a new substation, a new 5.3-mile natural gas pipeline, and temporary construction staging areas. The DEIS addresses the impacts of the entire 400 MW generation project and does not analyze the environmental impacts for each phase of development separately.

The plants would be connected to the Southern California Edison (SCE) electric power grid through upgrades to SCE's electric transmission line passing through the site and the new substation. The three phases would take several years to construct. Once completed, the solar power plants are expected to operate for 50 years or more. Construction of the first phase of the project is anticipated to begin in 2010 and be completed in 2013.

On November 6, 2007, the BLM published in the **Federal Register** a Notice of Intent (72 FR 62671) to prepare an EIS and Staff Assessment jointly with the CEC under NEPA and the California Environmental Quality Act. The BLM and CEC held public scoping meetings in January 2007 and have held a series of public workshops since then to discuss project changes and mitigation measures. Potential impacts to specific resources such as groundwater (quality and quantity), threatened and endangered species (desert tortoise), vegetation, visual resources, desert bighorn sheep, domestic livestock grazing, and recreation on the Ivanpah Dry Lake were identified during scoping and analyzed in the DEIS.

The DEIS evaluates alternatives to approve the proposed action, approve with modifications, or deny the ROW application for the ISEGS project as proposed. The BLM will also consider the DRMPA to the California Desert Conservation Area Plan to allow for the ISEGS project. The DEIS analyzed 22 alternative site locations and technologies to the ISEGS project. None of these 22 alternatives met the BLM purpose and need for the proposed action and as such were eliminated from detailed analysis.

Resources that may be affected include, but are not limited to: Desert tortoise, visual resources, cultural resources, ephemeral stream channels, soils, and vegetation.

Please note that public comments and information submitted including names, street addresses, and e-mail addresses of respondents will be available for public review and disclosure at the above addresses for the BLM California State Office and Needles Field Office during regular business hours (8 a.m. to 4 p.m.), Monday through Friday, except holidays.

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 may 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.

Authority: 40 CFR 1506.10 and 1610.2

Tom Pogacnik,

Deputy State Director for Natural Resources, California State Office.

[FR Doc. E9–27116 Filed 11–9–09; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWO2600000 L10600000 XQ0000]

Wild Horse and Burro Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Announcement of meeting.

SUMMARY: The Bureau of Land Management (BLM) announces that the Wild Horse and Burro Advisory Board will conduct a meeting on matters pertaining to management and protection of wild, free-roaming horses and burros on the Nation's public lands.

DATES: The Advisory Board will meet Monday, December 7, 2009 from 8 a.m. to 5 p.m., local time. This will be a one day meeting.

ADDRESSES: The Advisory Board will meet in Reno, Nevada at the John Ascuaga's Nugget, 1100 Nugget Avenue, Sparks, Nevada 89431. Their phone number for reservations is 800–648–1177.

Written comments pertaining to the Advisory Board meeting should be sent to: Bureau of Land Management, National Wild Horse and Burro Program, WO–260, Attention: Ramona DeLorme, 1340 Financial Boulevard, Reno, Nevada, 89502–7147. Submit written comments pertaining to the Advisory Board meeting no later than close of business December 2, 2009. See the **SUPPLEMENTARY INFORMATION** section for electronic access and filing address.

FOR FURTHER INFORMATION CONTACT: Ramona DeLorme, Wild Horse and Burro Administrative Assistant, at 775–861–6583. Individuals who use a telecommunications device for the deaf (TDD) may reach Ms. DeLorme at any time by calling the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Public Meeting

Under the authority of 43 CFR part 1784, the Wild Horse and Burro Advisory Board advises the Secretary of the Interior, the Director of the BLM, the Secretary of Agriculture, and the Chief of the Forest Service, on matters pertaining to management and protection of wild, free-roaming horses and burros on the Nation's public lands. The tentative agenda for the meeting is:

Monday, December 7, 2009 (8 a.m.–5 p.m.)

8 a.m.—Call to Order & Introductions:
8:15 a.m.—Old Business:
  Approval of September 28, 2009 Minutes
9 a.m.—New Business
  Secretaries Initiative
Break (9:45 a.m.–10 a.m.)
10 a.m.—New Business
  Secretaries Initiative (Continued)
Lunch (11:45 a.m.–1 p.m.)
1 p.m.—New Business
  Secretaries Initiative (Continued)
Break (2:45 p.m.–3 p.m.)
3 p.m.—Public Comments
4 p.m.—Board Recommendations
4:45 p.m.—Recap/Summary/Next Meeting/Date/Site
5 p.m.—Adjourn

The meeting site is accessible to individuals with disabilities. An individual with a disability needing an auxiliary aid or service to participate in the meeting, such as an interpreting service, assistive listening device, or

materials in an alternate format, must notify the person listed under **FOR FURTHER INFORMATION CONTACT** two weeks before the scheduled meeting date. Although the BLM will attempt to meet a request received after that date, the requested auxiliary aid or service may not be available because of insufficient time to arrange it.

The Federal Advisory Committee Management Regulations [41 CFR 101–6.1015(b),] require BLM to publish in the **Federal Register** notice of a meeting 15 days prior to the meeting date.

II. Public Comment Procedures

Members of the public may make oral statements to the Advisory Board on December 7, 2009 at the appropriate point in the agenda. This opportunity is anticipated to occur at 3 p.m., local time. Persons wishing to make statements should register with the BLM by noon on December 7, 2009 at the meeting location. Depending on the number of speakers, the Advisory Board may limit the length of presentations. At previous meetings, presentations have been limited to three minutes in length, however this time may vary. Speakers should address the specific wild horse and burro-related topics listed on the agenda. Speakers must submit a written copy of their statement to the address listed in the **ADDRESSES** section or bring a written copy to the meeting.

Participation in the Advisory Board meeting is not a prerequisite for submission of written comments. The BLM invites written comments from all interested parties. Your written comments should be specific and explain the reason for any recommendation. The BLM appreciates any and all comments, but those most useful and likely to influence decisions on management and protection of wild horses and burros are those that are either supported by quantitative information or studies or those that include citations to and analysis of applicable laws and regulations. Except for comments provided in electronic format, speakers should submit two copies of their written comments where feasible. The BLM will not necessarily consider comments received after the time indicated under the **DATES** section or at locations other than that listed in the **ADDRESSES** section.

In the event there is a request under the Freedom of Information Act (FOIA) for a copy of your comments, the BLM will make them available in their entirety, including your name and address. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. The BLM will release all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, in their entirety, including names and addresses.

Electronic Access and Filing Address

Speakers may transmit comments electronically via the Internet to: *ramona_delorme@blm.gov.* Please include the identifier ''WH&B'' in the subject of your message and your name and address in the body of your message.

Dated: December 4, 2009.

Edwin L. Roberson,

Assistant Director, Renewable Resources and Planning.

[FR Doc. E9–26983 Filed 11–9–09; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before October 24, 2009. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service,1201 Eye St., NW., 8th floor, Washington DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by November 25, 2009.

J. Paul Loether,

Chief, National Register of Historic Places/National, Historic Landmarks Program.

ARIZONA

Maricopa County

Roosevelt Addition Historic District, 600 block of W. 3rd St., Tempe, 09000959

Pima County

Gist Residence, 5626 E. Burns St., Tucson, 09000960

CONNECTICUT

New London County

St. James Episcopal Church, 76 Federal St., New London, 09000961

FLORIDA

Lee County

First Baptist Church of Boca Grande, 421 4th St. W., Boca Grande, 09000962

MARYLAND

Caroline County

Brick House Farm, 24870 E. Cherry Ln., Greensboro, 09000963

Leverton, Jacob and Hannah, House, 3531 Seaman Rd., Preston, 09000964

MASSACHUSETTS

Bristol County

Head of the River Historic District, 2–28 Main St., Acushnet; 2–28 Mill Rd., 2–13 Tarkiln Hill Rd., New Bedford, 09000965

NEW JERSEY

Hunterdon County

Seargeantsville Historic District, Co. Rts. 523 & 604, Lambert Rd., Delaware Dr., Delaware Township, 09000972

Morris County

Chamberlain, George, House, 315 Dover-Milton Rd., Jefferson, 09000973

Union County

Frazee, Elizabeth and Gershom, House, 1451 Raritan Rd., Scotch Plains, 09000971

NEW YORK

Kings County

Kol Israel Synagogue, 603 St. John's Place, Brooklyn, 09000966

Shaari Zedek Synagogue, 767 Putnam Ave., Brooklyn, 09000968

Suffolk County

Sherwood-Jayne House, 55 Old Post Rd., East Setauket, 09000969

Sullivan County

Spring House, 54 River Rd., Barryville, 09000970

Wayne County

Towar-Ennis Farmhouse and Barn Complex, 265 NY 14, Lyons, 09000967

OKLAHOMA

Craig County

Attucks School, 346 S. 4th, Vinita, 09000974

Ellis County

Ingle Brothers Broomcorn Warehouse, 320 NW 1st St., Shattuck, 09000975

Greer County

Downtown Mangum Historic District, (County Courthouses of Oklahoma TR) roughly bounded by E. Lincoln, S. Pennsylvania, N. Oklahoma and S. Oklahoma, Mangum, 09000976

Jefferson County

Irving Baptist Church, OK Rt. 1 Box 32, Ryan, 09000977

Oklahoma County

Citizens, 2200 N. Classen Blvd., Oklahoma City, 09000978

Payne County

Bassett House, The, 1100 E. 9th Pl., Cushing, 09000979

TEXAS

Collin County

Allen Water Station, N. of Exchange Pkwy on Cottonwood Creek, Allen, 09000980

Kendall County

Herff-Rozelle Farm, 33 Heroff Rd., Boerne, 09000983

Tarrant County

First National Bank Building, 711 Houston St., Fort Worth, 09000981
Petroleum Building, 210 W. 6th. St., Fort Worth, 09000982
S. Main St. Historic District, 104, 108, 126 & 200 blocks S. Main St., Fort Worth, 09000984

UTAH

Carbon County

42Cb1252, (Nine Mile Canyon, Utah) Address Restricted, Price, 09000988
42Cb145, (Nine Mile Canyon, Utah) Address Restricted, Price, 09001019
42Cb1758, (Nine Mile Canyon, Utah) Address Restricted, Price, 09000992
42Cb2024, (Nine Mile Canyon, Utah) Address Restricted, Price, 09000989
42Cb2043, (Nine Mile Canyon, Utah) Address Restricted, Price, 09001012
42Cb2218, (Nine Mile Canyon, Utah) Address Restricted, Price, 09000990
42Cb242, (Nine Mile Canyon, Utah) Address Restricted, Price, 09000991
42Cb31, (Nine Mile Canyon, Utah) Address Restricted, Price, 09001021
42Cb33, (Nine Mile Canyon, Utah) Address Restricted, Price, 09000994
42Cb36, (Nine Mile Canyon, Utah) Address Restricted, Price, 09000999
42Cb46, (Nine Mile Canyon, Utah) Address Restricted, Price, 09000998
42Cb48, (Nine Mile Canyon, Utah) Address Restricted, Price, 09000997
42Cb50, (Nine Mile Canyon, Utah) Address Restricted, Price, 09000993
42Cb51, (Nine Mile Canyon, Utah) Address Restricted, Price, 09001000
42Cb52, (Nine Mile Canyon, Utah) Address Restricted, Price, 09001020
42Cb690, (Nine Mile Canyon, Utah) Address Restricted, Price, 09001002
42Cb697, (Nine Mile Canyon, Utah) Address Restricted, Price, 09001003
42Cb729, (Nine Mile Canyon, Utah) Address Restricted, Price, 09001005
42Cb730, (Nine Mile Canyon, Utah) Address Restricted, Price, 09001011
42Cb731, (Nine Mile Canyon, Utah) Address Restricted, Price, 09001004
42Cb736, (Nine Mile Canyon, Utah) Address Restricted, Price, 09001008
42Cb743, (Nine Mile Canyon, Utah) Address Restricted, Price, 09001007
42Cb744, (Nine Mile Canyon, Utah) Address Restricted, Price, 09001018
42Cb745, (Nine Mile Canyon, Utah) Address Restricted, Price, 09001017
42Cb746, (Nine Mile Canyon, Utah) Address Restricted, Price, 09000996
42Cb804, (Nine Mile Canyon, Utah) Address Restricted, Price, 09001006
42Cb809, (Nine Mile Canyon, Utah) Address Restricted, Price, 09000995
42Cb811, (Nine Mile Canyon, Utah) Address Restricted, Price, 09001010
42Cb851, (Nine Mile Canyon, Utah) Address Restricted, Price, 09000986
42Cb893, (Nine Mile Canyon, Utah) Address Restricted, Price, 09001009
42Cb969, (Nine Mile Canyon, Utah) Address Restricted, Price, 09000985
42Cb974, (Nine Mile Canyon, Utah) Address Restricted, Price, 09000987
42Dc706, (Nine Mile Canyon, Utah) Address Restricted, Price, 09001016
Cottonwood Village, (Nine Mile Canyon, Utah) Address Restricted, Price, 09001015
Drop-Dead Ruin, (Nine Mile Canyon, Utah) Address Restricted, Price, 09001014
First Canyon Site, (Nine Mile Canyon, Utah) Address Restricted, Price, 09001013
42Dc306, (Nine Mile Canyon, Utah) Address Restricted, Price, 09001040
42Dc638, (Nine Mile Canyon, Utah) Address Restricted, Price, 09001039
42Dc682, (Nine Mile Canyon, Utah) Address Restricted, Price, 09001026

Duchesne County

42Dc683, (Nine Mile Canyon, Utah) Address Restricted, Price, 09001027
42Dc684, (Nine Mile Canyon, Utah) Address Restricted, Price, 09001038
42Dc685, (Nine Mile Canyon, Utah) Address Restricted, Price, 09001037
42Dc686, (Nine Mile Canyon, Utah) Address Restricted, Price, 09001036
42Dc687, (Nine Mile Canyon, Utah) Address Restricted, Price, 09001035
42Dc688, (Nine Mile Canyon, Utah) Address Restricted, Price, 09001034
42Dc696, (Nine Mile Canyon, Utah) Address Restricted, Price, 09001025
42Dc700, (Nine Mile Canyon, Utah) Address Restricted, Price, 09001022
42Dc702, (Nine Mile Canyon, Utah) Address Restricted, Price, 09001033
42Dc703, (Nine Mile Canyon, Utah) Address Restricted, Price, 09001031
42Dc704, (Nine Mile Canyon, Utah) Address Restricted, Price, 09001030
42Dc705, (Nine Mile Canyon, Utah) Address Restricted, Price, 09001023
42Dc708, (Nine Mile Canyon, Utah) Address Restricted, Price, 09001029
42Dc709, (Nine Mile Canyon, Utah) Address Restricted, Price, 09001028
42Dc710, (Nine Mile Canyon, Utah) Address Restricted, Price, 09001024
42Dc712, (Nine Mile Canyon, Utah) Address Restricted, Price, 09001032
Centennial House, (Nine Mile Canyon, Utah) Address Restricted, Price, 09001042
Fool's Pinnacle, (Nine Mile Canyon, Utah) Address Restricted, Price, 09001041
Karen's Cist, (Nine Mile Canyon, Utah) Address Restricted, Price, 09001043
Maxies Pad, (Nine Mile Canyon, Utah) Address Restricted, Price, 09001044
Nordell's Fort, (Nine Mile Canyon, Utah) Address Restricted, Price, 09001045
Redman Village, (Nine Mile Canyon, Utah) Address Restricted, Price, 09001047
Sunstone Village, (Nine Mile Canyon, Utah) Address Restricted, Price, 09001046
Taylor's City, (Nine Mile Canyon, Utah) Address Restricted, Price, 09001048

VIRGINIA

Albemarle County

Lewis Mountain, 1 Lewis Mountain Pkwy., Charlottesville, 09001052

Charlotte County

Four Locust Farm, US Rt. 15, Keysville, 09001053

Gloucester County

Walker, T.C., House, 1 Main St., Gloucester, 09001050

Mecklenburg County

More, MacCallum and Hudgins House Historic District, 603 Hudgins St., 439 Walker St., Chase City, 09001051

Rockbridge County

Willson House, 367 VA 673, Lexington, 09001049

[FR Doc. E9–26845 Filed 11–9–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that on November 2, 2009, a proposed Consent Decree in *United States* v. *Township of Brick, New Jersey,* Civil Action No. 3:09-cv-05592–FLW–TJB, was lodged with the United States District Court for the District of New Jersey.

In this action, the United States seeks, *inter alia,* injunctive relief and cost recovery with respect to the Brick Township Landfill Superfund Site in Ocean County, New Jersey, under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601, *et seq.* The complaint in this matter alleges that the Township of Brick was/is the past/current owner and/or operator of the Site, during which time hazardous substances were disposed and released there. The Consent Decree requires the Township of Brick to reimburse the United States all of its past response costs in the amount of $246,833; pay the United States all future response costs; and perform the remedy at the Site, which includes the installation of a solid waste landfill cap and implementation a groundwater monitoring program.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Township of Brick, New Jersey,* D.J. Ref. 90–11–3–09738.

During the public comment period, the Consent Decree, may also be examined on the following Department of Justice Web site, to *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $ 28.50 (25 cents per page reproduction costs of Consent Decree and Appendices) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E9–26973 Filed 11–9–09; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA'')

Notice is hereby given that on November 4, 2009, a proposed consent decree (''proposed Decree'') in *United States* v. *Alabama Plating Co., et al.,* Civil Action No. 2:08–cv–01422, was lodged with the United States District Court for the Northern District of Alabama, Southern Division.

In this action under Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9607(a) (''CERCLA''), the United States sought to recover response costs incurred or to be incurred by the United States as a result of releases and threatened releases of hazardous substances at the Alabama Plating Superfund Site, a former electroplating and hot-dip galvanizing facility located in Vincent, Shelby County, Alabama. The proposed Decree requires the defendants to pay $720,000 to the United States in reimbursement of past and future response costs, and provides the defendants with a covenant not to sue under Sections 106 and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607(a).

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Alabama Plating Co., et al.,* D.J. Ref. 90–7–1–06380/1.

The proposed Decree may be examined at the Office of the United States Attorney for the Northern District of Alabama, 1801 Fourth Avenue North, Birmingham, AL 35203–2101, and at U.S. EPA Region 4, 61 Forsythe Street, SW., Atlanta, GA 30303. During the public comment period, the proposed Decree may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the proposed Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $8.00 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E9–27035 Filed 11–9–09; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

Pursuant to 28 CFR 50.7, notice is hereby given that on October 28, 2009, a proposed consent decree in *United States* v. *Lennar Communities Development, Inc.,* Civil No. CIV–09–2252–PHX–FJM, was lodged with the United States District Court for the District of Arizona.

This Consent Decree will address claims asserted by the United States in a complaint filed contemporaneously with the Consent Decree against Lennar Communities Development, Inc. (LCD) for civil penalties and injunctive relief under Section 113(b) of the Clean Air Act (the Act), 42 U.S.C. 7413(b), for failure to install suitable trackout control devices and failure to immediately clean up trackout while conducting earthmoving in violation of Rule 2 Regulation 1, and Rule 310 of Regulation 3 of the Maricopa County Air Quality Department (MCAQD) which are part of the federally approved and federally enforceable State Implementation Plan (SIP) submitted to EPA by the State of Arizona pursuant to Section 110 of the Act, 42 U.S.C. 7410.

The proposed Consent Decree provides for the payment of $38,425 in civil penalties and implementation of a supplemental environmental project at a cost of not less than $144,094. The Consent Decree also includes measures designed to abate fugitive dust emissions which include installation of trackout control devices at its work sites; employing a dust control monitor at sites with 5 acres or more of surface; and requiring dust control training for employees and certain employees of sub-contractors whose job responsibilities involve dust generating operations.

The Department of Justice will receive for a period of thirty (30) days from the date of the publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Lennar Communities Development, Inc.,* D.J. Ref. 90–5–2–1–08655.

The Consent Decree may be examined at the Office of the United States Attorney for the District of Arizona, Two Renaissance Square, 40 N. Central Avenue, Suite 1200, Phoenix, Arizona 85004–4408, and at U.S. Environmental Protection Agency, Region 9, Office of Regional Counsel, 75 Hawthorne Street, San Francisco, California 94105. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/*

Consent_Decrees.html. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax number (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $7.00 (.25 cents per page reproduction cost) payable to the U.S. Treasury.

Maureen Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E9–27037 Filed 11–9–09; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,083]

HDM Furniture Industries, Incorporated, HDM Furniture Offices and Design Showroom Operations Subdivision, a Subsidiary of Furniture Brands International, Incorporated, High Point, NC; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on March 30, 2009, applicable to workers of HDM Furniture Industries, Incorporated, Furniture Offices and Design Showroom Operations Subdivision, High Point, North Carolina. The notice was published in the **Federal Register** on April 14, 2009 (74 FR 17221).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in administrative support activities, including accounting, finance, credit services, costing, production development, purchasing, office management, reception, maintenance, product display and showroom operations management duties, related to the production of wooden and upholstered household furniture.

New information shows that Furniture Brands International, Incorporated is the parent firm of HDM Furniture Industries, Incorporated, HDM Furniture Offices and Design Showroom Operations Subdivision. Workers wages at the subject firm are being reported under the Unemployment Insurance (UI) tax account for Furniture Brands International, Incorporated.

Accordingly, the Department is amending this certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of HDM Furniture Industries, Incorporated, HDM Furniture Offices and Design Showroom Operations Subdivision, a subdivision of Furniture Brands International, Incorporated, High Point, North Carolina who were adversely affected by a shift in the production of wooden and upholstered household furniture to Columbia, China, Vietnam, Indonesia and the Philippines.

The amended notice applicable to TA–W–65,083 is hereby issued as follows:

All workers of HDM Furniture Industries, Incorporated, HDM Furniture Offices and Design Showroom Operations Subdivision, a subsidiary of Furniture Brands International, Incorporated, High Point, North Carolina, who became totally or partially separated from employment on or after February 2, 2008 through March 30, 2011, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC this 19th day of October 2009.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–27006 Filed 11–9–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–64,749, TA–W–64,749A, TA–W–64,749B]

Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

TA–W–64,749, Lane Furniture Industries, Inc., a Subsidiary of Furniture Brands International, Inc., Upholstery Division, Soltillo, Mississippi.

TA–W–64,749A, Lane Furniture Industries, Inc., a Subsidiary of Furniture Brands International, Inc., Upholstery Division, Verona, Mississippi.

TA–W–64,749B, Lane Furniture Industries, Inc., a Subsidiary of Furniture Brands International, Inc., Distribution Center, Nettleton, Mississippi.

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on January 12, 2009, applicable to workers of Lane Furniture Industries, Inc., Upholstery Division, Saltillo, Mississippi, Lane Furniture Industries, Inc., Upholstery Division, Verona, Mississippi and Lane Furniture Industries, Inc., Distribution Center, Nettleton, Mississippi. The notice was published in the **Federal Register** on February 2, 2009 (74 FR 5870).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The Saltillo and Verona workers are engaged in the production of upholstered motion and stationary sofas and recliners. The Nettleton location serves as a distribution center for component parts for the aforementioned products and locations as well as a distribution center for finished goods.

New information shows that Furniture Brands International, Incorporated is the parent firm of Lane Furniture Industries, Inc. Workers wages at the subject firm are being reported under the Unemployment Insurance (UI) tax account for Furniture Brands International, Incorporated.

Accordingly, the Department is amending this certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Lane Furniture Industries, Inc., a subsidiary of Furniture Brands International, Inc., Upholstery Division, Saltillo, Mississippi, Lane Furniture Industries, Inc., a subsidiary of Furniture Brands International, Inc., Upholstery Division, Verona, Mississippi and Lane Furniture Industries, a subsidiary of Furniture Brands International, Inc., Distribution Center, Nettleton, Mississippi who were adversely affected by increased imports of upholstered motion and stationary sofas and recliners.

The amended notice applicable to TA–W–64,749, TA–W–64,749A and TA–W–64,749B) are hereby issued as follows:

All workers of Lane Furniture Industries, Inc., a subsidiary of Furniture Brands International, Inc., Upholstery Division, Saltillo, Mississippi (TA–W–63,749), Lane Furniture Industries, Inc., a subsidiary of Furniture Industries, Inc., a subsidiary of Furniture Brands, Inc., Upholstery division, Verona, Mississippi (TA–W–63,749A) and Lane Furniture Industries, Inc., a subsidiary of Furniture Brands International, Inc., Distribution Center, Nettleton, Mississippi (TA–W–64,749B), who became totally or partially separated from employment on or after December 17, 2007 through January 12, 2011, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC this 21st day of October 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–27018 Filed 11–9–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–64,776]

Maitland-Smith Furniture Industries, Incorporated, a Subsidiary of HDM Furniture Industries, Incorporated, a Subsidiary of Furniture Brands International, Incorporated, High Point, NC; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on January 27, 2009, applicable to workers of Maitland-Smith Furniture Industries, Incorporated, a subsidiary of HDM Furniture Industries, Incorporated, High Point, North Carolina. The notice was published in the **Federal Register** on February 23, 2009 (74 FR 8115).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers perform warehousing, distribution and various support service functions related to the production of household furniture.

New information shows that Furniture Brands International, Incorporated is the parent firm of Maitland-Smith Furniture Industries, Incorporated, a subsidiary of HDM Furniture Industries, Incorporated. Workers' wages at the subject firm are being reported under the Unemployment Insurance (UI) tax account for Furniture Brands International, Incorporated.

Accordingly, the Department is amending this certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Maitland-Smith Furniture Industries, Incorporated, a subsidiary of HDM Furniture Industries, Incorporated, a subsidiary of Furniture Brands International, Incorporated, High Point, North Carolina, who were adversely affected by increased company imports.

The amended notice applicable to TA–W–64,776 is hereby issued as follows:

All workers of Maitland-Smith Furniture Industries, Incorporated, a subsidiary of HDM Furniture Industries, Incorporated, a subsidiary of Furniture Brands International, Incorporated, High Point, North Carolina, who became totally or partially separated from employment on or after December 23, 2007 through January 27, 2011, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC this 19th day of October 2009.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–27005 Filed 11–9–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–65,399]

HDM Furniture Industries, Incorporated, Henredon Plant #10, a Subsidiary of Furniture Brands International, Incorporated, Mt. Airy, NC; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on April 15, 2009, applicable to workers of HDM Furniture Industries, Incorporated, Henredon Plant #10, Mt. Airy, North Carolina. The notice was published in the **Federal Register** on April 30, 2009 (74 FR 19996).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of upholstered furniture.

New information shows that Furniture Brands International, Incorporated is the parent firm of HDM Furniture Industries, Incorporated, Henredon Plant #10. Workers wages at the subject firm are being reported under the Unemployment Insurance (UI) tax account for Furniture Brands International, Incorporated.

Accordingly, the Department is amending this certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of HDM Furniture Industries, Incorporated, Henredon Plant #10, a subsidiary of Furniture Brands International, Incorporated, Mt. Airy, North Carolina who were adversely affected by increased imports and a shift in the production of upholstered furniture to China and the Philippines.

The amended notice applicable to TA–W–65,399 is hereby issued as follows:

All workers of HDM Furniture Industries, Incorporated, Henredon Plant #10, a subsidiary of Furniture Brands International, Incorporated, Mt. Airy, North Carolina, who became totally or partially separated from employment on or after February 25, 2008 through April 15, 2011, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC this 19th day of October 2009.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–27007 Filed 11–9–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–62,638]

Thomasville Furniture Industries, Inc. Corporate Office, a Subsidiary of Furniture Brands International, Inc., Thomasville Furniture Industries, Inc. Central Office, Thomasville, NC; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273), the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on February 11, 2008, applicable to workers of Thomasville Furniture Industries, Corporate Office, Thomasville, North Carolina. The notice was published in the **Federal Register** on February 29, 2008 (73 FR 11153).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers provide administrative support.

Information shows that Furniture Brands International, Inc. is the parent firm of Thomasville Furniture Industries, Inc. Workers wages at the subject firm are being reported under the Unemployment Insurance (UI) tax account for Furniture Brands International, Inc.

Accordingly, the Department is amending this certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by the increased company imports of upholstered furniture by an affiliated facility whose workers were certified eligible to apply for adjustment assistance.

The amended notice applicable to TA–W–62,638 is hereby issued as follows:

All workers of Thomasville Furniture, Corporate Office, a subsidiary of Furniture Brands International, Inc., Thomasville Furniture Industries, Inc., Central Office, Thomasville, North Carolina, who became totally or partially separated from employment on or after December 30, 2007 through February 11, 2010 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC this 20th day of October 2009.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–27015 Filed 11–9–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–64,768]

HDM/Henredon Morganton Operations, a Subsidiary of HDM Furniture Industries, Incorporated, a Subsidiary of Furniture Brands International, Incorporated; Morganton, NC; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on January 30, 2009, applicable to workers of HDM/Henredon Morganton Operations, a subsidiary of HDM Furniture Industries, Incorporated, Morganton, North Carolina. The notice was published in the **Federal Register** on February 23, 2009 (74 FR 8115).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in administrative support, product development, engineering, human resources, accounting, payroll and catalog distribution services, related to the production of household furniture.

New information shows that Furniture Brands International, Incorporated is the parent firm of HDM/Henredon Morgan Operation, a subsidiary of HDM Furniture Industries, Incorporated. Workers wages at the subject firm are being reported under the Unemployment Insurance (UI) tax account for Furniture Brands International, Incorporated.

Accordingly, the Department is amending this certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of HDM/Henredon Morganton Operations, a subsidiary of HDM Furniture Industries, Incorporated, a subsidiary of Furniture Brands International, Incorporated, Morganton, North Carolina who were adversely affected by a shift in the production of household furniture to China, Columbia, Indonesia and the Philippines.

The amended notice applicable to TA–W–64,768 is hereby issued as follows:

All workers of HDM/Henredon Morganton Operations, a subsidiary of HDM Furniture Industries, Incorporated, a subsidiary of Furniture Brands International, Incorporated, Morganton, North Carolina, who became totally or partially separated from employment on or after December 22, 2007 through January 30, 2011, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC this 19th day of October 2009.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–27020 Filed 11–9–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–64,760]

HDM Furniture Industries, Incorporated, a Subsidiary of HDM/Drexek-Heritage, Plant #75/CRC, a Subsidiary of Furniture Brands International, Incorporated, Morganton, NC; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on January 23, 2009, applicable to workers of HDM Furniture Industries, Incorporated, a subsidiary of HDM/Drexel-Heritage, Plant #75/CRC, Morganton, North Carolina. The notice was published in the **Federal Register** on February 10, 2009 (74 FR 6653).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers perform various administrative functions for an affiliated upholstery and casegoods manufacturing facility.

New information shows that Furniture Brands International,

Incorporated is the parent firm of HDM Furniture Industries, Incorporated, a subsidiary of HDM/Drexel-Heritage, Plant #75/CRC. Workers wages at the subject firm are being reported under the Unemployment Insurance (UI) tax account for Furniture Brands International, Incorporated.

Accordingly, the Department is amending this certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of HDM Furniture Industries, Incorporated, a subsidiary of HDM/Drexel-Heritage, Plant #75/CRC, a subsidiary of Furniture Brands International, Incorporated, Morganton, North Carolina who were adversely affected by increased imports and a shift in the production of upholstered furniture and casegoods to China, Columbia, the Philippines and Indonesia.

The amended notice applicable to TA–W–64,760 is hereby issued as follows:

All workers of HDM Furniture Industries, Incorporated, a subsidiary of HDM/Drexel-Heritage Plant #75/CRC, a subsidiary of Furniture Brands International, Incorporated, Morganton, North Carolina, who became totally or partially separated from employment on or after December 19, 2007 through January 23, 2011, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC this 19th day of October 2009.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–27019 Filed 11–9–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–63,754]

Lane Furniture Industries, Inc., a Subsidiary of Furniture Brands International, Inc., Service Center, Including Workers Whose UI Wages Were Paid by Action Transort, Belden, MS; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on August 20, 2008, applicable to workers of Lane Furniture Industries, Inc., Belden, Mississippi. The notice was published in the **Federal Register** on September 3, 2008 (73 FR 51529). The notice was amended on May 1, 2009 to include workers whose UI wages were paid by Action Transport. The notice was published in the **Federal Register** on May 18, 2009 (74 FR 23212).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of upholstered furniture and replacement units and component parts.

New information shows that the certification document issued on behalf of the workers of the subject firm did not identify the Belden, Mississippi location as the Service Center.

Information also shows that Furniture Brands International, Inc. is the parent firm of Lane Furniture Industries, Inc. Workers wages at the subject firm are being reported under the Unemployment Insurance (UI) tax account for Furniture Brands International, Incorporated.

Accordingly, the Department is amending this certification to properly reflect these matters.

The intent of the Department's certification is to include all workers of Lane Furniture Industries, Inc., a subsidiary of Furniture Brands International, Inc., Service Center, including workers whose UI wages were paid by Action Transport, Belden, Mississippi who were adversely affected by increased imports of upholstered furniture and replacement units and component parts.

The amended notice applicable to TA–W–63,754 is hereby issued as follows:

All workers of Lane Furniture Industries, Inc., a subsidiary of Furniture Brands International, Inc., Service Center, including workers whose wages were paid by Action Transport, Belden, Mississippi, who became totally or partially separated from employment on or after July 28, 2007, August 20, 2010, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC this 22nd day of October 2009.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–27017 Filed 11–9–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–63,674]

Lane Furniture Industries, a Subsidiary of Furniture Brands International, Inc., Upholstery Division, Tupelo, MS; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on August 6, 2008, applicable to the workers of Lane Furniture Industries, Inc., Upholstery Division, Tupelo Mississippi. This notice was published in the **Federal Register** on August 21, 2008 (73 FR 49491).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers produce upholstered furniture.

New information shows that Furniture Brands International, Incorporated is the parent firm of Lane Furniture Industries, Inc. Workers wages at the subject firm are being reported under the Unemployment Insurance (UI) tax account for Furniture Brands International, Incorporated.

Accordingly, the Department is amending this certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Lane Furniture Industries, Inc., a subsidiary of Furniture Brands International, Inc., Upholstery Division, Tupelo, Mississippi who were adversely affected by increased imports of upholstered furniture.

The amended notice applicable to TA–W–63,674 is hereby issued as follows:

All workers of Lane Furniture Industries, Inc., a subsidiary of Furniture Brands International, Inc., Upholstery Division, Tupelo, Mississippi (TA–W–63,674) who became totally or partially separated from

employment on or after July 7, 2007 through August 6, 2010, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed in Washington, DC, this 21st day of October 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–27016 Filed 11–9–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–61,423C]

Lane Furniture Industries, Inc., a Subsidiary of Furniture Brands International, Inc., Upholstery Division, Pontotoc, MS; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on June 11, 2007, applicable to workers of Lane Furniture Industries, Inc., Upholstery Division, Pontotoc, Mississippi. The notice was published in the **Federal Register** on June 28, 2007 (72 FR 35516).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of reclining chairs, as well as upholstered motion and stationary sofas.

New information shows that Furniture Brands International, Incorporated is the parent firm of Lane Furniture Industries, Inc. Workers wages at the subject firm are being reported under the Unemployment Insurance (UI) tax account for Furniture Brands International, Incorporated.

Accordingly, the Department is amending this certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Lane Furniture Industries, Inc., a subsidiary of Furniture Brands International, Inc., Upholstery Division, Pontotoc, Mississippi who were adversely affected by increased imports of upholstered motion and stationary sofas and recliners.

The amended notice applicable to TA–W–61,423C is hereby issued as follows:

All workers of Lane Furniture Industries, Inc., a subsidiary of Furniture Brands, Inc., Upholstery Division, Pontotoc, Mississippi (TA–W–61,423C), who became totally or partially separated from employment on or after April 30, 2006 through June 11, 2009 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed in Washington, DC, this 21st day of October 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–27014 Filed 11–9–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–70,774]

Sychip, Inc., Including On-Site Leased Workers From Adminstaff, Plano, TX; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (''Act''), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to apply for Worker Adjustment Assistance on September 23, 2009, applicable to workers of Sychip, Inc., Plano, Texas. The notice will be published soon in the **Federal Register**.

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in activities related to the production of wireless modules.

The company reports that workers leased from Adminstaff were employed on-site at the Plano, Texas location of Sychip, Inc. to provide payroll services. The Department has determined these workers were sufficiently under the control of the subject firm to be considered leased workers.

Information also shows that workers wages at the subject firm are being reported under the Unemployment Insurance (UI) tax account for Adminstaff.

Based on these finding, the Department is amending this certification to include workers leased from Adminstaff on-site at the Plano, Texas location of Sychip, Inc.

The amended notice applicable to TA–W–70,774 is hereby issued as follows:

All workers of Sychip, Inc., including on-site leased workers from Adminstaff, Plano, Texas, who became totally or partially separated from employment on or after May 27, 2008 through September 23, 2011, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 21st day of October 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–27009 Filed 11–9–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–70,006]

Maine Woods Company, Including On-Site Leased Workers From Tempo Employment Services, Portage Lake, ME; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (''Act''), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to apply for Worker Adjustment Assistance on September 11, 2009, applicable to workers of Maine Woods Company, Portage Lake, Maine. The notice will soon be published in the **Federal Register**.

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in activities related to the production of hardwood lumber.

The company reports that workers leased from Tempo Employment Services were employed on-site at the Portage Lake, Maine, location of the subject firm. The Department has determined these workers were sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include leased workers from Tempo Employment Services working on-site at the Portage Lake, Maine, location of Maine Woods Company.

The amended notice applicable to TA–W–70,006 is hereby issued as follows:

All workers of Maine Woods Company, including on-site leased workers from Tempo Employment Services, Portage, Maine, who became totally or partially separated from employment on or after May 18, 2008, through September 11, 2011, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 21st day of October 2009.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–27008 Filed 11–9–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–71,406]

Weyerhaeuser NR Company, et al.; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (''Act''), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on August 6, 2009, applicable to workers of Weyerhaeuser NR Company, Aberdeen Forest Area Division, Cosmopolis, Washington. The notice was published in the **Federal Register** September 22, 2009 (74 FR 48302–48304).

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in activities related to the production of logs.

The company reports that leased workers from the above mentioned firms were employed at the Cosmopolis, Washington location of Weyerhaeuser NR Company. The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from the above mentioned firms working on-site at the Cosmopolis, Washington location of Weyerhaeuser NR Company, Aberdeen Forest Area Division.

The amended notice applicable to TA–W–71,406 is hereby issued as follows:

All workers of Weyerhaeuser NR Company, Aberdeen Forest Area Division, including leased workers from Bridgewater Logging Inc., R.L. Smith Logging, Inc., NDC Timber Inc., Skookum Logging, Inc., Willapa Logging, Inc., Sevier Logging, Kiona Creek Timber, Inc., Don Frickel Cutting, Inc., Bill Hagara Trucking, Inc., Bill Hagara Jr. Trucking, Inc., Don Hagara Trucking, Inc., Osina Construction, Tony Gardner Trucking, Inc., MacMillan & Co., RL Smith Logging, Cecil Holmes Construction, JJ Welch Construction, Dave Williams Logging, Double D Logging, Pete Muller Logging/Const. Inc., Hi-Production Cutting, Inc., J&M Forestry, Willapa Log, Thompson Timber LLC, John Dickey Trucking, Barrier West, Brittland, Keith Muller Logging and Construction, J&P Cutting Inc., Brintec Inc., Ace Logging, Inc., and Thomsen Timber, Cosmopolis, Washington, who became totally or partially separated from employment on or after June 12, 2008, through August 6, 2011, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 20th day of October 2009.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–27010 Filed 11–9–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–71,407]

Weyerhaeuser NR Company, et al.; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (''Act''), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on August 6, 2009, applicable to workers of Weyerhaeuser NR Company, PeEll Forest Area Division, PeEll, Washington. The notice was published in the **Federal Register** September 22, 2009 (74 FR 48302–48304).

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in activities related to the production of logs.

The company reports that leased workers from the above mentioned firms were employed at the PeEll, Washington location of Weyerhaeuser NR Company. The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from the above mentioned firms working at the PeEll, Washington location of Weyerhaeuser NR Company.

The amended notice applicable to TA–W–71,407 is hereby issued as follows:

All workers of Weyerhaeuser NR Company, PeEll Forest Area Division, including leased workers from Bridgewater Logging Inc., R.L. Smith Logging, Inc., NDC Timber Inc., Skookum Logging, Inc., Willapa Logging, Inc., Sevier Logging, Kiona Creek Timber, Inc., Don Frickel Cutting, Inc., Bill Hagara Trucking, Inc., Bill Hagara Jr. Trucking, Inc., Don Hagara Trucking, Inc., Osina Construction, Tony Gardner Trucking, Inc., MacMillan & Co., RL Smith Logging, Cecil Holmes Construction, JJ Welch Construction, Dave Williams Logging, Double D Logging, Pete Muller Logging/Const. Inc., Hi-Production Cutting, Inc., J&M Forestry, Willapa Log, Thompson Timber LLC, John Dickey Trucking, Barrier West, Brittland, Keith Muller Logging and Construction, J&P Cutting Inc., Brintec Inc., Ace Logging, Inc., and Thomsen Timber, PeEll, Washington, who became totally or partially separated from employment on or after June 12, 2008, through August 6, 2011, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed in Washington, DC, this 20th day of October 2009.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–27011 Filed 11–9–09; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for

adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than November 20, 2009.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than November 20, 2009.

The petitions filed in this case are available for inspection at the Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room N–5428, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 30th day of October 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

APPENDIX—TAA PETITIONS INSTITUTED BETWEEN 10/12/09 AND 10/16/09

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
72558	Weyerhaeuser-iLevel Strand Technology, (Comp)	Elkin, NC	10/13/09	10/08/09
72559	Symmetricom, Inc., (Comp)	San Jose, CA	10/13/09	10/09/09
72560	Chrysler/Toledo Assembly, (UAW)	Toledo, OH	10/13/09	10/09/09
72561	United Tool & Plastics, Inc., (Comp)	Waynesboro, VA	10/13/09	10/08/09
72562	Fypon, Ltd., (Comp)	Archbold, OH	10/13/09	10/09/09
72563	Fypon, Ltd., (Comp)	Parkersburg, WV	10/13/09	10/09/09
72564	Termoseal, Inc., (Comp)	Sidney, OH	10/13/09	10/09/09
72565	Robert Bosch, LLC, (UAW)	St. Joseph, MI	10/13/09	09/16/09
72566	W.T. Sewing, Inc., (Wkrs)	San Francisco, CA	10/13/09	10/12/09
72567	Steve Williams Ford Lim, (Wkrs)	Lawrenceburg, TN	10/13/09	10/05/09
72568	Modine Manufacturing, (Wkrs)	Racine, WI	10/13/09	10/08/09
72569	Shiloh Industries Greenfield Die and Manufacturing, (Wkrs)	Canton, MI	10/13/09	10/09/09
72570	Michaels Processing Center, (Wkrs)	Grand Prairie, TX	10/13/09	10/05/09
72571	Freescale Semiconductor, (Wkrs)	Chandler, AZ	10/13/09	10/07/09
72572	AZ Automotive Corporation, (UAW)	Center Line, MI	10/14/09	10/09/09
72573	F.L. Smithe Division of Barry Wehmiller Corp, (IAMAW)	Duncansville, PA	10/14/09	10/09/09
72574	Ultra Clean Technology, (Wkrs)	Hayward, CA	10/14/09	10/10/09
72575	Dell Corporation, (Wkrs)	Winston-Salem, NC	10/14/09	10/13/09
72576	Alpha Polishing, Inc., (Comp)	Los Angeles, CA	10/14/09	10/12/09
72577	Spingfield Wire, Inc., (Comp)	Springfield, MA	10/14/09	10/13/09
72578	Agilent Technologies, (State)	Santa Rosa, CA	10/14/09	10/06/09
72579	Mead Link Products, Inc., (Comp)	Rochester, NY	10/14/09	10/13/09
72580	Criterion Catalysts & Technology, (USW)	Belmont, WV	10/14/09	10/13/09
72581	Freightcar America, (Wkrs)	Roanoke, VA	10/14/09	10/13/09
72582	GM Flint-Powertrain North, (Union)	Flint, MI	10/14/09	10/02/09
72583	Mansfield Brass and Aluminum, (Union)	New Washinton, OH	10/14/09	10/13/09
72584	IAC, (Union)	Dayton, TN	10/14/09	10/13/09
72585	Whirpool Corporation, Evansville Manufacturing Division, (IUECWA).	Evansville, IN	10/14/09	10/13/09
72586	Sapa Industrial Extrusions, (Wkrs)	Cressona, PA	10/15/09	09/30/09
72587	Raleigh Film and Television Studios, LLC, (Wkrs)	Los Angeles, CA	10/15/09	10/01/09
72588	Pavco Industries, Inc., (Comp)	Pascagoula, MS	10/15/09	10/14/09
72589	DOW Chemical—SKC Hass Display Films (USA), (Wkrs)	Rochester, NY	10/15/09	10/14/09
72590	Taminco Higher Amines, Inc., (Comp)	Riverview, MI	10/15/09	10/13/09
72591	Hutchinson Technology, Inc., (Wkrs)	Eau Claire, WI	10/15/09	10/10/09
72592	Sipco Molding Technologies, (Wkrs)	Meadville, PA	10/15/09	10/14/09
72593	Ciba Vision Corporation, (Wkrs)	Duluth, GA	10/15/09	10/15/09
72594	Heraeus Electro-Nite Company, LLC, (Comp)	Peru, IN	10/15/09	10/14/09
72595	Boyd Corporation, (State)	Portland, OR	10/15/09	10/13/09
72596	Metso Minerals, (Wkrs)	Portland, OR	10/15/09	10/13/09
72597	GE Healthcare Systems/Monitoring Solutions, (Wkrs)	Milwaukee, WI	10/16/09	10/12/09
72598	Nittsu Shoji U.S.A., Inc., (Comp)	Troy, OH	10/16/09	10/14/09
72599	Pradco, Inc., (State)	Ft. Smith, AR	10/16/09	10/14/09
72600	Unisys Corporation, (State)	Eagan, MN	10/16/09	10/15/09
72601	Crowe Manufacturing Services, Inc., (Comp)	Dayton, OH	10/16/09	10/14/09
72602	AT&T Operations, (State)	Greenroad Villiage, CO	10/16/09	10/08/09
72603	The Woodbridge Group, (Wkrs)	Auburn Hills, MI	10/16/09	10/15/09
72604	Career Horizons DBA Teleservices, Direct, (Comp)	Indianapolis, IN	10/16/09	10/15/09
72605	Coastal Diesel Service, (Wkrs)	New Bern, NC	10/16/09	10/06/09
72606	American Food and Vending, (Other)	Spring Hill, TN	10/16/09	10/15/09
72607	Bebe Store, Inc., (Wkrs)	Brisbane, CA	10/16/09	09/25/09
72608	Quark, Inc., (State)	Denver, CO	10/16/09	10/13/09

[FR Doc. E9–27013 Filed 11–9–09; 8:45 am]
BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than November 20, 2009.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than November 20, 2009.

The petitions filed in this case are available for inspection at the Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room N–5428, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 30th day of October 2009.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

APPENDIX—TAA PETITIONS INSTITUTED BETWEEN 10/5/09 AND 10/9/09

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
72490	Panduit Corporation., (Comp)	Tinley Park, IL	10/05/09	09/29/09
72491	Commerce Energy, Inc., (Wkrs)	Costa Mesa, CA	10/05/09	10/02/09
72492	Adams Granite Company, Inc., (Union)	Barre, VT	10/05/09	10/02/09
72493	Ananke, Inc., (Wkrs)	Providence, RI	10/05/09	10/02/09
72494	EDS/Hewlett Packard Enterprise Services, (Wkrs)	Miramar, FL	10/05/09	10/02/09
72495	ATI Allegheny Ludlum Corporation, (union)	New Castle, IN	10/05/09	10/02/09
72496	Experian ,(Wkrs)	Schaumburg, IL	10/06/09	10/05/09
72497	Utah Stamping Company, (Wkrs)	Clearfield, UT	10/06/09	10/05/09
72498	HSBC Finance, (State)	Mettawa, IL	10/06/09	09/21/09
72499	Hamilton Fairfield Dodge Jeep, (Comp)	Hamilton, OH	10/06/09	09/25/09
72500	Hardinge, Inc., (Wkrs)	Elmira, NY	10/06/09	09/29/09
72501	P.C.C. Airfoils, Inc., (Wkrs)	Crooksville, OH	10/06/09	10/01/09
72502	Burke Hosiery Mills, Inc., (Comp)	Hickory, NC	10/06/09	09/28/09
72503	Sycamore Networks, Inc., (Wkrs)	Chelmsford, MA	10/06/09	09/25/09
72504	Penske Logistics, LLC, (union)	Spring Hill, TN	10/06/09	10/02/09
72505	SEH America, Inc., (wrks)	Vancouver, WA	10/06/09	10/02/09
72506	GHT Craft, (wrks)	Grand Rapids, MI	10/06/09	10/05/09
72507	Cypress Semi Conductor, (wrks)	San Jose, CA	10/06/09	10/05/09
72508	American Axle & Manufacturing, (wrks)	Detroit, MI	10/06/09	09/29/09
72509	Ametek MCG, Inc., (State)	New Ulm, MN	10/06/09	10/05/09
72510	Jeld-Wen Millwork Distribution, (Comp)	Wilkesboro, NC	10/06/09	10/02/09
72511	Durbin Industrial Valve, Inc., (Wkrs)	Akron, OH	10/07/09	09/21/09
72512	Hewlett Packard, (Wkrs)	Cupertino, CA	10/07/09	09/30/09
72513	Kaiser Foundation Hospitals, (Wkrs)	Pasadena, CA	10/07/09	09/26/09
72514	Metal Creations, (Comp)	High Point, NC	10/07/09	10/06/09
72515	Precision Custom Coating, (State)	Totowa, NJ	10/07/09	10/06/09
72516	Pheonix Engineering Corporation, (Wkrs)	Baldwin, WI	10/07/09	10/05/09
72517	American Institute of Physics, (Comp)	Melville, NY	10/07/09	09/30/09
72518	Wilson Tool International, (State)	White Bear Lake, MN	10/07/09	10/06/09
72519	EDS, an HP Company, (Wkrs)	Plano, TX	10/07/09	10/05/09
72520	Precision Castparts Corps (PCC), (wrks)	Crooksville, OH	10/07/09	10/02/09
72521	GlaxoSmithKline, (wrks)	Durham, NC	10/07/09	10/06/09
72522	Glass and Glazing Forensics, Inc., (wrks)	Troy, MI	10/07/09	10/06/09
72523	Warner Automotive Group, Inc, (comp)	Tiffin, OH	10/07/09	10/02/09
72524	Erie Engineering/Automation, (wrks)	Clinton Township, MI	10/07/09	10/01/09
72525	Channellock, Inc., (Comp)	Meadville, PA	10/07/09	10/06/09
72526	Hewlett Packard (HP), (state)	Fort Collins, CO	10/07/09	10/06/09
72527	Saturn of Green Bay Inc., (Wkrs)	Green Bay, WI	10/08/09	10/06/09
72528	JW Kitko & Sons Wood Products, Inc., (Wkrs)	Glen Hope, PA	10/08/09	10/06/09
72529	Celanese, (Wkrs)	Pampa, TX	10/08/09	10/05/09
72530	PTC Alliance, (Union)	Jane Lew, WV	10/08/09	10/07/09
72531	Riley Power, Inc., (union)	Erie, PA	10/08/09	10/02/09
72532	Lower Columbia Head & Neck Associates, P.S., (Comp)	Longview, WA	10/08/09	10/01/09
72533	Ensign United States Drilling Company, (Wkrs)	Denver, CO	10/08/09	10/07/09
72534	Dura-Bar Metal Services, (Wkrs)	Woodstock, IL	10/09/09	09/25/09
72535	Dura-Bar, (Wkrs)	Woodstock, IL	10/09/09	09/25/09
72536	Hanesbrands, Inc., (Comp)	Winston-Salem, NC	10/09/09	10/04/09
72537	McQuay International, (Wkrs)	Verona, VA	10/09/09	10/07/09

APPENDIX—TAA PETITIONS INSTITUTED BETWEEN 10/5/09 AND 10/9/09—Continued

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
72538	Aerotek, (Comp)	Eureka, MO	10/09/09	10/07/09
72539	Sylmark, Inc., (State)	Los Angeles, CA	10/09/09	10/08/09
72540	Komatsu Forest, LLC, (Wkrs)	Shawano, WI	10/09/09	09/25/09
72541	TriMark Corporation, (Wkrs)	New Hampton, IA	10/09/09	10/02/09
72542	Cellular Expres, Inc., dba Boston Communications Group, (Comp).	Bedford, MA	10/09/09	10/08/09
72543	Owens Corning Sales, LLC, (Comp)	Charleston, WV	10/09/09	10/08/09
72544	Sonoco Products Company, (Comp)	Devens, MA	10/09/09	10/06/09
72545	Century Dodge, Chrysler Jeep, (Wkrs)	Wentzville, MO	10/09/09	09/01/24
72546	Carlisle Tire and Wheel, (Wkrs)	Carlisle, PA	10/09/09	10/07/09
72547	Arnold Gauge, (Comp)	Fairfield, OH	10/09/09	10/06/09
72548	AGC Automotive of Americas Kentucky, (Wkrs)	Elizabethtown, KY	10/09/09	10/07/09
72549	Charming Shoppes of Delware, Inc., (Comp)	Bensalem, PA	10/09/09	10/07/09
72550	The College House, Inc., (Wkrs)	Richmond, VA	10/09/09	10/02/09
72551	American Tube and Paper Company, (Union)	Totowa, NJ	10/09/09	10/07/09
72552	Courtesy Chevrolet, (State)	Bastrop, LA	10/09/09	10/07/09
72553	Intel Corporation, (Wkrs)	Chandler, AZ	10/09/09	09/29/09
72554	General Motors Corporation, (Union)	Pontiac, MI	10/09/09	10/06/09
72555	Global Heating Solutions, Inc., (Union)	Allegan, MI	10/09/09	10/06/09
72556	Sonus Networks, Inc., (Wkrs)	Westford, MA	10/09/09	10/05/09
72557	Johnson Controls, Inc., (Wkrs)	Kansas City, MO	10/09/09	09/27/09

[FR Doc. E9–27012 Filed 11–9–09; 8:45 am]
BILLING CODE 4510–FN–P

MARINE MAMMAL COMMISSION

Sunshine Act Notice

TIME AND DATE: The Marine Mammal Commission and its Committee of Scientific Advisors on Marine Mammals will meet on Wednesday, 2 December 2009, from 2 p.m. to 6 p.m.; Thursday, 3 December 2009, from 8 a.m. to 6 p.m.; and Friday, 4 December 2009, from 8:30 a.m. to 6 p.m. The Commission and the Committee will meet in executive session on Wednesday, 2 December 2009, from 10:30 a.m. to 12:30 p.m.

PLACE: Hilton Waikiki/Prince Kuhio, 2500 Kuhio Avenue, Waikiki Beach, Hawaii 96815; Telephone: 808–921–5570; fax: 808–921–5511.

STATUS: The executive session will be closed to the public in accordance with the provisions of the Government in the Sunshine Act (5 U.S.C. 552b) and applicable regulations. The session will be for internal discussions of process, personnel, and the budget of the Commission. All other portions of the meeting will be open to the public. Public participation will be allowed as time permits and as determined to be desirable by the Chairman.

MATTERS TO BE CONSIDERED: The Commission and Committee will meet in public session to discuss a broad range of marine ecosystem and marine mammal matters with a focus on the Pacific Islands region. Although subject to change, major issues that the Commission plans to consider at the meeting include marine protected areas, their status and effectiveness; efforts to protect and recover Hawaiian monk seals; research and regulatory actions affecting spinner dolphins; the Hawaii Humpback Whale Sanctuary; false killer whales and other odontocetes in Hawaii; and other cetaceans in the Pacific Islands region.

CONTACT PERSON FOR MORE INFORMATION: Suzanne Montgomery, Special Assistant to the Executive Director, Marine Mammal Commission, 4340 East-West Highway, Room 700, Bethesda, MD 20814; 301–504–0087; e-mail: *smontgomery@mmc.gov.*

Dated: November 3, 2009.

Timothy J. Ragen,

Executive Director.

[FR Doc. E9–26919 Filed 11–9–09; 8:45 am]
BILLING CODE 6820–31–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (09–096)]

Notice of Information Collection Under OMB Review

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection under OMB review.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 30 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Jasmeet Seehra, Desk Officer for NASA; Office of Information and Regulatory Affairs; Room 10236; New Executive Office Building; Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Lori Parker, NASA Clearance Officer, NASA Headquarters, 300 E Street, SW., JF0000, Washington, DC 20546, (202) 358–1351, *Lori.Parker-1@nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

NASA will collect information to determine which applicants meet required selection criteria and to what extent. Ten secondary educators from institutions nation-wide will be selected to participate in the Airborne Research Experience for Educators (AREE) project based on their experience and educational background.

II. Method of Collection

Applicants will complete an online application hosted on the AREE Web site. The application form can be downloaded using Adobe software and submitted electronically using the e-

mail submit button located on the form. The collection of information from the application, resume, and letters of reference will all occur electronically.

III. Data

Title: Airborne Research Experience for Educators (AREE) Application.

OMB Number: 2700–0137.

Type of Review: New Collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 25.

Estimated Number of Responses per Respondent: 1.

Estimated Time per Response: 1 hour.

Estimated Total Annual Burden Hours: 25 hours.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Lori Parker,

NASA Clearance Officer.

[FR Doc. E9–27041 Filed 11–9–09; 8:45 am]

BILLING CODE P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (09–095)]

Notice of Information Collection Under OMB Review

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection under OMB review.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 30 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Jasmeet Seehra, Desk Officer for NASA; Office of Information and Regulatory Affairs; Room 10236; New Executive Office Building; Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Lori Parker, NASA Clearance Officer, NASA Headquarters, 300 E Street, SW., JF000, Washington, DC 20546, (202) 358–1351, *Lori.Parker-1@nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The NASA Office of Education seeks a generic clearance to administer surveys through the Office of Education Performance Measurement (OEPM) system. Data Collection through the OEPM system will be used for reporting on Program Assessment Rating Tool (PART) measures, Program Analysis and Evaluation (PA&E), and answering Congressional inquiries about NASA education programs.

II. Method of Collection

Data collected will be primarily electronic. Teachers, students, and interested members of public who have attended or participated in NASA funded education events and activities will be sent an email with a link that, when clicked, will route the participant to the relevant survey.

At events where computers might not be available, a paper version of a select number of surveys will be available. Surveys will be scanned into the OEPM system through a fax machine or scanner.

III. Data

Title: NASA Office of Education Generic Collection.

OMB Number: 2700–XXXX.

Type of Review: New collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 400,000.

Estimated Number of Responses per Respondent: 1.

Estimated Time per Response: .25–.50 hour.

Estimated Total Annual Burden Hours: 103,458 hours.

Estimated Annual Cost for Respondents: $0.00.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Lori Parker,

NASA Clearance Officer.

[FR Doc. E9–27043 Filed 11–9–09; 8:45 am]

BILLING CODE P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of Humanities Panels will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Michael P. McDonald, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information

given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* December 1, 2009.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Research and Development in Preservation and Access Humanities Collection and Reference Resources, submitted to the Division of Preservation and Access at the July 15, 2009 deadline.

2. *Date:* December 1, 2009.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Enduring Questions: Pilot Course Grants, submitted to the Division of Education Programs at the September 15, 2009 deadline.

3. *Date:* December 1, 2009.
Time: 8:30 a.m. to 5 p.m.
Room: Library of Congress, Jefferson Building, African and Middle Eastern Conference Room, LJ–220, 101 Independence Avenue, SE., Washington, DC 20540.
Program: This meeting will review applications for Kluge Fellowships, submitted to the Division of Research Programs at the July 15, 2009 deadline.

4. *Date:* December 2, 2009.
Time: 9 a.m. to 5 p.m.
Room: 402.
Program: This meeting will review applications for Digital Humanities Start Up Grants, submitted to the Office of Digital Humanities at the October 6, 2009 deadline.

5. *Date:* December 3, 2009.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for American Studies I in Preservation and Access Humanities Collection and Reference Resources, submitted to the Division of Preservation and Access at the July 15, 2009 deadline.

6. *Date:* December 3, 2009.
Time: 8:30 a.m. to 5 p.m.
Room: Library of Congress, Jefferson Building, African and Middle Eastern Conference Room, LJ–220, 101 Independence Avenue, SE., Washington, DC 20540.
Program: This meeting will review applications for Kluge Fellowships, submitted to the Division of Research Programs at the July 15, 2009 deadline.

7. *Date:* December 7, 2009.
Time: 9 a.m. to 5 p.m.
Room: Room 402.
Program: This meeting will review applications for Digital Start Up Grants, submitted to the Office of Digital Humanities at the October 6, 2009 deadline.

8. *Date:* December 8, 2009.
Time: 9 a.m. to 5 p.m.
Room: Room 402.
Program: This meeting will review applications for Digital Start Up Grants, submitted to the Office of Digital Humanities at the October 6, 2009 deadline.

9. *Date:* December 8, 2009.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for Art and Architecture in Preservation and Access Humanities Collection and Reference Resources, submitted to the Division of Preservation and Access at the July 15, 2009 deadline.

10. *Date:* December 9, 2009.
Time: 9 a.m. to 5 p.m.
Room: Room 402.
Program: This meeting will review applications for Digital Start Up Grants, submitted to the Office of Digital Humanities at the October 6, 2009 deadline.

11. *Date:* December 10, 2009.
Time: 9 a.m. to 5 p.m.
Room: Room 402.
Program: This meeting will review applications for Digital Start Up Grants, submitted to the Office of Digital Humanities at the October 6, 2009 deadline.

12. *Date:* December 10, 2009.
Time: 8:30 a.m. to 5 p.m.
Room: 415.
Program: This meeting will review applications for American Studies II in Preservation and Access Humanities Collection and Reference Resources, submitted to the Division of Preservation and Access at the July 15, 2009 deadline.

13. *Date:* December 16, 2009.
Time: 8:30 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Fellowship Programs at Independent Research Institutions, submitted to the Division of Research Programs at the August 20, 2009 deadline.

Michael P. McDonald,
Advisory Committee, Management Officer.

[FR Doc. E9–27021 Filed 11–9–09; 8:45 am]
BILLING CODE 7536–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0473]

Notice; Applications and Amendments to Facility Operating Licenses Involving Proposed No Significant Hazards Considerations and Containing Sensitive Unclassified Non-Safeguards Information and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information

I. Background

Pursuant to section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this notice. The Act requires the Commission to publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This notice includes notices of amendments containing sensitive unclassified non-safeguards information (SUNSI).

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in Title 10 of the Code of Federal Regulations (10 CFR), Section 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of

publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rulemaking and Directives Branch (RDB), TWB–05–B01M, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be faxed to the RDB at 301–492–3446. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland, or at *http://www.nrc.gov/reading-rm/doc-collections/cfr/part002/part002-0309.html.* Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm.html.* If a request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner/requestor intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner/requestor intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner/requestor to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule, which the NRC promulgated in the **Federal Register** on August 28, 2007 (72 FR 49139). The E-Filing process requires participants to submit and serve all adjudicatory documents over the Internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the petitioner/requestor should contact the Office of the Secretary by e-mail at *hearing.docket@nrc.gov,* or by calling 301–415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances in which the petitioner/requestor (or its counsel

or representative) already holds an NRC-issued digital ID certificate). Each petitioner/requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at *http://www.nrc.gov/site-help/e-submittals/install-viewer.html.* Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.*

Once a petitioner/requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the filer submits its documents through EIE. To be timely, an electronic filing must be submitted to the EIE system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory e-filing system may seek assistance through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html* or by calling the NRC electronic filing Help Desk, which is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays. The toll-free help line number is 1–866–672–7640. A person filing electronically may also seek assistance by sending an e-mail to the NRC electronic filing Help Desk at *MSHD.Resource@nrc.gov.*

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Non-timely requests and/or petitions and contentions will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the request and/or petition should be granted and/or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/ehd_proceeding/home.asp,* unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

For further details with respect to this amendment action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.*

Carolina Power & Light Company, et al., Docket No. 50–400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of amendment request: July 21, 2009.

Description of amendment request: This amendment request contains sensitive unclassified non-safeguards information (SUNSI). The proposed amendment would revise Technical Specification Section 6.9.1.6 to add the NRC-approved topical report (TR) EMF–23 10(P)(A), ''SRP Chapter 15 Non-LOCA [Loss-of-Coolant Accident] Methodology for Pressurized Water Reactors,'' to the Core Operating Limits Report methodologies list. This change will allow the use of thermal-hydraulic computer analysis code, S–RELAP5 for Final Safety Analysis Report (FSAR) Chapter 15 non-LOCA transients in the Shearon Harris Nuclear Power Plant, Unit 1 (HNP) safety analyses. Topical Report EMF–23 10(P)(A), Revision 0, was approved by the NRC on May 11, 2001, for the application of the S–RELAP5 thermal-hydraulic computer analysis code to FSAR Chapter 15 non-LOCA transients. Revision 1 of TR EMF–23 10(P)(A), approved by the NRC on May 19, 2004, updated Section 5.6 of the topical report.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The topical report has been reviewed and approved by the NRC for use in determining core operating limits. The core operating limits to be developed using the new methodologies for HNP will be established in accordance with the applicable limitations as documented in the NRC Safety Evaluation Reports. In the May 11, 2001, NRC SE, the NRC concluded that the S–RELAP5 code is capable of addressing the thermal-hydraulic response of the target non-LOCA events in a conservative manner and is therefore an acceptable replacement for the ANF RELAP code. The May 19, 2004, SE for Revision 1 to EMF–23 10(P)(A), concluded that the code remained acceptable for use for the non-LOCA events.

The proposed change, by itself, does not impact the current design bases. The proposed change enables the use of new methodology to re-analyze certain events. Revised analyses may either result in continued conformance with design bases or may change the design bases. If design basis changes result from a revised analysis, the specific design changes will be evaluated in accordance with HNP design change procedures and 10 CFR 50.59.

The proposed change does not involve physical changes to any plant structure, system, or component. Therefore, the probability of occurrence for a previously analyzed accident is not significantly increased.

The consequences of a previously analyzed accident are dependent on the initial conditions assumed for the analysis, the behavior of the fission product barriers during the analyzed accident, the availability and successful functioning of the equipment assumed to operate in response to the analyzed event, and the setpoints at which these actions are initiated. The proposed methodologies will ensure that the plant continues to meet applicable design and safety analyses acceptance criteria. The proposed change does not affect the performance of any equipment used to mitigate the consequences of an analyzed accident. As a result, no analysis assumptions are impacted and there are no adverse effects on the factors that contribute to offsite or onsite dose as a result of an accident. The proposed change does not affect setpoints that initiate protective or mitigative actions. The proposed change ensures that plant structures, systems, and components are maintained consistent with the safety analysis and licensing bases.

Therefore, this amendment does not involve a significant increase in the probability or consequences of a previously analyzed accident.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not involve any physical alteration of plant systems, structures, or components, other than allowing for fuel design in accordance with NRC approved methodologies. No new or different equipment is being installed. No installed equipment is being operated in a different manner. There is no change to the parameters within which the plant is normally operated or in the setpoints that initiate protective or mitigative actions. As a result, no new failure modes are being introduced.

Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

There is no impact on any margin of safety resulting from the incorporation of this new topical report into the Technical Specifications. If design basis changes result from a revised analysis that uses these new methodologies, the specific design changes will be evaluated in accordance with HNP design change procedures and 10 CFR 50.59. Any potential reduction in the margin of safety would be evaluated for that specific design change.

Therefore, this amendment does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: David T. Conley, Associate General Counsel II—Legal Department, Progress Energy Service Company, LLC, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Branch Chief: Thomas H. Boyce.

Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation

Carolina Power & Light Company, et al., Docket No. 50–400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

A. This Order contains instructions regarding how potential parties to this proceeding may request access to documents containing Sensitive Unclassified Non-Safeguards Information (SUNSI).

B. Within 10 days after publication of this notice of hearing and opportunity to petition for leave to intervene, any potential party who believes access to SUNSI is necessary to respond to this notice may request such access. A ''potential party'' is any person who intends to participate as a party by demonstrating standing and filing an admissible contention under 10 CFR 2.309. Requests for access to SUNSI submitted later than 10 days after publication will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

C. The requester shall submit a letter requesting permission to access SUNSI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Associate General Counsel for Hearings, Enforcement and Administration, Office of the General Counsel, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is: U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. The e-mail address for the Office of the Secretary and the Office of the General Counsel are *Hearing.Docket@nrc.gov* and *OGCmailcenter@nrc.gov,* respectively.[1] The request must include the following information:

(1) A description of the licensing action with a citation to this **Federal Register** notice;

(2) The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in C.(1);

(3) The identity of the individual or entity requesting access to SUNSI and the requester's basis for the need for the information in order to meaningfully participate in this adjudicatory proceeding. In particular, the request must explain why publicly-available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention;

D. Based on an evaluation of the information submitted under paragraph C.(3) the NRC staff will determine within 10 days of receipt of the request whether:

(1) There is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding; and

(2) The requestor has established a legitimate need for access to SUNSI.

E. If the NRC staff determines that the requestor satisfies both D.(1) and D.(2) above, the NRC staff will notify the requestor in writing that access to SUNSI has been granted. The written notification will contain instructions on how the requestor may obtain copies of the requested documents, and any other conditions that may apply to access to those documents. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order[2] setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI.

F. *Filing of Contentions.* Any contentions in these proceedings that are based upon the information received as a result of the request made for SUNSI must be filed by the requestor no

[1] While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's ''E-Filing Rule,'' the initial request to access SUNSI under these procedures should be submitted as described in this paragraph.

[2] Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SUNSI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 30 days of the deadline for the receipt of the written access request.

later than 25 days after the requestor is granted access to that information. However, if more than 25 days remain between the date the petitioner is granted access to the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.

G. *Review of Denials of Access.*

(1) If the request for access to SUNSI is denied by the NRC staff either after a determination on standing and need for access, or after a determination on trustworthiness and reliability, the NRC staff shall immediately notify the requestor in writing, briefly stating the reason or reasons for the denial.

(2) The requester may challenge the NRC staff's adverse determination by filing a challenge within 5 days of receipt of that determination with: (a) The presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an administrative law judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

H. *Review of Grants of Access.* A party other than the requester may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed with the Chief Administrative Judge within 5 days of the notification by the NRC staff of its grant of access.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.[3]

I. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR Part 2. Attachment 1 to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

It is so ordered.

Dated at Rockville, Maryland, this 30th day of October 2009.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

ATTACHMENT 1—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION IN THIS PROCEEDING

Day	Event/activity
0	Publication of FEDERAL REGISTER notice of hearing and opportunity to petition for leave to intervene, including order with instructions for access requests.
10	Deadline for submitting requests for access to Sensitive Unclassified Non-Safeguards Information (SUNSI) with information: Supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding.
60	Deadline for submitting petition for intervention containing: (i) Demonstration of standing; (ii) all contentions whose formulation does not require access to SUNSI (+25 Answers to petition for intervention; +7 petitioner/requestor reply).
20	Nuclear Regulatory Commission (NRC) staff informs the requester of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows need for SUNSI. (NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents).
25	If NRC staff finds no ''need'' or no likelihood of standing, the deadline for petitioner/requester to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds ''need'' for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).
40	(Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI.
A	If access granted: Issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3	Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI consistent with decision issuing the protective order.
A + 28	Deadline for submission of contentions whose development depends upon access to SUNSI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.
A + 53	(Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI.
A + 60	(Answer receipt +7) Petitioner/Intervenor reply to answers.
>A + 60	Decision on contention admission.
A	If access granted: Issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3	Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI consistent with decision issuing the protective order.

[3] Requesters should note that the filing requirements of the NRC's E-Filing Rule (72 FR 49139; August 28, 2007) apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI request submitted to the NRC staff under these procedures.

ATTACHMENT 1—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION IN THIS PROCEEDING—Continued

Day	Event/activity
A + 28	Deadline for submission of contentions whose development depends upon access to SUNSI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.
A + 53	(Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI.
A + 60	(Answer receipt +7) Petitioner/Intervenor reply to answers.
>A + 60	Decision on contention admission.

[FR Doc. E9–26812 Filed 11–9–09; 8:45 am]
BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0491; Docket No. 50–315]

Indiana Michigan Power Company, Donald C. Cook Nuclear Plant, Unit 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from Title 10 of the Code of Federal Regulations (10 CFR) part 50, § 26.205(d)(4) [10 CFR 2.205(d)(4)], for Facility Operating License No. DPR–58, issued to Indiana Michigan Power Company (the licensee), for operation of the Donald C. Cook Nuclear Plant, Unit 1 (CNP–1), located in Berrien County. Therefore, as required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action is a one-time scheduler exemption from the requirements of 10 CFR 26.205(d)(4). Under routine work conditions, licensees shall ensure that work hour schedules for certain individuals meet the requirements as specified in 10 CFR 26.205(d)(3). The regulations permit licensees to use less restrictive work hour limits as specified in 10 CFR 26.205(d)(4) during the first 60 days of a unit outage. The proposed exemption would allow the less restrictive working hour limitations during a 60-day period that will encompass restart of CNP–1 from its current extended outage and would apply only to operations and maintenance personnel. Because CNP–1 entered its current outage in September 2008 and the first sixty days of the outage have elapsed, the less restrictive work hours of 10 CFR 26.205(d)(4) to support unit restart would not apply absent the exemption. The NRC is authorized to grant the exemption pursuant to 10 CFR 26.9.

The proposed action is in accordance with the licensee's request dated September 18, 2009 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML092680722), as supplemented by letter dated October 15, 2009 (ADAMS Accession No. ML092990410).

The Need for the Proposed Action

The proposed action is requested to support restart activities for CNP–1 from the current extended forced outage which began on September 20, 2008, as a result of a main turbine failure. Operations and maintenance personnel are subject to the new working hour limitations specified in 10 CFR part 26, subpart I, implemented by the licensee on October 1, 2009. Since CNP–1 has been in its current outage for over one year, the less restrictive work hour requirements of 10 CFR 26.205(d)(4) would not be available to accommodate the increased workload associated with restart of CNP–1, as those requirements are only available for the first 60 days of a unit outage.

The licensee has requested a one-time scheduler exemption to allow use of the work hour limitations specified in 10 CFR 26.205(d)(4) to support restart activities from the current CNP–1 extended outage.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that there are no environmental impacts associated with the proposed exemption. The details of the staff's safety evaluation will be provided in the exemption that will be issued as part of the letter to the licensee approving the exemption to the regulation.

The proposed action will not significantly increase the probability or consequences of accidents. No changes are being made in the types of effluents that may be released offsite. There is no significant increase in the amount of any effluent released offsite. There is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not have any foreseeable impacts to land, air, or water resources, including impacts to biota. In addition, there are also no known socioeconomic or environmental justice impacts associated with such proposed action. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action *(i.e.,* the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. Therefore, the environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resources than those previously considered in the Final Environmental Statement related to operation of the Donald C. Cook Nuclear Plant, Units 1 and 2, dated August 1973, and the Generic Environmental Impact Statement for License Renewal of the Donald C. Cook Nuclear Plant, Units 1 and 2 (NUREG–1437, Supplement 20), dated May 2005.

Agencies and Persons Consulted

On October 19, 2009, the staff consulted with the Michigan State official, Mr. Ken Yale, of the Michigan Department of Environmental Quality, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated September 18, 2009. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or send an e-mail to *pdr.resource@nrc.gov.*

Dated at Rockville, Maryland, this 4th day of November 2009.

For The Nuclear Regulatory Commission.

Terry A. Beltz,

Senior Project Manager, Plant Licensing Branch III–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E9–27057 Filed 11–9–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS) Subcommittee Meeting on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on December 2, 2009, Room T2–B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to the internal personnel rules and practices of the ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Wednesday, December 2, 2009, 2:30 p.m.–3:30 p.m.

The Subcommittee will discuss proposed ACRS activities and related matters. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Officer (DFO), Mr. Sam Duraiswamy, (Telephone: 301–415–7364, E-mail: *Sam.Duraiswamy@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 14, 2009, (74 FR 52829–52830).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at: *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained by contacting the DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the DFO if such rescheduling would result in major inconvenience.

Dated: *November 3, 2009.*

Cayetano Santos,

Chief, Reactor Safety Branch A, Advisory Committee on Reactor Safeguards.

[FR Doc. E9–27068 Filed 11–9–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Meeting of the ACRS Subcommittee on Regulatory Policies and Practices; Notice of Meeting

The ACRS Subcommittee on Regulatory Policies and Practices will hold a meeting on December 1, 2009, in Room T2–B3, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, December 1, 2009—2:30 p.m.–4:30 p.m.

The Subcommittee will review the Draft Final Revision 1 to Regulatory Guide 1.151 (DG–1178), ''Instrument Sensing Lines,'' and related matters. The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff, and other interested persons regarding these matters. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Zena Abdullahi (Telephone: 301–415–8716, E-mail: *Zena.Abdullahi@nrc.gov*), five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least 30 minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 14, 2009, (74 FR 52829–52830).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at: *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the website cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in major inconvenience.

Date: *November 3, 2009.*

Antonio F. Dias,

Chief, Reactor Safety Branch B, Advisory Committee on Reactor Safeguards.

[FR Doc. E9–27066 Filed 11–9–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meetings

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATES: Weeks of November 9, 16, 23, 30, December 7, 14, 2009.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of November 9, 2009

Tuesday, November 10, 2009

9:30 a.m.—Briefing on NRC International Activities (Public Meeting) (Contact: Karen Henderson, 301–415–0202)

This meeting will be Webcast live at the Web address—*http://www.nrc.gov.*

Week of November 16, 2009—Tentative

Tuesday, November 17, 2009

9:30 a.m.—Briefing on Equal Employment Opportunity (EEO) and Small Business Programs (Public Meeting) (Contact: Elva Bowden Berry, 301–415–1536)

This meeting will be Webcast live at the Web address—*http://www.nrc.gov.*

Week of November 23, 2009—Tentative

There are no meetings scheduled for the week of November 23, 2009.

Week of November 30, 2009—Tentative

Friday, December 4, 2009

9:30 a.m.—Meeting with the Advisory Committee on Reactor Safeguards (Public Meeting) (Contact: Antonio Dias, 301–415–6805)

This meeting will be Webcast live at the Web address—*http://www.nrc.gov.*

Week of December 7, 2009—Tentative

Tuesday, December 8, 2009

9:30 a.m.—Briefing on the Proposed Rule: Enhancements to Emergency Preparedness Regulations (Public Meeting) (Contact: Lauren Quiñones, 301–415–2007)

This meeting will be Webcast live at the Web address—*http://www.nrc.gov.*

Week of December 14, 2009—Tentative

There are no meetings scheduled for the week of December 14, 2009.

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* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415–1292. Contact person for more information: Rochelle Bavol, (301) 415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/about-nrc/policy-making/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.* braille, large print), please notify the NRC's Disability Program Coordinator, Rohn Brown, at 301–492–2279, TDD: 301–415–2100, or by e-mail at *rohn.brown@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an e-mail to *darlene.wright@nrc.gov.*

Dated: November 5, 2009.

Rochelle C. Bavol,

Office of the Secretary.

[FR Doc. E9–27146 Filed 11–6–09; 11:15 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0487]

Notice of Opportunity for Public Comment on the Proposed Model Safety Evaluation for Plant-Specific Adoption of Technical Specification Task Force Traveler-493, Revision 4, ''Clarify Application of Setpoint Methodology for LSSS Functions''

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of opportunity for public comment.

SUMMARY: The NRC is requesting public comment on the enclosed proposed model application, model no significant hazards consideration determination, and model safety evaluation for plant-specific adoption of Technical Specification Task Force (TSTF) Traveler-493, Revision 4, ''Clarify Application of Setpoint Methodology for LSSS Functions.'' The TSTF Traveler-493, Revision 4, is available in the Agencywide Documents Access and Management System (ADAMS) under Accession Number ML092150990. The proposed changes revise Standard Technical Specifications (STS) with respect to limiting safety system settings (LSSSs) assessed during periodic testing and calibration of instrumentation that may have an adverse effect on equipment operability. This model safety evaluation will facilitate expedited approval of plant-specific adoption of TSTF Traveler-493, Revision 4.

DATES: Comment period expires November 25, 2009. Comments received after this date will be considered, if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any one of the following methods. Please include Docket ID NRC–2009–0487 in the subject line of your comments. Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site Regulations.gov. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2009–0487. Address questions about NRC dockets to Carol Gallagher 301–492–3668; e-mail *Carol.Gallagher@nrc.gov.*

Mail comments to: Michael T. Lesar, Chief, Rulemaking and Directives Branch (RDB), Division of Administrative Services, Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by fax to RDB at (301) 492–3446.

You can access publicly available documents related to this notice using the following methods:

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's PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.* The Proposed Models for Plant-Specific Adoption of TSTF Traveler-493, Revision 4, are available electronically under ADAMS Accession Number ML093080028.

Federal Rulemaking Web site: Public comments and supporting materials related to this notice can be found at *http://www.regulations.gov* by searching on Docket ID: NRC–2009–0487.

FOR FURTHER INFORMATION CONTACT: Ms. Michelle C. Honcharik, Senior Project Manager, Special Projects Branch, Mail Stop: O–12 D1, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone 301–415–1774 or e-mail at *michelle.honcharik@nrc.gov.*

SUPPLEMENTARY INFORMATION:

Background

This notice provides an opportunity for the public to comment on proposed changes to the STS after a preliminary assessment and finding by the NRC staff that the agency will likely offer the changes for adoption by licensees. This notice solicits comment on a proposed change to the STS, which if implemented by a licensee will modify the plant-specific TS. The NRC staff will evaluate any comments received for the proposed change to the STS and reconsider the change or announce the availability of the change for adoption by licensees. Licensees opting to apply for this TS change are responsible for reviewing the NRC staff's safety evaluation, referencing the applicable technical justifications, and providing any necessary plant-specific information. The NRC will process and note each amendment application responding to the notice of availability according to applicable NRC rules and procedures.

Applicability

TSTF Traveler-493, Revision 4, is applicable to all nuclear power reactors. The Traveler revises the TS instrument function values related to those variables that have a significant safety function.

The NRC staff requests that each licensee applying for the changes proposed in TSTF Traveler-493, Revision 4, include documentation regarding the following in their license amendment request (LAR):

Adoption of TSTF Traveler-493, Option A With Changes to Setpoint Values

- The licensee must propose to add footnotes to all the functions identified in TSTF Traveler-493, Revision 4, Appendix A, and must incorporate the related TS Bases changes.
- The licensee must provide summary calculations for the revised setpoints as documentation of the plant-specific instrument setpoint methodology for TSTF Traveler-493, Revision 4, consistent with Option A. This includes the calculation basis for the Limiting Trip Setpoint (LTSP), Nominal Trip Setpoint (NTSP), Allowable Value (AV), As-Found Tolerance band, and As-Left Tolerance band for each change to an automatic protection instrumentation function setpoint value. If multiple similar setpoints are proposed to be revised, a summary calculation for each type of setpoint being changed may be provided, if the LAR contains a reasoned quantitative or qualitative analysis, as appropriate, of how the summary calculation(s) represent the type of setpoint values proposed to be changed.

Adoption of TSTF Traveler-493, Option A Without Changes to Setpoint Values

- The licensee must add footnotes to all the functions identified in TSTF Traveler-493, Revision 4, Appendix A, and must incorporate the related TS Bases changes. No changes to any setpoint values are proposed. Since no setpoint changes are being proposed, there is no requirement to provide the setpoint methodology for review or to provide any full or summary calculations.

Adoption of TSTF Traveler-493 With Option B—the Setpoint Control Program Option

- The licensee must provide the plant-specific evaluation for the list of instrument Functions that are described in Setpoint Control Program (SCP) TS 5.5.[18] Paragraph a and must incorporate the related TS Bases changes.
- The licensee must provide the content and application of the plant-specific setpoint methodology required by the SCP TS 5.5.[18] Paragraph b. This includes the calculation basis for the LTSP, NTSP, AV, As-Found Tolerance band, and As-Left Tolerance band for each automatic protection instrumentation function. The licensee must also describe the program methods for ensuring the requirements in Paragraph d will function as required by verifying the As-Left and As-Found settings are consistent with those established by the setpoint methodology. Discussion should include how the plant licensing basis meets the guidance provided in Regulatory Information Summary 2006–17, ''NRC Staff Position on the Requirements of 10 CFR 50.36, ''Technical Specifications,'' Regarding Limiting Safety System Settings During Periodic Testing and Calibration of Instrument Channels'' and Regulatory Guide 1.105, Revision 3, ''Setpoints for Safety-Related Instrumentation.'' Describe the measures to be taken to ensure that the associated instrument channel is capable of performing its safety function(s) in accordance with applicable design requirements and associated analyses. Include information on the controls employed to ensure that the As-Left trip setting after completion of periodic surveillance is consistent with the setpoint methodology. Also, discuss the plant corrective action processes (including plant procedures) for restoring channels to operable status. If the controls are located in a document other than the TS (*e.g.,* plant test procedure), describe how it is ensured that the controls will be implemented.
- The licensee must provide the plant-specific evaluation identifying the Functions required by SCP TS 5.5.[18] Paragraph d. In accordance with Paragraph d, Functions described in SCP TS 5.5.[18] Paragraph a are evaluated to identify Functions that are automatic protective devices related to variables having significant safety functions as delineated by 10 CFR 50.36(c)(1)(ii)(A). Identify any deviation from TSTF Traveler-493, Revision 4, and explain the basis for each deviation. Paragraph d contains three exclusion criteria to be applied during the evaluation. Paragraph d also requires specifying TS Surveillance Requirements which are applicable to the performance testing criterion of Paragraph d. This requirement of Paragraph d should also be included. For Functions which are not under the scope of Setpoint Control Program Paragraph d, but are included in Setpoint Control Program Paragraph a, explain how the requirements of Paragraph c will be met.

The proposed change does not prevent licensees from requesting an alternate approach or proposing changes

other than those proposed in TSTF Traveler-493, Revision 4. However, significant deviations from the approach recommended in this notice or the inclusion of additional changes to the license require additional NRC staff review. This may increase the time and resources needed for the review or result in NRC staff rejection of the LAR. Licensees desiring significant deviations or additional changes should instead submit an LAR that does not claim to adopt TSTF Traveler-493, Revision 4.

Dated at Rockville, Maryland, this 30th day of October 2009.

For the Nuclear Regulatory Commission.

Eric E. Bowman,

Acting Chief, Special Projects Branch, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation.

[FR Doc. E9–27061 Filed 11–9–09; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Senior Executive Service—Performance Review Board

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: Notice is hereby given of the appointment of members of the OPM Performance Review Board.

FOR FURTHER INFORMATION CONTACT: Tammy Van Keuren, Center for Human Capital Management Services, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415, (202) 606–1402.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management Section 4314(c) (1) through (5) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more SES performance review boards. The board reviews and evaluates the initial appraisal of a senior executive's performance by the supervisor, and considers recommendations to the appointing authority regarding the performance of the senior executive.

Office of Personnel Management.

John Berry,

Director.

Effective October 30, 2009; the following have been designated as members of the Performance Review Board of the U.S. Office of Personnel Management: Elizabeth A. Montoya, Chief of Staff and Director of External Affairs; Elaine Kaplan, General Counsel; Kay T. Ely, Associate Director; Nancy H. Kichak, Associate Director; Mark Reger, Chief Financial Officer; Mark Reinhold, Deputy Associate Director for Human Capital Management Services—Executive Secretariat.

[FR Doc. E9–27099 Filed 11–9–09; 8:45 am]

BILLING CODE 6325–45–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60923; File No. SR–NYSEArca–2009–96]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 6.82—Lead Market Makers To Eliminate Obsolete Language and Clarify Rule Provisions

November 3, 2009.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on October 20, 2009, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. NYSE Arca filed the proposal pursuant to Section 19(b)(3)(A) [4] of the Act and Rule 19b–4(f)(2) [5] thereunder. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 6.82—Lead Market Makers to eliminate obsolete language and clarify rule provisions. A copy of this filing is available on the Exchange's Web site at *http://www.nyse.com,* at the Exchange's principal office and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing by NYSE Arca is to revise outdated and obsolete language in Rule 6.82—Lead Market Makers (''LMM'').

Specifically, the Exchange proposes to amend Rule 6.82(c)(3) by adding a reference to Rule 6.37B—Market Maker Quotations, in order to clarify an LMMs obligation as it pertains to continuous quoting. In its current form, Rule 6.82 states that an LMM must provide continuous quotations in all appointed series. However, Rule 6.37B provides that LMMs must provide continuous quotations for 90% of the time the Exchange is open. To ensure that LMM obligations contained in Rule 6.82 are in accordance with Rule 6.37B, the Exchange proposes [sic] add language to Rule 6.82(c)(3) in order to clarify that LMMs need to provide quotations in accordance with Rule 6.37B. In addition, NYSE Arca no longer supports an Exchange auto-quoting system; all LMMs utilize proprietary quoting systems that supply electronic quotes directly to the NYSE Arca's trading system. Therefore the Exchange proposes deleting obsolete language in Rule 6.82(c)(3) referencing the Exchange's auto-quoting system.

The Exchange also proposes to delete Rule 6.82(c)(7). Under the structure of the Exchange's electronic trading systems, the automated execution system referenced in 6.82(c)(7) is part of the overall NYSE Arca trading system. Whenever an LMM provides electronic quotations to NYSE Arca, the LMM automatically participates in the automatic execution system. It is not possible for an LMM to submit quotes to the Exchange without being subject to the automatic execution system, nor is it possible for an LMM to participate in the automatic execution system without submitting electronic quotes. Because participation in the auto-execution system is not optional, it is not appropriate to designate participation in it as an obligation. The Exchange proposes to reserve Rule 6.82(c)(7) for future use.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(2).

By clarifying its rules and abolishing out-dated language, the Exchange is not changing or altering any obligation, rights, policies or practices enumerated within its rules.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[6] in general, and furthers the objectives of Section 6(b)(5) of the Act,[7] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6)(iii) thereunder.[11]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR–NYSEArca–2009–96 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2009–96. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2009–96 and should be submitted on or before December 1, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–26968 Filed 11–9–09; 8:45 am]

BILLING CODE 8011–01–P

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b–4(f)(6).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied the pre-filing requirement [sic].

[12] 17 CFR 200.30–3(a)(12).

SMITHSONIAN INSTITUTION

NATIONAL CAPITAL PLANNING COMMISSION

Intent To Prepare a Tier II Environmental Impact Statement for Proposed Construction of the Smithsonian National Museum of African American History and Culture

AGENCY: Smithsonian Institution (SI), National Capital Planning Commission (NCPC).

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 (40 CFR parts 1500–1509), and in accordance with the Environmental Policies and Procedures implemented by the National Capital Planning Commission, the SI and NCPC announce their intent, as Joint-Lead Agencies, with NCPC as the Responsible Federal Agency, to prepare a Tier II environmental impact statement (EIS) to assess the potential effects of constructing and operating the National Museum of African American History and Culture (NMAAHC) within the Smithsonian Institution. The Museum will be located on a 217,800 square foot (SF) or 5 acre site bounded by Constitution Avenue, Madison Drive, 14th and 15th Streets, NW., on the National Mall in Washington, DC. A public meeting will be conducted to ensure that all significant issues related to construction and operation of the proposed museum are identified for study in the EIS. SI and NCPC are conducting this NEPA process concurrent with the National Historic Preservation Act (NHPA), section 106 process.

SUPPLEMENTARY INFORMATION: Public Law 108–184, the National Museum of African American History and Culture Act enacted by the Congress of the United States on December 16, 2003, (the Act) established a museum within the Smithsonian Institution to be known as the National Museum of African American History and Culture. It recognizes that such a museum ''would be dedicated to the collection, preservation, research, and exhibition of African American historical and cultural materials reflecting the breadth and depth of the experience of individuals of African descent living in the United States.''

Section 8 of the Act, ''Building for the National Museum of African American History and Culture,'' directs the Smithsonian Board of Regents to select one site among four in Washington, DC for the construction of the museum. After undertaking a site evaluation study and consultation with parties specified in the legislation, the Board of Regents of the Smithsonian Institution voted to select the area bounded by Constitution Avenue, Madison Drive, 14th, and 15th Streets, NW., now commonly known as the Monument site. The decision was announced on January 30, 2006.

After site selection, SI and NCPC, after consultation with the Council of Environmental Quality, decided to tier the EIS process (40 CFR parts 1502.20 and 1508.28). The Tier I EIS was completed with a Final EIS (FEIS) issued on June 27, 2008 and a SI Record of Decision issued on August 8, 2008.

The identity and description of the action to be addressed in both EIS tiers derive primarily from the language of Public Law 180–184, its legislative history, and the studies by the ''National Museum of African American History and Culture Plan for Action Presidential Commission'' that led to its enactment, and the Phase II Site Evaluation Study of November 15, 2005.

The Tier I FEIS analyzed a ''no build'' alternative along with six diagrammatic massing alternatives on the site. Alternatives addressed themes that included context, siting and mass, orientation, form, exterior spaces, and profiles. The Tier I FEIS concluded that the Build Alternatives all had comparable effects on the majority of resources analyzed. This highlighted the need to develop more concrete design concepts in order to assess fully the impacts of the NMAAHC on cultural and visual/aesthetic resources. Therefore, the SI chose to express the Tier I Preferred Alternative as a set of physical parameters related to heights, setbacks, and configuration. The physical parameters resulted in a Smithsonian Preferred Alternative of about 350,000 GSF that was bounded between 60 and 105 feet in height, a minimum 50 foot setback from the inside face of the sidewalk of the surrounding streets; and a subsurface volume not lower that 45 feet. The massing parameters ranged from orthogonal and contextual to free-form and non-contextual. While NCPC and Smithsonian are working cooperatively on this EIS, Smithsonian does not submit a design to NCPC for review until later in the process.

In addition to the physical parameters, the SI developed a set of design principles to help future design architects to minimize adverse effects on historic resources. The principles speak to the importance of relating to and respecting the character, views, and spatial arrangements of the National Mall; the character, scale, and historic context of the Washington Monument grounds; and the relationship of the NMAAHC to adjacent architectural and urban contexts.

The potential range of alternatives that will be evaluated in the Tier II EIS includes the no action or no build alternative and no fewer than three build alternatives that will address, among other things, the design principles, the analysis and findings of the Tier I EIS and SI ROD and the issues surfaced in the concurrent NHPA, section 106 process. The Tier II EIS will include a full range of alternatives evaluating varying heights and forms, including one with a roof height that does not exceed the roof heights of adjacent museums, and with building faces that do not protrude beyond the building faces of adjacent museum buildings along the Mall.

Public Scoping Meeting and Comments: The Smithsonian Institution and the National Capital Planning Commission will solicit public comments for consideration and possible incorporation in the Draft Tier II EIS through public scoping, including a scoping meeting, on the proposed museum building at the Monument site. The scoping meeting will be held on December 10, 2009, from 5:30 p.m. to 8:30 p.m. in the ''Commons'' of the Smithsonian Castle Building, located at 1000 Jefferson Drive, SW., Washington, DC. Consultants representing the SI and NCPC will be available to answer questions and receive comments about the scope of the Tier II EIS. Announcements about the meeting are provided on the NCPC Web site at *http://www.ncpc.gov.* Notice of the public meeting will be publicized in local newspapers and through other sources. Additional information about the museum is located at *http://www.nmaahc.si.edu* and about the Tier I EIS at *http://www.louisberger-nmaahceis.com.* To ensure that all issues related to this action are addressed and all significant issues are identified early in the process, comments are invited in writing and orally from all interested and/or potentially affected parties. These comments may be provided at the public meeting or provided in writing to EDAW/AECOM, Attn: NMAAHC EIS Comments, 601 Prince Street, Alexandria, VA 22314 or by e-mail to *NMAAHC.EIS.Comments@aecom.com.* All public comments must be postmarked or received by e-mail by December 24, 2009.

FOR FURTHER INFORMATION CONTACT: Jane Passman, Senior Facilities Planner, Smithsonian Institution, Office of Facilities Engineering and Operations. For U.S. Postal Service delivery the address is P.O. Box 37012, MRC 511, Washington, DC 20013–7012. For all other deliveries the address is 600 Maryland Ave., SW., Suite 5001, Washington, DC 20024. Phone 202–633–6549; Fax: 202–633–6233.

Dated: November 4, 2009.

Judith Leonard,

General Counsel, Smithsonian Institution.

Dated: November 4, 2009.

Lois J. Schiffer,

General Counsel, National Capital Planning Commission.

[FR Doc. E9–27002 Filed 11–9–09; 8:45 am]

BILLING CODE 8030–03–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in California; Notice of Statute of Limitations on Claims

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by the California Department of Transportation (Caltrans), pursuant to 23 U.S.C. 327 and Other Federal Agencies.

SUMMARY: The FHWA, on behalf of Caltrans, is issuing this notice to announce actions taken by Caltrans, and other Federal Agencies that are final within the meaning of 23 U.S.C. 139(l)(1). The actions relate to a proposed highway project, Interstate 5 (I–5) High Occupancy Vehicle (HOV)/ Truck Lanes from the I–5/State Route 14

(SR–14) interchange south of the City of Santa Clarita, and ending at Parker Road in the community of Castaic, in the County of Los Angeles, State of California. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA, on behalf of Caltrans, is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before May 10, 2010. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Carlos Montez, Branch Chief, California Department of Transportation District 7, Division of Environmental Planning, 100 South Main Street, Los Angeles, California 90012, during normal business hours from 9 a.m. to 5 p.m., telephone (213) 897–9116, e-mail *carlos_montez@dot.ca.gov.*

SUPPLEMENTARY INFORMATION: Effective July 1, 2007, the Federal Highway Administration (FHWA) assigned, and the California Department of Transportation (Caltrans) assumed environmental responsibilities for this project pursuant to 23 U.S.C. 327. Notice is hereby given that Caltrans, and certain other Federal Agencies have taken final agency actions subject to 23 U.S.C. 139(l)(1) by issuing licenses, permits, and approvals for the following highway project in the State of California:

The addition of one HOV lane in each direction on I–5 from the SR–14 interchange at the southern portion of the project limit, and north to Parker Road (a distance of approximately 13.6 miles) and the addition of truck lanes from SR–14 interchange to Calgrove Boulevard (northbound) and from Pico Canyon Road/Lyons Avenue to the SR–14 interchange (southbound). The purpose of the project is to reduce delays to vehicles caused by slower-moving trucks and to improve operational and safety design features to facilitate the movement of people, freight and goods on the project segment. The purpose of the project also is to reduce existing and forecast traffic congestion on the project segment to accommodate planned growth within the study area. The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Environmental Assessment/Finding of No Significant Impact (EA/FONSI) for the project, approved on September 1, 2009, and in other documents in the Caltrans project records. The EA/FONSI and other project records are available by contacting Caltrans at the address provided above. The Caltrans EA/FONSI can be viewed and downloaded from the project Web site at *http://www.dot.ca.gov/dist07/resources/envdocs/docs/,* or viewed at public libraries in the project area.

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. General: National Environmental Policy Act (NEPA) [42 U.S.C. [4321–4351].
2. Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU).
3. Clean Air Act [42 U.S.C. 7401–7671(q)].
4. Migratory Bird Treaty Act [16 U.S.C. 703–712].
5. Historic and Cultural Resources: Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*].
6. Clean Water Act (section 401) [33 U.S.C. 1251–1377].
7. Federal Endangered Species Act of 1973 (16 U.S.C. 1531–1543).
8. Executive Order 11990, Protection of Wetlands.
9. Executive Order 11988, Floodplain Management.
10. Executive Order 12898—Environmental Justice.
11. Department of Transportation Act of 1966, Section 4(f) [49 U.S.C. 303].
12. E.O. 13112 Invasive Species.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1).

Issued on: November 3, 2009.

Cindy Vigue,

Director, State Programs, Federal Highway Administration, Sacramento, California.

[FR Doc. E9–27039 Filed 11–9–09; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in California; Notice of Statute of Limitations on Claims

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by the California Department of Transportation (Caltrans), pursuant to 23 U.S.C. 327 and Other Federal Agencies.

SUMMARY: The FHWA, on behalf of Caltrans, is issuing this notice to announce actions taken by Caltrans, and other Federal Agencies that are final within the meaning of 23 U.S.C. 139(l)(1). The actions relate to a proposed highway project, Los Angeles Avenue Widening from Moorpark Avenue to Spring Road in the City of Moorpark, County of Ventura, State of California. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA, on behalf of Caltrans, is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before May 10, 2010. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Carlos Montez, Branch Chief, California Department of Transportation District 7, Division of Environmental Planning, 100 South Main Street, Los Angeles, California 90012, during normal business hours from 9 a.m. to 5 p.m., telephone (213) 897–9116, e-mail *carlos_montez@dot.ca.gov.*

SUPPLEMENTARY INFORMATION: Effective July 1, 2007, the Federal Highway Administration (FHWA) assigned, and the California Department of Transportation (Caltrans) assumed environmental responsibilities for this project pursuant to 23 U.S.C. 327. Notice is hereby given that Caltrans, and certain other Federal Agencies have taken final agency actions subject to 23 U.S.C. 139(l)(1) by issuing licenses, permits, and approvals for the following highway project in the State of California:

Widen Los Angeles Avenue (State Route 118) from a four lane to a six lane conventional highway form Moorpark Avenue to approximately 426 feet east of Spring Road in Moorpark, California. The total length of the project is 0.5 mile. In addition, the project would require installation of a traffic signal at Millard Street and traffic signal modifications at Moorpark Avenue and Spring Road. The purpose of the project is relieve existing and forecasted traffic congestion on Los Angeles Avenue (SR–118) and Spring Road in the City of Moorpark. The actions by the Federal

agencies, and the laws under which such actions were taken, are described in the Environmental Assessment/Finding of No Significant Impact (EA/FONSI) for the project, approved on September 28, 2009, and in other documents in the Caltrans project records. The EA/FONSI and other project records are available by contacting Caltrans at the address provided above. The Caltrans EA/FONSI can be viewed and downloaded from the project Web site at *http://www.dot.ca.gov/dist07/resources/envdocs/docs/*, or viewed at public libraries in the project area.

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. General: National Environmental Policy Act (NEPA) [42 U.S.C. [4321–4351].

2. Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU).

3. Clean Air Act [42 U.S.C. 7401–7671(q)].

4. Migratory Bird Treaty Act [16 U.S.C. 703–712].

5. Historic and Cultural Resources: Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*].

6. Clean Water Act (section 401) [33 U.S.C. 1251–1377].

7. Federal Endangered Species Act of 1973 (16 USC 1531–1543).

8. Executive Order 11990, Protection of Wetlands.

9. Executive Order 11988, Floodplain Management.

10. Executive Order 12898—Environmental Justice.

11. Department of Transportation Act of 1966, Section 4(f) [49 U.S.C. 303].

12. E.O. 13112 Invasive Species.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1).

Issued on: November 3, 2009.

Cindy Vigue,

Director, State Programs, Federal Highway Administration, Sacramento, California.

[FR Doc. E9–27040 Filed 11–9–09; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Program Management Committee

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Program Management Committee meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the RTCA Program Management Committee.

DATES: The meeting will be held December 2, 2009 from 8:30 a.m. to 1:30 p.m.

ADDRESSES: The meeting will be held at RTCA, Inc., 1828 L Street, NW., Suite 805, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 850, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Program Management Committee meeting. The agenda will include:

- Opening Plenary (Welcome and Introductions).
- Review/Approve Summary of September 9, 2009 PMC meeting, RTCA Paper No. 217–09/PMC–753.
- Publication Consideration/Approval.
- Final Draft, Revised DO–293, *Minimum Operational Performance Standards for Nickel-Cadmium, Nickel Metal-Hydride, and Lead Acid Batteries,* RTCA Paper No. 238–09/PMC–760, prepared by SC–211.
- Final Draft, Revised DO–260A, *Minimum Operational Performance Standards for 1090 MHz Extended Squitter Automatic Dependent Surveillance—Broadcast (ADS–B) and Traffic Information Services—Broadcast (TIS–B),* RTCA Paper No. 228–09/PMC–756, prepared by SC–186.
- Final Draft, Revised DO–282A, *Minimum Operational Performance Standards for Universal Access Transceiver (UAT) Automatic Dependent Surveillance—Broadcast,* RTCA Paper No. 229–09/PMC–757, prepared by SC–186.
- Integration and Coordination Committee (ICC)—Report.
- Action Item Review.
- SC–218—Future ADS–B/TCAS Relationships—Discussion—Review Status.
- SC–203—Unmanned Aircraft Systems (UAS)—Discussion—Review Status.
- SC–214—Standards for Air Traffic Data Communications Services—Discussion—Review Status and Revised Terms of Reference.
- Discussion.
- SC–217—Terrain and Airport Databases—Co-Chairman Review/Approval.
- Special Committee—Chairmen's Reports.
- Closing Plenary (Other Business, Document Production, PMC Meeting Schedule Meeting, Adjourn).

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on November 4, 2009.

Francisco Estrada C.,

RTCA Advisory Committee.

[FR Doc. E9–27125 Filed 11–9–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35046 (Sub-No. 1)]

Duluth, Missabe and Iron Range Railway Company—Trackage Rights Exemption—Duluth, Winnipeg and Pacific Railway Company

Pursuant to a written trackage rights amendment agreement,[1] Duluth, Winnipeg and Pacific Railway Company (DWP) has agreed to amend and extend the existing overhead trackage rights previously granted to Duluth, Missabe and Iron Range Railway Company (DMIR).[2] DMIR proposes to acquire

[1] Duluth, Missabe and Iron Range Railway Company has submitted a draft agreement. As required by 49 CFR 1180.6(a)(7)(ii), DMIR states that it will submit a copy of the executed agreement within 10 days of the date the agreement is executed.

[2] The original trackage rights were exempted in *Duluth, Missabe and Iron Range Railway Company—Trackage Rights—Duluth, Winnipeg and Pacific Railway Company,* STB Finance Docket No. 34424 (Sub-No. 2) (STB served Apr. 9, 2004), and were exempted as amended in *Duluth, Missabe and Iron Range Railway Company—Amended Trackage Rights Exemption—Duluth, Winnipeg and Pacific Railway Company,* STB Finance Docket No. 35046 (STB served June 29, 2007). DWP and DMIR are indirect subsidiaries of Canadian National Railway Company (CN). *See Canadian National Railway*

Continued

additional overhead trackage rights over DWP's line of railroad between milepost 70.7 at Shelton Junction, MN, and milepost 165.3 at Ranier, MN, a distance of approximately 94.6 miles. DMIR states that the extension of its existing trackage rights will allow DMIR to operate trains from DMIR's Proctor Yard near Duluth, MN, over existing trackage rights to Shelton Junction, and on to the DWP terminal at Ranier.

The purpose of the proposed transaction is to expand the existing DMIR–DWP paired overhead trackage rights arrangement between Nopeming Junction, MN, and Shelton Junction to the next logical terminal at Ranier. According to DMIR, this will accommodate improvements in yard facilities and changes in terminal operations being undertaken in the Twin Ports of Duluth, MN, and Superior, WI, by DMIR, DWP, and Wisconsin Central Ltd., another CN affiliate. As a result, DMIR states that its expanded trackage rights will improve crew utilization, operational flexibility, and traffic fluidity in the area.

The transaction is scheduled to be consummated on November 25, 2009, the effective date of the exemption (30 days after the exemption was filed).

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

Pursuant to the Consolidated Appropriations Act, 2008, Public Law No. 110–161, § 193, 121 Stat. 1844 (2007), nothing in this decision authorizes the following activities at any solid waste rail transfer facility: Collecting, storing, or transferring solid waste outside of its original shipping container; or separating or processing solid waste (including baling, crushing, compacting, and shredding). The term ''solid waste'' is defined in section 1004 of the Solid Waste Disposal Act, 42 U.S.C. 6903.

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than November 18, 2009 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35046 (Sub-No. 1), must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Thomas J. Litwiler, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 920, Chicago, IL 60606–2832.

Board decisions and notices are available on our Web site at: ''*http://www.stb.dot.gov.*''

Decided: November 5, 2009.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Kulunie L. Cannon,

Clearance Clerk.

[FR Doc. E9–27060 Filed 11–9–09; 8:45 am]

BILLING CODE 4915–01–P

Company and Grand Trunk Corporation—Control—Duluth, Missabe and Iron Range Railway Company, et al., STB Finance Docket No. 34424 (STB served Apr. 9, 2004).

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35045 (Sub-No. 1)]

Duluth, Winnipeg and Pacific Railway Company—Trackage Rights Exemption—Duluth, Missabe and Iron Range Railway Company

Pursuant to a written trackage rights amendment agreement,[1] Duluth, Missabe and Iron Range Railway Company (DMIR) has agreed to amend and extend the existing overhead trackage rights previously granted to Duluth, Winnipeg and Pacific Railway Company (DWP).[2] According to DWP, its existing trackage rights on DMIR's line from Nopeming Junction, MN, through Adolph, MN, to Shelton Junction, MN (Nopeming Junction-Shelton Junction segment), did not provide access to DMIR's Proctor Yard in Proctor, MN, which is located several miles east of Adolph on a separate DMIR line. DWP now proposes to acquire additional overhead trackage rights over DMIR's line of railroad between milepost 12.8 at Carson/Adolph and milepost 6.7 at Proctor, MN (2,000 feet beyond the south switch into DMIR's Proctor Yard), a distance of approximately 6.1 miles. DWP states that the proposed trackage rights will include the right to enter and exit the Nopeming Junction-Shelton Junction segment at Carson/Adolph, and will provide access from that line into DMIR's Proctor Yard for interchange purposes.

The purpose of the proposed transaction is to allow DWP trains to operate in and out of the DMIR Proctor Yard, thus increasing interchange efficiency by optimizing traffic flows in the Twin Ports of Duluth, MN, and Superior, WI.

The transaction is scheduled to be consummated on November 25, 2009, the effective date of the exemption (30 days after the exemption was filed).

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

Pursuant to the Consolidated Appropriations Act, 2008, Public Law 110–161, section 193, 121 Stat. 1844 (2007), nothing in this decision authorizes the following activities at any solid waste rail transfer facility: collecting, storing, or transferring solid waste outside of its original shipping container; or separating or processing solid waste (including baling, crushing, compacting, and shredding). The term ''solid waste'' is defined in section 1004 of the Solid Waste Disposal Act, 42 U.S.C. 6903.

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than November 18, 2009 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35045 (Sub-No. 1), must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Thomas J. Litwiler, Fletcher & Sippel

[1] Duluth, Winnipeg and Pacific Railway Company has submitted a draft agreement. As required by 49 CFR 1180.6(a)(7)(ii), DWP states that it will submit a copy of the executed agreement within 10 days of the date the agreement is executed.

[2] The original trackage rights were exempted in *Duluth, Winnipeg and Pacific Railway Company—Trackage Rights—Duluth, Missabe and Iron Range Railway Company,* STB Finance Docket No. 34424 (Sub-No. 1) (STB served Apr. 9, 2004), and were exempted as amended in *Duluth, Winnipeg and Pacific Railway Company—Amended Trackage Rights Exemption—Duluth, Missabe and Iron Range Railway Company,* STB Finance Docket No. 35045 (STB served June 29, 2007). DWP and DMIR are indirect subsidiaries of Canadian National Railway Company. *See Canadian National Railway Company and Grand Trunk Corporation—Control—Duluth, Missabe and Iron Range Railway Company, et al.,* STB Finance Docket No. 34424 (STB served Apr. 9, 2004).

LLC, 29 North Wacker Drive, Suite 920, Chicago, IL 60606–2832.

Board decisions and notices are available on our Web site at: *http://www.stb.dot.gov.*

Decided: November 5, 2009.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Kulunie L. Cannon,

Clearance Clerk.

[FR Doc. E9–27055 Filed 11–9–09; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35047 (Sub-No. 1)]

Wisconsin Central Ltd.—Trackage Rights Exemption—Duluth, Missabe and Iron Range Railway Company

Pursuant to a written trackage rights amendment agreement,[1] Duluth, Missabe and Iron Range Railway Company (DMIR) has agreed to amend and extend the existing overhead trackage rights previously granted to Wisconsin Central Ltd. (WCL).[2] According to WCL, its existing trackage rights on DMIR's line from South Itasca, WI, through Adolph, MN, to Shelton Junction, MN (South Itasca-Shelton Junction segment), did not provide access to DMIR's Proctor Yard in Proctor, MN, which is located several miles east of Adolph on a separate DMIR line. WCL now proposes to acquire additional overhead trackage rights over DMIR's line of railroad between milepost 12.8 at Carson/Adolph and milepost 6.7 at Proctor (2,000 feet beyond the south switch into DMIR's Proctor Yard), a distance of approximately 6.1 miles. WCL states that the proposed trackage rights will include the right to enter and exit the South Itasca-Shelton Junction segment at Carson/Adolph, and will provide access from that line into DMIR's Proctor Yard for interchange purposes.

The purpose of the proposed transaction is to allow WCL trains to operate in and out of the DMIR Proctor Yard, thus increasing interchange efficiency by optimizing traffic flows in the Twin Ports of Duluth, MN, and Superior, WI.

The transaction is scheduled to be consummated on November 25, 2009, the effective date of the exemption (30 days after the exemption was filed).

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

Pursuant to the Consolidated Appropriations Act, 2008, Public Law 110–161, section 193, 121 Stat. 1844 (2007), nothing in this decision authorizes the following activities at any solid waste rail transfer facility: Collecting, storing, or transferring solid waste outside of its original shipping container; or separating or processing solid waste (including baling, crushing, compacting, and shredding). The term ''solid waste'' is defined in section 1004 of the Solid Waste Disposal Act, 42 U.S.C. 6903.

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed by November 18, 2009 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35047 (Sub-No. 1), must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Thomas J. Litwiler, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 920, Chicago, IL 60606–2832.

Board decisions and notices are available on our Web site at: *http://www.stb.dot.gov.*

Decided: November 5, 2009.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Kulunie L. Cannon,

Clearance Clerk.

[FR Doc. E9–27065 Filed 11–9–09; 8:45 am]

BILLING CODE 4915–01–P

[1] Wisconsin Central Ltd. has submitted a draft agreement. As required by 49 CFR 1180.6(a)(7)(ii), WCL states that it will submit a copy of the executed agreement within 10 days of the date the agreement is executed.

[2] The original trackage rights were exempted in *Wisconsin Central Ltd.—Trackage Rights Exemption—Duluth, Missabe and Iron Range Railway Company,* STB Finance Docket No. 35047 (STB served June 29, 2007). WCL and DMIR are indirect subsidiaries of Canadian National Railway Company. *See Canadian National, et al.—Control—Wisconsin Central Transp. Corp., et al.,* 5 S.T.B. 890 (2001); *Canadian National Railway Company and Grand Trunk Corporation—Control—Duluth, Missabe and Iron Range Railway Company, et al.,* STB Finance Docket No. 34424 (STB served Apr. 9, 2004).

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

November 3, 2009.

The Department of Treasury will submit the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, and 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before December 10, 2009 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0028.

Type of Review: Revision.

Title: Employer's Annual Federal Unemployment (FUTA) Tax Return (Form 940); Planilla Para La Declaracion Anual Del Patrono-La Contribucion Federal Para El Desempleo (FUTA)(Form 940–PR).

Form: 940–PR, Schedule A (Form 940).

Description: IRC section 3301 imposes a tax on employees based on the first $7,000 of taxable annual wages paid to each employee. IRS uses the information reported on Forms 940 and 940–PR (Puerto Rico) to ensure that employers have reported and figured the correct FUTA Wages and tax.

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 105,216,730 hours.

OMB Number: 1545–1842.

Type of Review: Extension.

Title: Health Coverage Tax Credit Registration Form.

Form: 13441.

Description: Form 13441, Health Coverage Tax Credit Registration Form, will be directly mailed to all individuals who are potentially eligible for the HCTC. Potentially eligible individuals will use this form to determine if they are eligible for the Health Coverage Tax Credit and to register for the HCTC program. Participation in this program is voluntary. This form will be submitted by the individual to the HCTC program office in a postage-paid, return envelope. We will accept faxed forms, if necessary. Additionally,

recipients may call center for help in completing this form.

Respondents: Individuals or households.

Estimated Total Burden Hours: 900 hours.

OMB Number: 1545–1016.

Type of Review: Extension.

Title: Return of Excise Tax on Undistributed Income of Regulated Investment Companies.

Form: 8613.

Description: Form 8613 is used by regulated investment companies to compute and pay the excise tax on undistributed income imposed under section 4982. IRS uses the information to verify that the correct amount of tax has been reported.

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 17,820 hours.

OMB Number: 1545–0155.

Type of Review: Revision.

Title: Investment Credit.

Form: 3468.

Description: Taxpayers are allowed a credit against their income tax for certain expenses they incur for their trades or businesses. Form 3468 is used to compute this investment tax credit. The information collected is used by the IRS to verify that the credit has been correctly computed.

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 530,937 hours.

OMB Number: 1545–0098.

Type of Review: Extension.

Title: Application for Tentative Refund.

Form: 1045.

Description: Form 1045 is used by individuals, estates, and trusts to apply for a quick refund of taxes due to carryback of a new operating loss, unused general business credit, or claim of right adjustment under section 1341(b). The information obtained is used to determine the validity of the application.

Respondents: Individuals or households.

Estimated Total Burden Hours: 515,114 hours.

OMB Number: 1545–1442.

Type of Review: Extension.

Title: PS–79–93 (Final) Grantor Trust Reporting Requirements.

Description: The information required by these regulations is used by the Internal Revenue Service to ensure that items of income, deduction, and credit of a trust as owned by the grantor or another person are properly reported.

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 920,000 hours.

Clearance Officer: R. Joseph Durbala (202) 622–3634. Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Shagufta Ahmed (202) 395–7873. Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Celina Elphage,

Treasury PRA Clearance Officer.

[FR Doc. E9–27028 Filed 11–9–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of the Secretary

List Of Countries Requiring Cooperation With an International Boycott

In accordance with section 999(a)(3) of the Internal Revenue Code of 1986, the Department of the Treasury is publishing a current list of countries which require or may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986).

On the basis of the best information currently available to the Department of the Treasury, the following countries require or may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986).

Kuwait

Lebanon

Libya

Qatar

Saudi Arabia

Syria

United Arab Emirates

Yemen, Republic of

Iraq is not included in this list, but its status with respect to future lists remains under review by the Department of the Treasury.

Dated: October 28, 2009.

Manal Corwin,

International Tax Counsel (Tax Policy).

[FR Doc. E9–27063 Filed 11–9–09; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Advisory Group to the Commissioner of Internal Revenue; Renewal of Charter

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: The Charter for the Information Reporting Program Advisory Committee (IRPAC) will renew for a two-year period beginning October 23, 2009.

FOR FURTHER INFORMATION CONTACT: Ms. Caryl Grant, National Public Liaison, at **Public_Liaison@irs.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given under section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988), and with the approval of the Secretary of the Treasury to announce the renewal of the Information Reporting Program Advisory Committee (IRPAC). The purpose of the IRPAC is to provide an organized public forum for discussion of relevant information reporting issues of mutual concern as between Internal Revenue Service (''IRS'') officials and representatives of the public. Advisory committee members convey the public's perception of IRS activities, advise with respect to specific information reporting administration issues, provide constructive observations regarding current or proposed IRS policies, programs, and procedures, and propose improvements to information reporting operations and the Information Reporting Program. Membership is balanced to include stakeholder segmentation, geographic location, industry representation and influence in channel communication and preferences, technology adaptation, life cycle data reporting, economics and specific product/service usage.

Dated: November 2, 2009.

Candice Cromling,

Director, National Public Liaison.

[FR Doc. E9–26995 Filed 11–9–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Advisory Group to the Commissioner of Internal Revenue; Renewal of Charter

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: The Charter for the Internal Revenue Service Advisory Council (IRSAC) will renew for a two-year period beginning October 23, 2009.

FOR FURTHER INFORMATION CONTACT: Ms. Lorenza Wilds, National Public Liaison, 202–622–6440 (not a toll-free number).

SUPPLEMENTARY INFORMATION: Notice is hereby given under section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988), and with the approval of the Secretary of the Treasury to announce the renewal of the Internal Revenue Service Advisory Council (IRSAC). The primary purpose of the Advisory Council is to provide an organized public forum for senior Internal Revenue Service executives and representatives of the public to discuss relevant tax administration issues. As an advisory body designed to focus on broad policy matters, the IRSAC reviews existing tax policy and/or makes recommendations with respect to emerging tax administration issues. The IRSAC suggests operational improvements, offers constructive observations regarding current or proposed IRS policies, programs, and procedures, and suggest improvements with respect to issues having substantive effect on Federal tax administration. Conveying the public's perception of IRS activities to Internal Revenue Service executives, the IRSAC is comprised of individuals who bring substantial, disparate experience and diverse backgrounds. Membership is balanced to include representation from the taxpaying public, the tax professional community, small and large businesses, international, and the payroll community.

Dated: November 2, 2009.

Candice Cromling,

Director, National Public Liaison.

[FR Doc. E9–26997 Filed 11–9–09; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Tuesday,
November 10, 2009

Part II

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Parts 409, 424, and 484
Medicare Program; Home Health Prospective Payment System Rate Update for Calendar Year 2010; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 409, 424, and 484

[CMS–1560–F]

RIN 0938–AP55

Medicare Program; Home Health Prospective Payment System; Rate Update for Calendar Year 2010

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

ACTION: Final rule.

SUMMARY: This final rule sets forth an update to the Home Health Prospective Payment System (HH PPS) rates; the national standardized 60-day episode rates, the national per-visit rates, the non-routine medical supply (NRS) conversion factors, and the low utilization payment amount (LUPA) add-on payment amounts, under the Medicare prospective payment system for home health agencies effective January 1, 2010. This rule also updates the wage index used under the HH PPS. In addition, this rule changes the HH PPS outlier policy, requires the submission of OASIS data as a condition for payment under the HH PPS, implements a revised Outcome and Assessment Information Set (OASIS–C) for episodes beginning on or after January 1, 2010, and implements a Consumer Assessment of Healthcare Providers and Systems (CAHPS) Home Health Care Survey (HHCAHPS) affecting payment to HHAs beginning in CY 2012. Also, this rule makes payment safeguards that will improve our enrollment process, improve the quality of care that Medicare beneficiaries receive from HHAs, and reduce the Medicare program's vulnerability to fraud. This rule also adds clarifying language to the ''skilled services'' section and Conditions of Participation (CoP) section of our regulations. This rule also clarifies the coverage of routine medical supplies under the HH PPS.

DATES: *Effective Date:* These regulations are effective on January 1, 2010.

FOR FURTHER INFORMATION CONTACT:
Randy Throndset, (410) 786–0131 (overall HH PPS).
James Bossenmeyer, (410) 786–9317 (for information related to payment safeguards).
Doug Brown, (410) 786–0028 (for quality issues).
Kathleen Walch, (410) 786–7970 (for skilled services requirements and clinical issues).

SUPPLEMENTARY INFORMATION:

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I. Background

A. Requirements of the Balanced Budget Act of 1997 for Establishing the Prospective Payment System for Home Health Services

The Balanced Budget Act of 1997 (BBA) (Pub. L. 105–33) enacted on August 5, 1997, significantly changed the way Medicare pays for Medicare home health services. Section 4603 of the BBA mandated the development of the home health prospective payment system (HH PPS). Until the implementation of a HH PPS on October 1, 2000, home health agencies (HHAs) received payment under a cost-based reimbursement system.

Section 4603(a) of the BBA mandated the development of a HH PPS for all Medicare-covered home health services provided under a plan of care (POC) that were paid on a reasonable cost basis by adding section 1895 of the Social Security Act (the Act), entitled ''Prospective Payment For Home Health Services''. Section 1895(b)(1) of the Act requires the Secretary to establish a HH PPS for all costs of home health services paid under Medicare.

Section 1895(b)(3)(A) of the Act requires that: (1) The computation of a standard prospective payment amount include all costs for home health services covered and paid for on a reasonable cost basis and be initially based on the most recent audited cost report data available to the Secretary, and (2) the prospective payment amounts be standardized to eliminate the effects of case-mix and wage levels among HHAs.

Section 1895(b)(3)(B) of the Act addresses the annual update to the standard prospective payment amounts by the home health applicable percentage increase. Section 1895(b)(4) of the Act governs the payment computation. Sections 1895(b)(4)(A)(i) and (b)(4)(A)(ii) of the Act require the standard prospective payment amount to be adjusted for case-mix and geographic differences in wage levels. Section 1895(b)(4)(B) of the Act requires the establishment of an appropriate case-mix change adjustment factor that adjusts for significant variation in costs among different units of services.

Similarly, section 1895(b)(4)(C) of the Act requires the establishment of wage adjustment factors that reflect the relative level of wages, and wage-related costs applicable to home health services furnished in a geographic area compared to the applicable national average level. Pursuant to 1895(b)(4)(c), the wage-adjustment factors used by the Secretary may be the factors used under section 1886(d)(3)(E) of the Act.

Section 1895(b)(5) of the Act gives the Secretary the option to make additions or adjustments to the payment amount otherwise paid in the case of outliers because of unusual variations in the type or amount of medically necessary care. Total outlier payments in a given fiscal year (FY) or year may not exceed 5 percent of total payments projected or estimated.

In accordance with the statute, we published a final rule (65 FR 41128) in the **Federal Register** on July 3, 2000, to implement the HH PPS legislation. The July 2000 final rule established requirements for the new HH PPS for home health services as required by section 4603 of the BBA, as

subsequently amended by section 5101 of the Omnibus Consolidated and Emergency Supplemental Appropriations Act (OCESAA) for Fiscal Year 1999, (Pub. L. 105–277), enacted on October 21, 1998; and by sections 302, 305, and 306 of the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act (BBRA) of 1999, (Pub. L. 106–113), enacted on November 29, 1999. The requirements include the implementation of a HH PPS for home health services, consolidated billing requirements, and a number of other related changes. The HH PPS described in that rule replaced the retrospective reasonable cost-based system that was used by Medicare for the payment of home health services under Part A and Part B. For a complete and full description of the HH PPS as required by the BBA, see the July 2000 HH PPS final rule (65 FR 41128 through 41214).

B. Deficit Reduction Act of 2005

On February 8, 2006, the Deficit Reduction Act of 2005 (Pub. L. 109–171) (DRA) was enacted. Section 5201 of the DRA requires HHAs to submit data for purposes of measuring health care quality, and links the quality data submission to payment. This requirement is applicable for CY 2007 and each subsequent year. If an HHA does not submit quality data, the home health market basket percentage increase will be reduced 2 percentage points. In accordance with the statute, we published a final rule (71 FR 65884, 65935) in the **Federal Register** on November 9, 2006 to implement the pay-for-reporting requirement of the DRA, codified at 42 CFR 484.225(h) and (i).

C. System for Payment of Home Health Services

Generally, Medicare makes payment under the HH PPS on the basis of a national standardized 60-day episode payment rate that is adjusted for the applicable case-mix and wage index. The national standardized 60-day episode rate includes the six home health disciplines (skilled nursing, home health aide, physical therapy, speech-language pathology, occupational therapy, and medical social services). Payment for non-routine medical supplies (NRS), is no longer part of the national standardized 60-day episode rate and is computed by multiplying the relative weight for a particular NRS severity level by the NRS conversion factor (See section III.C.4.e). Durable medical equipment covered under the home health benefit is paid for outside the HH PPS payment. To adjust for case-mix, the HH PPS uses a 153-category case-mix classification to assign patients to a home health resource group (HHRG). Clinical needs, functional status, and service utilization are computed from responses to selected data elements in the OASIS assessment instrument.

For episodes with four or fewer visits, Medicare pays on the basis of a national per-visit rate by discipline; an episode consisting of four or fewer visits within a 60-day period receives what is referred to as a low utilization payment adjustment (LUPA). Medicare also adjusts the national standardized 60-day episode payment rate for certain intervening events that are subject to a partial episode payment adjustment (PEP adjustment). For certain cases that exceed a specific cost threshold, an outlier adjustment may also be available.

D. Corrections

We published a final rule with comment period in the **Federal Register** on August 29, 2007 (72 FR 49762) that set forth a refinement and rate update to the 60-day national episode rates and the national per-visit rates under the Medicare prospective payment system for home health services for CY 2008. In this final rule with comment period, in Table 10B (72 FR 49854), the short description for ICD–9–CM code 250.8x & 707.10–707.9 should read ''PRIMARY DIAGNOSIS = 250.8x AND FIRST OTHER DIAGNOSIS =707.10–707.9. Instead of a formal correction notice, we are notifying the public of this correction in this final rule.

E. Updates to the HH PPS

As required by section 1895(b)(3)(B) of the Act, we have historically updated the HH PPS rates annually in the **Federal Register**. Most recently, we published a notice in the **Federal Register** on November 3, 2008 (73 FR 65351) that set forth the update to the 60-day national episode rates and the national per-visit rates under the Medicare prospective payment system for home health services for CY 2009.

F. Requirements for Issuance of Regulations

Section 902 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) amended section 1871(a) of the Act and requires the Secretary, in consultation with the Director of the Office of Management and Budget, to establish and publish timelines for the publication of Medicare final regulations based on the previous publication of a Medicare proposed or interim final regulation. Section 902 of the MMA also states that the timelines for these regulations may vary but shall not exceed 3 years after publication of the preceding proposed or interim final regulation except under exceptional circumstances.

This final rule finalizes provisions set forth in the August 13, 2009 proposed rule (74 FR 40948). 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 Proposed Provisions and Response to Comments

In the, August 13, 2009 **Federal Register** (74 FR 40948) we published the proposed rule entitled, ''Medicare Program; Home Health Prospective Payment System Rate Update for CY 2010'' and provided for a 60-day comment period. In this proposed rule we proposed updates to the Home Health Prospective Payment System (HH PPS) rates; the national standardized 60-day episode rates, the national per-visit rates, the non-routine medical supply (NRS) conversion factor, and the low utilization payment amount (LUPA) add-on payment amount, under the Medicare prospective payment system for home health agencies effective January 1, 2010. As part of the CY 2010 proposed rule (74 FR 40948), we also proposed a change to the HH PPS outlier policy, proposed to require the submission of OASIS data as a condition for payment under the HH PPS, and proposed payment safeguards that would improve our enrollment process, improve the quality of care that Medicare beneficiaries receive from HHAs, and reduce the Medicare program's vulnerability to fraud. The CY 2010 proposed rule also added clarifying language to the ''skilled services'' section and the Conditions of Participation (CoPs) sections of our regulations, and also clarified the coverage of routine medical supplies under the HH PPS. We also solicited comments on: Physician/patient interaction associated with the home health plan of care (POC); a Consumer Assessment of Healthcare Providers and Systems (CAHPS) Home Health Care Survey; the Outcome and Assessment Information Set (OASIS), Version C, effective January 1, 2010; proposed pay for reporting measures for use in CY 2011; and a number of minor payment-related issues. We also responded, in the CY 2010 proposed rule (74 FR 40948), to comments received as a result of our solicitation in the CY 2008 HH

PPS final rule with comment period (72 FR 49762).

In response to the publication of the CY 2010 HH PPS proposed rule, we received approximately 73 items of correspondence from the public. We received numerous comments from various trade associations and major health-related organizations. Comments also originated from HHAs, hospitals, other providers, suppliers, practitioners, advocacy groups, consulting firms, and private citizens. The following discussion, arranged by subject area, includes our responses to the comments and, where appropriate, a brief summary as to whether or not we are implementing the proposed provision or some variation thereof.

A. Outlier Policy

Section 1895(b)(5) of the Act allows for the provision of an addition or adjustment to the regular 60-day case-mix and wage-adjusted episode payment amount in the case of episodes that incur unusually high costs due to patient home health care needs. This section further stipulates that total outlier payments in a given year may not exceed 5 percent of total projected or estimated HH PPS payments. Section 1895(b)(3)(C) of the Act stipulates that the standard episode payment be reduced by such a proportion to account for the aggregate increase in payments resulting from outlier payments. Under the HH PPS, outlier payments are made for episodes for which the estimated cost exceeds a threshold amount. The wage adjusted fixed dollar loss (FDL) amount represents the amount of loss that an agency must bear before an episodes becomes eligible for outlier payments.

In recent years, our analysis has revealed excessive growth in outlier payments, primarily the result of suspiciously high outlier payments in a few discrete areas of the country. In our CY 2009 payment update, we did not raise the FDL ratio, given the statistical outlier data anomalies that we identified in certain targeted areas, because program integrity efforts, such as payment suspensions for HHAs with questionable outlier billing activities, were underway to address excessive, suspicious outlier payments that were occurring in these areas. Instead, we maintained the then-current (CY 2008) FDL ratio of 0.89 in CY 2009 while actions to remedy inappropriate outlier payments in these target areas of the country were effectuated.

In our CY 2010 HH PPS proposed rule, we expanded our outlier analysis to assess the appropriateness of adopting a lower target percentage of outlier payments to total HH PPS payments. We performed an analysis of all providers who receive outlier payments, focusing our analysis on total HH PPS payments, total outlier payments, number of episodes, number of outlier episodes, and location of provider. Specifically, our analysis incorporated a 10 percent per-agency cap on outliers and looked at outlier payments as a percentage of total HH PPS payments with that 10 percent per-agency cap in place. That analysis revealed that with a 10 percent per-agency outlier cap in place, outlier dollars accounted for approximately 2.1 percent of total HH PPS payments. Additionally, we performed a separate analysis on CMS data using Medicare provider numbers of members of a major association of home health agencies who claim to be safety-net providers, serving sicker, more costly patients. The average outlier payment to these agencies was found to be less than 2 percent.

In the proposed rule we recognized that although program integrity efforts associated with excessive outlier payments continue in targeted areas of the country, we continue to be at risk of exceeding the 5 percent statutory limit on estimated outlier expenditures. Therefore, we focused our analysis on whether a broader policy change to our outlier payment policy might also be warranted, to mitigate possible billing vulnerabilities associated with excessive outlier payments, and to adhere to our statutory limit on outlier payments. Our analysis revealed that a 10 percent per-agency cap in outlier payments would mitigate potential inappropriate outlier billing vulnerabilities while minimizing the access to care risk for high needs patients.

Therefore, to mitigate possible billing vulnerabilities associated with excessive outlier payments, and to adhere to our statutory limit on outlier payments, we proposed to implement an agency level outlier cap such that in any given calendar year, an individual HHA would receive no more than 10 percent of its total HH PPS payments in outlier payments. Additionally, we proposed to reduce the FDL ratio to 0.67 for CY 2010. This combination of a 10 percent agency level outlier cap, and reduced FDL ratio of 0.67, and allowing for future growth in outlier payments, resulted in a projected target outlier payment outlay of approximately 2.5 percent of total HH PPS payments in outlier payments.

Currently, we reduce the national standardized 60-day episode payment rates, the national per-visit rates, the LUPA add-on amount, and the NRS conversion factor by 5 percent in order to create an outlier pool that accommodates estimated outlier payments of 5 percent of total HH PPS payments. Targeting the percentage of outlier payments at approximately 2.5 percent would allow us to create a smaller outlier pool and return the remaining 2.5 percent to the HH PPS rates. In the proposed rule, we proposed to retain a 2.5 percent reduction to the national standardized 60-day episode rates, the national per-visit rates, the LUPA add-on payment amount, and the NRS conversion factor to fund the proposed target of approximately 2.5 percent of total estimated HH PPS payments in outlier payments, adhering to the statutory requirement in section 1895(b)(3) of the Act.

Comment: Most commenters were very supportive, and in favor of the overall proposed HH PPS outlier policy. Commenters stated that anomalous outlier trends in recent years are compelling evidence that abusive and possibly fraudulent practices are widespread in many areas of the country and that increased safeguards are necessary to curb inappropriate activity as it relates to the billing of outlier episodes under the HH PPS. Commenters further stated that the proposed changes were reasonable areas of focus for additional safeguards against fraud and abuse in the area of billing for outliers in the HH PPS. Other commenters stated that they strongly supported CMS in its efforts to curb fraud and abuse and are not opposed to the proposed implementation of these changes to the outlier policy. Several commenters found the proposed outlier policy to be fair and expect the policy to be effective.

Response: We appreciate the overwhelming support from commenters that we received on our proposed HH PPS outlier policy. We would like to point out that fraudulent activity is not widespread in many areas of the country. These sort of fraudulent activities are occurring in a few discrete areas of the country. We continue to believe that an agency-level outlier cap is the appropriate policy, at this time, to mitigate possible billing vulnerabilities associated with excessive outlier payments and to adhere to our statutory limit on outlier payments. As such, in conjunction with the 10 percent agency level outlier policy, we proposed to target a new 2.5 percent outlier pool (as opposed to the existing 5 percent outlier pool), and return 2.5 percent back into the national standardized 60-day episode rates, the national per-visit rates, the LUPA add-on payment amount, and the NRS conversion factor,

with a 0.67 FDL ratio. For reasons outlined later in this final rule, we are finalizing this outlier policy for CY 2010 only.

Comment: Several commenters supported the new, lower, outlier target of approximately 2.5 percent, and applauded CMS for restoring dollars to the HH PPS payment rates. A commenter commended CMS for thoughtfully considering the negative impact on patient access, should outlier payments be completely eliminated. A few commenters urged CMS to monitor outlier expenditures and further reduce the FDL if outlier payments drop below the new 2.5 percent target. A commenter asked CMS to explain the methods that would be used to monitor these outlier payments.

Response: We appreciate the support of the proposed outlier target of approximately 2.5 percent and returning 2.5 percent back into the HH PPS rates. As a commenter stated, CMS did give thoughtful consideration to eliminating the outlier policy altogether, and although we reserve the right to eliminate the outlier policy in the future, should circumstances make that necessary, we believe that an outlier target of approximately 2.5 percent and returning 2.5 percent back into the HH PPS rates, for CY 2010, is the appropriate policy at this time. As part of our final outlier policy, in addition to returning 2.5 percent back into the HH PPS rates, because of the 10 percent cap on outlier payments, CMS is also lowering the FDL from 0.89 to 0.67, making it easier for episodes to qualify for outlier payments. Thus, in addition to the fact that few non-fraudulent providers are expected to be impacted by the 10 percent cap, all providers will benefit from the 2.5 percent increase in the base rate and will also be helped by the lowering of the FDL ratio. As stated above, CMS plans to analyze overall national spending on outlier payments relative to the new 2.5 percent outlier pool by geographic area and provider type. CMS also plans on looking at outlier payments, per HHA, relative to the 10 percent cap on outlier payments at the agency level by geographic area and provider type.

Comment: There was a commenter who was opposed to returning a portion of the current 5 percent pool to the HH PPS rates, stating that doing so would reduce resources to provide for sicker patients and increase funds paid for lost-cost/low-utilization patients who are already well provided for. Another commenter was concerned about reducing the outlier pool to 2.5 percent, stating that it would hurt providers that accept difficult and hard-to-place patients.

Response: For the past several years, CMS has updated the FDL ratio in attempts to estimate outlier dollars to be no more than 5 percent. However, because outlier payments in certain areas of the country continue to increase at alarming rates, updating the FDL on an annual basis has proven to not be enough to keep outlier dollars at no more than 5 percent of total HH PPS payments. As we described in the proposed rule, our analyses show that when we remove from our analyses HHAs in areas of the country with high suspect outlier payments, as well as small agencies that are not representative of the types of agencies we suspect of suspicious billing activities, outlier payments for the rest of the country account for less than 2 percent of total HH PPS payments. As described in the proposed rule, our analyses have shown that in simulating payment for CY 2010, imposing an outlier cap of 10 percent at the agency level, we would pay approximately 2.32 percent of total HH PPS payments in outlier payments.

Additionally, in our separate analysis of CMS data using provider numbers from a major home health agency association's agencies, which claim to service a sicker, more costly population, only one of these agencies was estimated to exceed a 10 percent outlier cap. Further analysis shows us that approximately 70 percent of all HHAs receive between 0 percent and 1 percent in outlier dollars as a percentage of their total HH PPS payments. Consequently, we believe that a final outlier policy for CY 2010 that includes a 10 percent agency level outlier cap, a target of approximately 2.5 percent for outlier dollars as a percentage of total HH PPS payments, returning 2.5 percent back into the HH PPS rates, and a 0.67 FDL ratio is the appropriate policy, and that it appropriately pays for legitimate outlier episodes as well as all other types of episodes under the HH PPS. Because our trend analysis shows that outlier expenditures continue to grow, we proposed and are finalizing as part of our final outlier policy, an outlier target of approximately 2.5 percent.

Comment: Most commenters were in support of lowering the FDL ratio to that of 0.67, but urged CMS to carefully monitor the effects of reducing the FDL ratio to gauge whether there is an increase in inappropriate outliers and if increasing the FDL ratio might be necessary in the future. A commenter asked CMS to keep the FDL ratio at 0.89 because lowering it to 0.67 would make it easier for episodes to become outliers, thereby making it difficult for HHAs that are trying to stay under a 10 percent cap to meet the requirement and still deliver care. Another commenter stated that the proposal to reduce the FDL to 0.67, which would increase the number of episodes that qualify for outlier payments, is a ''futile gesture'' in the face of a 10 percent cap.

Response: We appreciate commenters' support of lowering the FDL ratio to 0.67. As stated above, CMS plans to analyze overall national spending on outlier payments relative to the new 2.5 percent outlier pool by geographic area and provider type. CMS also plans on looking at outlier payments per HHA relative to the 10 percent cap on outlier payments at the agency level by geographic area and provider type. At the same time, we will be looking at how the FDL ratio of 0.67 affects the percentage of outliers, and consider adjustments to the FDL ratio (up or down) if appropriate. We are decreasing the FDL ratio from 0.89 to 0.67 because the latest data and best analysis available tell us that in conjunction with an outlier policy that invokes a 10 percent agency level outlier cap and a target outlier pool of approximately 2.5 percent (returning 2.5 percent to the HH PPS rates), a FDL ratio of 0.67 is appropriate. As we stated in the proposed rule and throughout this final rule, if we are unable to see measurable improvements with respect to suspected fraudulent billing practices as they relate to HHA outlier payments, CMS may consider eliminating the outlier policy entirely in future rulemaking.

Comment: A number of commenters supported the ''rolling basis'' in determining whether outlier payments should be made at any given time during the year. However, another commenter cautioned CMS not to create a tracking nightmare for fiscal intermediaries and providers that is overly burdensome or complicated to administer. Yet another commenter was concerned about a delay in payments to HHAs, for services that have already been provided, and expenses that have already been incurred. That same commenter suggested that to address cash flow issues, CMS should delay the process of identifying and withholding outlier payments until the end of the first or second quarter of the calendar year, making it easier to HHAs to absorb early outlier cases. Another commenter was concerned that the ''rolling cap'' would result in accounting challenges, and suggested a quarterly look-back with a lump sum whenever outlier payments exceeded the 10 percent cap. A commenter stated that a rolling method could create excessive outlier

down-scores until the next calculation. The commenter believed that a retrospective adjustment would be fairer and would enable HHAs to reconcile revenue. Another commenter expressed concern about a retrospective recoupment, particularly an annual one, and the impact such a recoupment could have on the cash flow of smaller agencies and agencies with lower Medicare margins.

Response: Implementing the cap by a post-payment recoupment process, either quarterly or annual, would delay impact of the cap on HHAs that are billing outlier episodes inappropriately. Under a lump sum recoupment, there could be a total disruption to an HHA's cash flow. That is, if the amount of outlier dollars paid in excess of the cap and scheduled for recoupment is greater than the amount due to the HHA for other claims, the HHA's payment could stop completely for a time while the recoupment was made. We believe this sort of payment disruption is undesirable.

Under our planned implementation approach, for each home health provider, the claims processing system will maintain a running tally of the year-to-date (YTD) total home health payments. The claims processing system will ensure that each time an outlier claim for an agency is processed, actual outlier payments will never exceed 10 percent of the agency's YTD total payments. While an agency will always receive its base episode payment timely, the outlier portion of the claim will be paid on a rolling basis, as the agency's YTD payments support payment of the outlier. We plan to have a periodic reconciliation process under which outlier payments that were withheld are subsequently paid if the HHA's total payments have increased to the point that their outlier payments can be made. This reconciliation process will always result in additional cash flow to HHAs, and so we believe it is preferable. With regard to revenue tracking, distinct coding will be used on the HHA's remittance advice when outlier payments are withheld, assisting receivables accountants to identify and account for the differences between expected and actual payments. For these reasons, we agree with the commenter that supported a rolling implementation of the cap and will finalize this proposal.

Comment: A number of commenters encouraged CMS to take more aggressive actions through program integrity activities. One commenter recommended that a high rate of outliers for a particular HHA should trigger medical review, creating a greater/more effective deterrent to fraudulent behavior. In general, the commenter supported more aggressive enforcement. A commenter stated that reference areas with fraud should have much higher incidence of additional document requests (ADRs) and phone calls to beneficiaries from fiscal intermediaries. Documentation should be closely reviewed for medical necessity, qualifications, and homebound status.

Response: As we stated in the proposed rule, so far as activities related to high levels of suspicious outlier payments, CMS is continuing with program integrity efforts including possible payment suspensions for HHAs with questionable outlier billing activities.

Comment: Commenters asked that CMS clarify that while outlier payments would be capped at 10 percent, at the agency level, that the non-outlier portion of the payment would still be paid.

Response: We thank the commenters for this comment, and apologize if we were not clear as to what portion of the HH PPS payment would be subject to the 10 percent cap. As stated in the proposed rule (at 74 FR 40957),the outlier policy, finalized for CY 2010 only, will include a 10 percent cap on outlier payments at the agency level. That is to say, an agency's outlier payments are to be capped at 10 percent of its total HH PPS payments (of which outlier payments are a part). For any claim with an outlier payment, if it were determined that paying the outlier portion of the total HH PPS payment for that claim would result in the HHA exceeding the 10 percent cap in outlier payments, only the outlier portion of the claim would not be paid at that time. However, the regular HH PPS payment (based on the HHRG that applies to that claim) is not subject to that 10 percent outlier cap, and thus would be paid. Any HH PPS payment adjustments other than the outlier payment (that is, PEP, recoding for therapy visits, *etc.*), would also continue to apply to the claim.

Comment: CMS' analysis in the proposed rule started by first identifying ''all providers who receive outlier payments'' but excluded agencies with greater than 15 percent outlier episodes for one reason or another. Such exclusion skews analysis in favor of the 10 percent cap at the agency level, without considering that HHAs are shouldering the burden of serving sicker, more costly patients, represented by the excluded agencies with greater than 15 percent outlier episodes.

Response: The purpose of our analyses was to show the impact of the outlier cap policy on agencies not likely to be receiving inappropriate outlier payments. It is clear that a 10 percent agency outlier cap would have a major effect on agencies in certain areas of the country involved in suspect inappropriate billing practices. As such, we did not want to have data from those agencies skewing the results. To clarify, we did not exclude agencies with either outlier payments or outlier episodes greater than 15 percent. We did exclude agencies from our analysis that received sizeable outlier payments (totaling at least $100,000), had high ratio of outlier payments to total HH PPS payments (30 percent or more), and were located in the counties in Florida, Texas and California where program integrity issues had been identified. Those agencies simultaneously satisfying all three of these exclusion criteria were considered highly suspect for inappropriate billing practices. We also excluded a small number of agencies that had fewer than 20 Medicare HH PPS episodes, believing that Medicare beneficiaries account for such a small part of their business that they are not representative of the types of agencies we are most concerned about disadvantaging with an outlier cap policy. Finally, we excluded a few additional agencies because they, too, were located in those same counties experiencing program integrity issues, and thus we did not want to have data from those agencies skewing the results either.

Comment: Some commenters suggested that the proposed outlier policies will put small HHAs out of business, while larger HHAs will be impacted only slightly. A commenter suggested that small HHAs will have to transfer their complex patients to larger HHAs that generate enough income to receive outlier patients, leaving small HHAs with limited service offerings and more competitive disadvantages. The commenter further asked CMS to further research the impact that the 10 percent cap will have on HHAs that generate $2 million or less. Another commenter stated that special consideration should be given to smaller HHAs with fewer than 50 patients with low socioeconomic status (SES). The commenter also stated that CMS should take into account that there are cultural and racial reasons why certain areas may have more home health chronic patients. Another commenter stated that our proposed outlier policies would eliminate a safety net for HHAs that typically treat higher needs patients. Some commenters cautioned CMS to analyze carefully the effects of such an outlier policy to ensure that HHAs and

beneficiaries and rural and under-served areas are not adversely affected. A number of commenters urged CMS to ensure that HHAs that legitimately serve sicker/more clinically complex patients are not penalized or put out of business, causing access issues for beneficiaries. Another commenter suggested that in some areas lacking of other post acute settings available to beneficiaries, HHAs may have higher outlier costs. There was, however, a commenter who stated that the proposed outlier policy assumes some financial loss from outlier episodes, but that the commenter's analysis on freestanding HHAs indicates that some HHAs have lower costs than those costs assumed in the proposed policy. Consequently, these HHAs with lower costs may be able to profit from abusing the outlier policy, even with a smaller outlier pool and provider level cap.

Response: Our analysis (see proposed rule at 74 FR 40956) shows that when the counties with program integrity problems are removed, the vast majority of the remaining providers have outlier dollars below 10% of their total home health expenditures and thus will not be affected by the policy. Further mitigating the effects of the outlier policy is that the base rates for all episodes are being increased by 2.5%. An alternative, as was discussed in the proposed rule, would be to eliminate the outlier policy altogether, an option that some providers might find even less appealing. While we continue to believe that our proposed outlier policy would not negatively impact the access to home health care, we believe it prudent to carefully monitor the impact that this new policy may have on access to home health care. Therefore, we are finalizing our proposed outlier policy, but for CY 2010 only. We will closely monitor data trends and we may make this policy, or some variation of this policy, permanent in future rulemaking. We believe that a final outlier policy for CY 2010 that includes a 10 percent agency level outlier cap, a target of approximately 2.5 percent for outlier dollars as a percentage of total HH PPS payments, returning 2.5 percent back into the HH PPS rates, and a 0.67 FDL ratio is the appropriate policy at this time.

Comment: Some commenters opposed the proposed outlier policy, stating that it penalized HHAs that treat insulin-dependent diabetes mellitus (IDDM) patients. These commenters stated that this policy would ultimately end up causing patients with IDDM to be denied treatment, and thus jeopardizing their lives. The same commenter stated that IDDM patients have always been the exception to the rule, ''end in sight''. The commenter went on to say that this policy would be life threatening to insulin dependent diabetics because they would have no one to administer their insulin. The commenter stated that they were one of the few HHAs that accepted these types of patients, and that if the 10 percent outlier cap were implemented, there would be no HHA to take these patients, resulting in insulin mismanagement, increased hospitalizations, and complications (including death). The commenter stated that Houston has a high population of IDDM patients, and that CMS should consider regions/geography as to how an outlier cap should appropriately be applied.

A few commenters wanted to see exceptions for certain types of patients, while other commenters wanted to see exceptions for HHAs specializing in treating certain types of patients. One commenter proposed that HHAs specializing in chronic disease management (diabetes, congestive heart failure (CHF), wound care, etc.), with criteria to safeguard against fraud, should be exempt from the 10 percent outlier cap policy. The commenter stated that criteria may include having specialty providers working with the HHA and that enhanced services (placing the patient as an outlier) are necessary. The commenter pointed out that, in their State, an association of diabetes educators was working towards being able to certify HHAs with a ''Diabetes Education Program'' which could also be a requirement for those with outlier diabetics. HHAs providing that specialty care should be willing to collect and report data on outcomes to assure quality care is being provided. A commenter stated that while a 10 percent outlier cap may be appropriate in most cases, episodes in which IDDM patients are being served should be exempt from that policy. Another commenter suggested that an exemption for those HHAs willing to follow criteria for specialty care to safeguard against fraud should be excluded from the cap.

Another commenter adamantly opposed the 10 percent outlier cap, as they specialize in diabetic care, and such a policy would affect the way they do business and their cash flow. The commenter stated that they would be forced to transfer IDDM patients to other HHAs. The commenter stated that such patients should not be punished by forcing them to change providers due to government policy rather than choice. The commenter also suggested that CMS do more research on the impact of such a change and the effects that such a change would have on competitive dynamics as well as ways to ''even the playing field.'' Another commenter suggested that CMS allow higher cap percentages for counties with high IDDM populations.

Another commenter was opposed to the 10 percent outlier cap, stating that it would put their patients in jeopardy. The commenter went on to say that they see elderly and mentally disabled adults through Diabetic Outreach Services (DOS). The commenter stated that many patients in DOS have vision disturbances, cognitive impairment, or dexterity issues and are on the Medicare home health benefit for multiple daily insulin injections. Without the HHA, or a willing/able caregiver, these patients would likely dose incorrectly or not at all, leading to hospitalization, SNF placement, or death. The commenter further stated that those IDDM patients receiving services from home health agencies have fewer hospitalizations or urgent use of the medical system.

A few commenters were opposed to the proposed outlier policy, stating that they take the ''difficult cases'' such as the unwanted children with psychiatric issues, low SES, IV, wound-care, and other diabetic cases, many of whom do not have caregivers. Many of their homebound patients are also vision impaired, have dexterity issues, or have dementia and/or Alzheimer's disease and require someone to be involved in their care. Those in assisted living facilities have even more specialized needs. The commenter stated that assisted living facilities are not always able to check glucose levels, and some are prohibited from administering insulin. The commenter stated that many patients cannot administer insulin safely, and families are unable to do so due to work schedules. The commenter wrote that incorrectly administered insulin can cause frequent calls to 911 and visits to the emergency room, and that poorly managed diabetes can cause hyperglycemia, hypoglycemia, and death. The commenter stated that if this outlier policy were to be implemented, their patients would end up in the hospital, only redirecting Medicare costs to high hospital bills. The commenter went on to say that their agency sees patients in the homes and assisted living facilities for ''house call'' diabetic services, and that patients who are homebound and residing in assisted living facilities would be adversely affected by this proposal. The commenter stated that putting a cap on outliers will force HHAs to ''dump'' IDDM patients, causing concern about these patients losing access to quality care.

Response: Excessive billing for IDDM patients in counties with program

integrity concerns is one of the main reasons necessitating the new outlier policy. However, we are sensitive to the commenter's concerns that homebound IDDM patients receive diabetes management support; likewise, we are sensitive to the support and disease management needs of patients with chronic diseases such as other types of diabetes, CHF, and wound care. Under Medicare's home health benefit, agencies are expected to provide education and training to help IDDM (and other diabetic) patients self-manage their diabetes. Many homebound patients with diabetes require short-term management for skilled observation, assessment, teaching and training activities. If the patient is unable to learn to self-manage, including self-administer medication, the home health agency would be expected to provide the teaching and training to a care-giver or family member. There will always be a subgroup of patients who cannot learn self-management, do not have a willing and able caregiver, and/or have no community support. However, as discussed in the proposed rule, our analysis shows us that after excluding HHAs in certain areas of the country where fraudulent billing practices are suspected, we expect that less than 2 percent of all Medicare HHAs would be affected by a 10 percent cap on outlier payments, and that of that less than 2 percent of HHAs, almost all are located in urban areas where beneficiaries have other choices. We also expect that the ability of agencies to receive 10 percent of their total payment in outliers would partially compensate agencies for the care associated with this subgroup. The outlier policy in the HH PPS was never intended to fully compensate HHAs for episodes that incur unusually high costs due to patient home health care needs. Rather, the intent of the outlier policy is to mitigate the negative financial impact that unusually high cost patients have on HHAs. We believe that our final outlier policy for this rule, that includes a 10 percent per-agency cap on outlier payments, is consistent with that intent. Our analysis shows us that approximately 70 percent of HHAs receive between 0 percent and 1 percent in outlier payments. Therefore, we believe our final outlier policy (which includes a 10 percent cap on outlier payments at the agency level) is reasonable and responsible. We also encourage home health agencies to take advantage of the help and support available from organizations such as the American Diabetes Association, the Indian Health Service, and the American Association of Diabetic Educators regarding innovative techniques associated with diabetes self management training (DSMT). Collaborating with these organizations may allow agencies to achieve greater success in enabling IDDM patients and/or their caregivers to better achieve self-management, and may provide the agencies with innovative care suggestions regarding their IDDM patients. CMS will closely monitor utilization trends of IDDM home health patients to assess the impact this policy may have on their access to care. Specifically, we plan to look at pre-2010 data to analyze trends of home health usage by IDDM patients, looking also at patterns of their Medicare utilization prior to the home health episode, and will compare those patterns with current usage.

Comment: A commenter stated that while MedPac may have reported that beneficiaries have access to an adequate number of HHAs, the reality is that many HHAs limit acceptance of high-utilization patients due to lack of resources or to protect their bottom line. The commenter also stated that they accept referrals for patients that other agencies will not admit. Another commenter stated that they would not be able to accept these types of patients if the proposed outlier policy were implemented, stating that they already take a 20 percent loss on these patients, which they offset with the few low-utilization short episodes they receive. The commenter stated that their agency will be restricted in the number of high utilization, sicker patients that they will accept. The commenter stated that many HHAs will not gamble with reimbursement calculations, timing, and cash flow issues that would be associated with a 10 percent cap. Consequently, the commenter believed that there would be no agency for many of the patients to turn to, and therefore this would likely result in an access to care issue.

Response: While experience varies from year to year, on average, the increased cost of sicker patients should generally be offset by the decreased cost for other patients. As stated in an earlier response to comments, based on our analysis (which excludes HHAs in certain areas of the country involved in potentially fraudulent billing practices), we expect that less than 2 percent of all Medicare HHAs may be affected by a 10 percent cap on outlier payments, and of this group of HHAs who may be affected by the 10 percent outlier cap, a vast majority are located in urban areas where beneficiaries have other choices. That being stated, an overwhelming majority of HHAs will not be affected by the 10 percent outlier cap, and thus will be in a position to accept patients who legitimately need home health services, and meet the eligibility requirements for the Medicare home health benefit.

Comment: A few commenters generally supported the proposed outlier policy, but recommended modifications to the policy. Generally speaking, some commenters requested that an appeals process be created for HHAs that CMS initially determined to have exceeded the 10 percent cap. The concern here was that such a cap could potentially affect legitimate outlier cases. As such, a commenter stated that situations could evolve in which high needs patients receiving care at one HHA are forced to change agencies during a potentially critical time. This commenter also found it concerning that we would have a cap policy that could potentially not allow for reimbursement for a valid outlier case. Another commenter suggested that CMS target areas where the data indicate the overutilization of outliers, rather than applying the policy to all HHAs in the country. We also received the following recommended modifications: (1) The cap should be put in place no earlier than 2011 (different versions of a delay included that of a delay until it is clear that Congress has addressed the issue, while another version suggested phasing-in the 10 percent cap by starting with a higher cap of 15 or 20 percent); (2) CoPs should be amended to allow agencies to discharge outlier patients when it can be estimated that a HHA will exceed the cap; similarly, CoPs should be amended to permit a HHA to deny admission to an outlier patient when its estimated cap will be exceeded. CoP amendments should also address patient notice rights; (3) During pendency of cap discharges, allow an exception to the cap if a HHA can show that it took all reasonable measures to secure alternative care for qualified patients; (4) Establish an exemption if the provider exceeding cap can show that patients served are qualified and that no other HHA is available to admit them; (5) Establish a registry of HHAs that report availability to accept outlier patients; (6) Issue ''best-practice'' guidelines for dealing with outlier patients; (7) The Secretary of HHS should coordinate regulatory efforts with current proposals in Congress that would modify outlier standards. Not doing so could result in piecemeal enactment which could put HHAs at higher risk; (8) Clarify that the application of the cap calculation is based solely on outlier adjustments.

Response: An appeals process would be cumbersome and difficult to implement for such a small percentage of situations. HHAs should be able to predict whether they will be affected by a 10 percent outlier cap policy based on past utilization and, in legitimate situations, be able to point the beneficiaries to alternatives. CMS is moving forward with implementation of the 10 percent outlier cap for CY 2010, effective January 1, 2010. With suspect fraudulent outlier billing practices continuing to increase, we believe it crucial to implement this policy now (CY 2010) rather than delay. Additionally, a delay, while maintaining the current FDL ratio of 0.89, would not be possible. In such a scenario (that is, a delay), CMs would have to either eliminate the outlier pool altogether, or raise the FDL ratio significantly (see CY 2009 HH PPS Update Notice at 73 FR 65357), so as to maintain a 5 percent outlier pool, if the 10 percent outlier cap were not implemented this year. However, CMS does not believe that eliminating the outlier policy or raising the FDL ratio is the appropriate policy at this time. Revisions to existing CoPs do not need to take place in order to implement this outlier policy. CoPs do not, and are not intended to, address or restrict the ability of HHAs to discharge patients. The HHA is required to accept patients with a reasonable expectation that the patient's medical, nursing, and social needs can be adequately met by the agency at the patient's place of residence (42 CFR 484.18). The CoPs already address patients' rights at 42 CFR 484.10. Given the availability of HHAs, and the estimated infrequency of circumstances where legitimate cases might exist, we do not believe that exemptions are necessary. As noted in a previous response to comments, as stated in the proposed rule (at 74 FR 40957) and finalized in this rule for CY 2010 only, the outlier policy will include a 10 percent cap on outlier payments at the agency level. That is to say, an agency's outlier payments are to be capped at 10 percent of its total HH PPS payments (of which outlier payments are a component). For any claim with an outlier payment, if it is determined that paying the outlier portion of the total HH PPS payment for that claim would result in the HHA exceeding the 10 percent cap in outlier payments, the outlier portion of the claim would not be paid at that time. However, the regular HH PPS payment (based on the HHRG that applied to that claim) would not be subject to that 10 percent outlier cap, and thus would be paid. Any HH PPS payment adjustment (that is, PEP, recoding for therapy visits, *etc.*) other than the outlier payment, would also continue to apply to the claim.

Comment: A commenter agreed with the approach, but stated that the overarching problem is that beneficiary needs have increased and that the flaw is not in the outlier policy but in low reimbursement. The commenter suggested that CMS develop more accurate methods to deal with HHAs that ''gamed'' the outlier policy, versus putting forward the proposed policy. The commenter asked CMS to consider something akin to the hospice cap, but with a modifier to allow for HHAs with sicker patients.

Response: We disagree that the flaw is in the low reimbursement rates. The newly refined 153–HHRG case-mix model now reflects different resource costs for early home health episodes versus later home health episodes and expanded the case-mix variables included in the payment model. The newly refined model also replaced the previous single 10-therapy threshold with three therapy thresholds (6, 14, and 20 therapy visits), with gradual payment increases between the first and third therapy thresholds. The newly refined model also includes six severity levels at which it pays for non routine medical supplies (NRS). We believe that the new model has addressed the areas identified by the industry as ''not being accounted for'' in the previous 80–HHRG case-mix model. Sicker patients are accounted for in the more detailed 153–HHRG case-mix model. Home health margins, even by industry standards, have been generous.

Comment: Several commenters whose parents are Medicare HHA patients were opposed to the proposed outlier policy, stating that their parents are diabetic and unable to administer insulin; that the children's work schedules are not flexible, and consequently the adult children are not consistently available to assist their parents. These commenters stated that they rely on the HHA to administer the insulin to their parents. These commenters emphasized that their parents have paid into the Medicare program and that it should be available to them in their time of need. The commenters also stated that changing this would be a horrible burden on them, as they would have to have their parents move into their homes, which would be a difficult situation. Commenters stated that their parent's independence would be lost forever and that their overall health would suffer. These commenters stated that they may have to change jobs, which was not an option at this time; otherwise their parents would not get their insulin regularly. The commenters stated that if their parents would not move in with them, their parents would go into a nursing home. Commenters believed this was an attempt by CMS to save money while risking the lives of patients. These commenters urged CMS to reconsider the outlier policy. One commenter, an insulin patient, stated that he/she was unable to give himself/herself shots and did not have family to do so on a regular basis. The commenter went on to say that if nurses cannot come to their home, he/she would end up in the hospital or nursing facility. The commenter stated that the cost to be in a nursing facility would be more than the cost of a home health nurse who comes to his/her home. The commenter requested that CMS not change how it pays the home health nurse.

Response: CMS is sympathetic to the fact that some beneficiaries who need help administering insulin. The new outlier policy is intended to address the inappropriate, potentially fraudulent billing practices that we are seeing. In our view, there is no reason to expect a large number of insulin patients unable to treat themselves would all be utilizing a single provider, and this is, in fact, generally the case in all areas of the country except those with severe program integrity issues. We believe that by implementing such a policy, in conjunction with the continued program integrity efforts, including possible payment suspensions for HHAs with questionable outlier billing activities, Medicare beneficiaries will continue to receive the services they need, while providers receive appropriate payment for the services they provide. We are committed to addressing potentially fraudulent activities, especially those in areas where we see suspicious outlier payments, and will monitor and aggressively pursue actions towards agencies where inappropriate billing of outlier payments is identified.

Comment: One commenter urged CMS to re-examine the outlier policy in its entirety, as some HHRGs have more underlying cost variation than others. Another commenter recommended that CMS modify use of HHRG scores and related payment in PPS for diabetic episode and outlier payments, rather than limit the number of diabetic patients that an HHA can care for and be paid for. A commenter suggested we re-examine the outlier payment policy in its entirety. This commenter wrote that some HHRGs have significantly more underlying variation in costs than others. Additionally, he wrote that high therapy cases are unlikely to have

outliers because of therapy dominance. He added that agencies with a high proportion dual eligibles have different visit profiles due to the more acute needs of dual eligibles. This commenter believes that these issues suggest that a uniform fixed loss threshold and loss ratio across all HHRGs may not be appropriate policy. The commenter suggested that a more customized policy should be examined and may obviate the need for a cap altogether. Another commenter suggested that good HHAs may easily exceed the cap, but fraudulent HHAs may use outlier clients as a method of getting cross-referrals from other fraudulent HHAs for non-outlier patients. The commenter stated that the proposed policy will not eliminate fraud/abuse or save Medicare dollars because most outlier patients would be spread to all providers in an area. CMS would still be paying for just as many outlier cases, but they would be spread amongst more providers. The commenter suggested that a better approach would be to increase the FDL ratio so that estimated outlier dollars were close to the 5 percent allowed under statute. The commenter also suggested that another approach could be to cap payment based on the published per visit rates, multiplied by the number of visits billed, or the outlier payment, whichever is lower. Another commenter recommended grandfathering in current patients, as HHAs shouldn't abandon patients already receiving services. The commenter also recommended grandfathering in each HHA's current percentage of outliers and using that percentage as the cap for that HHA. A few commenters also suggested that in setting caps, CMS should consider the population of the county.

Response: The premise of the new outlier policy is not that the case-mix model is not accurately capturing the cost of resources in providing care for these patients. Rather, the new outlier policy is being implemented due to the frequency of inappropriate and possibly fraudulent billing practices. The commenter's suggestion of increasing the FDL to pay 5 percent in outlier dollars is precisely what CMS had been doing in past years, before the highly suspect, and possibly fraudulent, billing activities became so prevalent. As we stated in a previous response to comments, our analysis shows us that minus the suspect fraudulent activity, we believe that 2.5 percent is a more appropriate target for outlier payments as a percentage of total HH PPS payments. As such, we do not believe that simply increasing the FDL to pay outlier payments at 5 percent of total HH PPS payments is the appropriate policy at this time. Increasing the FDL ratio would prevent many legitimate outlier cases from being considered as such, essentially hurting the larger majority of HHAs that are billing appropriately. The commenter's suggestion that we pay HHAs the lower of the published per-visit rates multiplied by the number of visits billed, or the current calculated outlier payment, would not be an acceptable alternative, as the end result would be to pay the outlier payments as currently calculated. Using a HHA's current outlier percentage as the cap for that HHA would ignore the problematic billing that has been occurring, and would do nothing to control the problem that exists today with outliers in home health.

Comment: A commenter stated that there exist a number of negative effects, which are significant and should be modified/addressed, if the proposed outlier policy were implemented, which include: (1) Legitimate benefits would decrease due to lack of access resulting in a poorer quality of care due to the incentives to restrict care to diabetics to avoid outlier status; therefore, people would not receive care at home due to outlier status, resulting in an increase in the use of hospitals, nursing homes and emergency rooms; (2) Costs will increase; (3) Increasing number of patients will be displaced from homes, creating emotional and physical hardship on patients and families, yet patients respond best in a comfortable home environment; (4) It would be more cost-effective and promote better care if the HHA were to specialize in diabetic care, as long as such care was medically necessary and the patient was homebound.

Response: As stated in an earlier response to comments, based on our analysis (which excludes HHAs in certain areas of the country involved in suspicious billing practices), we expect that less than 2 percent of all Medicare HHAs will be affected by a 10 percent cap on outlier payments, and that of this group of HHAs who may be affected by the 10 percent outlier cap, a vast majority are located in urban areas where beneficiaries have other choices. Thus, an overwhelming majority of HHAs will not be affected by the 10 percent outlier cap, and will be in a position to accept patients who legitimately need these services, and meet the eligibility requirements for the Medicare home health benefit. As such, we do not believe that increased costs will occur as a result of increases in hospital or nursing home stays, or visits to emergency rooms.

To summarize, we believe that our final outlier policy, for CY 2010 only, that includes a 10 percent cap on outlier payments at the agency level, in concert with a new 2.5 percent outlier pool (as opposed to the existing 5 percent outlier pool), and returning 2.5 percent back into the national standardized 60-day episode rates, the national per-visit rates, the LUPA add-on payment amount, and the NRS conversion factor, with a 0.67 FDL ratio, to be the appropriate policy at this time.

We will continue to monitor the trends in outlier payments and any related policy effects. Specifically, we plan to analyze overall national spending on outlier payments relative to the new 2.5 percent outlier pool by geographic area and provider type. We also plan to look at outlier payments, per HHA, relative to the 10 percent cap on outlier payments at the agency level by geographic area and provider type. So far as activities related to high suspect outlier payments, CMS is continuing with program integrity efforts including possible payment suspensions for suspect agencies. We will re-examine this policy in future rulemakings, and will consider further adjustments to this policy for CY 2011 and future years.

Implementation strategy for a 10 percent agency level cap on outlier payments.

CMS plans on implementing the 10 percent cap policy by making determinations as to whether or not a given outlier payment exceeds the 10 percent cap on a ''rolling'' basis. Under our planned implementation approach, for each home health provider, the claims processing system will maintain a running tally of the year-to-date (YTD) total home health payments. The claims processing system will ensure that each time an outlier claim for an agency is processed, actual outlier payments will never exceed 10 percent of the agency's YTD total payments. While an agency will always receive its base episode payment timely, the outlier portion of the claim will be paid as the agency's YTD payments support payment of the outlier. We plan to utilize a periodic reconciliation process under which outlier payments that were withheld are subsequently paid if the HHA's total payments have increased to the point that its outlier payments can be made. This reconciliation process will always result in additional cash flow to HHAs, and so we believe it is preferable. With regard to revenue tracking, distinct coding will be used on the HHA's remittance advice when outlier

payments are withheld, assisting receivables accountants in identifying and accounting for the differences between expected and actual payments.

B. Case-Mix Measurement Analysis

In the CY 2008 HH PPS final rule with comment period, we stated that we would continue to monitor case-mix changes in the HH PPS and to update our analysis to measure change in case-mix, both nominal and real. As stated in the proposed rule, we have continued to monitor case-mix changes and our latest analysis supports the payment adjustments which we implemented in the CY 2008 HH PPS.

The case-mix analysis used for this rule uses PPS data from 2007. As discussed in the proposed rule, this analysis indicates a 15.03 percent increase in the overall observed case-mix since 2000. We next determined what portion of that increase was associated with a real change in the actual clinical condition of home health patients. As was done for the CY 2008 final rule, using Abt Associates' 6-phase model, we examined data on demographics, family support, pre-admission location, clinical severity, and non-home health Part A Medicare expenditure data to predict the average case-mix weight for 2007. Our best estimate is that approximately 9.77 percent of the 15.03 percent increase in the overall observed case-mix between the IPS baseline and 2007 is real; that is, due to actual changes in patient characteristics.

The estimate of real case-mix change continues to decrease for a number of reasons: First, because the nominal change in case-mix continues to grow, real case-mix as a percentage of the total change/increase in case-mix becomes less. With each successive sample, beginning with 2005 data (in the CY 2008 final rule), the predicted average national case-mix weight is moving very little because the variables in the model used to predict case-mix are not changing much. At the same time, the actual average case-mix continues to grow steadily. Thus, the gap between the predicted case-mix value, which is based on information external to the OASIS, and the actual case-mix value, grows with each successive sample. Consequently, as a result of this analysis, CMS recognizes that a 13.56 percent nominal increase ((15.03 − (15.03 × 0.0977)) in case-mix is due to changes in coding practices and documentation rather than to treatment of more resource-intensive patients.

We stated in our CY 2008 HH PPS proposed and final rules that we might find it necessary to adjust the offsets as new data became available. Given that we have adjusted the rates for two consecutive years by −2.75 percent in each year (2008 and 2009), based on 2007 data, if we were to account for the remainder of the 13.56 percent residual increase in nominal case-mix over the next two years, we estimate that the percentage reduction in the rates for nominal case-mix change for each of the remaining two calendar years (2010 and 2011) of the case-mix change adjustment would be 3.51 percent per year. If we were to account for the remaining residual increase in nominal case-mix in CY 2010, we estimate that the percentage reduction to the national standardized 60-day episode rates and the NRS conversion factor would be 6.89 percent. In the proposed rule, we proposed to move forward with our existing policy, as implemented in the August 22, 2007 CY 2008 final rule, of imposing a 2.75 percent reduction to the national standardized 60-day episode rates and the NRS conversion factor for CY 2010. We stated that we would continue to monitor any future changes in case-mix as more current data became available and update as appropriate.

Comment: A number of commenters were opposed to further payment reductions based on estimates of nominal CM change. One commenter wrote that CMS assumes upcoding, yet 2008 HHA payments are $1 billion less than 1997 payments. Several commenters noted that HHAs have faced years of market basket update reductions during this decade, and that combined with annual wage index uncertainties and reform pending in Congress, and a case-mix adjustment on top of these other reductions, the survival of HHAs is threatened. The commenter stated that reductions may force the quality providers out of business, jeopardizing access, and leaving only those who ''game'' the system to provide care. A commenter wrote that this is contrary to the interests of Medicare's long term solvency or growing future care needs, and another wrote that reductions hurt innovation and quality. Additionally, a commenter suggested that the effect of the reductions will be to decrease dollars available for treating patients, and will indirectly limit access for patients with heavy care needs.

Response: We understand that some aspects of the payment environment have been uncertain at times. However, the total of 1997 payments is not comparable to the expenditures following the Balanced Budget Act (BBA) of 1997, which took effect in August of that year. The BBA led to a markedly lower use rate of home health services by 1999. Although the use rate has been rising since the historically low level brought by the BBA, the change in use rate is one reason for lower payments compared to the past. Analyses by the Medicare Payment Advisory Commission (MedPac) indicate that home health agency margins have been generally very healthy. Congressionally mandated updates and other payment changes under law have been made in the knowledge that agencies are generally not at risk of becoming insolvent. The continuing certification of new agencies and capital access for the industry, both of which are documented in MedPac's March 2009 annual report, are additional indications that Medicare payment is generally adequate or more than adequate. Furthermore, MedPac reported that freestanding agencies' cost per case grew at a relatively low annual average rate of 1.5 percent per year between 2002 and 2007. This low rate of cost growth compares favorably with annual payment updates of those years, notwithstanding Congressionally mandated reductions to some updates. Net updates for 2008 and 2009, incorporating the case-mix change adjustment, have been modestly positive. In terms of impacts on innovation, as we have noted elsewhere in our responses, some agencies have been able to make investments in new technology during these years. Home health quality measures have been generally stable or improving. In short, at this time, we do not believe that the survival of home health providers is threatened, and we have no indication that quality, access, and innovation are being compromised.

Comment: One commenter agreed with MedPAC's suggestion to establish ''profit/loss corridors'' as a financial safeguard for HHAs. Several commenters urged CMS to suspend further case-mix changes until a solution is found that ensures continuing access to home health care, and offered to work with CMS on the issues surrounding the case-mix change reductions. Several suggested that CMS meet with the industry to discuss the data and methodology, and find consensus. Another suggested that CMS refrain from additional case-mix adjustments until an impartial third party, the industry, and Congress review the process for analyzing case-mix.

Response: We appreciate the public's continuing effort to provide us with comments and creative suggestions. The Secretary does not have authority under current law to establish profit/loss corridors. Should these be mandated, we welcome suggestions about how to

implement them. Congress specifically addressed the possibility that nominal coding change might occur when it authorized (in BIPA legislation) the Secretary to offset such changes by reducing rates (see Section 1895(b)(3)(B)(iv) of the Act), and we are cognizant of the large reduction in costs per episode that accompanied prospective payment. Therefore, in 2007 we proposed and finalized a phased reduction in coding-based payment increases that we believe were not reflected by changes in underlying acuity, that were incurred between FY2000 and CY2005. We have continued to monitor nominal case-mix change through CY2007, and found continuing evidence that such changes were occurring. We received public comments on the case-mix change adjustment methodology in the past, and we have enhanced the model consistent with comments where necessary. As we noted in the proposed rule, after developing more data, we intend to test additional enhancements pursuant to comments we received in this rulemaking. At this time, we do not know whether any future results incorporating enhancements will measure additional real case-mix change than we have already accounted for using the existing model and data. We continue to welcome suggestions on how to improve our measurement method in a feasible and cost-efficient manner.

Comment: A number of commenters were opposed to the continuing decision to apply case-mix reductions to all agencies regardless of their average case-mix or rate of case-mix change. A commenter stated that the analysis focused on averages and does not account for States or regions with slower, more modest growth. A few commenters suggested that the Abt Associates reports showed that freestanding nonprofit agencies have not contributed to nominal case-mix change at a level comparable to for-profits, yet all agencies are suffering equal cuts. The commenter believes such a policy was unfair, and damaged agencies that CMS should be rewarding for their compliance, particularly non-profits. Several commenters stated that the reductions disproportionately affected hospital-based agencies or smaller agencies, particularly in rural areas.

While one commenter recognized the logistical problems if CMS were to excuse some agencies from further case-mix reductions, such as those that didn't have high average case-mix or which had not increased their average case-mix at a rate suggesting nominal change, the commenter wrote that CMS is obligated to apply policy fairly. The commenter suggested that we exempt agencies with low case-mix weights or which have not had excessive case-mix change from further across-the-board reductions.

Response: We continue to believe that it is more appropriate and feasible to implement a nationwide approach to case-mix change adjustment. An individual agency approach would be administratively burdensome and difficult to implement. Policies to address the identity of agencies in light of changes to organizational structures and configurations would need to be developed. Furthermore, smaller agencies might have difficulty in providing accurate measures of real case-mix change because of their small caseloads. We do not foresee being able to administer an individualized rate reduction fairly and effectively. Nor do we believe it would be possible to administer a regional or other classification-based reduction fairly. Any sort of special regional payment adjustments, the most common example being a rural add-on payment, would need to be legislated by Congress. Contrary to the statement a commenter made about the conclusions of the Abt Associates reports, the reports documented that freestanding voluntary/nonprofit agencies had relatively low average case-mix weights in FY2000. The analysis allowed changes in the ownership/affiliation composition of the population of agencies to contribute to real case-mix change, but it did not identify differences in case-mix growth since FY2000 within any class of agencies. Further, it seems unlikely that some significant number of agencies has avoided nominal case-mix change. It is counterintuitive to believe that agencies in general have not advanced and updated their application of OASIS and ICD9–CM diagnosis coding. In accordance with continuing educational efforts on the part of CMS, the State OASIS coordinators help agencies understand and apply OASIS, and other public and private assistance services that have developed around the proper and accurate interpretation of OASIS items and selection of the correct response to each item. That process of advancing and updating the application of OASIS is a natural outgrowth of the fundamental approach to payment adopted under the HH PPS.

Comment: A commenter wrote that CMS should adopt criteria to identify and protect ''safety net'' agencies from the impact of case-mix payment reductions, which admit patients based on need rather than on profitability. This commenter is concerned that these safety net agencies would be pushed out of the Medicare program by negative margins, creating a loss of critical patient access. This commenter stated that CMS should pay for the reasonable cost of care so that safety net agencies could be viable.

Response: Currently, the law does not provide for payment differentials for ''safety net'' agencies. Additionally, we believe that it would be extremely difficult to accurately identify safety-net providers, and any such process to identify and pay such providers differently could be inaccurate, prone to program vulnerabilities and costly to administer. Additionally, it would require CMS to enforce compliance with whatever criteria we used to identify such providers, to ensure that these providers continue to qualify for the payment differential. Rather, CMS is currently focusing on demonstrations which have a goal to reward providers based on the high quality of care provided, and savings associated with high quality, such as decreased hospitalizations.

Comment: Some commenters suggested further refinements to the case-mix adjustment model as a way of mitigating effects of the case mix change adjustment to the episode payment rate. The commenters mentioned giving credit for the absence of a caregiver, Medicaid status, residence in high crime areas, use of wound care and other supplies, use of innovative technologies, and for patients with advanced stages of debilitating chronic diseases.

Response: We appreciate the commenters' concerns and point out that we addressed the absence of caregivers in our CY 2008 final rule. OASIS item M0350 asks whether there are assisting persons in the home, other than the home care agency staff. On average, episodes without caregivers might be underpaid under the current case-mix model, but our analysis also showed that the payment difference was not large. Moreover, we continue to believe this variable raises significant policy concerns. We restate our belief that a case-mix adjustment should not discourage assistance from family members, nor should it make patients believe that there is some financial stake in how they report their familial supports while they are receiving home health services. Adoption of this measure of case-mix risks introduction of negative incentives into the case-mix adjustment system; these negative incentives potentially could have adverse effects on home health Medicare beneficiaries.

We also considered Medicaid status. After accounting for a broad range of clinical and functional factors which predict resource use, the presence of a Medicaid number was found to add a negligible amount to the predicted resource use, suggesting that having Medicaid is not a strong predictor of resource use. Given the administrative burdens of verifying the current Medicaid status of a patient, we judged that, on balance, adding Medicaid enrollment to the case-mix model was not warranted.

We know of no data to measure residence in high crime areas reliably for purposes of payment operations; nor are there studies documenting the role of this variable in patient-by-patient cost differences. The idea of incorporating technology use, such as wound care supplies and other innovative technologies, in determining the payment for specific patients raises significant policy issues about the role of the government in driving agency decisions about the mix of inputs to be used in delivering care. Our approach has been to document and pay in accordance with the average costs incurred when treating patients with different characteristics, but not to pay in accordance with agency technology choices. To the extent that costly technology is reflected in NRS costs and charges routinely available in administrative data, and use of such technology is the standard of care in specific circumstances, then we welcome proposals for identifying these situations in current data collection processes so that we can study their impact on NRS costs. We believe that any proposals from the public should balance the burden from adding complexity to coding systems and data collection processes on account of a small number of episodes against the impact on payment accuracy. Instruments such as OASIS are not designed to focus on uncommon situations. Regarding refinements for advanced stages of debilitating chronic diseases, we have concerns that measurement of this aspect of case mix would not be reliable, and could lead to inequities and nominal case mix change. Nonetheless, we welcome specific suggestions in future comment periods for measurement items and instruments that promise to reliably capture this dimension of health status.

Comment: Some commenters suggested that in the review of real vs. nominal case-mix change, CMS consider factors such as OASIS implementation, educational initiatives to teach agencies how to more comprehensively assess patient needs and more accurately code OASIS, improvements in documentation, and the quality of care.

Response: As we have noted in responding to similar comments in previous regulations, improved OASIS implementation, staff education, and improvements in documentation are indications of coding change, not an actual change in patient case-mix. While they may represent a much-desired improvement in the accuracy of data used to manage the care of patients, they do not represent cost increases related to the health status of patients. We have no basis to recognize the quality of care as a factor to consider in the review of nominal vs. real case-mix change. The legal basis for making payment reductions is nominal case-mix increases that can result from changes in coding practices and from coding improvements, as well as from financial incentives in the payment system.

Comment: Commenters cited an evolving home health population and changes in patient characteristics as factors to consider in the review of nominal vs. real case-mix change. A number of commenters mentioned that the patients entering home health are sicker, have more complex conditions with more co-morbidities, and require a more costly inter-disciplinary approach. One noted that the 1997 to 2000 increase of 13.4% in case-mix weights demonstrates the substantial effect that changes in patient characteristics can produce; this commenter wrote that if real case-mix could increase prior to HH PPS, it is unreasonable to assume that none of the change after that point is real.

Response: In our case-mix change model, we measured demographic and health status factors, and utilization indicators of health status, and then related them to the HH PPS case-mix weight in a regression equation. The methodology attempts to capture the effects of an evolving home health population by measuring the entire set of factors at two points in time. Having established the relationship between predictors and case-mix weight using data from the first time period, we then use the model to predict the case-mix weight based on the factors during the second time period. Therefore, this approach does consider changes in the home health population. To the extent that patients entering home health are sicker, have more complex conditions, and more comorbidities, the variables predicting the case-mix weight in the case-mix change model reflect such changes to a large extent. As we indicated in the proposed rule, we intend to test additional variables to pick up possible unmeasured population changes. It is not certain that these attempts will identify additional real case-mix change. If home health practice has evolved between FY2000 and today to provide an inter-disciplinary approach, this is not necessarily a change in the real case-mix of the treated population; it could well be a change in treatment practices, given that evidence from the case-mix change model and other evidence we have presented in previous regulations point to little change in the health characteristics of home health users. Notwithstanding the question of whether any shift towards an interdisciplinary approach has occurred, data cited by the Medicare Payment Advisory Commission and our own analyses of home health margins indicate that home health agencies are being adequately paid under the HH PPS.

Contrary to the assertion of the specific commenter that we had concluded that all of the change in case-mix was nominal, we identified nearly one-tenth of the difference between the average case-mix weight for FY2000 and CY2007 as real case-mix change. We allowed for that amount in the rate reductions. Regarding the large 13.4 percent change in average case-mix weight between 1997 and 2000 (that is, the last year of the IPS), in the 2007 proposed rule (72 FR 25393), we reviewed and discussed comparative OASIS data from the original Abt Associates case-mix study (1996–1998) and from FY 1999, as well as several studies of the effects of the Balanced Budget Act, and specifically, of the Interim Payment System (IPS).

The literature and data identified several changes in the health and demographic characteristics of the home health user population. An important implication of those studies and data was that patients with intensive or lengthy needs for nursing and personal care services as opposed to short-term or rehabilitative needs were less likely to be found in the national home care caseload as a result of the IPS (72 FR 25393). We also noted in that discussion that changes in therapy utilization during the final year of the IPS period, after the proposals for the HH PPS were issued, could have reflected an anticipatory response to the coming payment system. Such a behavioral response on the part of home health agencies would therefore have contributed to the 1997–2000 13.4 percent change in the average case-mix. As we indicated in our discussion, it is very possible that a certain amount of nominal change occurred during 1997–2000; this would have been due to the

period October 28, 1999, through September 30, 2000, which is the period after the proposed rule was issued.

Comment: Some commenters had specific criticisms of the real case-mix change model. Some wrote that the methodology for assessing changes in patient characteristics relies on DRG changes, but only half of HHA patients are discharged directly from a hospital to an agency. In commenting on the case-mix change model, some commenters stated that data on ownership structure were not related to patient characteristics. They went on to write that the methodology gave no consideration to changes in care delivery in other health sectors (for example, the growth in Medicare Advantage), or in reimbursement methodologies that drive patients into home health care.

Response: Far greater than half of the observation units—that is, episodes—in the samples had hospital discharge data. The model uses data from the last hospital stay the patient had before the home health episode. Approximately 90 percent of the random sample of episodes in the case-mix change model, regardless of the time period (FY2000 or CY2007), had a hospital stay record. Not all of these hospital stay records were classifiable to a specific DRG because of sample size considerations, but we were able to classify every hospital stay into a medical or a procedure group, based on information in the hospital stay record. For patients with multiple episodes, the last discharge did not necessarily lead directly to home health admission, but it would still reflect fairly recent health characteristics. For a small proportion of episodes, the hospital stay may have occurred distantly in time (but no more than four years earlier). In alternative models described in the Abt Associates Final Report (April, 2008), hospital stays for some conditions were not used if they did not occur relatively close in time to the home health episode, but the results did not change the essential conclusions we drew from the analysis.

The predictions of the case-mix weight from the model were adjusted for the ownership/affiliation category of the agency that delivered the care under the episode. We made this adjustment to account for the historically different coding practices and apparent case-mix levels associated with different kinds of ownership. We did this out of an abundance of caution, because of a paucity of literature explaining these differences. It is plausible that the large decline in hospital-based agencies that occurred after the last year of the IPS could have affected the national case-mix in a real sense. In any case, had we not made the ownership/affiliation adjustment, we would have found less real case-mix change from our analysis.

We disagree with the commenter's conclusion that we have ignored the effects of reimbursement methodologies that drive patients into home health care. Variables in the model account for prior utilization in acute care hospitals, long-term-care hospitals, inpatient rehabilitation facilities and skilled nursing facilities. The model relates these various kinds of utilization to the case-mix weight in the ensuing home health episode. We used the model and the levels of prior utilization that occurred by CY2007 to make predictions of the real case-mix weight for that year. In fact, the net effect of all the Medicare cost and utilization variables in the model was to raise the predicted average case-mix weight, consistent with what appears are the commenter's assumptions. However, the increase was small. To the extent that the nature of the relationship between the specific kind of prior utilization and the ensuing episode's case-mix weight has changed, the case-mix prediction methodology may not capture the entire impact of reimbursement changes in other parts of Medicare. However, in its Final Report (April, 2008), Abt Associates conducted a test for possible changes in the relationship between predictor variables and case-mix, and this test did not support the idea that changes in the model variables' relationship to case-mix had occurred. Moreover, we believe we have captured some of the other settings' reimbursement effects by measuring change in utilization of prior settings. In addition, the model includes an array of other demographic and health-related variables that are expected to detect change in the health status of the user population, which is the real underlying issue raised by reimbursement changes.

As we indicated in the proposed rule, we intend to test changes to the model that may represent the growth in Medicare Advantage.

Comment: Several commenters wrote that CMS' methodology for estimating nominal case-mix change is imprecise and relies on limited sources of data. One commenter noted that the methodology was not based on clinical analysis but on statistical inferences in a complex model that is so abstract and complex that significant data errors were undetected. The commenter noted that it is plausible that the average case-mix continues to grow, since the ratio of for-profit to nonprofit agencies increases each year, and for-profit agencies have higher case-mix. Several commenters wrote that nominal case-mix change estimate is a guesstimate, and is not sufficient or accurate. Some commenters suggested CMS engage additional consultants to use alternative methods of evaluation, and cross-compare outcomes, before the proposed 2011 adjustment is finalized. Another commenter asked for an independent audit of Abt's work.

Response: We believe that our methodology for quantifying the contribution of real case-mix change to total case-mix change between FY2000 and CY2007 is a reasonable approach, but it is only part of the evidence base for our conclusion that nominal case-mix change has been pervasive. As we noted in the proposed rule, the full evidence base was presented in a series of regulations, beginning with the May 4, 2007, proposed rule (72 FR 25393). We discussed a variety of statistical data, including but not limited to resource use measures in comparison to case-mix weight changes, shifts among severity levels of the clinical, functional, and service dimensions of the case-mix system, shifts in the share of high-therapy episodes, differential changes in responses among various OASIS items (payment-related items and non-payment-related items), and a detailed analysis of the evolution of OASIS guidance and manual instructions and definitions that could have affected case-mix item responses. We presented admission rates over time for five specific conditions suggested by commenters, and examined the time to admission for those conditions. These results were updated in the proposed rule, and suggested that changes were insufficient to explain the substantial upward trend in case-mix. We also noted the steep learning curve faced by agencies in adapting to the new environment presented by OASIS, resulting in improved coding. We also pointed out that coding changes are not foreign to any payer system when payment methodology becomes more dependent on provider ascertainment of health status information. The evidence base is the best available, given the infeasibility of auditing large chart samples from both time periods, which may be assumed to be the type of clinical analysis that a commenter suggests. As we noted in the proposed rule, we are investigating enhancements to the model to capture more elements of real case-mix change that may be unmeasured. However, whether these enhancements will reveal any additional real case-mix change than we have already measured is unclear at this time.

From the point of view of statistical methodology, the model is a basic linear model and not complex; although it includes several variables. Our application of the model relies on large, representative samples. The preparation of the data has been subject to some technical corrections, but the basic approach has remained the same and is not subject to significant error. Furthermore, insofar as there have been data errors, they have not been so significant as to alter by large amounts the size of the payment reductions we made based on the model findings. As we have noted elsewhere in our responses, the model does allow for the contribution of for-profit agencies to real case-mix change.

We have no plans for undertaking alternative methods of evaluation. An independent audit is not necessary because the model and results of the application of the model have been presented in detail in the Abt Associates reports. However, we do intend to test enhancements to the model (described in the proposed rule) and welcome suggestions from the public for modifications to the statistical approach and additions to the data that are cost-efficient to make.

Finally, as a point of clarification, the 2.71 percent reduction for CY 2011 is not a proposed adjustment. In the CY 2008 final rule (at 72 FR 49843) we promulgated our policy of a 2.75 percent reduction for 3 years (CY 2008, CY 2009, and CY 2010) and a 2.71 percent reduction for CY 2011. Nothing in this final rule changes what was finalized in the above rule, with regards to payment reductions to address the increase in nominal case-mix.

Comment: Some commenters believed that the increased therapy needs or increased involvement of physical therapists in assessing patients have contributed to appropriate growth in HHRGs. They wrote that the change in focus from disease management to restorative therapy has increased HHRGs and benefited patients. A few suggested that the process for evaluating case-mix change related to therapy utilization must include in-depth review of the merits of individual claims, as the limited use of proxies is unreliable. Several commenters believed that the analysis failed to adequately evaluate whether changes in case-mix are due to abusive over-utilization of therapy, fraudulent or abusive coding, erroneous coding, revised coding instructions, or improved quality coding. Where changes are due to abusive or fraudulent practices, several commenters suggested that CMS address those abuses with the specific providers, rather than applying a punitive adjustment to all agencies. Alternatively, commenters suggested CMS use enforcement to conduct targeted claims review and deny payment where case-mix weights are not supported by the plan of care.

Response: We agree that there has been a shift toward rehabilitative services, but we believe commenters are confusing a change in the home health ''product'' with actual change in the health status of the treated population. As MedPAC has noted for years, with the implementation of the HH PPS, the service payment unit underwent changes: the unit of payment changed from visits to 60-day episodes, and the content of the home health product changed from that of the 1997–2000 period—consisting of fewer visits, shorter stays, and more therapy with less aide care (MedPAC, March 2004, ''Report to Congress: Medicare Payment Policy'', Section 3D, ''Home Health Services''). In any future enhancement of the real case-mix change model, we may investigate allowing for the possible increased use of physical therapists as the assessing clinician. We would do this on the assumption that increased use of therapists to make assessments is a change that is not a consequence of the agencies' learning curve in the HH PPS environment or of new financial incentives that began in October 2000. We would do this despite the fact that it could be stated that differing assessment results arising from the use of nurses vs. therapists as assessing clinicians do not signify differences in the health status of the treated patient. In any case, we expect that such a change to the model would have a very small impact on our conclusions.

To the extent that abusive over-utilization of therapy and fraudulent or abusive coding are responsible for case-mix growth between FY2000 and CY2007, it would be preferable to remove agencies engaging in these activities from the data analysis. However, it is difficult for us to identify these agencies on a large scale, so we find the commenter's suggestion impractical. Furthermore, we believe that the overwhelming majority of providers are not committing fraud, which would mean that eliminating the fraudulent providers would not have a large impact on our results. If commenters know of fraud being committed in their areas, we urge them to inform the Office of the Inspector General and the CMS Regional Office. As stated earlier, CMS is committed to addressing suspect fraudulent activities, especially those in areas where we see suspicious outlier payments, and will monitor and aggressively pursue actions towards agencies where inappropriate billing of outlier payments is identified.

Comment: Several commenters suggested we conduct an impact analysis of the proposed rule relative to case-mix, include an evaluation of access in each year of any adjustment, and consider all factors related to access. These commenters felt that the impacts in the proposed rule were factually and legally inadequate and therefore violated the Regulatory Flexibility Act.

Response: We appreciate the commenter's suggestion; however, our current approach to impact analysis does include the effect of the rate reduction related to nominal case-mix change. Our impact analysis is subject to OMB review and meets legal requirements. We will consider how to increase our monitoring of access going forward. We would appreciate any specific suggestions from commenters on ways to do this.

Comment: A few commenters questioned the assumptions surrounding LUPA episodes which were used in the case-mix change analysis. One wrote that nearly all ''creep'' may have been offset if CMS had modified its actuarial assumption of 5 percent LUPA incidence to actual occurrence once PPS was in place. The commenter asked that we disclose the LUPA incidence for 2001 through 2006. The commenter felt that using a 5 percent LUPA incidence, rather than the higher, actual LUPA incidence, has led to agencies being underpaid. This commenter added that instead of lowering rates using a ''creep'' theory of justification, CMS should have raised the base rate calculation methodology with the refinement process, at a minimum for the LUPA mis-application and also for the real need severity CMS determined exists. This commenter wrote that the combination of LUPA incidence, an outlier rate below 5 percent, changing the single therapy threshold to multiple therapy thresholds, and the increased incidence of high therapy cases constitutes more than 100 percent of the observed increased in the average case-mix weight.

Response: Based on a 10 percent random beneficiary sample, our data show the LUPA incidence rates from 2001 to 2007 were the following: 15.06 percent, 14.11 percent, 13.35 percent, 12.53 percent, 12.12 percent, 11.16 percent, 10.54 percent. We note that LUPA incidence rates, while higher than the forecasted 5 percent, continue to decline. LUPA episodes were not used in the measurement of case-mix

change in either our analysis or in the Abt Associates model of real case-mix change. We have no evidence that LUPA episode assumptions caused agencies to be underpaid; in fact, margin analysis shows PPS payments have been adequate. It should be recognized that we proposed to adjust the episode national standardized payment amount to be consistent with an outlier expenditure proportion of less than 5 percent of total outlays. This upward adjustment is a continuation of the methodology we have used since the beginning of PPS; the upward adjustment is simply to provide for a lower rate of outlier expenditures than the 5 percent assumption we have traditionally used. We made this proposal in conjunction with the proposal to cap outlier payments at 10 percent on an per-agency basis. We have no basis to change payment rates on account of the refinement of the therapy thresholds. Even if agencies return to more clinically based therapy treatment plans, resulting in a new distribution of therapy visits per episode and reduced total expenditures, we would not make any payment rate changes in isolation from other issues, such as the change in the mix of visits since the original PPS final rule, and change in the total number of visits in a 60-day episode. Similarly, we do not believe it is appropriate to adjust payment rates for the deviation of LUPA episodes from the forecasted 5 percent, in isolation from other issues, such as addressing the issue of lower visits per episode existing today, as compared to the number of visits per episode on which the HH PPS rates were originally based. We believe that the appropriate time and place to deal with any re-estimates, in these multiple areas, is if and when a rebasing for the rates were to take place.

Comment: A commenter wrote that the elimination of the single therapy threshold was an attempt by CMS to align payment incentives with patient care needs. This commenter felt the case-mix change primarily reflects growth in therapy utilization. A different commenter asked CMS to clarify how going from single to multiple therapy levels did not constitute a ''double dip'' penalty. This commenter wrote that the multi-level therapy equation model HHRG modifications may have lowered the relative value for all higher therapy cases, but the commenter couldn't confirm this since CMS did not release the data. The commenter stated that ''re-jiggering'' of service factors was likely directed toward lowering reimbursement rates and having therapy services delivered in a more clinically driven manner. The commenter added that the relative loss of aggregate case-mix weight under the 4–Equation model equals measured case-mix weight change, which is tantamount to a ''double dip''. Another commenter wrote that the data he analyzed showed that 95 percent of case-mix growth was a direct result of higher levels of service domain in care delivery under PPS. He added that when PPS was originally proposed, and again in 2007, CMS acknowledged that it did not have good data to measure or apply case-mix based on patients' service needs, yet CMS stated that it believed that the multi-level therapy thresholds was an improvement over the single threshold approach.

Response: The following table illustrates the change in the distribution of therapy visits per episode since FY2000:

PERCENT OF TOTAL EPISODES BY NUMBER OF THERAPY VISITS PER 60-DAY EPISODE: INTERIM PAYMENT SYSTEM AND HH PPS

Number of therapy visits	Time period							
	FY2000	2001	2002	2003	2004	2005	2006	2007
None	60.0	54.5	52.3	51.2	49.9	49.6	49.6	49.8
1 to 3	9.7	9.1	9.4	9.6	9.7	9.6	9.3	9.1
4 to 6	7.4	8.0	8.3	8.3	8.4	8.3	8.1	7.9
7 to 9	6.2	6.4	6.4	6.2	6.1	6.1	5.9	6.0
10 to 12	4.8	8.3	9.2	10.4	11.3	11.8	12.3	12.6
13 to 15	3.4	4.8	5.3	5.6	5.9	6.0	6.2	6.3
16 to 18	2.5	3.3	3.5	3.5	3.7	3.8	3.8	3.8
19 to 20	1.2	1.4	1.5	1.4	1.4	1.4	1.3	1.3
21+	4.7	4.2	4.1	3.8	3.7	3.5	3.5	3.2
Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0

Notes: FY2000 data from 100% sample of claims from Oct. 1, 1999, through Sept. 30, 2000.
Data presented for 2001 through 2007 are Calendar Year data.
Claims were grouped into 60-day episodes.
PPS data based on a 10% random beneficiary sample of PPS episode claims beginning with 1/1/2001.

We agree that growth in therapy utilization of ten visits or more was a significant factor in case-mix change, because the ten-visit therapy threshold produced a large increase in an episode's case-mix weight. The table above shows that episodes of ten to eighteen therapy visits grew steadily as a proportion of total episodes under HH PPS. Ten to twelve therapy visits, a range that would generally be most profitable to agencies, grew the most, and by 2007 such episodes accounted for about one quarter of all the episodes that had a therapy visit. These episodes, of course, also were among those with the highest case-mix weights and had a minimum case-mix weight of 1.4847.

One goal of the case-mix refinements was to better match payments with agency cost experience under PPS; thus we used 2005 data for estimating the final case-mix model that was used for the 153-group system. Changing to multiple therapy thresholds with a gradual increase in payment better aligns costs and payments and avoids incentives for providers to distort patterns of good care that would occur at each proposed therapy threshold. As a disincentive for agencies to provide more care than is appropriate, we proposed that any per-visit increase incorporate a declining, rather than constant, amount per added therapy visit. It should be understood that the refined case-mix methodology redistributed the resource costs expended in 2005 to the new set of 153 groups we defined from the severity levels developed from the four-equation model generating OASIS item scores.

Instead of a single high therapy range, one based on average resource costs for all episodes with 10 or more therapy visits (including those with the very highest number of therapy visits), the refined system had multiple therapy ranges, with the payment addition for therapy being based on all episodes with therapy visits in the stated range. Therefore, the right tail of the distribution (that is, cases with the highest therapy visits and thus the highest resource costs for therapy) is not figuring into the payment increment until the 20+ therapy visit level is reached. Thus, it was our intention to have lower payments for episodes with 10 to 12 therapy visits, so as to better align costs and payments.

The redistribution of resource costs among the new 153 groups resulted in some lowering of case-mix weights, as just described, but all the resource costs expended in 2005 were accounted for in the payment system. The final case-mix change adjustment addresses nominal case-mix change and is applied across all case-mix groups in a similar manner. Therefore, the final case-mix adjustment is completely separate from the realignment of payments to the 153 groups, and thus there was no double-dipping. In sum, the multiple therapy thresholds and the case-mix change adjustment are unrelated and do not doubly adjust the rate as each adjustment is clearly warranted by the data.

We do not have enough information to verify the commenter's finding that 95 percent of case-mix growth was a direct result of higher levels of service domain in care delivery under PPS.

Comment: Several commenters wrote with suggestions or alternatives to the case-mix analysis. One commenter wrote that CMS should continue to work on developing post-acute care national assessment tool for use across all settings, which would allow CMS to better determine what settings were appropriate for patients based on acuity. It would also allow CMS to understand how changes in home health case-mix are affected by the type of patient admitted to home health. Some wrote that CMS should allow implementation of OASIS–C before any further case-mix reductions are made. A commenter suggested that we fully analyze and compare information within OASIS–C with the development and testing of the Continuity Assessment Record and Evaluation (CARE) instrument. Another commenter felt that the data from OASIS–C would be helpful to CMS in determining real changes in case-mix rather than those stemming from coding or documentation improvements.

A number of commenters felt that the proposed 2011 adjustment was too steep, particularly given low or negative profit margins, and recommended a minimum 4-year phase-in; another suggestions that we consider the impact on low-margin agencies before finalizing the rule. Some commenters suggested that the complexities of the case-mix methodology warranted making relevant CMS staff and contractors available to respond to questions regarding the assessment methods prior to expiration of the comment period. Additionally, these commenters suggested that CMS make all data used in the analyses available, and provide a 120-day comment period to allow time for expert analysis to evaluate the methodology and findings. A different commenter was strongly opposed to reductions for 2011 until more analysis of medical necessity of the care provided was complete. This commenter encouraged us to reduce or eliminate the creep attributed to the shift to provision of higher therapy services unless clear evidence existed that the therapy services were not medically necessary. This commenter suggested we make a distinction in the application of creep between therapy and non-therapy HHRGs, and recommended that physical and occupational therapists be added to MAC review departments with mandatory education and experience as qualifications for medical review.

Response: We thank the commenters for these thoughtful comments and suggestions. We assure the commenter that we are continuing our work associated with the post-acute care demonstration. We are currently in the early stages of data analysis of the assessment data and resource data which has been collected to date. We will finish data collection by the end of calendar year 2009. We remind the commenter that the analysis of these data is a multi-year project, and that the analysis will consider the data collected via the CARE instrument, the validity and reliability of those data, and the strength of the items as payment predictors. CMS plans to present the analysis of the data collected during the demonstration and associated recommendations to Congress in the summer of 2011. Regarding the commenters' suggestions that we wait to make further case-mix reductions until we assess the OASIS–C data, we remind the commenter that the OASIS–C revisions did not significantly change payment items. We believe that the commenter may be suggesting that CMS analyze OASIC–C non-payment items to assess whether these new items would enable CMS to better identify the health status of the patient, and whether these new items might be more reliable in assessing real patient acuity change versus that which is unrelated to real changes in acuity (nominal). It is important to note that because we are just beginning to collect these items in CY 2011, that sort of comparative analysis would only be possible after several years of OASIS–C data collection. We may consider the suggestion that we account for increases in nominal case-mix over a longer period of time, in future rulemaking. In this final rule, we are not accounting for additional changes in nominal case-mix which we identified from current data analysis. Rather, we are maintaining the policy, finalized in CY 2008, to reduce CY 2010 base episode payments by 2.75 percent. With regards to the suggestion for a 120-day comment period, we are unfortunately unable to adopt such a comment period given our rulemaking timeframes, but we will continue to make every attempt possible to share our analyses with the public in as timely as possible. Regarding the commenter's suggestion that CMS should assess the medical necessity of therapy visits before applying up-coding reductions, as we described in an earlier comment, we find this suggestion impracticable. With finite resources, it would be challenging to perform a medical review on every claim which includes therapy.

Again, as a point of clarification, the 2.71 percent reduction for CY 2011 is not a proposed adjustment. That percentage reduction was promulgated in the CY 2008 final rule (72 FR 49843).

Comment: A commenter stated that while he did not assess changes in home health case-mix, an increase in case-mix unrelated to severity in 2007 confirms the need for continuing review of annual case-mix change. The commenter noted that nominal changes in case-mix had been found when major revisions were implemented in other payment systems, suggesting particular scrutiny of the 2008 changes in case-mix was warranted. The commenter wrote that if additional nominal case-mix change was indicated, CMS should adjust payments as appropriate. The commenter further recommended that we combine the planned reductions for 2010 and 2011, and reduce payments in 2010 by 5.5 percent, and that payments should be rebased to a level equal to average costs in 2011.

Response: We thank the writer for these comments. We agree with the commenter that we need to continue to analyze current data as they become available to us and update our

identification of nominal case-mix using these more current data. We are currently analyzing 2008 data to assess the impact of our CY 2008 refinements, and determine the effect these refinements may have had on nominal case-mix growth and will address the need for additional reductions to the HH PPS rates in future rulemaking.

Comment: Another commenter wrote that CMS uses MedPAC's reports of strong profit margins and high levels of new entrants to bolster the view that access will be unaffected after the full creep cutbacks are implemented. This commenter wrote that an industry association disagrees with MedPAC's methodology, and concluded that one-third to one-half of HHAs would lose money when creep reductions are fully implemented. The commenter questioned MedPAC's use of a sample of HHA cost reports representing less than 60 percent of HHA visits. This commenter asked that the full information from MedPAC be released and subject to review since CMS is supporting its case-mix reduction using that report.

Response: We would like to assure the commenter that the analysis and associated methodology CMS used to differentiate between real and nominal case-mix growth involved extensive analysis, which is fully documented in the Abt report, publicly available via the HH PPS Web site at *http://www.cms.hhs.gov/Reports/downloads/Coleman_final_April_2008.pdf.*

We understand that the commenters are concerned about whether we are taking into consideration the financial conditions of hospital-based home health agencies. As MedPAC noted in its March 2009 report, financial margin estimates using hospital-based providers are impacted by the allocation of overhead costs from the hospital. We agree with this assessment and believe that using this information would not provide an accurate view of the overall industry margin or the impact of the proposed change to the payment system.

Comment: A commenter disagreed with our choice of data used for the creep analysis, saying that he was not convinced that data from the final year of IPS could serve as a base period from which to measure nominal growth in case-mix. The commenter questioned whether these data were representative of post-PPS, and noted that there was a learning curve with OASIS. The commenter wrote that until we made the ''derived base period'' information available to the public, we should defer further creep adjustments and roll back the first two stages. He also questioned Abt's use of just 313,447 IPS OASIS assessments, and was concerned that 18 percent of the episodes could not be evaluated since the OASIS could not be reliably linked to claims. He also noted that much has been made of improvements in OASIS coding over time, which suggests that the OASIS was not properly coded at the time of IPS. He questions the validity of this sample since many HHAs were not filing OASIS at the time, and concluded that it was illogical to assume the IPS data could be reliable bases for measuring creep. He also suggested we make public the data showing actual use of S2 and S3, and the IPS data used as a proxy for S2 and S3 cases. He noted that there was no M0825 data in OASIS for the final IPS period; therefore one could argue that the final IPS data understates case-mix.

Response: We disagree that OASIS data collected during the last year of IPS were so poor as to be unusable to measure the case mix during that period. Agencies were not supposed to be unfamiliar with OASIS in the fall of 1999. Medicare first proposed making OASIS mandatory in March 1997. The development of OASIS had been supported and publicized by a large industry group over the years (transcript of June 24, 1997, meeting of National Committee on Vital and Health Statistics, accessed at *http://www.ncvhs.hhs.gov/970624b1.htm#oasis*). OASIS was discussed in professional and research journals (for example, see *Home Healthcare Nurse,* May 1997, Vol. 15/5: 340–342). OASIS version B–1 was released in October 1998, one year before our observation period for the IPS baseline began. After first publishing a final regulation in January 1999 whose effective date was delayed on April 27, 1999, Medicare re-finalized the OASIS regulations in June 1999. Agencies were instructed to begin OASIS data collection for Medicare, Medicaid, and all other skilled services patients by July 19, 1999. This was 2.5 months before the beginning of our IPS baseline observation period, though they did not have to transmit data (other than for testing purposes) until August 25, 1999. The Health Care Financing Administration (HCFA), CMS's predecessor agency, issued a comprehensive OASIS Implementation manual in July 1999 containing item-by-item instructions about how to complete the OASIS assessment. It was for the use of HHA agency staff who would be implementing OASIS as a uniform core data set. HCFA conducted a national meeting of State OASIS coordinators in mid-September 1999 to train them in responding to agency requests for information. Four million assessments were submitted by HHAs to State agencies from July 1999 to January 2000 (CMS–3006–F, Dec. 23, 2005). This is an indication that agencies were actively working with OASIS from the start of the OASIS effective date. Our inability to match all simulated episodes to an OASIS stems mainly from the fact that time points of data collection for OASIS before HH PPS did not necessarily match the starting points of simulated episodes. During that period, OASIS was collected for outcomes purposes, not payment purposes.

The learning curve with OASIS is an important reason why nominal case-mix growth should be expected. However, we based our case-mix change adjustment on the evidence that patient health status did not change substantially, notwithstanding that improved understanding of and application of OASIS occurred. Contrary to the commenter's implication that the IPS sample was small, our sample size of hundreds of thousands is extremely large. Scientifically, sample size adequacy does not hinge on the ratio of the sample to the total population, but does depend on the actual absolute numbers of observations. Regarding the 18 percent of IPS episodes without a matched OASIS, we appreciate the commenter's concern, but we have good reason to believe that the sample we used is representative. Based on our understanding of the main cause of the OASIS shortfall (described above), we do not have reason to infer a bias in the assessments that we do have. We also note that the sample's average is consistent with an average from an initial episode sample. Initial episodes are more likely to have a matched OASIS (89 percent for initial episodes vs. 75 percent for subsequent episodes) so using data based on initial episodes should reduce concerns about sample representativeness. The estimate of average case-mix weight that we get from the sample combining initial and subsequent episodes differs from the estimate we get from the initial episodes sample in the direction we expect (1.096 vs. 1.125). That is, the estimate from total (initial and subsequent) episodes is lower because health conditions measured in OASIS and used in the case-mix system tend to be more severe around the time of admission. Furthermore—and most important in terms of the basis for our policy decision to adjust payment to compensate for nominal case-mix change—using an initial episode sample would produce the same percentage

growth in case-mix as using a combined initial and subsequent episode sample. As we stated in the CY 2008 final rule (72 FR 49833): ''We used all episodes rather than just initial episodes. This change in our sample selection approach does not materially change the estimate of case-mix change, whether comparing the baseline to HH PPS 2003 or HH PPS 2005.'' Finally, modeling case-mix on an IPS sample that could possibly deviate in some respects from a fully representative sample would not necessarily produce distortions in the relationships found by the modeling procedure. Our conclusions about real case-mix change depend upon those relationships.

As we have noted elsewhere in our responses to comments, we believe we have made available highly detailed information about our data and methodology in the Abt Associates reports (April 2008 and August 2009) and in our regulations. For years, claims and OASIS data have been routinely available for purchase from CMS for researchers who wish to analyze it and can guarantee the security of the data. We published data on the rates of use of S2 and S3 under the IPS baseline period and 2003 in Tables 8 and 9 in the May 4, 2007 proposed rule (72 FR 25396–25399). The table in this section, in a response to a comment, provides detailed annual therapy visit distributions and thereby reflects S2 and S3 rates year by year. We did not use M0825 in determining S2 and S3; instead, we used the therapy visits reported by providers on the matched paid claims.

Comment: A commenter asked that we re-examine the case-mix weights for congestive heart failure (CHF), chronic obstructive pulmonary disease (COPD), and similar chronic conditions. She wrote that we claim HHAs are seeing fewer of such patients, and that she believes this is either due to coding practices or to agencies not accepting these patients. The commenter believes that the current method for accounting for patients with these conditions results in a very low case-mix weight. This low case-mix weight, coupled with high nursing needs, causes these patients to exceed available reimbursement, leading to a loss for the agency. The commenter asked that we increase points for these diagnoses, refine how shortness of breath is assessed and points calculated, and consider the speed at which such patients can perform Activities of Daily Living (ADLs), and not just whether the patient can do the ADL independently.

Response: The case-mix model we finalized in the CY 2008 final rule recognizes more diagnoses than the original (FY2000) HH PPS model, and it includes the specific diagnoses mentioned by the commenter, CHF and COPD. Also, the CY 2008 case-mix model recognizes resource-intensive interactions (that is, combinations of conditions within the same episode). The model specifically recognizes the interaction of pulmonary conditions and ambulation: the cost of serving pulmonary patients with a limitation in ambulation is more during an initial episode, and this combination increases the case-mix score. We believe this interaction case-mix item does capture the burden of COPD on ADLs. Shortness of breath, as measured by OASIS item M0490, provides additional points for initial episodes. Providers receive points for these and other conditions identified from statistical modeling of the relationship between diagnoses and OASIS measures on the one hand, and resource costs on the other. Agencies also receive points for secondary diagnoses, thereby accounting for multiple co-morbidities.

Furthermore, we implemented a case-mix adjusted payment for non-routine supplies, such as those related to ulcers or wounds. All of the point values in the case-mix model represent the average addition to the resource cost of the 60-day episode when a patient has the condition associated with the points. The fact that agencies may encounter some cases more costly than the case-mix-adjusted payment is a result of the variability in patient needs inherent in the population. We believe that, on average, this model aligns payment and agency costs with acceptable accuracy. As shown in Table 1 of the CY 2010 proposed rule (74 FR 40958), the proportion of episodes (initial episodes and all subsequent episodes) where the patient was discharged from the hospital prior to entering home health and had a hospital principal diagnosis of CHF has decreased by more than one-third since FY 2000. We did not publish a similar statistic for COPD. The statistics in Table 1 do not reflect coding practices in home health agencies; the conditions in Table 1 come from the hospital principal diagnosis preceding the episode (where the discharge occurred within the 14 days before the first day of the episode). As for refining the dyspnea and ADL measures in OASIS, we have reviewed all items in the course of developing OASIS–C. We made changes to selected items where a need for improvement was apparent. This review did not result in significant changes along the lines suggested by the commenter. Furthermore, it is unclear how the speed of ADL performance affects the resource costs for nursing care, beyond the added costs already accounted for in the point-bearing items mentioned earlier in this response. Finally, all changes to the OASIS instrument have to be balanced against the added burden imposed on the agency to measure performance reliably and accurately.

To summarize, we are moving forward with our existing policy, as implemented in the August 22, 2007 CY 2008 final rule with comment, of imposing a 2.75 percent reduction to the national standardized 60-day episode rates and the NRS conversion factor for CY 2010. We will continue to monitor any future changes in case-mix as more current data become available. We will also continue to look at ways to enhance the Abt model, and depending on the availability of newer and additional data, look to take into account factors that might yet be unmeasured in the current model. Given the continued growth in nominal case-mix, we expect to revise upward the 2.71 percent reduction to the national standardized 60-day episode rates and the NRS conversion factor for CY 2011 in next year's rule. Analysis in next year's rule will update the measure of the nominal increase in case-mix and compute the appropriate percent reduction to the national standardized 60-day episode rates and the NRS conversion factor to account for that increase.

C. Proposed CY 2010 Rate Update

1. The Home Health Market Basket Update

We proposed a HH market basket update of 2.2 percent for CY 2010. This update was based on IHS Global Insight Inc.'s first quarter 2009 forecast, utilizing historical data through the fourth quarter 2008. Since publication of the proposed rule, we have a revised market basket update based on IHS Global Insight Inc.'s third quarter 2009 forecast, utilizing historical data through the second quarter of 2009. The final HH market basket update for CY 2010 is 2.0 percent. A detailed description of how we derive the HHA market basket is available in the CY 2008 Home Health PPS proposed rule (72 FR 25356, 25435).

Comment: One commenter stated the market basket increase of 2.2 percent would not be sufficient to cover the increased costs of implementing OASIS–C, CAHPS, as well as increases in staffing costs. The ongoing phase-in of the case-mix ''creep'' adjustment would add to the financial burden of receiving a market basket increase

which is lower than the previous year's 2.9 percent. According to MedPAC, 25 percent of HHAs have negative profit margins. The increase in costs of operation will have a negative impact on the financial viability of these agencies.

The commenter noted that not-for-profit HHAs are investing more of their revenue in attracting and retaining qualified HH staff. The shortages of nursing and physical therapy personnel are a major challenge. HHAs compete with other providers to attract these professionals.

Response: We disagree with the commenter that the 2010 market basket update is not sufficient. The home health (HH) market basket is not designed to account for changes in total costs (such as those associated with the implementation of OASIS–C or other initiatives), but rather it is intended to measure the input price pressures that the average home health provider is expected to face in the coming year. The composition of the market basket itself is made up of a set of mutually exclusive and exhaustive cost categories that reflect the cost structure of the industry (in a given base year). The HH index's cost shares (or weights) are based on data reported on the Medicare cost report forms and are specific to home health agencies. Each cost category is assigned an appropriate price proxy whose projected movements are weighted by their respective cost shares resulting in the actual market basket update.

We recognize that HH providers compete with the rest of the health care industry for nurses, physical therapists, and other health care personnel. To the extent that the cost structure of the HH industry changes over time, such as a greater share of expenses being devoted to wages and salaries, for example, that change in share is picked up during the rebasing process of a market basket. It has been our experience that the cost structure of the HH industry does not vary substantively from year to year. As a matter of practice, however, CMS periodically rebases its market baskets to reflect updated cost structures. The current HH market basket is based on Medicare cost report data from 2003 and, we believe, reflects the appropriate cost composition of the industry. We will continue to closely monitor the cost structure of the HH industry and will propose to rebase the market basket, as appropriate. Notably, the final update contained in this rule does reflect the expected competitive wage pressures associated with hiring health care personnel in the coming year.

Comment: One commenter stated support for our proposal to provide the full market basket update of 2.2 percent in CY 2010. The commenter stated that this measure provides relief to HHAs that have been subject to market basket cuts for several years including a 0.8 percent reduction in the market basket for 2004 (July to December) and 2005, and a full 3.6 percent market basket reduction in 2006 (per provisions of section 5201 of the DRA of 2005).

Response: We appreciate the commenter's support. We will incorporate the final market basket update of 2.0 percent into the CY 2010 HH PPS rates.

2. Home Health Care Quality Improvement

As part of the CY 2010 proposed rule, we proposed to consider OASIS assessments submitted by HHAs to CMS in compliance with HHA conditions of participation for episodes beginning on or after July 1, 2008 and before July 1, 2009 as fulfilling the quality reporting requirement for CY 2010. We proposed to reconcile the OASIS submissions with claims data in order to verify full compliance with the quality reporting requirements in CY 2010 and each year thereafter on an annual cycle July 1 through June 30 as described above. HHAs that meet the reporting requirements would be eligible for the full home health market basket percentage increase. HHAs that do not meet the reporting requirements would be subject to a 2 percent reduction to the home health market basket increase.

In the proposed rule we described the impending transition from OASIS–B1 to OASIS–C. This revision to the current OASIS version B–1 has undergone additional testing, and has been distributed for public comment and other technical expert recommendations over the past few years. CMS received OMB approval to modify the OASIS data set and will require that this new version of OASIS (OMB # 0938–0760) be collected on episodes of care beginning on or after January 1, 2010.

In the proposed rule we also noted that as a result of implementing OASIS–C, we will update Home Health Compare to reflect the addition of the following 13 new process of care measures:

- Timely initiation of care,
- Influenza immunization received for current flu season,
- Pneumococcal polysaccharide vaccine ever received,
- Heart failure symptoms addressed during short-term episodes,
- Diabetic foot care and patient education implemented during short-term episodes of care,
- Pain assessment conducted,
- Pain interventions implemented during short-term episodes,
- Depression assessment conducted,
- Drug education on all medications provided to patient/caregiver during short-term episodes,
- Falls risk assessment for patients 65 and older,
- Pressure ulcer prevention plans implemented,
- Pressure ulcer risk assessment conducted, and
- Pressure ulcer prevention included in the plan of care.

Also under consideration are three additional process of care measures that may be added to home Health Compare based on results of consumer testing. Those additional process measures are:

- Drug education on high risk medications provided to patient/caregiver at start of episode,
- Potential medication issues identified and timely physician contact at start of episode,
- Potential medication issues identified and timely physician contact during episode.

Comment: One commenter stated that he believes a six to twelve-month delay in implementation of OASIS–C would be necessary to accommodate a reasonable phase-in of such a significant change in OASIS. The commenter stated that the vendor community reports that it is not yet ready for OASIS–C. As a result, agencies can neither test the software changes needed nor can they begin training their clinical and information systems staff on the changes. As of mid-September 2009, CMS had not released the final interpretive guidelines for OASIS–C. There is simply not enough time to do all the planning, testing and training needed to successfully implement OASIS–C on January 1. The commenter believed outcome measurement is far too important to be implemented without adequate training and testing, and wrote that changes in OASIS implementation of this magnitude deserve a proper implementation process. He felt that the home health community has waited for many years for some of these changes, so waiting a few more months to do it right would be prudent.

Another commenter stated that our proposal to require home health agencies to transition patient assessment data collection from OASIS B1 to OASIS–C on January 1, 2010 was considered to be an appropriate timeline when proposed. However, he felt that in

light of the recently issued version OASIS–C (August 2009) and the fact that guidance and Q&As have not yet been made available, this would no longer be an appropriate target timeline. The commenter wrote that this timeline would not give software vendors and home health agencies sufficient time to complete programming, testing and education of clinicians. The commenter appreciated that CMS is undertaking several venues for educating providers on OASIS–C to ensure that all home health agencies have access to free training, but stated that there are too many unresolved issues to meet a January 1, 2010 implementation date. The commenter requested that CMS delay implementation of OASIS–C implementation until April 1, 2010.

Response: We appreciate the magnitude of the effort required to transition to OASIS–C, but we believe that it will offer substantial benefits, in terms of improved support for agency quality improvement efforts and provision of enhanced quality information for providers and beneficiaries. The new data set also incorporates process of care items that measure agencies' use of evidence-based practices that have been shown to prevent exacerbation of serious conditions, can improve care received by individual patients, and can provide guidance to agencies on how to improve care and avoid adverse events. Making these improvements is a high priority for CMS, which is why we have proceeded on a well-considered course of data set development and field testing, solicitation of public comment, and revision of the data set, on a deliberate schedule over the past 4 years. Our experience in field testing showed that agency staff could be trained on the new and modified items in a relatively short period of time, and welcomed the improvements to the data set. We released the post-testing version of the data set in March 2009, and the initial OASIS Data Specifications on July 1, 2009, so that vendors could begin to develop the needed system changes. CMS has not received feedback from the vendor community to date, relating to lack of readiness for OASIS–C. We believe that software vendors who took timely advantage of the resources made available will be prepared for the OASIS–C transition. In addition, the State systems are being configured to accept OASIS–C as of January 1, 2010, as is the updated home health PPS grouper software. While such a major change will never be easy, we believe that the benefits to be realized and the burdens of delaying the process at this point, and argue for proceeding with this transition as scheduled. The immediate need of HHAs related to the OASIS–C instrument is to understand what the new, changed and deleted items are. This information has been available since August. Agencies will not be introduced to new quality measures until September 2010 and additional resources related to these will be made available. We will shortly be posting the final OASIS–C User Guidance Manual, and we will be offering free training teleconferences through the Medicare Learning Network. We urge all providers or vendors who have questions about OASIS–C or the transition to take advantage of all of the resources that CMS has provided, which can be accessed through the CMS Web site, the Quality Improvement Evaluation System (QIES) Technical Support Office (QTSO) Web site, and our State OASIS Education Coordinators.

Comment: One commenter stated that it is his understanding that the current number of quality measures available through Outcome-Based Quality Improvement (OBQI) is 41, rather than 54, with plans by CMS to expand to 54 once process measure data are available from OASIS–C data collection. The commenter recognized the value of adding process measures to Home Health Compare as additional consideration by the public in search for home health services. However, the commenter believed that 13 process measures, in addition to the 12 quality measures already publicly reported, will only serve to overwhelm beneficiaries. He wrote that the important considerations related to processes are assessment of need and implementation of interventions.

The commenter recommended that measures related to ''plan of care'' not be publicly reported since this is information not essential to the agency selection process. He added that current regulations require that all services, regardless of professional practice requirements, be included in the plan of care.

Response: We agree that assessment of need and implementation of interventions are important considerations related to processes, but we also believe that proactive planning for appropriate interventions is an indicator of quality care. HHA clinicians play a key role in the formulation of the plan of care and when interventions such as diabetic foot care or falls prevention are stated clearly in the plan of care, they are available for reference by all staff who provide care for the patient, thereby ensuring that efforts are coordinated effectively. The seven process measures related to the plan of care are National Quality Forum (NQF) endorsed measures of accountability for HHAs. They assess adherence to recommendations for best clinical practice which we believe is an essential piece of the agency selection process.

Comment: One commenter suggested that CMS use caution when selecting indicators which may focus solely on processes that may not have been tested to be predictors of quality.

Response: The new process measures are NQF-endorsed, in addition to extensive testing and evaluation of CMS based on criteria that include, but are not limited to: Addressing a national health goal or priority area, consistency with clinical practice guidelines and action-ability of the measures (that is, the measures' susceptibility to experiencing improved outcomes through intervention). CMS will continue to provide meaningful, relevant, timely, and consensus-based measures.

Comment: CMS received several comments supporting the value of adding the new process measures.

Response: We appreciate the industry's willingness and encouragement regarding adopting these new methods of reflecting the quality of care provided to Medicare beneficiaries.

Comment: One commenter urged CMS to provide guidance to Home Health Agencies on the use and role of physical therapists.

Response: Though we recognize the valuable role of physical therapy in the documentation and reporting of the new process measures as well as the provision of home health care to multiple patient populations including those with wounds, heart failure, and those in need of medication management, we hesitate to make recommendations on issues relating to staff use. Each HHA must review the needs of its patient population and evaluate the best way to achieve the appropriate level of care based on the competency of its staff.

Comment: Several commenters noted that their memberships believe that the OASIS–C instrument is an improvement over the existing OASIS–B1, but that many HHAs still have questions regarding the new tool and request information regarding training on its use.

Response: CMS believes that HHA's questions have been answered with the release of the OASIS–C Guidance Manual on October 9, 2009, the content of the OASIS–C presentation at the NAHC annual conference on October

10, 2009, and within the National Provider Calls that started on October 22, 2009.

Comment: Two commenters requested a delay in the public reporting of process measures. One requested delay until January 2012 to allow time for implementation, development of and risk adjustment models and staff education.

Response: Process measures are derived directly from OASIS–C data and by nature do not require risk adjustment. We began providing education on OASIS–C starting in October 2009.

Comment: One commenter requested a delay in the public reporting of process measures until June 1 (no year was included in the request).

Response: CMS plans that the process measures will be reported on Home Health Compare no earlier than October 2010.

Comment: Several commenters expressed concern with specifics related to the addition of the 13 new process measures. One commenter mentioned the lack of a timeframe for these measures and the perception that some measures (pneumococcal vaccine ever received and depression assessment conducted and influenza immunization received) are above and beyond what an agency is expected to do. One commenter recommended that questions related to ''potential medication issues identified'' and ''timely physician contact'' should not be included in public reporting since the outcome of those measures is largely determined by physician response.

Response: We believe strongly that the addition of process measures will enhance the HHAs' ability to improve the quality of care provided to beneficiaries. Process measures assess adherence to recommendations for clinical practice based on evidence or consensus. Measures based on data items that align with those used across other provider settings (such as pneumonia vaccine received) will promote systematic use of evidence-based practices with the aim of improving population health. To a greater extent than outcome measures, process measures can identify specific areas of care that may require improvement and give credit for good care provision. Data related to the process measures will be collected in the OASIS–C instrument beginning January 1, 2010 and the first reports on process measures are projected to be available to agencies in September 2010.

Comment: One commenter requested definitions of various terms used within the process measure descriptions.

Response: The OASIS–C Guidance Manual contains detailed information for the clinician in order to be able to respond to these items accurately.

- ''Short-term episode of care'': Implementation process measures report whether a care process was ''implemented since the last OASIS assessment''. These measures will be calculated separately for short-term episodes and long-term episodes. Short-term episodes are those in which the time frame from Start of care (SOC)/Resumption of Care (ROC) to Transfer (TRF)/Discharge (DC) is less than or equal to 60 days (and DO NOT contain a 60-day follow-up assessment). Long-term episodes are those in which the time frame from SOC/ROC to TRF/DC is longer than 60 days (and DO contain a 60-day follow-up assessment). In response to industry and NQF concerns that measures might not accurately reflect care for longer stay patients, episodes that exceed 60 days will not be included in publicly reported measures on implementation of evidence based practices.
- The phrase ''at start of episode'' does not refer to payment episodes and does not mean that this information will be collected and reported for each 60-day episode. The phrase means that the measure reports on best care practices that occur when a patient is admitted to home care. It is used to distinguish this measure from others that report on best practices that are implemented over the course of the home health stay (rather than at the time of home health admission) and are collected at transfer or discharge.
- ''Timely physician contact'' is defined as communication to the physician within one calendar day of the assessment by telephone, voicemail, electronic means, fax, or any other means that appropriately conveys the message of patient status.
- ''High risk medications'' are defined as those identified by quality organizations (Institute for Safe Medication Practices, Joint Commission, *etc.*) as having considerable potential for causing significant patient harm when they are used erroneously.
- In the OASIS–C Guidance Manual, clinically significant medication issues are defined as those that, in the care provider's clinical judgment, pose an actual or potential threat to patient health and safety, such as drug reactions, ineffective drug therapy, side effects, drug interactions, duplicate therapy, medication omissions, dosage errors, or non-adherence to prescribed medication regimen. Potential clinically significant medication issues include adverse reactions to medications (for example, rash), ineffective drug therapy (for example, analgesic that does not reduce pain), side effects (for example, potential bleeding from an anticoagulant), drug interactions (for example, serious drug-drug, drug-food and drug-disease interactions), duplicate therapy (for example, generic name and brand name drugs that are equivalent both prescribed), omissions (missing drugs from an ordered regimen), dosage errors (for example, either too high or too low), noncompliance (for example, regardless of whether the noncompliance is purposeful or accidental) or impairment or decline in an individual's mental or physical condition or functional or psychosocial status.

Comment: One commenter expressed concern with our proposal (set out at 74 FR 40960) regarding home health care quality improvement. We proposed to ''reconcile the OASIS submissions with claims data in order to verify full compliance with the quality reporting requirements.'' The commenter thought this process was new and requested that it be defined in more detail.

Response: This proposal is not new. Identical language was proposed in our May 4, 2007, CY 2008 HH PPS proposed rule (72 FR 25450) and in our CY 2009 HH PPS update notice (73 FR 65356). These proposals were subsequently implemented. Details regarding the process are available in the Medicare Claims Processing Manual, Chapter 10, section 120.

Comment: One commenter was concerned that pay for performance does not differentiate between traditional Medicare patients and those participating in waiver programs. Waiver patients have long-term chronic needs, unlikely to be shown in discharge data, or to improve in the same manner as traditional patients with short-term needs and expectations for recovery.

Response: We thank the commenter for the comment on this topic, and will consider his concerns related to differences in outcomes for dually eligible waiver patients as plans for pay for performance are developed.

Reporting of Home Health Care Quality Data Through CAHPS Survey

In the Home Health Prospective Payment System Rate Update for Calendar Year 2010 (August 13, 2009), we proposed to expand the home health quality measures reporting requirements to include the CAHPS® Home Health Care (HHCAHPS) Survey, as initially discussed in the May 4, 2007 proposed rule (72 FR 25356, 25452) and in the November 3, 2008 Notice (73 FR 65357,

65358). As part of the U.S. Department of Health and Human Services (DHHS) Transparency Initiative, we proposed to implement a process to measure and publicly report patient experiences with home health care using a survey developed by the Agency for Healthcare Research and Quality's (AHRQ's) Consumer Assessment of Healthcare Providers and Systems (CAHPS®) program. The HHCAHPS survey is part of a family of CAHPS® surveys that asks patients to report on and rate their experiences with health care. The HHCAHPS survey presents home health patients with a set of standardized questions about their home health care providers and about the quality of their home health care. Prior to this survey, there was no national standard for collecting information about patient experiences that would enable valid comparisons across all home health agencies (HHAs).

In this Final Rule, we intend to move forward with the implementation of the HHCAHPS. However, we intend to link the survey to the CY 2012 payment update rather than to the CY 2011 payment update. We still intend to implement the survey on a voluntary basis beginning in October 2009.

Background and Description of the HHCAHPS

AHRQ, in collaboration with its CAHPS grantees, developed the CAHPS® Home Health Care Survey with the assistance of many entities (for example, government agencies, professional stakeholders, consumer groups and other key individuals and organizations involved in home health care). The HHCAHPS survey was designed to measure and assess the experiences of those persons receiving home health care with the following three goals in mind:

- To produce comparable data on patients' perspectives of care that allow objective and meaningful comparisons between home health agencies on domains that are important to consumers;
- To create incentives for agencies to improve their quality of care through public reporting of survey results; and
- To hold health care providers accountable by informing the public about the providers' quality of care.

The development process for the survey began in 2006 and included a public call for measures, review of the existing literature, consumer input, stakeholder input, public response to **Federal Register** notices, and a field test conducted by AHRQ. AHRQ conducted this field test to validate the length and content of the CAHPS® Home Health Care Survey. We submitted the survey to the National Quality Forum (NQF) for consideration and endorsement via their consensus process. NQF endorsement represents the consensus opinion of many healthcare providers, consumer groups, professional organizations, health care purchasers, Federal agencies and research and quality organizations. The survey received NQF endorsement on March 31, 2009.

The HHCAHPS survey includes 34 questions covering topics such as specific types of care provided by home health providers, communication with providers, interactions with the home health agency, and global ratings of the agency. For public reporting purposes, we will utilize composite measures and global ratings of care. Each composite measure consists of four or more questions regarding one of the following related topics:

1. Patient care;
2. Communications between providers and patients; or
3. Specific care issues (medications, home safety and pain). There are also two global ratings; the first rating asks the patient to assess the care given by the HHA's care providers, and the second asks the patient about his/her willingness to recommend the HHA to family and friends.

There are two options for administering the HHCAHPS survey. The agency can choose to administer the existing HHCAHPS survey, or the HHA can integrate additional questions within the HHCAHPS survey. If an agency chooses to implement an integrated survey, the core questions from the HHCAHPS survey (questions 1 through 25) must be placed before any specific/supplemental questions that the home health agency wishes to add to the survey. Questions 26 through 34 (the ''About You'' survey questions) must be administered as a unit—although they may be placed either before or after any supplemental questions that the HHA wishes to add to the HHCAHPS survey. If no HHA-specific questions are to be added to the HHCAHPS survey, the ''About You'' questions should follow the core questions (numbered 1 through 25) on the HHCAHPS survey. In addition, there are nine optional supplemental HHCAHPS questions that are available for HHAs to use (in addition to the 34-item HHCAHPS survey). These optional supplemental HHCAHPS questions will not be publicly reported and are not required. The supplemental questions are listed in the Protocols and Guidelines Manual available at *https://www.homehealthcahps.org*.

The survey is currently available in both English and Spanish translations. We proposed that HHAs and their survey vendors will not be permitted to translate the HHCAHPS survey into any other languages on their own. However, it was proposed that CMS will provide additional translations of the survey over time. The Web site *https://www.homehealthcahps.org* will provide information about the subsequent availability of additional translations. In the proposed rule, we asked for suggestions for any additional language translations. Such suggestions should be submitted online to the HHCAHPS Survey Coordination Team, at *HHCAHPS@rti.org*.

Home health agencies interested in learning about the survey are encouraged to view the HHCAHPS survey Web site, at *https://www.homehealthcahps.org*. Agencies can also call toll-free (1–866–354–0985), or send an e-mail to the HHCAHPS Survey Coordination Team at *HHCAHPS@rti.org* for more information.

The following types of home health care patients were proposed as eligible to participate in the HHCAHPS survey:

➢ Current or discharged patients who had at least one skilled care home health visit at any time during the sample month;

➢ Patients who were at least 18 years of age at any time during the sample period, and are believed to be alive;

➢ Patients who received *at least two skilled care visits* from HHA personnel during a 60-day look-back period. (Note that the 60-day look-back period is defined as the 60-day period prior to and including the last day in the sample month);

➢ Patients who have not been selected for the monthly sample during any month in the current quarter or during the 5 months immediately prior to the sample month;

➢ Patients who are not currently receiving hospice care;

➢ Patients who do not have ''maternity'' as the primary reason for receiving home health care; and

Patients who have not requested ''no publicity status.''

To collect and submit HHCAHPS data to CMS, Medicare-certified agencies will need to contract with an approved HHCAHPS survey vendor. Beginning in summer 2009, interested vendors applied to become approved HHCAHPS vendors. The application process was (and still is) delineated online at *https://www.homehealthcahps.org*. Vendors are required to attend training conducted by CMS and the HHCAHPS Survey Coordination Team, and to pass a post-training certification test.

Home health agencies that are interested in participating in the HHCAHPS survey may do so on a voluntary basis beginning in October 2009. Such agencies must select a vendor from the list of HHCAHPS approved survey vendors. This listing was made available on the Web site *https://www.homehealthcahps.org* on September 14, 2009. The listing will be updated on an ongoing basis to reflect the current approved list of survey vendors.

Participation Requirements for CY 2011: The Consumer Assessment of Healthcare Providers and Systems (CAHPS®) Home Health Care Survey

In the proposed rule, we proposed that beginning in the first quarter of CY 2010, all Medicare-certified home health agencies would begin to collect the CAHPS® Home Health Care (HHCAHPS) survey data in accordance with the Protocols and Guidelines Manual located on the HHCAHPS Web site *https://www.homehealthcahps.org*. Home health agencies would contract with approved HHCAHPS survey vendors (posted on *https://www.homehealthcahps.org*) that are to conduct the survey. We proposed that participating home health agencies would conduct a dry run of the survey for at least one month in the first quarter of 2010 (January, and/or February, and/or March 2010), and submit the dry run data to the Home Health CAHPS® Data Center by 11:59 p.m. EST on June 23, 2010. The dry run data would not be publicly reported on the CMS Home Health Compare Web site. This dry run would provide an opportunity for vendors and HHAs to acquire first-hand experience with data collection, including sampling and data submission to the Home Health CAHPS® Data Center, with no public reporting of the results. We proposed that all Medicare-certified home health agencies continuously collect HHCAHPS survey data every quarter beginning in the second quarter (April, May and June) of 2010, and submit these data for the second quarter of 2010 to the Home Health CAHPS® Data Center by 11:59 p.m. EST on September 22, 2010. We proposed that these data submission deadlines be firm (that is, there would be no late submissions allowed).

Medicare-certified HHAs would need to provide their respective survey vendors with information about their survey-eligible patients (either current or discharged) every month in accordance with the Protocols and Guidelines Manual posted on *https://www.homehealthcahps.org*. Details about selecting the HHA sample are also delineated in the Protocols and Guidelines Manual.

In the proposed rule, we proposed that the HHCAHPS survey data be submitted and analyzed quarterly, and that the sample selection and data collection occur on a monthly basis. HHAs would target 300 HHCAHPS survey completes annually. Smaller agencies that were unable to reach 300 survey completes by sampling would survey all HHCAHPS eligible patients. We proposed that survey vendors initiate the survey for each monthly sample within 3 weeks after the end of the sample month. We proposed that all data collection for each monthly sample be completed within 6 weeks (42 days) after data collection began. We have approved three modes of the survey to be used: mail only, telephone only, and mail with telephone follow-up (the ''mixed mode''). We proposed that for mail-only and mixed-mode surveys, data collection for a monthly sample would end 6 weeks after the first questionnaire was mailed. We proposed that for telephone-only surveys, data collection would end 6 weeks following the first telephone attempt.

In the proposed rule we wrote that we were aware that there was a wide variation in the size of Medicare-certified home health agencies. We proposed that the requirement to collect HHCAHPS survey data be waived for agencies that served fewer than 60 HHCAHPS eligible patients annually. The HHCAHPS eligible, unduplicated patient counts for the period of October 1 through September 30 for a given year would be used to determine if the HHA had to participate in the HHCAHPS survey in the next calendar year.

We also proposed that newly Medicare-certified home health agencies (that is, those certified on or after January 1, 2010 for payments to be made in CY 2011) be excluded from the HHCAHPS reporting requirement for the first year, as data submission and analysis would not be possible for an agency this late in the reporting period.

In the proposed rule, we strongly recommended that home health agencies participating in the HHCAHPS survey promptly review the required Data Submission Summary Reports that are described in the Protocols and Guidelines Manual posted on *https://www.homehealthcahps.org*. These reports will enable the home health agency to ensure that its survey vendor has submitted their data on time, and that the data have been accepted/received by the Home Health CAHPS® Data Center. We received no comments on this proposal, and are finalizing it as proposed.

Oversight Activities: The Consumer Assessment of Healthcare Providers and Systems (CAHPS®) Home Health Care Survey

We proposed that vendors and HHAs be required to participate in HHCAHPS oversight activities to ensure compliance with HHCAHPS protocols, guidelines and survey requirements. The purpose of the oversight activities is to ensure that HHAs and approved survey vendors follow the Protocols and Guidelines Manual. It was proposed that all approved survey vendors develop a Quality Assurance Plan (QAP) for survey administration in accordance with the Protocols and Guidelines Manual. The QAP would include the following:

- Organizational chart;
- Work plan for survey implementation;
- Description of survey procedures and quality controls;
- Quality assurance oversight of on-site work and of all subcontractors work; and
- Confidentiality/Privacy and Security procedures in accordance with the Health Insurance Portability and Accountability Act (HIPAA).

As part of the oversight activities the HHCAHPS Survey Coordination Team would conduct on-site visits and/or conference calls. The HHCAHPS Survey Coordination Team would review the survey vendor's survey systems, and would assess administration protocols based on the Protocols and Guidelines Manual posted on *https://www.homehealthcahps.org*. We proposed that all materials relevant to survey administration would be subject to review. The proposed systems and program review would include but not be limited to: (a) Survey management and data systems; (b) printing and mailing materials and facilities; (c) data receipt, entry and storage facilities; and (d) written documentation of survey processes. Organizations would be given a defined time period in which to correct any problems and provide follow-up documentation of corrections for review. Survey vendors would be subject to follow-up site visits as needed.

We did not receive any comments regarding the proposed oversight activities and therefore, the proposed recommendations are considered to be final for this rule.

For Further Information on the HHCAHPS Survey

It is strongly recommended that all home health care agencies participating in the HHCAHPS survey regularly check

the Web site, *https://www.homehealthcahps.org* for program updates and information.

We proposed that all HHAs, unless covered by specific exclusions, meet the quality reporting requirements or be subject to a 2 percent reduction in the home health market basket percentage increase in accordance with section 1895(b)(3)(B)(v)(I) of the Act. A reconsideration and appeals process is being developed for HHAs who fail to meet the HHCAHPS reporting requirements. We proposed that these procedures would be detailed in the proposed CY 2012 home health payment rule, the period for which HHCAHPS will be linked to the home health market basket percentage increase.

Comment: We received a comment endorsing the proposed addition of the HHCAHPS patient perspectives of care survey, stating that it would be a useful supplement to existing performance measures.

Response: We appreciate this comment in support of adding the Home Health Care CAHPS (HHCAHPS) measures to the quality reporting program of the agency.

Comment: We received comments that HHCAHPS needs to be field-tested and the survey results need to be statistically reliable before such results are incorporated into quality reports, published on Home Health Compare, or counted in the consideration of the annual payment update for home health agencies.

Response: The Home Health Care CAHPS has been field-tested by AHRQ and the CAHPS grantees and the final survey is currently being used in a national, randomized mode experiment. A rigorous, scientific process was used in the development of the survey, including: a public call for measures; literature reviews; focus groups with home health patients; cognitive interviews with home health patients; stakeholder input; public response to **Federal Register** notices; and a field test.

Comment: We received feedback from commenters asking how HHCAHPS would be adjusted to account for variation in quality scores which is unrelated to agency behavior. One commenter noted that this would require matching of demographic and insurance data into a risk adjustment methodology. The commenter asked CMS to articulate how this adjustment will be achieved to prevent the release of spurious quality measures.

Response: We appreciate this feedback and would like to emphasize that from the very beginning of the planning for HHCAHPS, the prevention of spurious variables on the data was viewed as essential in the implementation of HHCAHPS. To further achieve this goal, we have additionally revised our protocols for the HHCAHPS based on comments that were sent to us. We are now including only Medicare and/or Medicaid patients in the HHCAHPS survey. For public reporting of the data, the data will be adjusted for mode of survey administration. The HHCAHPS measures will also be adjusted for patient mix. Patient-mix adjustments are made when certain patient characteristics that are beyond home health agencies' control impact how a patient responds to the survey. The patient-mix characteristics that have been identified for possible inclusion cover variables such as overall health status, diagnosis information, age, education, managed care indicator, whether the patient lives alone, and insurance coverage. Although the patient-mix adjusters included in the model are constant over time, the exact values of patient-mix adjustment coefficients are re-estimated each reporting period based on the empirical relationship observed between the patient-mix adjustment variables and HHCAHPS outcomes in that period.

Comment: We received comments that the HHCAHPS survey is too long. These commenters mentioned that the rates of completion of consumer satisfaction surveys are typically low, particularly when the instrument is long.

Response: The version of the HHCAHPS that was used in the AHRQ field test had 58 items, and the length of that survey did not appear to influence the completion of the survey. However, as a result of intensive data analysis and input from the stakeholders and the Technical Expert Panel, over 20 questionnaire items were eliminated from the field test survey. The current 34-item questionnaire (that ultimately received NQF endorsement) was the outcome of this development process. We believe that the length of the survey represents an effective compromise and achieves the goal of providing key quality measures of the patient perspectives of care while at the same time keeping the survey as short as possible. CMS is not shortening the survey in this Final Rule.

Comment: We received feedback from a commenter concerned that many HHA patients were not sufficiently educated to interpret the HHCAHPS correctly.

Response: We appreciate the sensitivity to the home health patients by asking about the readability of the HHCAHPS survey. The Flesch-Kincaid reading test showed that the HHCAHPS survey is at less than a seventh grade level. More importantly though, if patients are unable to answer the survey due to decreased capacities, a family or friend may assist the patient and answer the questions on behalf of the selected home health patient in the HHCAHPS home health agency sample.

Comment: We received comments asking how the HHCAHPS survey would be administered to patients suffering from dementia or psychiatric disorders.

Response: We appreciate comments sensitive to concerns about how HHCAHPS would be administered to patients suffering from dementia, or other disorders that might present challenges to respondents. Early on, we recognized the importance of allowing proxy respondents for this population even though proxy respondents are not always used in other CAHPS surveys. Proxy respondents answer the HHCAHPS survey on behalf of the patient respondent. We analyzed the field test data and found that proxy respondents do not respond differently from home health patients; thus, proxy respondents (that is, family members) are allowed. However, home health agency staff cannot serve as proxy respondents for patients.

Comment: We received feedback from one commenter that the existing survey timelines could result in patients being surveyed more than 60 days after their home health services ended, resulting in an inability to recall or evaluate services accurately.

Response: We appreciate this comment concerning surveying patients too long after they received services. We received comments from the home health agencies in our mode experiment that the earliest that they can deliver a patient list from the end of the month is about two weeks after the close of the month. Therefore, we have emphasized to the HHAs to send their patient lists to their respective vendors in time to begin data collection within 21 days after the close of any month. In most data collection scenarios, we believe that patients will be surveyed within 60 days from the time that they last received services from the home health agency. In certain circumstances, it may be that patients will be surveyed later than 60 days if they were seen the very beginning of the sample month and do not respond to the initial mail or telephone attempts. Overall, the goal of the data collection process is to survey the patients as soon as possible.

Comment: We received comments that there is a need for additional

language translations of the HHCAHPS besides English and Spanish. Several commenters mentioned the difficulties in implementing HHCAHPS because their agencies have few patients who speak either English or Spanish.

Response: We appreciate these concerns regarding the need for additional language translations and strongly encourage that these suggestions and specific requests be submitted as soon as possible to the HHCAHPS Survey Coordination Team at *HHCAHPS@rti.org.* Currently, CMS is creating a Chinese translation of the questionnaire and will produce additional translations in the coming year. CMS is not allowing vendors or individual HHAs to independently translate the survey into other languages on their own because of the need to assure comparable (if not identical) wording in every language, and thus ensure comparability of the survey data on a national basis.

Comment: We received several comments about how we chose the particular criteria on who is eligible/ineligible to participate in the survey.

Response: Based on input received through stakeholder meetings, AHRQ and CMS agreed that patients 18 and older needed to have 2 or more skilled visits in order to evaluate an agency's care. Additionally, maternity and hospice patients were excluded due to (1) the unique circumstances surrounding maternity care; and (2) the sensitivity associated with surveying hospice patients.

Comment: We received several comments concerning the inclusion of all patients, rather than limiting the survey to Medicare and/or Medicaid patients only. Commenters were concerned about the burden and validity of including non-Medicare or non-Medicaid patients as respondents.

Response: In this Final Rule we are recommending that the submission of HHCAHPS data be initially applied to Medicare and Medicaid patients only. Only Medicare and/or Medicaid patients are included in the HHCAHPS survey. All other eligibility criteria are being implemented as proposed.

Comment: We received comments asking why Home Health Agencies cannot conduct the HHCAHPS survey themselves (that is, self-administer the survey).

Response: Agencies are not allowed to conduct the survey on their own. Since many patients have a continuing relationship with their home health agency, we believe that an independent third party will be better able to solicit an unbiased response. Since they receive care in their homes, this population is particularly vulnerable and dependent upon their home health agency caregivers.

Comment: We received a comment asking CMS to clarify what oversight would occur regarding how agencies compile their patient lists and submit them to vendors.

Response: We thank the commenter for this inquiry and respond that we will be conducting oversight activities for the HHCAHPS vendors. As part of the oversight activities, we will monitor information about the number of patients eligible per month and may ask the vendor to provide sampling frame counts for a sample of agencies. If we are seeing unusual numbers of eligible patients counts compared against OASIS counts, we may work with the vendor and agency to determine if there are any systematic issues.

Comment: We received comments concerning the costs involved in contracting with an approved Home Health Care CAHPS vendor to collect and submit data. These costs represent an additional expenditure for agencies without additional compensation from CMS. These commenters stated vendor cost estimates have been provided, ranging anywhere from $5 per completed survey, up to $9,000 a year.

Response: We recognize that vendors will charge different amounts for the survey, and highly recommend that home health agencies ''shop around'' for the best value for their agency. The vendor list is available on *www.homehealthcahps.org.* Currently, 34 vendors have been approved to conduct the survey and additional vendors will be approved in the coming months. Therefore, for the final rule, only HHCAHPS-approved vendors may be used to conduct the HHCAHPS survey for participating home health agencies.

Comment: We received multiple comments about cost to the HHAs, and burden to the HHAs. We received feedback from one commenter who wrote that the HHCAHPS implementation process has not been well explained or thought through in terms of impacts on agencies; a number of commenters were concerned about the financial burden, particularly when reimbursements are decreasing. Another felt that software reprogramming costs and fees were not accurate in the burden estimates. Another commenter asked that CMS clarify whether CMS or HHAs will be paying vendors for their services. A number of commenters wrote that a policy which imposes a mandatory requirement but makes non-compliance subject to a penalty should be funded by CMS. Another commenter asked that we cap the amount that vendors would charge HHAs and allow HHAs to claim the cost as allowable on their cost reports.

Response: We are fully appreciative of the comments concerning cost burdens to the HHAs with the implementation of HHCAHPS. We believe that home health agencies should ''shop around'' for the best value by researching as many vendors as possible that are listed on the vendor list on *http://www.homehealthcahps.org.* We are confident that there are reasonable choices for the HHAs with the current list of vendors. We have limited the initial data collection to Medicare and/or Medicaid patients to reduce the burden of providing administrative data on private pay patients. We will also accept V codes instead of ICD–9 codes if the agency does not have ICD–9 codes for particular patients. All of the administrative variables should be available on OASIS and should require minimal reprogramming for the HHAs to provide patient information to their survey vendors. HHAs will be paying vendors for data collection and processing services and we will be paying for training, technical assistance, oversight of vendors, and data analysis of the HHCAHPS data. In response to the comment that this is a mandatory requirement that makes non-compliance subject to a penalty, we respond that the expanded requirements concerning the collection of quality data were stated in the CY 2008 Home Health Payment Rule and in the CY 2009 Home Health Notice of October 31, 2008. The expanded requirements concerning quality data for home health agencies were also stated in the Deficit Reduction Act. The collection of quality data for similar CAHPS surveys, such as the Hospital CAHPS survey, follow the same model wherein the health care providers pay the approved survey vendors for the data collection costs and we pay for the training, technical assistance, oversight of vendors, and data analysis costs. HHAs are strongly encouraged to report their respective HHCAHPS cost on their cost reports but should note that these costs are not reimbursable under the HH PPS.

Comment: We received comments asking whether HHCAHPS participation is really a voluntary program.

Response: The first year of the HHCAHPS is entirely voluntary. Once data collection is tied to the annual payment update for CY 2012 (voluntary data collection begins October 2010), agencies may choose to participate. Moreover, agencies may still choose *not* to participate in the survey if they believe that the costs of participating

will exceed the two percent reduction of the full annual payment update they would otherwise receive.

Comment: While commenters were generally supportive of the survey, and of quality improvement measures in home health, many requested a delay in the implementation of the survey. Commenters were concerned about implementing this new requirement at the same time as the rollout for OASIS–C. They wanted home health agencies to have additional time to select a vendor to conduct the survey for them. Commenters were concerned about not accounting for this expense in their 2010 budgets, and wanted additional time to evaluate and pilot the survey on their own.

Response: CMS has carefully considered the comments it received, and is delaying the linkage of HHCAHPS data to the quality reporting requirements for the annual payment update by 6 months. This will allow home health agencies to first fully implement OASIS–C before being required to implement the HHCAHPS survey for payment considerations. As such, agencies will be required to do a dry run for at least one month in third quarter CY 2010, and to begin data collection on an ongoing basis in October 2010. With this change, HHAs will be required to submit dry run data from the third quarter of CY 2010 to the Home Health CAHPS Data Center by 11:59 p.m. EST on January 21, 2011. Similarly, HHAs will be required to submit data for the fourth quarter of CY 2010 to the Home Health CAHPS Data Center by 11:59 p.m. on April 21, 2011. With this delay, HHCAHPS will be a requirement for agencies to receive their full 2012 annual payment update.

As a result of this rule's final provision to tie the HHCAHPS to the CY 2012 annual payment update (rather than to the CY 2011 annual payment update), home health agencies certified on or after April 1, 2011 will be excluded from the HHCAHPS reporting requirement for CY 2012 as data submission and analysis will not be possible for an agency this late in the CY 2012 reporting period. Agencies should begin HHCAHPS data collection as soon as possible to meet HHCAPS reporting requirements for future years. Additionally, by June 16, 2010, HHAs need to provide CMS with patient counts for the period of April 1, 2009 through March 31, 2010. CMS will post a form that the HHAs will use to submit their patient counts via the Web site, *http://www.homehealthcahps.org.* This requirement pertains only to Medicare-certified HHAs with fewer than 60 eligible, unduplicated patients for that time period. Such agencies would be exempt from conducting the HHCAHPS survey for the annual payment update in CY 2012. Agencies that have fewer than 60 eligible, unduplicated patients would be exempt from data collection from third quarter CY 2010 through second quarter CY 2011.

Comment: We received comments about the HHCAHPS data submission requirements for reporting ICD–9 codes for patient diagnosis. It was proposed in the Protocols and Guidelines Manual and also in CMS training that ICD–9 codes be used in patient mix adjustment to ensure the HHCAHPS results are comparable across agencies. However, commenters wrote that over 40 percent of home health agencies use V-codes to indicate a patient's primary diagnosis. Home health agencies however, are in agreement that V codes do not accurately reflect the medical conditions of their patient population.

Response: Based on feedback from the proposed rule, we have modified the specifications to allow for the submission of V codes if those are the only available data. However, we strongly encourage the submission of ICD–9 codes if feasible. The reason for collecting diagnosis codes that are not V codes is to distinguish patients who, because of their underlying condition, may have very different attitudes about the health care they receive and who also may respond very differently to the questions on the HHCAHPS. Prior research has shown that patients rate the care they receive differently based on their characteristics. For example, older patients tend to rate more favorably than younger patients, but sicker patients tend to rate less favorably than relatively healthier patients. Consider the case in which two patients are coded with one of the V57 rehabilitation codes; however, one has had knee surgery and the other has had a stroke. These two patients will potentially have different perspectives and opinions about the home health care they receive, and these perspectives will affect how they respond to the HHCAHPS survey items. The V code in this example does not indicate the severity of the illness/condition. For this reason, we urge survey vendors to provide ICD–9 codes whenever possible, so that survey results can be statistically adjusted to account for any differences in responses based on patient characteristics. Therefore, for the final rule, we will allow V codes if those are the only available data.

Comment: We received feedback from a commenter that the requirements for HHCAHPS include reporting ADL scores from OASIS, but OASIS is not required for non-Medicare, non-Medicaid patients. HHAs that do perform an OASIS assessment on these patients do not enter the information into their electronic files since HHAs are prohibited from reporting these data to the State repository.

Response: We are appreciative of this comment and for the final rule have limited data collection to Medicare and/or Medicaid patients. In addition, we are also allowing V codes if ICD–9 data are unavailable for the HHCAHPS patients.

Comment: We received a comment suggesting that we reevaluate patient data submission requirements, and streamline the amount of information essential to the accurate reporting of patient experiences.

Response: We appreciate this comment concerning a reevaluation of the patient data submission requirements for HHCAHPS. Accordingly, we have revised the data submission requirements with two significant changes in this final rule. The first change is that only Medicare and/or Medicaid patients are in the HHCAHPS. The second change is that HHAs may submit V codes if ICD–9 codes are unavailable.

Comment: We received several comments concerning the survey modes and the need for 300 completed surveys a year. We received several comments that HHCAHPS should only be administered by mail mode to ensure comparability. Similarly, we received requests that HHCAHPS be only available in the telephone mode for comparability. Finally, we received comments that only one survey mode should be accepted for use for HHCAHPS, no matter what the mode choice was, for comparability across all agencies nationally.

Response: We appreciate these comments because they are all related to the same goal to ensure comparability of the survey results for all participating HHAs. HHCAHPS, as a part of the CAHPS program, is always striving to ensure comparability in all steps of the survey implementation and analysis of results. We realized that to limit the survey mode to only one type (for example, telephone only) could be limiting the HHAs in choosing survey vendors.

We dealt with a similar issue with the Hospital CAHPS survey, for which several modes of administration were ultimately permitted. While patient responses did vary based on the survey mode employed, it was possible to adjust for these differences statistically. We are therefore conducting a randomized mode experiment to test the

effect of using three data collection modes: mail only, telephone only, and mixed mode (mail with telephone follow-up of non-respondents). If the mode experiment suggests that the method of data collection has a significant impact on the survey responses, then we will use the results from the mode experiment to make appropriate adjustments in the reporting of the survey responses. When the mode experiment is concluded and all results, conclusions and recommendations are available, the results as well as the adjustments will be posted on *http://www.homehealthcahps.org,* the official Web site of the Home Health Care CAHPS survey. In the meantime, for the final rule, the HHCAHPS will allow three survey modes as proposed.

Comment: We received comments that questioned the advisability of requiring a total of 300 completed surveys since this number will have varying statistical validity for small versus large agencies. Further, HHAs serving populations that tend to be poor respondents will be unable to meet this total number, particularly if the agencies themselves are small in size. In addition, commenters were concerned about the validity of data comparing small agencies (that may need to survey 100 percent of the patients in order to meet the required target) with large agencies (which may be able to survey as few as 1 percent of their patients and reach the target).

Response: We understand concerns about the sample size. In the practice of statistics however, it is established that the sample size in absolute numbers is more important than the proportion of the population surveyed. Surveying a sample of 300 will produce the same level of precision whether the sample is 10 percent, 1 percent or even 0.01 percent of the total population. We understand that 300 may be higher than achievable for some small agencies. However, the larger the sample (even if less than 300), the less the variability in an agency's ratings over time. Therefore, in the final rule we are moving forward with the sample sizes for HHCAHPS as proposed.

Comment: We received feedback from a commenter that suggested that CMS base compliance with the requirement on whether HHAs submitted appropriate numbers of patient files for their size, rather than on the number of patients that responded to surveys.

Response: We appreciate this question clarifying whether agencies must submit 300 completed surveys on an annual basis. In the proposed rule and in this final rule, we emphasized that HHAs should target 300 completes annually which averages about 25 completes a month. However, we equally emphasized that smaller agencies that are unable to reach 300 survey completes by sampling should survey all HHCAHPS eligible patients. We will accept less than 300 survey completes annually if an agency is unable to achieve that number. Compliance is based on whether the agency did the survey and followed the protocols. It is not based on the number of patients that responded to the survey.

Summary of Final Rule Changes for HHCAHPS

For this final rule, we are adopting three changes to the previously proposed provisions for HHCAHPS. The first change is the delay in the HHCAHPS linkage to the annual payment update, from CY 2011 to CY 2012. This delay means that home health agencies will need to conduct a dry run for at least one month in the third quarter 2010, and continuously collect survey data beginning in the fourth quarter 2010 and moving forward. HHAs are urged to note the revised dates in this Final Rule and to routinely check the Web site *http://www.homehealthcahps.org* for the key dates. The second change concerns the patients eligible for the survey: only Medicare and/or Medicaid patients will be eligible to take the HHCAHPS survey. The third change is that V codes may be submitted if ICD–9 codes are unavailable. Home Health Compare will be updated to reflect the addition of HHCAHPS to the quality reporting requirements.

3. Home Health Wage Index

Sections 1895(b)(4)(A)(ii) and (b)(4)(C) of the Act require that we adjust the HH PPS payment rates to account for differences in area wage levels, using a wage index that we find appropriate. Since the inception of the HH PPS, we have used hospital wage data in developing a wage index to be applied to HHAs.

In the CY 2010 proposed rule, we proposed to continue that practice, as we continue to believe that using the pre-floor, pre-reclassified hospital inpatient wage index is appropriate and reasonable for the HH PPS. As explained in the update notice for CY 2009 (73 FR 65359), the HH 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.

We apply the appropriate wage index value to the labor portion (77.082 percent) of the HH PPS rates based on the site of service for the beneficiary (defined by section 1861(m) of the Act as the beneficiary's place of residence).

In the HH PPS final rule for CY 2006 (70 FR 68138, November 9, 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.

In adopting the OMB Core-Based Statistical Area (CBSA) geographic designations, we provided for a 1-year transition with a blended wage index for all providers. For CY 2006, the wage index for each provider consisted of a blend of 50 percent of the CY 2006 MSA-based wage index and 50 percent of the CY 2006 CBSA-based wage index (both using FY 2002 hospital data). We referred to the blended wage index as the CY 2006 HH PPS transition wage index. As discussed in the HH PPS final rule for CY 2006 (70 FR 68138, November 9, 2005), subsequent to the expiration of the 1-year transition on December 31, 2006, we use the full CBSA-based wage index values.

We continue to use the methodology discussed in the CY 2007 final rule (71 FR 65884, November 9, 2006) to address those geographic areas in which there are no hospitals and, thus, no hospital wage data on which to base the calculation of the HH PPS wage index. For those areas, we use the average wage index from all contiguous CBSAs as a reasonable proxy. This methodology is used to calculate the wage index for rural Massachusetts. However, we do not apply this methodology to rural Puerto Rico due to the distinct economic circumstances that exist there, but instead continue using the most recent wage index previously available for that area (from CY 2005). For urban areas without specific hospital wage data, we use the average wage indexes of all urban areas within the State to serve as a reasonable proxy for the wage index of that that urban CBSA. The only urban area without wage data is Hinesville-Fort Stewart, Georgia (CBSA 25980).

On November 20, 2008, OMB issued Bulletin No. 09–01 located at Web address *http://www.whitehouse.gov/omb/bulletins/fy2009/09-01.pdf.* This bulletin highlights three geographic areas that were previously classified as Micropolitan Statistical Areas but now

qualify as Metropolitan Statistical Areas. The three areas are: (1) CBSA 16020, Cape Girardeau-Jackson, MO–IL (this includes Alexander County in Illinois and Bollinger and Cape Girardeau Counties in Missouri); (2) CBSA 31740, Manhattan, KS (this includes Geary, Pottawatomie, and Riley Counties in Kansas); and (3) CBSA 31860, Mankato-North Mankato, MN (this includes Blue Earth and Nicollet Counties in Minnesota).

The comments that we received on the wage index adjustment to the HH PPS rates, and our responses to those comments, appear below.

Comment: A commenter requested that CMS develop an industry specific (HH specific) wage index.

Response: Our previous attempts at either proposing or developing a home health specific wage index were not well received by commenters or the industry. Generally, the volatility of the home health wage data and the resources needed to audit and verify those data make it difficult to ensure that such a wage index accurately reflects the wages and wage-related costs applicable to the furnishing of services. We believe it is important that a HH specific wage index be more reflective of the wages and salaries paid in a specific area, be based upon stable data sources, and significantly improve our ability to determine HH payments without being overly burdensome.

Comment: As an alternative to the rural floor, one commenter suggested we adjust for population density during calculation of the labor portion of payments to account for the increased costs of providing services in rural areas.

Response: The proposal of utilizing a population density adjustment is suggestive of a rural add-on. The HH PPS has utilized rural add-ons during various time periods since its inception. However, rural add-ons must be legislated. The last rural add-on, which was mandated by section 5201(b) of the Deficit Reduction Act (DRA), expired in early CY 2007.

Comment: A commenter wrote that it was unfair for HHAs to be tied to erroneous hospital data with no recourse.

Response: CMS utilizes efficient means to ensure and review the accuracy of the hospital cost report data and resulting wage index. The home health wage index is derived from the pre-floor, pre-reclassified hospital wage index which is calculated based on cost report data from hospitals paid under the hospital inpatient prospective payment system (IPPS). All IPPS hospitals must complete the wage index survey (Worksheet S–3, Parts II and III) as part of their Medicare cost reports. Cost reports will be rejected if Worksheet S–3 is not completed. In addition, our intermediaries perform desk reviews on all hospitals' Worksheet S–3 wage data, and we run edits on the wage data to further ensure the accuracy and validity of the wage data. Furthermore, HHAs have the opportunity to submit comments on the hospital wage index data during the annual IPPS rulemaking period. Therefore, we believe our review processes result in an accurate reflection of the applicable wages for the areas given.

Comment: A few commenters objected to our using CBSA area, which they stated creates arbitrary payment differences along CBSA borders, and exacerbate instability in the wage index.

Response: We believe that adjusting payments based on the CBSA areas is the best available method of compensating for differences in labor markets.

Comment: A few commenters suggested we establish limits on allowable annual changes in wage index values from one year to the next. One suggested spreading any wage index value changes greater than 2 percent over at least 2 years.

Response: Updating the wage index must be done in a budget neutral manner. Establishing limits on how much a particular wage index could increase or decrease from one year to another would not be consistent with budget neutrality. Consequently, we implement updated versions of the wage index, in their entirety.

Comment: Several commenters asked CMS to allow HHAs to apply for the type of geographic reclassification that IPPS hospitals are provided. In addition, several commenters recommended establishing a rural floor.

Response: The commenters are referring to rural floor and geographic reclassification provisions in the IPPS which are only applicable to hospital payments. The rural floor provision is provided at section 4410 of Public Law 105–33 and is specific to hospitals. The reclassification provision provided at section 1886(d)(10) of the Act is also specific to hospitals. In its June 2007 report titled, ''Report to Congress: Promoting Greater Efficiency in Medicare'', MedPAC 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 alter 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 HH 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 alternative wage index methodology for the HH PPS in the future.

Comment: Several commenters recommended MedPAC's approach to the HH wage index outlined in its June 2007 report. This approach would use Bureau of Labor Statistics (BLS) data to provide more consistent values among neighboring markets and less year-to-year volatility in values. Additionally, the MedPAC methodology would utilize data that are available for all labor areas, eliminating the need to impute a wage index in areas with no hospital.

Response: In February 2008, CMS awarded a Task Order under its Expedited Research and Demonstration Contract, to Acumen, LLC. Acumen, LLC conducted a study of both the current methodology used to construct the Medicare wage index and the recommendations in MedPAC's 2007 report to Congress. Part One of Acumen's final report, which analyzes the strengths and weaknesses of the data sources used to construct the CMS and MedPAC indexes, is available online at *http://www.acumenllc.com/reports/cms*. We will continue monitoring wage index reform efforts and their potential influence on the HH PPS wage index.

Moreover, in light of all of the pending research and review of wage index issues in general, it would be premature at this time to initiate revisiting the use of CBSA labor market areas and review of a HH specific wage index.

Therefore, in this final rule, we will continue to use hospital wage data to calculate the HH PPS wage index adjustment, and are finalizing the wage index policies as discussed in the CY 2010 proposed rule (74 FR 40948–40982, August 13, 2009). Refer to Addenda A and B of this final rule for the wage index applicable to CY 2010 HH PPS payments.

4. CY 2010 Payment Update

a. National Standardized 60-Day Episode Rate

The CY 2010 HH PPS rates use the same case-mix methodology and application of the wage index adjustment to the labor portion of the HH PPS rates as set forth in the CY 2008 HH PPS final rule with comment period. We multiply the national 60-day episode rate by the patient's applicable case-mix weight. We divide the case-mix adjusted amount into a labor and non-labor portion. We multiply the labor portion by the applicable wage index based on the site of service of the beneficiary. We add the wage-adjusted portion to the non-labor portion yielding the case-mix and wage adjusted 60-day episode rate subject to any additional applicable adjustments.

For CY 2010, we base the wage index adjustment to the labor portion of the HH PPS rates on the most recent pre-floor and pre-reclassified hospital wage index. As discussed in the July 3, 2000 HH PPS final rule, for episodes with four or fewer visits, Medicare pays the national per-visit amount by discipline, referred to as a LUPA. We update the national per-visit rates by discipline annually by the applicable home health market basket percentage. We adjust the national per-visit rate by the appropriate wage index based on the site of service for the beneficiary, as set forth in § 484.230. We will adjust the labor portion of the updated national per-visit rates used to calculate LUPAs by the most recent pre-floor and pre-reclassified hospital wage index, as discussed in the CY 2008 HH PPS final rule with comment period. We update the LUPA add-on payment amount and the NRS conversion factor by the applicable home health market basket update of 2.0 percent for CY 2010.

Medicare pays the 60-day case-mix and wage-adjusted episode payment on a split percentage payment approach. The split percentage payment approach includes an initial percentage payment and a final percentage payment as set forth in § 484.205(b)(1) and § 484.205(b)(2). We may base the initial percentage payment on the submission of a request for anticipated payment (RAP) and the final percentage payment on the submission of the claim for the episode, as discussed in § 409.43. The claim for the episode that the HHA submits for the final percentage payment determines the total payment amount for the episode and whether we make an applicable adjustment to the 60-day case-mix and wage-adjusted episode payment. The end date of the 60-day episode as reported on the claim determines which calendar year rates Medicare would use to pay the claim.

We may also adjust the 60-day case-mix and wage-adjusted episode payment based on the information submitted on the claim to reflect the following:

- A low utilization payment provided on a per-visit basis as set forth in § 484.205(c) and § 484.230.
- A partial episode payment adjustment as set forth in § 484.205(d) and § 484.235.
- An outlier payment as set forth in § 484.205(e) and § 484.240.

b. Updated CY 2010 National Standardized 60-Day Episode Payment Rate

In calculating the annual update for the CY 2010 national standardized 60-day episode payment rates, we first look at the CY 2009 rates as a starting point. The CY 2009 national standardized 60-day episode payment rate is $2,271.92.

As discussed in section II.B., ''Outlier Policy'', of the CY 2010 proposed rule, and finalized in section II.A. of this final rule, in our final policy of targeting outlier payments to be approximately 2.5 percent of total HH PPS payments in CY 2010, we are returning 2.5 percent back into the HH PPS rates, to include the national standardized 60-day episode payment rate. As such, to calculate the CY 2010 national standardized 60-day episode payment rate, we first increase the CY 2009 national standardized 60-day episode payment rate ($2,271.92) to adjust for the 5 percent originally set aside for outlier payments. We then reduce that adjusted payment amount by 2.5 percent, the final target percentage of outlier payments as a percentage of total HH PPS payment. Next, we update by the final CY 2010 home health market basket update percentage of 2.0 percent.

As previously discussed in section II.C., ''Case-Mix Measurement Analysis'', of the proposed rule, our updated analysis of the change in case-mix not due to an underlying change in patient health status reveals additional increase in nominal case-mix. As discussed, we are moving forward with our existing policy to reduce rates by 2.75 percent in CY 2010. Consequently, to calculate the CY 2010 national standardized 60-day episode payment rate, we then reduce the rate by 2.75 percent, for a final updated CY 2010 national standardized 60-day episode payment rate of $2,312.94. The final updated CY 2010 national standardized 60-day episode payment rate for an HHA that submits the required quality data is shown in Table 1. The final updated CY 2010 national standardized 60-day episode payment rate for an HHA that does not submit the required quality data (home health market basket update of 2.0 percent is reduced by 2 percent) is shown in Table 2.

TABLE 1—NATIONAL STANDARDIZED 60-DAY EPISODE PAYMENT RATE UPDATED BY THE HOME HEALTH MARKET BASKET UPDATE FOR CY 2010, BEFORE CASE-MIX ADJUSTMENT AND WAGE ADJUSTMENT BASED ON THE SITE OF SERVICE FOR THE BENEFICIARY

CY 2009 National standardized 60-day episode payment rate	Adjusted to return the outlier funds, that paid for the original 5% target for outlier payments	Adjusted to account for the proposed 2.5% outlier policy	Multiply by the home health market basket update (2.0 percent) [1]	Reduce by 2.75 percent for nominal change in case-mix	CY 2010 National standardized 60-day episode payment rate
$2,271.92	/ 0.95	× 0.975	× 1.020	× 0.9725	$2,312.94

[1] The estimated home health market basket update of 2.0 percent for CY 2010 is based on IHS Global Insight Inc., 3rd Qtr 2009 forecast with historical data through 2nd Qtr 2009.

TABLE 2—FOR HHAS THAT DO NOT SUBMIT THE REQUIRED QUALITY DATA; NATIONAL STANDARDIZED 60-DAY EPISODE PAYMENT RATE UPDATED BY THE HOME HEALTH MARKET BASKET UPDATE FOR CY 2010, BEFORE CASE-MIX ADJUSTMENT AND WAGE ADJUSTMENT BASED ON THE SITE OF SERVICE FOR THE BENEFICIARY

Total CY 2009 National standardized 60-day episode payment rate	Adjusted to return the outlier funds, that paid for the original 5% target for outliers	Adjusted to account for the 2.5% outlier policy	Multiply by the home health market basket update (2.0 percent) [1] minus 2 percent for a 0.0 percent update	Reduce by 2.75 percent for nominal change in case-mix	CY 2010 National standardized 60-day episode payment rate for HHAs that do not submit required quality data
$2,271.92	/ 0.95	× 0.975	× 1.00	× 0.9725	$2,267.59

[1] The estimated home health market basket update of 2.0 percent for CY 2010 is based on IHS Global Insight Inc., 3rd Qtr 2009 forecast with historical data through 2nd Qtr 2009.

c. National Per-Visit Rates Used To Pay LUPAs and Compute Imputed Costs Used in Outlier Calculations

In calculating the CY 2010 national per-visit rates used to calculate payments for LUPA episodes and to compute the imputed costs in outlier calculations, we start with the CY 2009 national per-visit rates. We first adjust the CY 2009 national per-visit rates to adjust for the 5 percent originally set aside for outlier payments. We then reduce those national per-visit rates by 2.5 percent, the final target percentage of outlier payments as a percentage of total HH PPS payment. Next we update by the current CY 2010 home health market basket update percentage of 2.0 percent. National per-visit rates are not subjected to the 2.75 percent reduction related to the nominal increase in case-mix because they are per-visit rates and hence not case-mix adjusted. The final updated CY 2010 national per-visit rates per discipline are shown in Table 3.

TABLE 3—NATIONAL PER-VISIT RATES FOR LUPAS (NOT INCLUDING THE LUPA ADD-ON PAYMENT AMOUNT FOR A BENEFICIARY'S ONLY EPISODE OR THE INITIAL EPISODE IN A SEQUENCE OF ADJACENT EPISODES) AND OUTLIER CALCULATIONS UPDATED BY THE CY 2010 HOME HEALTH MARKET BASKET UPDATE, BEFORE WAGE INDEX ADJUSTMENT

Home health discipline type	CY 2009 Per-visit amounts per 60-day episode for LUPAs	Adjusted to return the outlier funds that paid for the original 5% target for outlier payments	Adjusted to account for the 2.5% outlier policy	For HHAs that DO submit the required quality data		For HHAs that DO NOT submit the required quality data	
				Multiply by the home health market basket update (2.0 percent) [1]	CY 2010 per-visit payment amount for HHAs that DO submit the required quality data	Multiply by the home health market basket update (2.0 percent) [1] minus 2 percent, for a 0 percent update	CY 2010 per-visit payment amount for HHAs that DO NOT submit the required quality data
Home Health Aide	$48.89	/ 0.95	× 0.975	× 1.02	$51.18	× 1.00	$50.18
Medical Social Services	173.05	/ 0.95	× 0.975	× 1.02	181.16	× 1.00	177.60
Occupational Therapy	118.83	/ 0.95	× 0.975	× 1.02	124.40	× 1.00	121.96
Physical Therapy	118.04	/ 0.95	× 0.975	× 1.02	123.57	× 1.00	121.15
Skilled Nursing	107.95	/ 0.95	× 0.975	× 1.02	113.01	× 1.00	110.79
Speech-Language Pathology	128.26	/ 0.95	× 0.975	× 1.02	134.27	× 1.00	131.64

[1] The proposed estimated home health market basket update of 2.0 percent for CY 2010 is based on IHS Global Insight Inc., 3rd Qtr 2009 forecast with historical data through 2nd Qtr 2009.

d. LUPA Add-on Payment Amount Update

Beginning in CY 2008, LUPA episodes that occur as the only episode or initial episode in a sequence of adjacent episodes were adjusted by adding an additional amount to the LUPA payment before adjusting for area wage differences. As previously discussed, we are returning 2.5 percent back into the HH PPS rates, to include the LUPA add-on payment amount, as a result of our final policy to target outlier payments to be approximately 2.5 percent of total HH PPS payments in CY 2010. As such, we first adjust the CY 2009 LUPA add-on payment amount to adjust for the 5 percent originally set aside for outlier payments. We then reduce that amount by 2.5 percent, the final target percentage of outlier payments as a percentage of total HH PPS payment. Next we updated by the current CY 2010 home health market basket update percentage of 2.0 percent. The LUPA add-on payment amount was not subject to the 2.75 percent reduction related to the nominal increase in case-mix because it is an add-on to the per-visit rates which are not case-mix adjusted.

The final updated CY 2010 LUPA add-on payment amount is shown in Table 4 below. Just as the standardized 60-day episode rate and the per-visit rates paid to HHAs that do not submit the required quality are reduced by 2 percent, the additional LUPA payment should be reduced by 2 percent also. In neither the CY 2008 nor the CY 2009

HH PPS rulemaking did we include such an adjustment to the LUPA add-on payment amount. For CY 2010, the add-on to the LUPA payment to HHAs that submit the required quality data will be updated by the full home health market basket update. The add-on to the LUPA payment to HHAs that do not submit the required quality data will be updated by the home health market basket update minus two percent.

TABLE 4—CY 2010 LUPA ADD-ON PAYMENT AMOUNTS

			For HHAs that DO submit the required quality data		For HHAs that DO NOT submit the required quality data	
CY 2009 LUPA Add-on payment amount	Adjusted to return the outlier funds, that paid for the original 5% target for outliers	Adjusted to account for the proposed 2.5% outlier policy	Multiply by the home health market basket update (2.0 percent) [1]	CY 2010 LUPA Add-on payment amount for HHAs that DO submit required quality data	Multiply by the home health market basket update (2.0 percent) [1] minus 2 percent, for a 0.0 percent update	CY 2010 LUPA Add-on payment amount for HHAs that DO NOT submit required quality data
$90.48	/ 0.95	× 0.975	× 1.02	$94.72	× 1.00	$92.86

[1] The proposed estimated home health market basket update of 2.0 percent for CY 2010 is based on IHS Global Insight Inc., 3rd Qtr 2009 forecast with historical data through 2nd Qtr 2009.

e. Non-Routine Medical Supply Conversion Factor Update

Payments for non-routine medical supplies (NRS) are computed by multiplying the relative weight for a particular severity level by the NRS conversion factor. We first adjust the CY 2009 NRS conversion factor ($52.39) to adjust for the 5 percent originally set aside for outlier payments. We then reduce that amount by 2.5 percent, the final target percentage of outlier payments as a percentage of total HH PPS payment.

Next we update by the current proposed CY 2010 home health market basket update percentage of 2.0 percent. Finally, we then reduce that adjusted payment amount by 2.75, to account for the increase in nominal case-mix. The final updated CY 2010 NRS conversion factor is shown in Table 5a below. The NRS conversion factor for CY 2009 was $52.39. For CY 2010, the NRS conversion factor is $53.34.

TABLE 5A

CY 2009 NRS conversion factor	Adjusted to return the outlier funds, that paid for the original 5% target for outlier payments	Adjusted to account for the 2.5% outlier policy	Multiply by the home health market basket update (2.0 percent)	Reduce by 2.75 percent for nominal change in case-mix	CY 2010 NRS conversion factor for HHAs that DO submit the required quality data
$52.39	/ 0.95	× 0.975	× 1.02	× 0.9725	$53.34

The payment amounts, using the above computed CY 2010 NRS conversion factor ($53.34), for the various severity levels based on the updated conversion factor are calculated in Table 5b.

TABLE 5B—RELATIVE WEIGHTS FOR THE 6-SEVERITY NRS SYSTEM

Severity level	Points (scoring)	Relative weight	NRS payment amount
1	0	0.2698	$14.39
2	1 to 14	0.9742	51.96
3	15 to 27	2.6712	142.48
4	28 to 48	3.9686	211.69
5	49 to 98	6.1198	326.43
6	99+	10.5254	561.42

For HHAs that do not submit the required quality data, we again begin with the CY 2009 NRS conversion factor. We first adjust the CY 2009 NRS conversion factor ($52.39) to adjust for the 5 percent originally set aside for outlier payments. We then reduce that amount by 2.5 percent, the final target percentage of outlier payments as a percentage of total HH PPS payment. Next we update by the current CY 2010 home health market basket update percentage of 2.0 percent minus 2 percent) for a 0.00 percent update. Finally, we then reduce that adjusted payment amount by 2.75, to account for the increase in nominal case-mix. The final updated CY 2010 NRS conversion factor for HHAs that do not submit quality data is shown in Table 6A below.

TABLE 6A—CY 2010 NRS CONVERSION FACTOR FOR HHAS THAT DO NOT SUBMIT THE REQUIRED QUALITY DATA

CY 2009 NRS Conversion Factor	Adjusted to return the outlier funds, that paid for the original 5% target for outlier payments	Adjusted to account for the proposed 2.5% outlier policy	Multiply by the proposed home health market basket update (2.0 percent) minus 2 percent for a 0.0 percent update	Reduce by 2.75 percent for nominal change in case-mix	CY 2010 NRS conversion factor for HHAs that DO NOT submit the required quality data
$52.39	/ 0.95	× 0.975	× 1.00	× 0.9725	$52.29

The payment amounts for the various severity levels based on the updated conversions factor, for HHAs that do not submit quality data, are calculated in Table 6B, below.

TABLE 6B—RELATIVE WEIGHTS FOR THE 6–SEVERITY FOR HHAS THAT DO NOT SUBMIT QUALITY DATA

Severity level	Points (scoring)	Relative weight	Proposed NRS payment amount
1	0	0.2698	$14.11
2	1 to 14	0.9742	50.94
3	15 to 27	2.6712	139.68
4	28 to 48	3.9686	207.52
5	49 to 98	6.1198	320.00
6	99+	10.5254	550.37

D. OASIS Issues

1. HIPPS Code Reporting

In the proposed rule we clarified our policy regarding the submission of the Health Insurance Prospective Payment System (HIPPS) codes to CMS via OASIS. § 484.250 requires HHAs to submit to CMS the OASIS data described in § 484.55(b)(1) and § 484.55(d)(1) in order for CMS to administer the payment rate methodologies. Also, as described in § 484.20, HHAs must electronically report all OASIS data collected in accordance with § 484.55 as a condition of participation, and HHAs must encode and electronically transmit the completed OASIS assessment to CMS in the standard data format as described in § 484.20(d). For those OASIS assessments required for payment, the standard format which is electronically transmitted by the HHA to CMS includes a HIPPS code, generated by grouper software at the HHA. When an HHA electronically transmits OASIS assessments to CMS (via the State agency), the CMS OASIS submission system performs a validation check of the transmitted OASIS items, including the submitted HIPPS code. If the CMS OASIS submission system validation determines that the submitted HIPPS code is in error, it informs HHAs of that error via the Final Validation Report which is returned to HHA. The Final Validation Report will include the valid, CMS OASIS submission system calculated HIPPS code. We have become aware of a proliferation of incidents where the HIPPS code submitted to CMS on the OASIS does not match the HIPPS code, which is calculated by the CMS OASIS submission system. The HH PPS Grouper Software, which is used by the CMS OASIS submission system in its validation, is the official grouping software of the HH PPS, and thus the HIPPS code produced by the CMS OASIS submission system is the HIPPS code that should ultimately be billed on the claim. Consequently, in the interest of accurate coding and billing, we proposed that the HHA be required to ensure that the HIPPS code billed on the claim is consistent with that which CMS' OASIS submission system calculated. In the case where the Final Validation Report returns to the HHA a HIPPS code which is different than the HIPPS code submitted to CMS by the HHA on the OASIS, the HHA must ensure that the HIPPS code from the Final Validation report is the HIPPS code reported on the bill.

Comment: Commenters were supportive of our proposal to require that the OASIS HIPPS code match that on the claim. However, one commenter noted that some software cannot identify claims that need to have the HIPPS codes reconciled, and suggested we allow time for vendors to accommodate, and time for providers to develop internal procedures. This commenter also asked that we clarify in greater detail what is meant by non-compliance. If the proposal is finalized, and enforced on an individual claim basis, this commenter suggested that after a delay for systems changes, we allow for testing of individual claim edits by generating warning messages. The commenter suggested this occur during a trial period to give providers time to test out procedures and software.

Other commenters wrote that if we move toward requiring claim-by-claim verification of the HIPPS codes against the OASIS data repository, the system should be constructed to avoid delays in payment. One commenter stated that the proposed rule wasn't clear about when the trend toward incorrect HIPPS coding began. This commenter wrote that if it began with the 2008 refinement, did we consider factors outside of HHA control, such as the effect of item M0110, which impacts the HIPPS code. HHAs may not have enough information to answer M0110 at the start of the episode, but the FI may automatically change the HIPPS code due to more current information related to M0110 in CWF which was not available to the HHA at start of care. The commenter asks how we will ensure that the HIPPS codes match in this scenario, and how agency oversight would occur. Another commenter asked what the consequences would be if a few claims had minor discrepancies, and would like us to provide additional information on the implications and consequences of policy statements regarding the differences in HIPPS generated by OASIS and HIPPS on the claim.

Some commenters expressed concern that some vendor billing software used by HHAs is not currently able to identify situations where the HIPPS code submitted on claims needs to be reconciled to the HIPPS code calculated by State OASIS systems. The commenter requested that CMS allow additional time for vendors and HHAs to make changes to their software and that CMS systems generate warning messages during a trial period.

Response: HHAs do not necessarily need to change their software initially in order to comply with this requirement. If HIPPS codes generated by the HHA's software do not match the code calculated by State OASIS systems, the HHA currently receives a warning message alerting them to this problem. HHAs should use these warning messages as a trigger to correct any HIPPS code submitted for payment by either canceling and resubmitting any paid Request for Anticipated Payment (RAP) or adjusting any paid claim. Since canceling or adjusting claims are routine billing processes, we do not believe additional time is necessary to allow HHAs to prepare for them.

In the future, enforcement of this requirement may be implemented on a pre-payment basis. HHAs should seek to improve their compliance and their internal processes now in order to prepare for any future pre-payment requirement. Specific information about future enforcement mechanisms will be provided by Medicare program instructions with sufficient time for HHAs to prepare for them.

The information that highlighted the errors in HIPPS code reporting reflected all 2008 claims. However, the information compared the HIPPS codes the HHA initially submitted on claims with the HIPPS codes calculated by the State OASIS system for the same episode. Both the HHA and the State system were using the same M0110 information in their calculations, so subsequent changes in that information could not affect the results. CMS will consider the effect of M0110 information in any future enforcement mechanism.

As such, in the interest of accurate coding and billing, we are implementing the provision that the HHA be required to ensure that the HIPPS code billed on the claim is consistent with that which CMS' OASIS submission system calculated. In the case where the Final Validation Report returns to the HHA a HIPPS code which is different than the HIPPS code submitted to CMS by the HHA on the OASIS, the HHA must ensure that the HIPPS code from the Final Validation report is the HIPPS code reported on the bill.

2. OASIS Submission as a ''Condition of Payment''

Section 484.20 requires that HHAs must electronically report to CMS (via the State agency or OASIS contractor) all OASIS data collected in accordance with § 484.55 as a condition of participation. Additionally, § 484.250 requires that HHAs must submit to CMS the OASIS data described at § 484.55(b)(1) and (d)(1) in order for CMS to administer the payment rate methodologies. Building on the above clarification for HHAs to ensure the HIPPS code reported on the bill is consistent with that which CMS' OASIS submission system calculated, and in order to be consistent with § 484.250, in the proposed rule, we proposed to require the electronic reporting of OASIS to CMS as a condition of payment in § 484.210. Currently, as a requirement for pay for reporting, HHAs are required to submit quality data (that being OASIS data) in order to receive the full home health market basket update to the rates. The burden associated with the requirement for the HHA to submit the OASIS is currently accounted for under OMB# 0938–0761. Making OASIS submission a condition for payment is consistent with both OASIS submissions being a condition of participation and a requirement to receive full market basket updates under pay for reporting.

Comment: Several commenters supported our proposal to require OASIS reporting as a condition of payment, calling it an appropriate step toward ensuring agreement between the HHRG on OASIS and that reported on the claim. However, these commenters were confused because they wrote that the proposed regulatory language and the language in the current regulation are the same. They also requested that we clarify how the proposed change would affect current procedures for RAPs and claims submissions, saying that currently HHAs are required to have OASIS data ready for transmission before submitting a RAP, but are not required to have submitted OASIS.

Additionally, these commenters noted that compliance with 42 CFR 455.55(b)(1) and (d)(1) specifies that OASIS data submitted requires completion of the comprehensive assessment with OASIS within 5 days after the start of care and during the last 5 days of a prior episode for recertification. The commenter was concerned that the impact of the proposed change could preclude HHAs from receiving Medicare payment in all cases where OASIS was not completed within the 5-day timeframe. The commenters noted some exceptions to the 5-day timeframe, and that in the early years of HH PPS, CMS used Q&As and letters to express its intention to refrain from penalizing HHAs that failed to submit OASIS during the 5-day timeframe under certain circumstances. In these cases, the commenters wrote that CMS allowed HHAs to either conduct a comprehensive assessment as soon as possible in the 60 day episode, or to determine appropriate OASIS responses required for payment from the clinical record when Medicare is the payer. Also, when payment-only items are collected, HHAs are not to submit these data to CMS. The commenters recommended that we amend any enforcement to consider that 100 percent compliance with the 5-day timeframe is not always achievable.

A different commenter was opposed to the proposal to require OASIS reporting as a condition for payment, noting the exceptions to the 5-day timeframe because of issues outside of the provider's control. This commenter wrote that we should not include timeframes in any submission requirement related to payment and also asked that we change enforcement to recognize that 100 percent compliance with the 5-day timeframe is not always achievable.

Several commenters were concerned about the potential for reinstitution of collection of all OASIS items for one-visit-only cases; currently HHAs limit the OASIS collection to payment-only items for one-visit patients.

One commenter wrote that the current OASIS requirements are included only in the home health CoPs, and is concerned that the proposal would lead to the use of OASIS requirements by Regional Home Health Intermediaries (RHHIs), Payment Safeguard Contractors (PSCs), and Recovery Audit Contractors (RACs) to deny or adjust claims payment. The commenter wrote that HHAs are already inundated with State and Federal audits, and that this proposal would only exacerbate the problem. Another asked us to provide additional information in the implications and consequences of policy statements regarding OASIS being a condition of payment, and asked what actions would result if an agency failed to meet the requirement.

Response: We thank the writers for their comments. We assure commenters that we have no intention that this proposed requirement would have an effect on long-standing direction associated with submitting RAPS, OASIS completion timeframes, and

instructions associated with one-visit episodes. Rather, we intend that in finalizing this policy, providers will ensure that prior to submitting a final HH PPS episode claim, a provider will have submitted an OASIS, and the HIPPS code on the final HH PPS episode claim will be consistent with the HIPPS on the OASIS validation report.

As such, we are implementing the provision to require the submission of OASIS, for final claims, as a condition of payment, and revising § 484.210 ''Data used for the calculation of the national prospective 60-day episode payment'' to reflect this requirement.

E. Qualifications for Coverage as They Relate to Skilled Services Requirements

In the proposed rule, for CY 2010, we proposed to clarify what constitutes skilled services in the home health setting with the following revisions to § 409.42. We proposed to add a qualifying instruction to § 409.42(c)(1) to explain that intermittent skilled nursing services meeting the criteria for skilled services and the need for skilled services found in § 409.32 (with examples in § 409.33 (a) and (b)) are subject to certain limitations in the home health setting.

Proposed New Paragraph § 409.42(c)(1)(i)

We proposed to describe the limitations in two new paragraphs, § 409.42(c)(1)(i) and § 409.42(c)(1)(ii). In § 409.42(c)(1)(i) we proposed that in the home health setting, management and evaluation of a patient care plan is considered a reasonable and necessary skilled service only when underlying conditions or complications are such that only a registered nurse can ensure that essential non-skilled care is achieving its purpose.

Further, in § 409.42(c)(1)(i) we also proposed to clarify that to be considered a skilled service, the complexity of the necessary unskilled services that are a necessary part of the medical treatment must require the involvement of licensed nurses to promote the patient's recovery and medical safety in view of the overall condition. Where nursing visits are not needed to observe and assess the effects of the nonskilled services being provided to treat the illness or injury, skilled nursing care would not be considered reasonable and necessary, and the management and evaluation of the care plan would not be considered a skilled service.

Additionally, we proposed to further clarify in § 409.42(c)(1)(i) that in some cases, the condition of the patient may require that a service that would normally be considered unskilled be classified as a skilled nursing service given a patient's unique circumstances. This would occur when the patient's underlying condition or complication required that only a registered nurse could ensure that essential non-skilled care was achieving its purpose. However, any individual service would not be deemed a skilled nursing service merely because it was performed by or under the supervision of a licensed nurse. Where a service could be safely and effectively performed (or self administered) by the average non-medical person without the direct supervision of a nurse, the service could not be regarded as a skilled service, although a nurse may have actually provided the service.

Proposed New Paragraph § 409.42(c)(1)(ii)

Additionally, we also proposed a new § 409.42(c)(1)(ii), which would clarify when patient education services as described in § 409.33(a)(3) constituted skilled services in the home health setting. Currently § 409.32(a)(3) states that patient education services are skilled services if the use of technical or professional personnel is necessary to teach patient self-maintenance. However, to address the concerns and lack of clarity surrounding when educational services are skilled services as described above, we proposed to add a new paragraph, § 409.42(c)(1)(ii). In the home health setting, skilled education services would be deemed to no longer be needed when it became apparent, after a reasonable period of time, that the patient, family, or caregiver could not or would not be trained. Further teaching and training would cease to be reasonable and necessary in this case, and would cease to be considered a skilled service. Notwithstanding that the teaching or training was unsuccessful, the services for teaching and training would be considered to be reasonable and necessary prior to the point that it became apparent that the teaching or training was unsuccessful, as long as such services were appropriate to the patient's illness, functional loss, or injury.

Proposed Change to § 409.44(b)

We proposed to revise the introductory material at § 409.44(b)(1), to refer to the newly proposed limitations of skilled services in the home health benefit at § 409.42(c)(1)(i) and 409.42(c)(1)(ii). The clauses under the revised paragraphs (i) through (iv) would remain unchanged.

Proposed Revision to § 424.22(a)(1)(i) and § 424.22(b)(2)

We also proposed to revise § 424.22(a)(1)(i) and § 424.22(b)(2) to require a written narrative of clinical justification on the physician certification and recertification for the targeted condition where the patient's overall condition supported a finding that recovery and safety could be ensured only if the care was planned, managed, and evaluated by a registered nurse. To clarify for home health agencies what specific circumstances would necessitate the involvement of a registered nurse in the development, management, and evaluation of a patient's care plan when only unskilled services were being provided, we proposed additions to the home health certification content requirements as described at § 424.22(a)(i) and recertification content requirements at § 424.22(b)(2). Specifically, when a patient's underlying condition or complication required exclusively that a registered nurse ensure that essential non-skilled care is achieving its purpose, and necessitated that a registered nurse be involved in the development, management, and evaluation of a patient's care plan, we proposed to require the physician include a written narrative on the certification and recertification describing the physician's clinical justification of this need.

Comment: Many commenters appreciated CMS' clarification of skilled services. However, many opposed CMS' proposal that a physician include a clinical justification on the certification of need for Medicare's home health services, in the scenario where a patient's need for skilled services is met solely because skilled oversight of unskilled services is required. Commenters urged CMS to reconsider this requirement, stating that such a requirement would be too burdensome for physicians to include on the certification, would be too burdensome for agencies to administer, and would result in fewer patients being referred to home health. Some commenters stated that the need for skilled oversight of unskilled services is a determination that the home health nurse makes at the initial eligibility assessment, and that this need is better understood by the nurse than it would be by the certifying physician. Further, commenters stated that this requirement would muddy issues of nursing practice by requiring more physician orders for established areas of nursing practice. Other commenters expanded on this concern, stating that by requiring the physician to

clinically justify the need for skilled oversight of unskilled services, CMS was diminishing the role and responsibility of the home health nurse to makes such an assessment. Some commenters recommended that CMS instead provide education to providers regarding when evaluation and management of unskilled services is appropriate. Another commenter suggested that we develop a national coverage determination (NCD) to address our concerns. Commenters described the challenges that home health agencies currently face in getting the physician to sign orders and plans of care, fearing that this additional physician documentation requirement could result in physicians not certifying patients for Medicare's home health benefit, ultimately resulting in access to care issues for patients. Other commenters stated that this requirement would have no positive effect; because so few patients meet the skilled requirement based solely on this need, the narrative requirement would not enhance program integrity efforts. Commenters contended that the requirement would increase HHA costs, since HHAs would need to track the physician's compliance. One commenter suggested that we instead provide the patient's certifying physician with a list of services provided to the patient to achieve more physician involvement with the home health patient. Another commenter suggested instead of requiring a physician narrative in this scenario, we instead require that the plan of care contain a clinical justification for the skilled oversight. Other commenters stated that a narrative requirement is not the way to achieve more physician involvement and another commenter stated that a narrative requirement would take away from the time a physician spends with the patient. Instead, CMS should look to new OASIS–C process measures which would require the home health agency to contact the physician more frequently. Another commenter suggested that we instead require a clear order from the physician for management and evaluation of the plan of care. Another commenter stated that this narrative requirement more appropriately belongs in the physician fee schedule rule, while another commenter stated that should CMS finalize this requirement, we place the burden of compliance on the physician. Finally, a commenter stated this requirement is especially problematic for dual eligible home health patients. The commenter asserted that Medicaid does not have a comparable narrative requirement. Therefore, should an agency believe that the payer source for a patient is Medicaid, it would not obtain the narrative from the physician. If later the agency determines that Medicare should be the payer for the services rendered to such a patient, the agency would not be able to satisfy this narrative requirement.

Response: We thank the writers for their comments. However, we continue to believe that requiring a physician to complete a clinical justification on the certification in this targeted scenario addresses a specific program vulnerability which has been identified by our Medicare contractors, and is a first step in addressing vulnerabilities identified by the Office of Inspector General (OIG). We also believe that this requirement will result in a minimal burden on the physician, and minimal costs to the HHA, given that this requirement applies only to the small percentage of patients who require only skilled oversight of unskilled care. The brief narrative should be a simple task for the physician because of the physician's responsibility for the clinical determination of the patient's skilled need as part of the certification or recertification requirement.

We remind commenters that a physician must certify that home health services are required because the individual patient needs skilled nursing care on an intermittent basis, or physical or speech therapy, or continued occupational therapy in order for a patient to be eligible for the benefit. We are concerned that many commenters state that a physician's involvement in this scenario is negligible; that the physician relies solely on the home health nurse's determination when certifying the need for the Medicare home health benefit. We remind commenters that the physician has always been responsible for certifying that the unique condition of the patient warrants eligibility for Medicare's home health benefit. A home health agency's recommendation alone is not sufficient for a physician to certify the need for the benefit. While our regulations have always required the physician to review the individual patient's needs and unique clinical condition as part of the certification and recertification requirement, we believe the commenters are often correct that the physician may rely too heavily on the home health staff for the determination of skilled need for Medicare's home health benefit.

We also would like to assure nurses that this requirement is not an attempt by CMS to diminish in any way the essential and important role that skilled nurses play in the assessment of a home health patient's needs. While the home health nurse is responsible for initiating, managing and evaluating the resources needed to promote the Medicare home health patient's optimal level of well-being, this does not diminish the responsibility of the physician to ensure that the unique condition of the patient warrants the need for Medicare's home health benefit. The physician is currently responsible to carefully synthesize data regarding the patient's condition and assess whether this patient's unique condition requires Medicare's home health services. The physician is accountable for the accuracy of the certification of need for home health services. We agree with the commenter that providing the physician with a list of patients' home health services provided may be useful. Similarly, we agree with the commenter that inclusion of a clinical justification on the plan of care is a good idea, and that a clear physician order for this service should be present. We also agree that the OASIS process measures will more actively involve the physician in some aspects of patient care. Additional provider education associated with management and evaluation is something that CMS will consider providing. However, we do not believe that an NCD is appropriate in this scenario because skilled services are covered under the home health benefit, and appropriate use of management and evaluation management of the plan of care is a skilled service. Regardless, none of these suggestions would replace the physician's accountability associated with the certification and recertification of need for Medicare's home health benefit, nor would these suggestions address the program vulnerability associated with this specific category of home health patient. And, because the physician's certification and recertification of the need for Medicare's home health benefit is fundamental to eligibility, we disagree with the commenter that this provision would be more appropriately addressed in the physician fee schedule rule. Regarding the commenter's suggestion that we hold the physician accountable for complying with this requirement, we continue to believe that each agency is responsible for ensuring that the certification and recertification requirements are met, but we also reiterate the physician's accountability associated with the certification and recertification, as they are part of the medical record.

Therefore, we are finalizing the following policy: When a patient's underlying condition or complication requires that a registered nurse ensures that essential non-skilled care is achieving its purpose, and necessitates a registered nurse be involved in the development, management and evaluation of a patient's care plan, we will require that the physician include a written narrative on the certification and recertification describing the physician's clinical justification of this need.

Comment: Some commenters encouraged CMS to allow the narrative to be submitted as an attachment. These commenters believe that home health agencies and physicians which have electronic medical records should not be forced to include the narrative on the certification and recertification forms. Some commenters stated that CMS should provide examples to help home health agencies and physicians understand the scope of acceptable responses. Another commenter stated that the requirement would be meaningless since there are no specific guidelines for the content of the statement, and there would be no way to determine that the narrative is completed. Similarly, a commenter stated that if physicians were required to include a clinical justification narrative on the certification, the narrative would be simply a restatement of the nurse's justification, or it would be a prefabricated statement.

Response: Our intent is for the physician to justify his or her certification of skilled need in the scenario where only unskilled services are being provided. We understand that many physicians would prefer to dictate rather than hand-write their clinical findings, and we agree with commenters who stated that we should take into account that some providers have electronic health record systems and may more easily produce an addendum containing the clinical justification. Therefore, we have decided that a typed addendum containing the narrative which is electronically or hand signed by the physician would be acceptable. We also appreciate the commenter's concern that a home health nurse may compose the narrative for the physician and that we should clarify the criteria associated with the narrative requirement. We expect that the narrative must be composed by the physician performing the certification or recertification and not by other home health personnel. Regarding the commenter's concern associated with dual eligible patients, especially given that Medicaid is the payer of last resort, we would encourage agencies to ensure that all Medicare criteria are met if the agency believes that Medicare may be the appropriate payer for a patient.

We believe that these requirements regarding the certification and recertification are a first step in ensuring that only home-health eligible patients receive the benefit. We disagree with the commenter who suggested we include an illustrative example of narrative language, since the intent of the narrative is to capture the physician's synthesis of each patient's unique conditions.

We are modifying our original proposal in that we will allow the narrative to either be part of the certification and recertification forms, or to be an addendum to the certification and recertification forms which is electronically or hand signed by the physician. If the narrative is part of the certification or recertification form, then the narrative must be located immediately prior to the physician's signature. If the narrative exists as an addendum to the certification or recertification form, in addition to the physician's signature on the certification or recertification form, the physician must also sign immediately following the narrative in the addendum. The narrative must reflect the patient's individual clinical circumstances.

Comment: A commenter stated that CMS should issue specific Medicare coverage guidelines that clearly differentiate non-covered custodial or medically unnecessary care under Medicare home health from covered rehabilitative, acute or curative care.

Response: We thank the commenter for the suggestion. We believe that the commenter is asking CMS to expand our skilled services clarification to better clarify CMS' definition of custodial care. We believe that this is outside of the scope of that which we solicited comments, which was to clarify CMS' regulations concerning skilled services in the home health setting. However, we will briefly address this as it is a related topic. Custodial care is not considered skilled care. We suggest the commenter refer to regulations at 42 CFR 409.45(b) and 42 CFR 409.49(d) for some clarification regarding custodial care in the home health setting. We suggest the commenter refer to regulations at 42 CFR 409.49(d) where we specifically stipulate the exclusion of housekeeping services from home health services, and also stipulate that services whose sole purpose is to enable the beneficiary to continue residing in his or her home (for example, cooking shopping, Meals on Wheels, cleaning, laundry) are excluded from home health coverage. We also note that personal care and some incidental services can be provided in the course of a covered Medicare home health visit. 42 CFR 409.45(b) defines what constitutes a home health aide visit. This section explains that the reason for the aide visit must be to provide hands-on personal care to the beneficiary or services that are needed to facilitate treatment of the beneficiary's illness or injury. Please note 42 CFR 409.45(b)(1)(i) provides examples of covered personal care and 42 CFR 409.45(b)(4) permits an aide to perform services incidental to a covered visit. These incidental services may include changing bed linens, personal laundry, or preparing a light meal. Therefore, a home health aide may perform some incidental services which do not meet the definition of a home health aide service (light cleaning, preparation of a meal, taking out the trash, shopping, etc.). However, the purpose of a home health aide visit may not be to provide these incidental services since they are not health-related services, but rather are necessary household tasks that must be performed by anyone to maintain a home. It is important to note that to be considered a covered Medicare home health visit, the purpose of the home health visit cannot be to provide the ''incidental or custodial'' services.

Comment: A few commenters supported the proposed narrative requirement. One commenter recommended that we require the narrative for ALL home health episodes, regardless of services ordered, stating that this would be encourage more physician involvement with the home health patient.

Response: The commenter has correctly interpreted our interest in enhancing physician accountability and involvement with the home health patient. However, at this time we are proposing to require the narrative for only one targeted nursing service. Program vulnerability has been identified in this scenario, because the patient is receiving only unskilled services, which would normally not result in eligibility to Medicare's home health benefit. Therefore, we believe it is prudent to require the physician to provide this clinical justification of why a patient's condition would require skilled nursing management and evaluation (M&E) of the patient's care plan.

Comment: A commenter recommended that CMS reconsider the restrictive interpretation of skilled oversight of the plan of care (POC). Providers are often compelled to

discharge patients from Medicare based on a very limited interpretation of skilled oversight when it is apparent that the patient is in advanced stages of chronic illness and will likely relapse once nursing oversight is discontinued. Such patients may become stable for several weeks and under the policy above would be considered non-covered and discharged from Medicare home health. Patient outcomes could be improved if such patients were offered continuing care coordination during periods of stability. The commenter suggested we modify coverage guidelines to allow home healthcare to continue for observation and monitoring of a plan of care through periods of relative stability if the patient is in advanced stages of chronic illness and likely to deteriorate without skilled care.

Response: We thank the writer for this perspective. However, we are not excluding beneficiaries in advanced stages of chronic illness from qualifying for this service. When a chronically ill patient with an underlying condition or complication requires skilled nursing personnel to manage the plan of care then this service is indeed indicated until the treatment regimen has essentially stabilized. If the combination of the patient's underlying condition, age and immobility creates a high potential for serious complications which require that only a registered nurse can ensure that essential non-skilled care is achieving its purpose then the patient is indeed eligible for this service. However when the patient's treatment regimen is essentially stabilized and skilled nursing visits are not necessary to manage and supervise the home health aide the patient will not require this type of care and does not meet the definition of needing a skilled service for purposes of Medicare home health eligibility, per sections 1814(a)(2)(C) and 1835(a)(2)(A) of the Social Security Act.

Comment: A commenter urged CMS to undertake a similar initiative to set out coverage conditions for therapy services in the home health regulations.

Response: In response to a commenter's request for CMS to provide clarification of coverage of therapy services we are referring the commenter to the following existing section of the Code of Federal Regulation, 42 CFR 409.44(c). We believe that this section adequately sets out the circumstances under which therapy services are covered. However, we thank the commenter for this opportunity to remind HHAs of their ongoing responsibility to evaluate the patient's need for therapy and provide all covered home health services (except durable medical equipment) either directly or under arrangement while a patient is under a home health plan of care.

Comment: A commenter stated that the revisions proposed by CMS will make it more difficult for Medicare patients to obtain skilled nursing management and evaluation of the care plan. The commenter also stated that the requirement places an unrealistic expectation on a patient or caregiver to gauge effectively whether non-skilled care is achieving its purpose, that CMS wrongly hinges coverage on the complexity of unskilled services, and provides no clear guidance for how to determine complexity. The commenter further states that the proposed clarifications add confusion to the current standard.

Response: We disagree with the commenter's statement that the revisions to the skilled nursing management and evaluation of the care plan will make it more difficult for Medicare patients to obtain this skilled service. We also point out that we would expect the home health agency rather than the patient or caregiver to gauge the effectiveness of the services being provided. As we stated earlier, the proposed regulation changes reflect long-standing manual guidance. We also believe that the commenter's concern about no clear guidance to assess the complexity of the unskilled services further reveals the need for the certifying physician to clearly describe what unique aspect about the patient's condition would require skilled management and evaluation of these unskilled services. However, we understand the commenter's concern. The proposed regulation text stated, ''* * * in the home health setting, management and evaluation of a patient care plan is considered a reasonable and necessary skilled service *only* when underlying conditions or complications are such that only a registered nurse can ensure that essential non-skilled care is achieving its purpose.'' (Emphasis added.)

For better consistency with long standing manual guidance, we will remove the word ''only'' after ''reasonable and necessary skilled services * * *''. The modified regulation text is more consistent with long standing manual guidance. The finalized regulation text reads, ''* * * in the home health setting, management and evaluation of a patient care plan is considered a reasonable and necessary skilled service when underlying conditions or complications are such that only a registered nurse can ensure that essential non-skilled care is achieving its purpose.''

Comment: One commenter stated that additional physician visits, phone calls, or paying more for oversight is unlikely to produce meaningful genuine physician involvement. These proposals do not address the fundamental problem of too little physician time to fully support the patient at home. Additional requirements are likely to produce paper or rote compliance at best and at worst will discourage some physicians from referring appropriate patients to homecare. Another commenter stated that the best approach to involving physicians in homecare rests in new models of chronic care management that integrate primary care practice that are committed to home-based care with HHAs into a single, consolidated chronic care service.

Response: We are grateful for the comments. We will consider the suggestions regarding innovative approaches to increasing physician involvement in the plan of care in future rulemaking. However, we again remind commenters that by signing the certification and recertification, the physician is accountable for attesting that the beneficiary is in need of Medicare's home health services, and that the certification and recertification are part of the patient's medical record. And, Medicare reimburses physicians for their work associated with the certification, recertification and plan of care oversight.

Comment: Some commenters expressed concerns with CMS' clarification which described that skilled education services would be deemed to be no longer needed when it became apparent, after a reasonable period of time, that the patient, family member or caregiver could not or would not be trained. Some commenters asked that CMS better clarify timeframes that would be appropriate for these skilled training services. Other commenters stated that unless CMS defines what is a ''reasonable period of time'', the clarification isn't helpful. Other commenters stated that when a patient or caregiver appears incapable of learning, more training would be justified. Another commenter suggested that instead of clarifying this in regulation, we should increase the educational and outreach efforts of our contractors.

Response: This regulation clarification codifies long-standing guidance which has been present in Medicare's Benefit Policy Manual. We believe it inappropriate to assign specific timeframes for patient education services because the length of

time a patient or family or caregiver needs should be determined by assessing each patient's individual condition and other pertinent factors such as the skill required to teach the activity and the unique abilities of the patient. It is important to know that teaching activities must be related to the patient's functional loss, illness, or injury. However, we disagree with the commenter who suggested that when a patient or caregiver is incapable of learning that more education is needed. Medicare's home health benefit is not intended to provide training and education to patients, families, caregivers for an infinite period of time.

To summarize, we are finalizing a number of provisions as they relate to skilled services in the home health setting. Specifically, we are clarifying what constitutes skilled services in the home health setting with the following revisions to § 409.42. We are adding a qualifying instruction to § 409.42(c)(1) to explain that intermittent skilled nursing services meeting the criteria for skilled services and the need for skilled services found in § 409.32 (with examples in § 409.33 (a) and (b)) are subject to certain limitations in the home health setting.

We are revising the introductory material at § 409.44(b)(1), to refer to the new limitations of skilled services in the home health benefit at § 409.42(c)(1)(i) and § 409.42(c)(1)(ii). The clauses under the revised paragraphs (i) through (iv) will remain unchanged.

We are also revising § 424.22(a)(1)(i) and § 424.22(b)(2) to require a written narrative of clinical justification on the physician certification and recertification for the targeted condition where the patient's overall condition supports a finding that recovery and safety could be ensured only if the care was planned, managed, and evaluated by a registered nurse. To clarify for home health agencies what specific circumstances would necessitate the involvement of a registered nurse in the development, management, and evaluation of a patient's care plan when only unskilled services are being provided, we are finalizing additions to the home health certification content requirements as described at § 424.22(a)(i) and recertification content requirements at § 424.22(b)(2).

F. OASIS for Significant Change in Condition: No Longer Associated With Payment

In the CY 2010 proposed rule we proposed to remove an obsolete reference to ''new case-mix assignments'' as a result of significant changes in a patient's condition that appeared in 42 CFR part 484 subpart E at § 484.55(d)(1)(ii). The significant change in condition (SCIC), as it relates to new case-mix assignments affecting payment, was an element of the HH PPS at the time of its first implementation in fiscal year 2000. However, as part of the HH PPS payment refinements implemented in CY 2008, we eliminated the SCIC policy, and the assignment of subsequent case-mix assignments under the HH PPS. However, it should be noted that it was not the SCIC payment policy that required the HHA to perform the assessment, but rather the significant change in the patient's condition. In the proposed rule we did not propose to change that requirement. A HHA would still be required to perform an assessment in the event that a patient experienced a significant change in condition. The proposed modification is only that a new case-mix assignment is no longer associated with this assessment.

In addition, we proposed to revise § 484.250 to delete an obsolete reference to § 484.237. Section 484.237 referred to the SCIC payment policy and was removed in the CY 2008 HH PPS final rule (72 FR 49879).

Comment: A commenter wrote that since there is no additional payment for SCICs, there is no incentive for HHAs to do additional, time-consuming, and costly OASIS assessments. This commenter stated she disagreed with this requirement, and suggested that if we wanted this additional assessment, we should increase reimbursement for it.

Response: We believe the commenter has misunderstood the text of the proposed rule. As noted in the proposed rule, we eliminated the SCIC payment policy and the assignment of subsequent case-mix assignments under the HH PPS in our 2007 (CY 2008) final rule. However it was not the SCIC payment policy that required the HHA to perform the assessment, but rather the significant change in the patient's condition. We did not propose any changes this requirement. The proposed modification was only that a new case-mix assignment is no longer associated with this assessment. Therefore there was no proposal for any additional assessments beyond those that have been requirements for some time now.

We are finalizing the provision to remove an obsolete reference to ''new case-mix assignments'' as a result of significant changes in a patient's condition that appeared in 42 CFR part 484 subpart E at § 484.55(d)(1)(ii). We are also finalizing the provision to revise § 484.250 to delete an obsolete reference to § 484.237.

G. Payment Safeguards for Home Health Agencies

In the Medicare Program; Home Health Prospective Payment System Rate Update for Calendar Year 2010, we also proposed several payment safeguard provisions designed to: (1) Improve our ability to verify that home health agencies (HHAs) meet minimum enrollment criteria; (2) ensure that HHAs that are changing ownership meet and continue to meet the Conditions of Participation for HHAs found in 42 CFR part 484; and (3) improve the quality of care that Medicare beneficiaries receive from HHAs.

1. Program Integrity Concerns Involving HHAs

We stated in the proposed rule that the fraudulent business practices of certain HHAs continue to cost the Medicare program millions of dollars nationwide. This issue was discussed in a recent report issued by the Government Accountability Office (GAO) entitled ''Improvements Needed to Address Improper Payments in Home Health'' (GAO–09–185). This report stated that, nationwide, ''spending on the Medicare home health benefit grew about 44 percent from 2002 through 2006, despite an increase of just less than 17 percent in the number of beneficiaries using the benefit during that 5-year period.'' It also stated discrepancies in a number of States between the number of HHAs that billed Medicare and the increase in the number of Part A beneficiaries. For instance, between 2002 and 2006, the number of HHAs that billed Medicare rose in Florida by 100 percent, in Michigan by 62 percent, in Illinois by 59 percent, in Ohio by 42 percent, in Arizona by 32 percent, and in the District of Columbia by 67 percent. However, the GAO reported, the increases in the number of Part A beneficiaries who used HHA services in these six jurisdictions were as follows: Florida—28 percent; Michigan—19 percent; Illinois—23 percent; Ohio—14 percent; Arizona—4 percent; and the District of Columbia—2 percent.

The disparity in many jurisdictions between the increase in the number of HHAs and the rise in the number of beneficiaries is so overwhelming that it cannot be attributed solely to an aging populace. The fact that, as shown above, between 2002 and 2006, the number of HHAs in Arizona rose at a rate 8 times greater than the number of Part A beneficiaries that use HHA services and that the rate was *an astounding* 33 times greater in Washington, DC must raise

serious questions as to the legitimacy of some of these entities.

As explained in the preamble to the proposed rule, the GAO report also outlined a number of instances of allegedly fraudulent activities on the part of HHAs. In a particularly glaring example in Houston, Texas, the GAO noted the following: ''One PSC (Program Safeguard Contractor) interviewed 670 Houston beneficiaries who had the most severe clinical rating and who were patients of HHAs identified by the PSC as having aberrant billing patterns. The PSC found 91 percent of claims for these beneficiaries to be in error. Nearly 50 percent of the beneficiaries were not homebound and therefore were not eligible to receive any Medicare home health services. The investigators also found that while 39 percent of the beneficiaries they interviewed were eligible for the benefit, their clinical severity had been exaggerated. The PSC concluded that only 9 percent of claims for the 670 beneficiaries were properly coded. In addition, the PSC found that other home health beneficiaries it interviewed were not homebound; for instance, some were mowing their lawns when investigators came to interview them.''

In its report, the GAO also cited a number of court cases and actions of the Office of Inspector General (OIG) that resulted in the criminal convictions of or settlements with owners of various HHAs. In one 2007 case, the owner of a Louisiana HHA was convicted of defrauding Medicare over a 5-year period and was ordered to pay more than $4.6 million in damages. In 2004, the owner of the two largest HHAs in California pled guilty to defrauding the Medicare program of approximately $40 million and filing false tax return to conceal the income. In 2008, an HHA in Florida, pursuant to an OIG settlement, agreed to pay $178,000 to settle a case in which it was alleged that the provider paid kickbacks for beneficiary referrals. In another OIG settlement, this time in 2005, a Pennsylvania HHA agreed to pay $300,000 to settle a case in which it was alleged to have paid kickbacks under Medicare.

In light of all this, the GAO concluded, in part, that ''In the absence of greater prevention, detection, and enforcement efforts, the Medicare home health benefit will continue to be a ready target for fraud and abuse.'' More specifically, it stated that ''gaps in screening potential and current HHAs may allow problem providers to enter and remain in the Medicare program.''

The problem of fraudulent activity has been especially acute in the States of Texas and California. As we stated in the proposed rule, in Los Angeles County in California, the amount of money for which HHAs in that county billed Medicare between Fiscal Years 2003 and 2006 rose from $569 million to $921 million, an increase of 62 percent, and one that was not accompanied by a similar increase in the county's Medicare beneficiary population. There has also been an abnormal proliferation of HHAs in California as a whole. Between October 2002 and May 2007, the number of HHAs in the State rose by 25 percent—again, without a concomitant upswing in the number of Medicare beneficiaries in California, all of which suggested that there may also be an increase in improper billing. Moreover, we have seen instances—notably, though not exclusively, in South Florida and Texas—in which specific HHAs have changed ownership on a frequent basis. The new owners, however, have been mere nominal figures.

We also stated in the proposed rule that the problems we identified have been seen with HHAs on a far greater scale than with any other type of certified provider. The dramatic rise in the number of HHAs in relation to the increase in Medicare beneficiaries has not been duplicated by any other certified provider types.

2. Provisions of the Proposed Regulation

We proposed the following payment safeguard provisions:

- In § 424.530(a)(8), we proposed to deny Medicare billing privileges to a prospective HHA if the HHA is determined, under proposed 42 CFR 489.19, to be sharing, leasing, or subleasing its practice location or base of operations identified in section 4 of its Medicare provider enrollment application with or to another Medicare-enrolled HHA or supplier.
- In § 424.535(a)(11), we proposed to revoke the Medicare billing privileges of an HHA that is determined, under proposed 42 CFR 489.19, to be sharing, leasing, or subleasing its practice location or base of operations identified in section 4 of its Medicare provider enrollment application with or to another Medicare-enrolled HHA or supplier.
- In § 424.540(b)(3), we proposed to exclude home health agencies from the existing language in § 424.540(b)(3), which states that the reactivation of Medicare billing privileges does not require a new certification of the provider or supplier by the State survey agency or the establishment of a new provider agreement.
- In § 424.540(b)(3)(i), we proposed to require that an HHA whose Medicare billing privileges are deactivated under the provisions found at 42 CFR 424.540(a) must obtain an initial State survey or accreditation by an approved accreditation organization before its Medicare billing privileges can be reactivated.
- In § 424.550(b)(1), we proposed to require that if the owner of a home health agency sells (including asset sales or stock transfers), transfers or relinquishes ownership of the HHA within 36 months after the effective date of the HHA's enrollment in Medicare, the provider agreement and Medicare billing privileges do not convey to the new owner.
- In § 424.550(b)(1)(i), we proposed that in the situation described in proposed § 424.550(b)(1), the prospective owner of the HHA must instead enroll in the Medicare program as a new HHA under the provisions of § 424.510.
- In § 424.550(b)(1)(ii), we proposed that in the situation described in proposed § 424.550(b)(1), the prospective owner of the HHA must obtain a State survey or an accreditation from an approved accreditation organization.
- In § 489.12(a)(5), we proposed that CMS deny a provider agreement to a prospective HHA that is determined to be sharing, leasing, or subleasing its practice location or base of operations identified in section 4 of its Medicare provider enrollment application with or to another Medicare enrolled HHA or supplier in violation of the HHA space sharing prohibition set forth in proposed § 489.19.
- In § 489.19(a), we proposed that an HHA be prohibited from sharing its practice location or base of operations identified in section 4 of its Medicare provider enrollment application with another Medicare-enrolled HHA or supplier.
- In § 489.19(b), we proposed that an HHA be prohibited from leasing or subleasing its practice location or base of operations identified in section 4 of its Medicare provider enrollment application with another Medicare-enrolled HHA or supplier.

We also solicited comments on whether there were legitimate business reasons for a Medicare-enrolled HHA to share space with another Medicare-enrolled HHA or supplier when there is common ownership. Likewise, we solicited comments on whether there were legitimate business reasons for a Medicare-enrolled HHA to be co-located with another Medicare-enrolled HHA or supplier when there was no common ownership. Finally, we solicited comments on whether there were

legitimate business reasons for a Medicare-enrolled HHA to engage in leasing or subleasing arrangements with a Medicare-enrolled supplier when there was common ownership.

3. Analysis of and Responses to Public Comments

We received approximately 20 timely public comments in response to the proposed payment safeguard rule. The following is a summary of the comments received and our responses:

a. Sharing and Leasing of Space

Comment: Several commenters opposed the space-sharing provision in proposed 42 CFR 489.19(a). These commenters contend that this provision could preclude arrangements in which an HHA also provides unrelated services from a single location, for example, influenza vaccine clinics under a supplier number; outpatient therapy services under Medicare Part B; preventive nutrition services; hospice services; DME; and infusion supplies and services. One commenter stated that many health systems operate out of a single practice location in the provision of a broad array of items and services. Another commenter, too, stated that corporations often operate multiple provider and supplier types out of the same location; an HHA, for instance, might operate a DMEPOS supplier and a hospice out of the same site. Another commenter noted that arrangements in which an HHA, hospice and DMEPOS share a common location would be known to CMS via the respective providers'/suppliers' completion of the applicable CMS–855 application, which already enables CMS to monitor such arrangements closely; the commenter added that neither CMS nor the OIG has demonstrated a compelling basis to disrupt such arrangements if they are currently in compliance. Yet another commenter noted that a number of HHAs are commonly owned and operated as a result of organizational mergers and are involved in completely legitimate arrangements; the commenter did not understand why such arrangements should be disrupted.

Response: Based on these and other comments received regarding proposed § 489.19(a) and our concern that a broad-based prohibition on co-location policy may negativity impact the health care delivery for some services, we have decided not to include this provision in the final rule. However, we continue to have concerns about these arrangements and will consider our administrative remedies to address our concerns. We are especially concerned about an HHA that maintains a practice location in one State and furnishes services to Medicare beneficiaries in another State. We are also concerned about the HHAs that have merged or consolidated their operations into a single practice location, but continue to operate as distinct entities.

As indicated in the preamble, having multiple HHAs at a single site makes it extremely difficult to determine which HHA is in operation at a given time, which HHA has actual control over certain aspects of the practice location, etc. If an HHA thus does not have a valid practice location, it is considered to be non-operational and, by extension, out of compliance with the HHA conditions of participation and with 42 CFR 424.510(a)(6). If the HHA thereafter bills for services out of that non-operational site, it does so inappropriately.

Comment: Several commenters stated that the ability of HHAs to share a practice location and centralized back office operations with other HHAs—or other Medicare providers and suppliers—improves efficiency and helps to keep down the costs associated with these operations by reducing rent and enabling the sharing of, for instance, billing staff and computer systems. One commenter added that such co-located entities allocate costs separately to each provider and supplier in the same way that hospitals do for their departments. Several other commenters stated that to require these HHAs and suppliers to move to separate locations if proposed 42 CFR 489.19(a) were finalized, would be unduly burdensome and costly to them; it would, for instance, require each formerly co-located provider or supplier to have separate staffs and computer systems.

Response: Based on these and other comments received regarding proposed § 489.19(a), we have decided not to finalize this provision in the final rule.

Comment: One commenter stated that having a shared practice location for various providers and suppliers is a normal, cost-efficient method of health care delivery without any program integrity concerns. The only reason these shared practice locations have more than one provider or supplier number is that Medicare operates an enrollment system that requires separate numbers. In this same vein, another commenter stated that a centrally located organization has been forced to obtain several provider numbers in order to cover its entire service area. In other cases, the commenter, added, HHAs that deliver services across State lines (for decades, in some cases) are currently forced to obtain separate provider numbers because the States that they served have decided not to establish reciprocity agreements with bordering States.

Response: As stated above, based on these and other comments received regarding proposed § 489.19(a), we have decided not to finalize this provision in the final rule.

Comment: Several commenters stated that, under proposed 42 CFR § 489.19(a), a hospital-based HHA would not be able to share space with a DMEPOS supplier that is also owned and operated by the hospital. The commenter suggests that such arrangements pose little risk to the Medicare program.

Response: As stated above, we have decided not to finalize proposed § 489.19(a) in the final rule.

Comment: One commenter urged CMS to identify more effective ways to identify the few fraudulent providers and suppliers that apply for multiple Medicare numbers for the same location. The commenter believed that CMS should establish a vetting process rather than the blanket denial of co-locations. By the same token, this vetting process must do more than allow use of the same address with separate suite numbers, as that would not be a sufficient deterrent to fraudulent providers.

Response: As stated above, we have decided not to finalize proposed § 489.19(a) in the final rule.

Comment: Several commenters urged CMS to refine its proposed 42 CFR 489.19(a) to allow HHAs to share a practice location with other licensed and certified entities to use a shared practice location as long as the co-location arrangement is not used or has not been used for fraudulent or abusive purposes.

Response: As stated above, we have decided not to finalize proposed § 489.19(a) in the final rule.

Comment: One commenter urged CMS to eliminate its proposal in 42 CFR 424.535(a)(11) to allow contractors to revoke the Medicare billing privileges of an HHA on the grounds that it shares a practice location with another entity that is a Medicare-certified HHA. The commenter also stated that due process procedures should be used in instances where an existing HHA is discovered to share a practice location with another HHA or supplier, and that it would be unreasonable to revoke the HHA's billing privileges on that ground if there is no concern about fraud or abuse by the organization.

Response: As stated above, we have decided not to finalize proposed § 489.19(a) in the final rule.

Comment: Several commenters stated that HHAs should be able to share practice locations with other HHAs and suppliers if there is common ownership involved.

Response: As previously stated, we have decided not to finalize proposed § 489.19(a) in the final rule.

Comment: Several commenters requested that CMS clarify the specific situations in which an HHA may be co-located with another entity. Another commenter stated that the space-sharing prohibition smacked of too much government interference into how HHAs do business and would do nothing for patient care.

Response: As stated above, we have decided not to finalize proposed § 489.19(a) in the final rule.

Comment: One commenter disagreed with our prohibition on leasing arrangements in proposed § 489.19(b). The commenter contended that there are a variety of services that one agency may not be equipped to handle and must rely on relationships with other vendors to meet the full needs of their patients. The proposed prohibition could, therefore, hinder beneficiary access to required services.

Response: Based on these and other comments received regarding proposed § 489.19(b), we have decided not to finalize this provision in the final rule.

Comment: One commenter agreed with our proposal to prohibit an HHA from sharing space with another HHA, stating that this practice raises questions as to the viability and legitimacy of the HHA and could confuse surveyors by rendering it difficult for them to identifying which HHA they are actually evaluating.

Response: While we appreciate the commenter's support, we have decided not to finalize proposed § 489.19(a) in the final rule.

Comment: Another commenter supported proposed 42 CFR 489.19(a), but sought clarification that it would not prohibit an HHA from sharing space with other types of home health related organizations such as a long-term home health program, a managed long-term care program, and a licensed certified home health services agency.

Response: While we appreciate the commenter's support, we have decided not to finalize proposed § 489.19(a) in the final rule.

Comment: One commenter supported our proposal to prevent HHAs from sharing practice locations and operations to the extent that there is no common ownership involved. This commenter went on to say that the practice of co-location makes it difficult for State surveyors and accreditors to clearly identify which agency is under review.

Response: While we appreciate the commenter's support, we have decided not to finalize proposed § 489.19(a) in the final rule.

b. Change of Ownership Provisions

Comment: Several commenters agreed with our proposal to prohibit the conveyance of a provider agreement to the new owner of an HHA if the change of ownership takes place within 36 months of the HHA's enrollment in Medicare. One commenter noted that the proposal would: (1) Eliminate situations in which HHAs are established for the purpose of being sold to persons or entities that will ultimately be the operator, and (2) ensure that persons who will operating HHAs have an understanding of the business requirements before receiving a provider agreement.

Response: We appreciate the support of these commenters.

Comment: One commenter supported our proposed change of ownership provision, acknowledging our concerns about turn-key sales of new HHAs where there is no assurance that the buyer can maintain compliance with the conditions of participation.

Response: We agree with this commenter.

Comment: One commenter suggested that CMS allow transactions involving sales and transfers of ownership of HHAs currently enrolled in Medicare for less than 3 years that are in process as of January 1, 2010 to proceed.

Response: We disagree and believe that an HHA change of ownership application that is pending as of January 1, 2010 should be subject to the provisions of this final rule.

Comment: Another commenter requested CMS to establish a ''hardship'' exemption so that legitimate HHA sales can be reviewed and permitted to proceed. The commenter stated that some HHAs sales are facilitated for entirely legitimate and unavoidable reasons, such as when a partner in a partnership dies or leaves the business and a new entity is created. The requirements of 42 CFR 424.550(b)(1) could force such a provider to go out of business; the commenter also stated that the requirements of 42 CFR 424.550(b)(1) could lead to the total devaluation of certain HHAs, and that purchasers will be unable to bill for services provided for periods as long as a year after the sale. Another commenter stated that given the significant investment of capital needed to start and operate an HHA in the current regulatory environment, an owner—in selling its HHA for entirely legitimate reasons—should be able to recoup its investment.

Response: We do not believe that a hardship exemption should be established, nor do we believe that the three-year period should be reduced. As previously stated, the purpose of this requirement is to ensure that HHAs that are sold remain in compliance with Medicare's conditions of participation. We stress that 42 CFR 424.550(b)(1) in no way prohibits an owner from selling its HHA. It merely requires that the HHA enroll as a new provider, undergo a State survey or accreditation, and sign a new provider agreement prior to being able to bill Medicare for services once again.

Comment: Several commenters requested that CMS reduce the 3-year period to 12 months under 42 CFR 424.550(b)(1) so as not to unduly prohibit legitimate sales of HHAs. One such commenter added that agencies that undergo changes of ownership that occur within 1 year fit the CMS description of ''turn-key'' operation.

Response: We do not believe that a change in proposed 42 CFR 424.550(b)(1) is warranted. We continue to believe that a 3-year period is appropriate. We believe that this change will help to ensure that individuals establishing a HHA are doing so with a long-term view of furnishing services, rather than establishing a business for the purpose of selling it a short time later. In addition, we believe that this time-frame will allow CMS to assess whether the HHA is operating in compliance with the conditions of participation and other program requirements.

We wish to make clear that the intent of 42 CFR 424.550(b)(1) goes beyond the issue of ''turn-key'' operations. If an HHA undergoes a change of ownership, CMS—at the current time—generally does not perform a State survey pursuant thereto. CMS therefore has no sure way of knowing whether the HHA, under its new ownership and management, is in compliance with the HHA conditions of participation—regardless of whether the ownership change occurred 12, 24, or 36 months after the HHA's initial enrollment. Unless CMS can make this determination, there is a risk that the newly-purchased HHA, without having been appropriately vetted via the survey process, will bill for services when it is out of compliance with the conditions of participation. And in light of the frequency of inappropriate practices, as outlined in the GAO report, of HHAs relative to other provider types, we believe it is imperative that we ensure

that the newly-purchased HHA be subject to an appropriate level of review.

c. Deactivation Provisions

Comment: Several commenters expressed concern that the deactivation provision in proposed § 424.540(b)(3) could disadvantageously affect HHAs that bill Medicare on either an infrequent basis or not at all. They stated that since Medicare deactivates a provider's Medicare billing privileges if the provider has not billed Medicare for 12 consecutive months, HHAs that only sporadically bill Medicare not only may have their billing privileges deactivated frequently, but will, under the aforementioned proposed provision, have to undergo a State survey each time it seeks to reactivate these privileges. This will, the commenter believes, impose a very significant burden on such providers. One commenter also: (1) Expressed concern that a deactivation of its Medicare billing privileges would affect its ability to bill Medicaid, and (2) asked whether, if it owned an HHA and a hospice and both were enrolled in Medicare, a deactivation of its HHA billing privileges would affect its ability to continue billing for hospice services. Another commenter urged CMS to consult with State Medicaid programs prior to implementing this proposed provision. Yet another commenter stated that it was their understanding that the requirement to obtain an initial State survey under proposed § 424.540(b)(3) would be commensurate to decertification. With long timelines for obtaining surveys and with Medicare having categorized HHA surveys as Tier-4 priority, this would put HHAs out of business and, in turn, impact Medicaid-only businesses that require Medicare certification—with the end result, the commenter stated, of harming Medicaid patients. Similar concerns were expressed by a commenter regarding HHAs that only bill Medicare Advantage plans.

Response: We recognize that proposed § 424.540(b)(3) could delay an HHA's ability to reactivate its Medicare billing privileges, especially if the HHA bills only sporadically and is thus susceptible to frequent deactivations. However, we believe that this is outweighed by the strong need to verify that HHAs whose billing privileges were deactivated after 12 consecutive months of non-billing remain in compliance with Medicare's conditions of participation and other regulatory provisions. We also believe that this approach will help ensure that Medicare beneficiaries receive services from qualified HHA providers.

CMS does not currently conduct a State survey when a provider seeks to reactivate its Medicare billing privileges. As is the case with ownership changes, CMS therefore has no sure way of knowing whether the HHA, after not billing Medicare for at least a 12-month period, is still in compliance with the HHA conditions of participation; indeed, it is possible that the period of non-billing was due to the fact that the HHA was not in operation at the time. Unless CMS can determine whether the HHA is in compliance with the conditions of participation, the HHA may have its billing privileges reactivated and begin billing for services again without having been appropriately reviewed via the survey process. This could lead to inappropriate billings if HHA is indeed out of compliance with such conditions. As with 42 CFR 424.550(b)(1), we believe that 42 CFR 424.540(b)(3)(i) will help close the gap noted by the GAO in ''screening potential and current HHAs'' by ensuring that the new owners in an HHA ownership change are properly screened. With respect to the commenters' concerns related to Medicaid and Medicare Advantage billing under Medicare, the deactivation of a provider's Medicare billing privileges does not mean that the provider is no longer enrolled in Medicare. In fact, the Medicare provider agreement remains in effect. Accordingly, a deactivated HHA is still certified as a Medicare HHA. Deactivation simply means that the provider, prior to having its Medicare billing privileges reactivated, must: (1) Submit the information requested in § 424.540(b)(1) and (2) undergo a State survey or obtain accreditation to ensure that it remains in compliance with the applicable conditions of participation. Indeed, as previously indicated, there have been instances where HHAs are sold to nominal owners when the real operators are individuals who were later found to be engaging in fraudulent activity. Our current inability to conduct a State survey for most changes of ownership hinders CMS's ability to fully vet and review the HHA, its new owners, and the new operations, and makes it more likely that such sham operations can continue to exist.

With respect to situations in which a provider owns an HHA and a hospice and the billing privileges of the HHA are deactivated for 12 consecutive months of non-billing, this does not affect the billing privileges of the hospice; the hospice's billing privileges remain intact, as the HHA and the hospice are separate providers, are separately enrolled, and have separate provider agreements.

Finally, we do intend to notify State Medicaid agencies about the implementation of this provision.

Comment: Another commenter stated that proposed § 424.540(b)(3) would require those HHAs that primarily or even exclusively bill Medicaid but who are required to be enrolled in Medicare as a prerequisite thereto to submit at least one Medicare claim per year or see their Medicare billing privileges rescinded.

Response: As we previously stated, the deactivation of a provider's Medicare billing privileges is not the same as the revocation of these privileges. A deactivated provider remains enrolled in Medicare, whereas a revoked provider loses its Medicare billing privileges and is no longer enrolled in the program.

Comment: Several commenters suggested that for providers enrolled in Medicare and Medicaid, CMS not deactivate a provider's Medicare billing privileges for non-billing if the provider has submitted a bill for or been paid by Medicaid within that same 12-month period.

Response: The regulatory provisions in 42 CFR 424.540 regarding 12 consecutive months of Medicare non-billing do not allow for the level of Medicaid billings to be a consideration in the deactivation of a provider's Medicare billing privileges. This is because Medicare and Medicaid are two completely separate health programs. If we expanded 42 CFR 424.540 to allow a provider's billing history with other health plans to be a factor in determining whether to deactivate a provider's Medicare billing privileges, a situation could arise where a provider has not submitted a bill to Medicare for a 10-year period but has not been deactivated because the HHA has billed another program each year within that span. This would, in our view, defeat the purpose of 42 CFR 424.540. Besides, and as already stated, the deactivation of Medicare billing privileges does not mean that Medicare billing privileges have been revoked.

Comment: One commenter noted that the revised 42 CFR 424.540(b)(3) appears to require a new certification, but the unaltered 42 CFR 424.540(c) regarding the effective (date) of deactivation still provides that deactivation does not have any effect on a provider's participation agreement. The commenter suggested that we consider revising paragraph (c) to correlate with the changes to paragraph (b). Another commenter understood the

changes § 424.540 to mean that we now equate the requirement to obtain an initial State survey with decertification. In light of the extremely long timelines for obtaining initial surveys from States and accrediting organizations, the commenter stated such a requirement would put many legitimate home health agencies that are part of the 2,000 agencies that CMS estimates will be deactivated out of business.

Response: We agree that there is a discrepancy. We have therefore not included our proposed revision to § 424.540(b)(3) in the final rule. We believe that this change will eliminate the perception that deactivation and decertification are one in the same.

Comment: One commenter expressed support for our proposed changes regarding space sharing, ownership changes, and deactivations, stating that the instances of fraud and abuse reported by CMS justify changes. The commenter suggested, however, that CMS consult with the HHS Office of Inspector General, the Government Accounting Office, and the U.S. Department of Justice for alternative perspectives on the appropriate length of billing inactivity that warrants a State survey or accreditation prior to reactivation.

Response: We appreciate both the commenter's support for our proposed provisions and the suggestion regarding the consultation of other law enforcement bodies. We have, in fact, consulted with other agencies in the past regarding the 12-month deactivation policy outlined in § 424.540(a)(1). However, we believe that they would support every effort on our part to ensure that HHAs remain in compliance with Medicare's conditions of participation before their Medicare billing privileges are reactivated. We further believe that 12 consecutive months of non-billing by the provider—a lengthy period in and of itself—constitutes sufficient justification for CMS to attempt to reconfirm that the provider meets the HHA conditions of participation.

d. General Comments

Comment: One commenter believed that CMS, in its proposed program safeguard initiatives, was attempting to use a ''broad brush'' approach to combating fraud, that CMS seems to view all home health providers as fraudulent, and that the proposed initiatives will harm honest HHAs. The commenter also stated that the States with the highest levels of HHA fraud do not have significant barriers to entry, such as a State-mandated certificate of need (CON). The commenter stated that CMS should consider the correlation between CON states and the frequency of fraud and abuse. Finally, the commenter recommended, in lieu of the proposed program integrity initiatives, increased funding of survey and certification efforts and urged CMS to seek out the root cause of fraudulent behavior.

Response: We recognize that the vast majority of HHAs participating in the Medicare program are honest. However, the information cited in the preamble to the proposed rule—as well as the conclusions drawn by the Health and Human Services' Office of Inspector General—provide reason and concern for us that HHA fraud is a prevalent problem that, and in our view, warrants additional review and action to address this issue.

Comment: Several commenters expressed concern about the impact of proposed § 424.540(c) and § 424.550(b) on State survey agencies and accreditation organizations. They contended that these agencies and organizations have experienced—and, in some cases, are still experiencing—major backlogs in the number of pending HHA request for certification or accreditation. Some State agencies, another commenter stated, are not conducting new HHA surveys at all at the current time. Requiring a new survey/accreditation pursuant to each change of ownership and reactivation of Medicare billing privileges will result in even larger backlogs, which in turn will further delay the ability of HHAs to obtain a survey or accreditation in a prompt fashion. One commenter stated that it will be impossible for State survey agencies and accrediting bodies to resurvey 2,000 CHOWs that CMS reports occur annually.

Response: We understand the commenters' concern regarding workload implications for State survey agencies and deemed accrediting organizations. We believe that HHAs undergoing an ownership change or having their billing privileges reactivated must meet the conditions of participation and other program requirements in order to participate in the Medicare program.

Comment: One commenter recommended that CMS appropriately fund State agencies to handle the increased survey workload.

Response: As stated above, we understand the workload implications for State agencies and deemed accrediting organizations. Moreover, we are aware of the potential funding issues raised by the commenter.

Comment: One commenter stated that CMS must reevaluate its projections for the number of HHAs that will be impacted by the proposed CHOW requirements (2,000) and deactivation requirements (2,000). If these numbers are correct, CMS' proposals will result in requiring resurvey of 40% of the 9,500 home health agencies annually.

Response: We believe that the projections contained in the proposed rule are accurate and that the final rule is sufficiently clear as to the number of surveys that would have to be performed.

Comment: One commenter supported the proposed changes regarding space-sharing and changes of ownership, and added that CMS should begin even more active enforcement. This should include ensuring that all new enrollment applicants have a timely, thorough on-site review of clinical, operational and financial policies and processes prior to being granted enrolled status.

Response: We appreciate the commenter's support and note that we are undertaking a number of efforts to reduce fraud and abuse.

Comment: One commenter made a number of recommendations to CMS with respect to the combating of fraudulent activity in the HHA arena. These included: (1) Expanding educational efforts regarding compliance; (2) establishing a Federal requirement that administrators of home health are credentialed by a nationally recognized body; (3) establishing certification requirements for financial managers; (4) enacting a targeted moratorium on new HHAs; and (5) working with the industry to ensure that reports of fraudulent activities are acted upon promptly.

Response: We appreciate these suggestions and will take them under advisement.

Comment: One commenter suggested that CMS: (1) Enhance the Provider Enrollment, Chain and Ownership System (PECOS) to automatically identify HHAs located at the same practice location; (2) update section 12 of the CMS–855A form to include questions regarding office space, similar to the questions contained on the CMS–855B application for physical therapy and occupational therapy groups; and (3) perform site visits for some new providers.

Response: We appreciate these suggestions and will take them under advisement, though we note that CMS has increased the number of site visits it performs in certain high-risk areas for new and existing HHAs.

Comment: One commenter suggested that we describe the method by which HHAs can consolidate under one provider number without financial

consequence, and that CMS allow HHAs that intend to consolidate up to 12 months to do so.

Response: HHAs with multiple provider agreements for agencies at the same location can voluntarily terminate a provider agreement and merge the multiple HHAs into a single organization.

Comment: One commenter suggested that the intent of the States in requiring a prospective Medicaid provider to be enrolled in and certified by Medicare was to pass on the cost of the survey and certification of Medicaid-only agencies to the Federal Government and suggested that CMS resolve this with the States.

Response: We believe that this comment is outside the scope of this final rule.

Comment: One commenter asked for clarification on how HHAs are to be notified when their Medicare billing privileges are deactivated.

Response: In the event a claim is submitted after 12 consecutive months of non-billing, the claims processing system will place a message on the remittance notice stating ''This provider was not certified/eligible to be paid for this procedure/service on this date of service.'' We do not expect that this message will be implemented until CY 2010.

Based on the public comments, we are adopting the provisions of the proposed rule with the following revisions:

- We are not adopting § 424.530(a)(8) in this final rule.
- We are not adopting § 424.535(a)(11) in this final rule.
- We are not adopting § 489.12(a)(5) in this final rule.
- We are not adopting § 489.19(a) in this final rule.
- We are not adopting § 489.19(b) in this final rule.
- We proposed to exclude HHAs from the existing language in § 424.540(b)(3), which states that the reactivation of Medicare billing privileges does not require a new certification of the provider or supplier by the State survey agency or the establishment of a new provider agreement. We have decided not to include this proposed revision to § 424.540(b)(3) in the final rule. We are also making it clear that under proposed § 424.540(b)(3)(i), which is included in the final rule, an HHA undergoing a change of ownership within the first 36 months after its enrollment remains Medicare-certified and that its provider agreement has not been revoked. The deactivated HHA's certification, provider agreement, and status as an enrolled HHA remain intact. However, it must obtain a new survey or accreditation.

H. Physician Certification and Recertification of the Home Health Plan of Care

a. Background

Sections 1814(a)(2)(C) and 1835(a)(2)(A) of the Act require that a plan for furnishing home health services be established and periodically reviewed by a physician in order for Medicare payments for those services to be made. Our regulations at § 409.43(e) specifically state that a home health POC must be reviewed, signed, and dated by the physician who reviews the POC (as specified in § 409.42(b)) in consultation with agency clinical staff at least every 60 days (or more frequently as specified in § 409.43(e)(1)). Additionally, § 424.22(b) states that a recertification is required at least every 60 days, preferably at the time the plan is reviewed, and must be signed by the physician who reviews the home health POC. These schedules, for the review of the POC and the recertification, coordinate with the 60-day episode payment unit under the HH PPS. In implementing the statutory requirement as well as these regulations, we believed that these requirements would encourage enhanced physician involvement in the HH POC and patient management, and would include more direct ''in-person'' patient encounters (as logistically feasible).

Currently, physicians are paid for both the certification and recertification of the HH POC under HCPCS codes G0180 and G0179, respectively. The basis for the payment amounts of these physician services is the relative resources in RVUs required to furnish these services. We believe physician involvement is very important in maintaining quality of care under the HH PPS.

In the HH PPS proposed rule published in the October 28, 1999 **Federal Register** (64 FR 58196), we had proposed to require the physician to certify the case-mix weight/home health resource group (HHRG) as part of the required physician certification of the POC. This reflected our belief that the physician should be more involved in the decentralized delivery of home health services. However, in the final rule published in the July 3, 2000 **Federal Register** (65 FR 41163), we did not finalize that proposal and decided to focus our attention on physician certification and education in order to better involve the physician in the delivery of home health services.

b. Solicitation of Comments

It has come to our attention that physician involvement in the certification and recertification of HH POC varies greatly. While some physicians have direct contact with their patients in the delivery of home health services, we believe that a significant number of physicians provide only a brief, albeit thorough, review of the HH POC, without any direct contact with the patient. We continue to believe that active involvement of the physician, including ''in-person'' contact with the patient, during the certification and recertification of the HH POC is essential for the delivery of high quality HH services.

In the Physician Fee Schedule proposed rule published in the July 7, 2008 **Federal Register** (73 FR 38578), we mentioned several options to enhance direct contact between the physician and the patient. First, we considered a review of the RVUs associated with the certification and recertification of the HH POC. As a result of that review, the payment amounts to physicians could be reduced based on a more accurate determination of the actual RVUs required to provide these services. We also considered proposing new requirements; for example, a requirement for ''direct'' patient contact with the physician, to ensure more active physician involvement in the certification and recertification of the HH POC. We specifically solicited comments on these policy options.

In the November 19, 2008 final rule, we expressed our appreciation for the comments and responded that we would continue to analyze and consider the comments and suggestions in future rulemaking. Additionally, as a result of comments received on the above physician rule, as they relate to physician-patient contact, we are considering the possibility of requiring physicians to make phone calls to patients at various times over the course of home health treatment (prior to recertification), as a means to promote that physician-patient contact and to help ensure the delivery of high quality HH services to our beneficiaries.

In the HH PPS proposed rule for CY 2010, we specifically solicited additional comments on this topic.

Comment: While commenters agreed that increasing physician involvement in home health patient care was a positive step, they were not supportive of requiring a face-to-face encounter between patients and physicians, or of requiring telephone contact, prior to physician certification or recertification

of the plan of care. Some felt this would be burdensome to physicians and would create a significant barrier to patients seeking home health services. Several pointed out that there was no analysis to suggest that face-to-face or telephone encounters would improve outcomes, and questioned the value of such a requirement, given its cost. A few mentioned that the underlying problem was inadequate payment to physicians; some stated that without reimbursement, physicians were not likely to be cooperative; one wrote that this suggestion did not address the fundamental problem of too little physician time to support patients at home.

One commenter wrote that the level and frequency of physician contact with patients should be determined by the physician, based on the patient's medical needs. A few commenters noted that such a requirement would interfere with the professional judgment of the physician, failed to recognize that nurses and therapists provide OASIS assessment of all patients prior to physician certification, and noted that homebound, infirm or disabled patients should not be forced to leave home for a doctor's visit. They noted that leaving home may be a considerable and taxing effort for homebound patients, especially in rural areas, when there are weather issues, or where patients have no caregiver or transportation. One commenter asked what would happen if the patient refused to go.

Several commenters pointed out that existing laws already establish serious criminal and civil sanctions for physicians who knowingly and falsely certify that a patient is homebound and needs home health. Additionally, they stated that there are no reports of quality of care problems related to the absence of a face-to-face physician encounter.

While a telephone contact could be more convenient, commenters felt that it would not accomplish much other than confirm to the physician that the patient exists and possibly hear the patient express things about his or her condition or needs. They noted that it would be difficult for the home health agency to validate that a call actually occurred if the agency were not a direct party to it. Others noted that physicians would have to make such calls after hours, given their busy schedules, and this could be disruptive to homebound patients, many of whom are elderly and retire early.

A commenter mentioned that some beneficiaries don't have telephones, particularly in remote rural areas. Another wrote that patients could barely get needed prescriptions called in timely. Some commenters also wrote that requiring an encounter could be a serious claims processing issue, akin to the former M0175 component of the HHRGs. Commenters believed that the agency would not be in a position to consistently or comprehensively understand the encounters.

Commenters suggested a number of alternatives. One commenter felt the best approach to involving physicians more in home care is in new models of chronic care management that integrate primary care practices committed to home-based care with home health agencies in a single, consolidated chronic care service. This commenter is working on pilot projects with Medicare Advantage patients, and welcomes the opportunity to develop a demonstration program.

One commenter suggested we study the role of physicians in home care and determine which factors enhance the physician's ability to conduct oversight activities, ensure appropriateness of care, and work collaboratively with home health agencies without burdening beneficiaries. Another commenter recommended we consider ways to improve communication between physicians and home health agencies, particularly as it relates to follow-up when a patient's condition changes. One commenter suggested we consider the comments received upon solicitation in the Physician Fee Schedule rule, which encouraged a wider range of mechanisms to increase involvement, such as telehealth, photographic evidence, telephone, and use of advanced practice nurses (APNs) or physician assistants (PAs). Others suggested we continue the dialogue with physicians' groups and with home health agencies about this issue. Several commenters echoed the suggestion to allow APNs or PAs, within State practice guidelines, and noted that these professionals are more accessible, more open to discussion of patient issues than physicians, would reduce the burden on physicians, and improve access.

Another commenter suggested we test proposals to require encounters in demonstration projects, and establish whether the outcomes improve enough to merit the increase in costs. This commenter also suggested we consider requiring a Medicare Director, similar to those in hospice programs. In considering alternatives, another commenter wrote that physician home visits are unrealistic. This commenter noted that under current care plan oversight (CPO), physicians can count time for telephone interactions, and suggested we see if this method of oversight is widely used. He added that CMS should review practices that cannot be counted toward CPO time and consider allowing these. He also suggested that surveyors focus more on the 60-day summary to physicians.

Several commenters recommended that CMS conduct a comprehensive study on the impact and value of physician encounters as a qualifying element of Medicare home health services. These commenters suggested that in the interim, physician payment rules could be modified to limit payment for care plan recertification to those physicians who can document a face-to-face encounter with the patient prior to care plan certification.

Response: We appreciate the comments from the public on this matter and will continue to address our concerns surrounding this issue, and analyze and consider those comments and suggestions in future policymaking and future rulemaking.

I. Routine Medical Supplies

HHAs have expressed to the HHS Office of the Inspector General (OIG) some confusion regarding routine medical supplies and how we account for the cost of those supplies. Therefore, in the proposed rule we reiterated our policy regarding routine medical supplies and how they are reimbursed under the HH PPS.

Section 1895(b)(1) states that ''all services covered and paid on a reasonable cost basis under the Medicare home health benefit as of the date of the enactment of this section, including medical supplies, shall be paid for on the basis of a prospective payment amount * * *''. The cost of routine medical supplies was included in the average cost per visit amounts derived from the audit sample. These average cost per visit amounts were used to calculate the initial HH PPS rates published in the July 3, 2000 HH PPS final rule (FR 65 41184). Because reimbursement for routine medical supplies is bundled into the HH PPS 60-day episode rate and the per-visit rates, HHAs may not bill separately for routine supplies.

As noted in Chapter 7—Home Health Services of the Medicare Benefit Policy Manual (Pub. 100–02), sections 50.4.1.2 and 50.4.1.3, routine supplies are supplies that are customarily used in small quantities during the course of most home care visits. They are usually included in the staff's supplies and not designated for a specific patient. Routine supplies would not include those supplies that are specifically ordered by the physician or are essential to HHA personnel in order to effectuate the plan of care. Examples of supplies

which are usually considered routine include, but are not limited to:

A. Dressings and Skin Care

- Swabs, alcohol preps, and skin prep pads;
- Tape removal pads;
- Cotton balls;
- Adhesive and paper tape;
- Nonsterile applicators; and
- 4x4s.

B. Infection Control Protection

- Nonsterile gloves;
- Aprons;
- Masks; and
- Gowns.

C. Blood Drawing Supplies

- Specimen containers.

D. Incontinence Supplies

- Incontinence briefs and Chux covered in the normal course of a visit. For example, if a home health aide in the course of a bathing visit to a patient determines the patient requires an incontinence brief change, the incontinence brief in this example would be covered as a routine medical supply.

E. Other

- Thermometers; and
- Tongue depressors.

There are occasions when the supplies listed in the above examples would be considered non-routine and thus would be considered a billable supply, that is, if they are required in quantity, for recurring need, and are included in the plan of care. Examples include, but are not limited to, tape, and 4x4s for major dressings.

Comment: A commenter requested clarification in the final rule on some routine medical supplies that were not included in the clarification in section III.I, such as wound care supplies and colostomy supplies. Additionally, the commenter was seeks clarification of the statement, ''There are occasions when the supplies listed * * * a billable supply, that is, if they are required in quantity, for recurring need, and are included in the plan of care'' on page 40974 at the end of section III.I. The commenter asked if this represents a change from current practice.

Response: The law governing the Medicare home health prospective payment system (HH PPS) effective October 1, 2000 requires that while the patient is under a home health POC, the HHA must bill and receive payment from Medicare for all covered home health services including routine and non-routine medical supplies, except DME Medical supplies, under the consolidated billing requirements. Routine, and non-routine medical supplies, are bundled into and paid for under the HH PPS rates and are subject to home health consolidated billing, which means that Medicare will not pay separately for these items for a beneficiary who is in an open home health care episode of care. Section 50.4 of Chapter 7, ''Home Health Services'' of the Medicare Benefit Policy Manual (Pub. 100–02) defines medical supplies as ''items that due to their therapeutic or diagnostic characteristics, are essential in enabling HHA personnel to conduct home visits or to carry out effectively the care the physician has ordered for the treatment or diagnosis of the patient's illness or injury''. All supplies which would have been covered under the cost-based reimbursement system are bundled under the home health PPS. There is no limit on the number of supplies that a patient may receive from the HHA as long as the supplies are covered, reasonable and necessary and documented by the physician and kept in the patient's record by the HHA.

Miscellaneous Comments

Comment: A commenter wrote that most claims have Non-routine Supplies (NRS) level 1 or 2, and almost none have NRS level 5. This commenter wrote that there was no information in HH PPS to capture the need for expensive pleurex catheters. The commenter felt that changes in the NRS methodology may be needed to more accurately reflect supply needs.

Another commenter was concerned that certain non-routine supplies were being added to the HH PPS bundle, but were not represented in the original cost basis for PPS supply payment without appropriate payment increases. He felt this was a disincentive to adopt new technology, and fosters the use and application of older and less efficacious alternative treatments and supplies. This commenter expressed specific concern over a Pleura-evac and sophisticated but expensive wound care products, and noted that the application of these technologies cost more than the NRS allowances. He suggested we re-evaluate the classification of Pleura-evacs and establish a process to adjust the NRS allowance to accommodate the accretion of new, more expensive, NRS.

Response: We appreciate the comments on this topic, but we are not, as part of this rule, refining either the case-mix model or the NRS severity model for the HH PPS. We will consider the comments received in future rulemaking.

Comment: In the proposed rule, CMS indicated that the 60-day episode rate was based on 25.5 visits. This is incorrect because it uses LUPAs that had 4 or fewer visits that are not paid using the full 60-day episode rate. Rather 31.6 visits per episode is the correct number of visits per episode, as the initial factor used by CMS in computing the 60-day episode rate back in 2000. CMS should clarify how the 25.5 visits per episode relates to the 31.6 visits per episode that was the basis for the 60-day episode base rate.

Response: The commenter is correct that 25.5, which was the actuarial projection for FY 2001 for all episodes as spelled out in the July 3, 2000 HH PPS Final Rule, was not the proper number to use for comparison with the current non-LUPA visits per episode; we regret the error. The 31.6 was for CY 1998 (the last historical year for which data were available for the Rule), and trends at the time indicated that visits per episode were declining. While the July 3, 2000 HH PPS Final Rule did not explicitly state the projection for FY 2001 non-LUPA visits per episode, it can be gleaned mathematically from other numbers published in that final rule, and turns out to be a few visits lower than 31.6.

Comment: A few commenters wrote that LUPA rates were still less than an agency's cost of providing a visit, and asked that the rates be reviewed and increased. One commenter suggested we apply the LUPA add-on to all LUPA episodes. Another could not find support for the prediction that LUPA episodes would drop from 15 percent to 5 percent, and noted that the most recent data for his State suggested LUPA episodes were running at just over 14%.

Response: Rebasing rates is not part of this final rule. A description of the analysis supporting that the LUPA add-on apply only to first or only LUPA episodes can be found in the CY 2008 final rule (72 FR 49762). It can also be noted that an individual agency's cost of providing a visit will differ from agency to agency, however, we believe that the LUPA rates, on average, are sufficient. One should note that LUPA incidence can vary greatly from agency to agency and area to area. We intend to monitor the trend in incidence of LUPA episodes in view of the change we made to LUPA payments (the LUPA add-on) that became effective in CY 2008. It is worth noting that, nationally, the percentage of LUPA episodes continues to drop, our most recent data indicating that LUPA episodes have dropped to around 10 percent. As stated in a response to a previous comment, we believe that the appropriate time and place to deal with

any re-estimates, in these multiple areas, is if and when a rebasing for the rates were to take place.

Comment: A commenter felt that the proposed rule fell short of adopting essential reform to home health payment model and regulatory processes as suggested by MedPAC and described in the Senate Finance Committee's Chairman's Mark. The commenter believes the proposed rule can be strengthened to be consistent with health care reform goals and avoid serious consequences for Medicare, its beneficiaries, and avoid undermining access to quality home health agencies. Various commenters stated that home health is an effective approach to reducing hospital admissions and managing the long term nature of chronic diseases such as heart failure, chronic respiratory diseases, and unstable diabetes, and that many patients, including those who are not homebound, could benefit from ongoing management at home. One of these commenters stated a concern that the proposed rule focuses on costs of home care without factoring in the overall cost of care to Medicare. Another commenter urged us to appreciate the services that HHAs provide, and how home health is a cost-effective, quality alternative to rising health care costs.

Response: We appreciate the commenters' suggestions regarding broader reform associated with the home health benefit. We agree with the commenter that home health care may be an effective approach to reducing hospitalizations and overall Medicare costs. However, the commenters' suggestions are outside the scope of the proposed provisions which we solicited comments about in the CY 2010 proposed rule. The commenter is suggesting a broader scope of benefit than that which is currently statutorily mandated for Medicare's home health benefit.

Comment: A commenter felt that the actions of a few agencies are driving policy decisions for the entire home health program. The commenter was concerned about the proliferation of agencies in pockets of the country, and the negative behavior of many of these HHAs. The commenter wrote that we should work directly with States to address appropriate growth and minimize risk to Medicare without impacting access. He hopes that we will be sensitive to the impact policy decisions aimed at managing the few have on the majority of providers. Finally, the commenter appreciated our continued open dialogue through teleconferences and open door forums.

Response: Data so far suggest the problem of growing, suspect outlier payments has been associated with individual agencies and specific areas of the country. Our proposal for addressing the outlier payment problem considered the impact on agencies generally; thus, we have proposed an outlier cap at a level, 10 percent, that far exceeds the typical agency ratio with respect to outliers. We have addressed other parts of our proposed, and finalized, policies in other responses to public comments in this final regulation.

Comment: A commenter suggested we seek new types of healthcare systems and promote innovation in this area. Another commenter suggested we implement policies and guidance to maximize utilization of electronic health records and other forms of health information technology within the home health setting. Another commenter wrote that because of the HIPAA law, hospitals are not providing home health agencies with needed discharge information; this impacts the patient's transition to home and leaves the agency to rely on patient recall.

Response: CMS is aware that some home health agencies have implemented new technology to assist in patient services already. They have been able to make such investments under the current payment system. We urge continued investments in these technologies in the interests of improving care management and efficiency in the home health industry. CMS is committed to improving health setting transitions to minimize unnecessary errors and burdens on patients and providers. For example, under the QIO program, we will continue to work with the hospital industry and others to disseminate information about smoothing transitions.

III. Provisions of the Final Rule

Generally, this final rule incorporates the provisions of the August 6, 2009 proposed rule (republished on August 13, 2009 with corrected wage index tables), except as noted in the specific response to comments in the applicable section of this rule.

IV. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 30-day notice in the **Federal Register** and solicit public comment before a collection of information (COI) requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We solicited public comments on each of aforementioned issues for the information collection requirements discussed below. In this final rule, we are restating the discussion of the information collection requirements as it appeared in the HH PPS proposed rule published on August 13, 2009 (74 FR 40948).

A. ICRs Regarding the Requirements for Home Health Services

In § 424.22 we stated that if a patient's underlying condition or complication required a registered nurse to ensure that essential non-skilled care was achieving its purpose, and necessitated a registered nurse be involved in the development, management, and evaluation of a patient's care plan, the physician would include a written narrative describing the clinical justification of this need.

The burden associated with this requirement will be the time and effort put forth by the physician to include the written narrative. We estimate it will take one physician approximately 5 minutes to meet this requirement. We estimate the frequency of such a situation to occur in about 5 percent of episodes (or about 345,600 episodes a year); therefore, the total annual burden associated with this requirement will be 28,800 hours for CY 2010.

Comment: Two commenters wrote that the time and burden estimates presented in section IV. of the proposed rule were underestimated. One noted that these regulations would increase costs of operation. For section IV.A., the other wrote that the time to educate the physician regarding the type of documentation needed to support unlicensed care from a Management and Evaluation perspective would be astronomical, in addition to the time required trying to obtain the documentation from the physician. She added that the time physicians must spend collecting information on each client to document medical necessity was greater than 5 minutes.

Response: We disagree that the time to educate the physician regarding the type of documentation that would be needed to fulfill the requirement for a physician's written narrative, in these rare instances, as astronomical. Nor do we agree that the time required to obtain the narrative will be excessive. The physician should already have considered what his/her clinical justification is for the certification or recertification of the beneficiary to receive Medicare's home health benefit, as well as the ordering and approving of these skilled services on the plan of care. Consequently, the physician should have already synthesized their clinical justification, and need only to record it into the certification or recertification.

The requirements and associated information collection burden contained in § 424.22 will be submitted to OMB for approval. As part of the approval process, we will seek public comments in an additional notice separate from this final rule.

B. ICRs Regarding Deactivation of Medicare Billing Privileges

In § 424.540(b)(3)(i), an HHA whose Medicare billing privileges are deactivated under the provisions found in § 424.540(a) must obtain an initial State survey or accreditation by an approved accreditation organization before its Medicare billing privilege can be reactivated. The burden associated with this requirement will be the time and effort put forth by the HHA to obtain a State survey or accreditation. We estimate it will take the prospective provider/owner 60 hours to obtain a State survey or accreditation. We estimate that there will be 2,000 such occurrences annually. (We believe that this figure is an extremely high-end estimate, but will utilize it for purposes of this final rule so as to ensure that we do not underestimate the potential burden on HHAs. Therefore, the total annual burden associated with this requirement will be 120,000 hours.

Comment: Two commenters wrote that the time and burden estimates presented in section IV. of the proposed rule were underestimated. One noted that these regulations would increase costs of operation. For section IV.B, a commenter wrote that the time required to receive an initial survey was months from an accrediting organization since in her State, the State survey agency was no longer performing initial surveys.

Response: With respect to the estimated survey timeframe, the calculation is based on the total amount of time the provider spends: (1) In undertaking specific activities in preparation for the survey, and (2) undergoing the survey itself. The calculation does not include the time waiting for the survey to take place.

The requirements and associated information collection burden contained in § 424.540(b)(3) will be submitted to OMB for approval. As part of the approval process, we will seek public comments in an additional notice separate from this final rule.

C. ICRs Regarding Prohibition Against Sale or Transfer of Billing Privileges

At § 424.550(b)(1) we require that an HHA undergoing an ownership change will have to obtain an initial State survey or accreditation by an approved accreditation organization if the change takes place within 36 months after the effective date of the HHA's participation in Medicare. Between April 2008 and April 2009, approximately 2,000 Medicare-enrolled HHAs—or 22.5 percent of the 9,000 total number of HHAs enrolled in Medicare—underwent a change of ownership. Naturally, the magnitude of the ownership changes varied by HHA, but the fact that almost one-quarter of all Medicare-enrolled HHAs changed ownership in some form within the past year is, for the reasons outlined in the preamble to this rule, significant.

It is also important to note that of the 2,000 ownership changes, approximately 20 percent occurred in Texas, another 20 percent in Florida, and 14 percent in California, meaning that over one-half of all changes in ownership occurred in three States. Though it is likely that, once this provision is implemented, the number of total annual ownership changes will decrease, we will assume for purposes of this final rule that the figure of 2,000 will remain constant so as to ensure that we do not underestimate the potential burden on HHAs.

The burden associated with this requirement in § 424.550(b)(1) is twofold. First, the HHA will need to complete and submit a Medicare enrollment application (paper or electronic) as an initial applicant. This can be done electronically via the Internet-Based Provider Enrollment, Chain and Ownership System (PECOS) or by using the paper CMS–855 enrollment application. The estimated burden of completing the entire application as a new enrollee is 3 hours. Thus, the estimated annual burden for the approximately 2,000 HHAs that will change ownership will be 6,000 hours. Second, the provider will need to undergo a survey (or obtain accreditation in lieu of a survey) and perform administrative activities associated therewith. We estimate that the total hourly burden to the HHA for stated activities will be 60 hours, for an annual burden of 120,000 hours (2,000 HHAs × 60 hours).

Therefore, we estimate that the total annual burden of compliance with § 424.550(b)(1) will be 126,000 hours (120,000 hours + 6,000 hours).

The requirements and associated information collection burden contained in § 424.550(b)(1) will be submitted to OMB for approval. As part of the approval process, we will seek public comments in an additional notice separate from this final rule.

Comment: Two commenters wrote that the time and burden estimates presented in section IV. of the proposed rule were underestimated. One noted that these regulations would increase costs of operation. For section IV.C, one of the commenters believed that the time to complete the enrollment form needed when a sale/transfer of ownership occurs is far greater than 3 hours, taking several days to complete the form and gather all required documentation. Additionally, if a deficiency in completing this complex form is noted, the time to correct it is not factored in.

Response: We believe that the timeframe we have used for the completion of the form is both accurate and consistent with past estimates that CMS has used for the completion of the Medicare enrollment application (for example, CMS–855A).

D. ICRs Regarding Patient Assessment Data

Section 484.210 will require an HHA to submit to CMS the OASIS data described at § 484.55(b)(1) and (d)(1) in order for CMS to administer the payment rate methodologies described in §§ 484.215, 484.230 and 484.235.

The burden associated with this is the time and effort put forth by the HHA to submit the OASIS data. This burden is currently accounted for under OMB# 0938–0761.

OMB No.	Requirements	Number of respondents	Burden hours	Total annual burden hours
0938–NEW	424.22	345,600	1/12	28,800.
None	424.540(b)(3)(i)	2,000	60	120,000.
None	424.550(b)(1)	2,000	63	126,000.
0938–0761	484.210	N/A	N/A	N/A.

If you comment on these information collection and recordkeeping requirements, please do either of the following:

1. Submit your comments electronically as specified in the **ADDRESSES** section of this rule; or

2. Submit your comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: CMS Desk Officer, CMS–1560–F, Fax: (202) 395–6974; or E-mail: *OIRA_submission@omb.eop.gov*.

E. ICRs Regarding Annual Update of the Unadjusted National Prospective 60-Day Episode Payment Rate

Section 484.225(i) requires the submission of quality measures as specified by the Secretary. As part of this requirement, each HHA sponsoring a Home Health Care CAHPS (HHCAHPS) Survey must prepare and submit to its survey vendor a file containing patient data on patients served the preceding month that will be used by the survey vendor to select the sample and field the survey. This file (essentially the sampling frame) for most home health agencies can be generated from existing databases with minimal effort. For some small HHAs, preparation of a monthly sample frame may require more time. However, data elements needed on the sample frame will be kept at a minimum to reduce the burden on all HHAs.

The burden associated with this requirement is the time and effort put forth by the HHA to prepare and submit the file containing patient data on patients. The survey instrument and procedures for completing the instrument are designed to minimize burden on all respondents. No significant burden is expected for small agencies beyond providing their contracted vendor with a monthly file of patients served.

Initially, we estimate it will take one HHA 5 hours for the first month to meet this requirement. The subsequent monthly burden is estimated to be 30 minutes per HHA. We estimate approximately 7,000 HHAs will be submitting this data annually. Based on that number, the burden associated with the first month is estimated at 35,000 hours. The burden will decrease to 2,100 for subsequent months. Therefore, the total annual burden for the first year will total 58,100.

The burden associated with the home health patient's submission of the HHCAHPS survey is currently pending OMB approval (CMS–10275/OMB# 0938–NEW). Once OMB approval has been obtained, we will revise the package to include the burden on the HHAs as discussed above.

Comment: Two commenters wrote that the time and burden estimates presented in section IV of the proposed rule were underestimated. One noted that these regulations would increase costs of operation. For section IV.E on the HHCAHPS, one commenter wrote that time and burden were severely underestimated as HHAs must implement both procedural and technological changes which are not included in the estimates.

Response: In the beginning, it will take HHAs a little time to set up their files to retrieve the needed patient information on a monthly basis for their respective survey vendors. However, from several years of experience with Hospital CAHPS, we have observed that the participating hospitals are able to deliver their monthly files to their respective survey vendors *with minimal effort.* Regarding section IV.E of the Information Collections Requirements, CMS is adopting three changes to the proposed HHCAHPS implementation that may alleviate some of the ''burden'': (1) Delayed HHCAHPS linkage to CY 2012 payment and not to CY 2011 payment; (2) the eligible patient list that HHAs need to give to their survey vendors include only Medicare and/or Medicaid patients; (3) HHAs may give V Codes to their survey vendors if ICD–9 codes are unavailable; (4) HHAs will have the opportunity to voluntarily implement HHCAHPS for a year (October 2009 through September 2010) for ''practicing'' the implementation procedures before data collection ''counts'' toward an annual payment update.

V. Regulatory Impact Analysis

A. Overall Impact

We have examined the impacts of this final rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993) the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999) and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for rules with economically significant effects ($100 million or more in any 1 year). We estimate that this rulemaking is ''economically significant'' as measured by the $100 million threshold and hence also a major rule under the Congressional Review Act. Accordingly, we have prepared a Regulatory Impact Analysis, which to the best of our ability, presents the costs and benefits of the rulemaking.

1. HHA Provisions Regarding Ownership Changes and Reactivation of Billing Privileges

For the proposed rule, we estimated that a total of 2,000 deactivated HHAs and 2,000 HHAs undergoing a change of ownership may be affected annually by our proposed payment safeguard provisions. Yet we believe that the actual budgetary impact will be minimal, as these estimated figures were very high-end estimates and were used so as not to underestimate the potential burden on HHAs. The reality is that the annual number of deactivated HHAs that will seek to reactivate their billing privileges will very likely be substantially less than 2,000. This is primarily because the requirements in 42 CFR 424.540(b)(3)(i) will encourage some deactivated HHAs to remain in a deactivated status rather than undergo a State survey, especially if they plan to only infrequently bill Medicare after the reactivation of their Medicare billing privileges. It is for this same reason that we believe that the number of ownership changes will be less than 2,000. Some entities and individuals

may be reluctant to sell or buy a Medicare-enrolled HHA if they know that the HHA will first have to undergo an initial Medicare enrollment and survey. While it is not possible for us to place a precise figure on the number of HHAs that will forgo reactivation or an ownership change due to the survey requirement, we do believe that it will be significant enough to mitigate the overall budgetary impact.

Moreover, and as previously stated, we believe that these changes are necessary to ensure that currently enrolled and prospective HHAs are billing for the services provided and are in compliance with the conditions of participation in 42 CFR Part 484, and all other Medicare requirements.

As for the issue of beneficiary access, the number of affected HHAs is such that we do not believe that beneficiaries will be adversely impacted by these provisions. To the contrary, any reduction in the number of enrolled HHAs that will result from the implementation of these provisions will be more than offset by the assurance that those HHAs that cannot meet Medicare requirements and quality standards are no longer in the program.

We are unable to determine the exact extent to which currently enrolled and prospective HHAs would be able to meet the requirements outlined in the provisions. In addition, as a result of a dearth of quantifiable data, we cannot effectively derive an estimate of the monetary impacts of these provisions. Accordingly, we are seeking public comment so that the public may provide any data available that provides a calculable impact or any alternative to these provisions.

2. CY 2010 Update

The update set forth in this rule applies to Medicare payments under HH PPS in CY 2010. Accordingly, the following analysis describes the impact in CY 2010 only. We estimate that the net impact of the proposals in this rule, including a 2.75 percent reduction to the national standardized 60-day episode payment rates and the NRS conversion factor to account for the case-mix change adjustment, is approximately $140 million in CY 2010 savings. The estimated $140 million impact reflects the distributional effects of an updated wage index (–$10 million) as well as the final 2.0 percent home health market basket increase (an additional $350 million in CY 2010 expenditures attributable only to the CY 2010 home health market basket), and the 2.75 percent decrease (–$480 million for the third year of a 4-year phase-in) to the HH PPS national standardized 60-day episode rates and the NRS conversion factors to account for the case-mix change adjustment under the HH PPS. The $140 million is reflected in column 5 of Table 7 as a 1.03 percent decrease in expenditures when comparing the current CY 2009 system to the CY 2010 system.

The RFA requires agencies to analyze options for regulatory relief of small entities, if a rule has a significant impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $7 million to $34.5 million in any 1 year. For the purposes of the RFA, approximately 75 percent of HHAs are considered to small businesses according to the Small Business Administration's size standards with total revenues of $13.5 million or less in any 1 year. Individuals and States are not included in the definition of a small entity. Excluding HHAs in areas of the country where high and suspect outlier payments exist, this rule is estimated to have an overall positive effect upon small entities (see section V.B ''Anticipated Effects'', of this final rule, for supporting analysis).

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 rule applies to home health agencies. Therefore, the Secretary has determined that this rule will not have a significant economic impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of about $100 million or more in 1995 dollars, updated for inflation. That threshold is currently approximately $133 million in 2009. This final rule is not anticipated to have an effect on State, local, or tribal governments, in the aggregate, or by the private sector, of $133 million or more.

Executive Order 13132 established certain requirements that an agency must meet when it promulgates a 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 substantial direct effects on the rights, roles, and responsibilities of States, local, or tribal governments.

B. Anticipated Effects

This final rule sets forth updates to the HH PPS rates contained in the CY 2009 notice (73 FR 65351, November 3, 2008). The impact analysis of this final rule presents the estimated expenditure effects of policy changes in this rule. We use the latest data and best analysis available, but we do not make adjustments for future changes in such variables as number of visits or case-mix.

This analysis incorporates the latest estimates of growth in service use and payments under the Medicare home health benefit, based on Medicare claims from 2007. We note that certain events may combine to limit the scope or accuracy of our impact analysis, because such an analysis is future-oriented and, thus, susceptible to errors resulting from other changes in the impact time period assessed. Some examples of such possible events are newly-legislated general Medicare program funding changes made by the Congress, or changes specifically related to HHAs. In addition, changes to the Medicare program may continue to be made as a result of the BBA, the BBRA, the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000, the MMA, the DRA, MIPPA, ARRA, or new statutory provisions. Although these changes may not be specific to the HH PPS, the nature of the Medicare program is such that the changes may interact, and the complexity of the interaction of these changes could make it difficult to predict accurately the full scope of the impact upon HHAs.

Table 7 represents how home health agency revenues are likely to be affected by the policy changes described in this rule. For this analysis, we used linked home health claims and OASIS assessments; the claims represented a 20-percent sample of 60-day episodes occurring in CY 2007. Column one of this table classifies HHAs according to a number of characteristics including provider type, geographic region, and urban versus rural location.

For the purposes of analyzing impacts on payments, we performed three simulations and compared them to each other. Based on our assumption that

outliers, as a percentage of total HH PPS payments, will be no more than 5 percent in CY 2009, the 2009 baseline, for the purposes of these simulations, we assumed that the full 5 percent outlay for outliers will be paid under our policy in 2009 of a 0.89 FDL ratio. As described in section III.A. of this final rule, given our CY 2010 policies of a 0.67 FDL ratio and a 10 percent cap on outlier payments, we will return 2.5 percent back into the national standardized 60-day episode payment rates, the national per-visit rates, the LUPA add-on payment amount, and the NRS conversion factor, and then estimate outlier payments to be approximately 2.5 percent of total HH PPS payments in CY 2010. All three simulations use a CBSA-based wage index reported on the 2007 claims to determine the appropriate wage index.

The first simulation estimates CY 2009 payments under the current system (to include the 2009 wage index). The second simulation estimates CY 2009 payments under the current system, but with the 2010 wage index. The second simulation produces an estimate of what total payments using the sample data will have been in CY 2009 without any of the provisions in this rule, except for that of the 2010 wage index. The third simulation estimates CY 2010 payments with the 2010 wage index, incorporating our maintaining of the 2.75 percent reduction to the HH PPS rates, as well as all the provisions of this rule.

These simulations demonstrate the effects of: a new 2010 wage index, a 2.75 percent reduction to account for the increase in nominal case-mix, a 2.0 percent market basket update, a 2.5 percent increase to account for a new outlier target of 2.5 percent, a 0.67 FDL ratio, and a 10 percent cap on outlier payments. Specifically, the second column of Table 7 shows the percent change due to the effects of the 2010 wage index. The third column of Table 7 shows the percent change due to the combined effects of the 2010 wage index, our maintaining of a 2.75 percent reductions to the rates to account for the increase in nominal case-mix, the 2.0 percent home health market basket update, the 2.5 percent increase to the HH PPS rates to account for an approximate 2.5 percent target for outliers as a percentage of total HH PPS payments, a 0.67 FDL ratio, and a 10 percent outlier cap.

The overall percentage change, for all HHAs, in estimated total payments from CY 2009 to CY 2010 is a decrease of approximately 1.03 percent. Rural HHAs, however, are estimated to see an increase in payments from CY 2009 to CY 2010 of about 3.27 percent. On the other hand, urban HHAs are expected to see a decrease of approximately 1.81 percent in payments from CY 2009 to CY 2010.

Voluntary non-profit HHAs (3.36 percent), facility-based HHAs (3.72 percent), and government owned HHAs (2.94 percent) are estimated to see an increase in the percentage change in estimated total payments from CY 2009 to CY 2010. Proprietary and freestanding HHAs, on the other hand, are estimated to see decreases of 3.32 percent and 1.90 percent, respectively, in estimated total payments from CY 2009 to CY 2010. Freestanding HHAs, broken out, show that voluntary non-profit and governmental HHAs are estimated to see increases of 3.47 percent and 3.48 percent, respectively, in estimated total payments from CY 2009 to CY 2010.

HHAs in the North and Midwest regions are expected to experience a percentage change increase in the estimated total payments from CY 2009 to CY 2010 of 3.66 percent and 3.48 percent, respectively. HHAs in the South and West regions of the country are estimated to experience decreases in the percentage change in estimated total payments from CY 2009 to CY 2010 of 4.19 percent and 1.70 percent. We believe that the major contributors to the estimated decreases in payments in these areas of the country are those with high and suspect outlier payments.

Breaking this down even further, it is estimated that New England, Mid Atlantic, East South Central, East North Central, West North Central, and Mountain area HHAs are all expected to experience increases in their payments in CY 2010 ranging from almost 2 percent to almost 5 percent. Conversely, South Atlantic and Pacific HHAs are expected to experience decreases, 11.84 percent and 3.09 percent respectively, in the percentage change in estimated total payments from CY 2009 to CY 2010. Again, we believe that the major contributors to the estimated decreases in payments in these areas of the country are those with high and suspect outlier payments.

The last section of Table 7 shows the percentage change in payments by agency size, as determined by the number of first episodes. The agency size categories, for this rule, are based on the number of first episodes in a random 20 percent beneficiary sample of CY 2007 claims data. Initial episodes, under the HH PPS, are defined as the first episode in a series of adjacent episodes (contiguous episodes that are separated by no more than a 60-day period between episodes) for a given beneficiary. Initial, or first, episodes are a good estimate of agency size, because this method approximates the number of admissions experienced by the agency based on approximately one-fifth of the total annual data. The size categories were set to have roughly equal numbers of agencies, except that the highest category has somewhat more agencies because added detail amongst the large size category was not needed. As such, the size categories for these impact analyses are: less than 19 first episodes, 20 to 49 first episodes, 50 to 99 first episodes, 100 to 199 first episodes, and 200 or more first episodes. Larger HHAs (those with 200 or more Medicare home health initial episodes per year) are estimated to experience an increase in payments from CY 2009 to CY 2010 of approximately 2.27 percent. Mid-size to small agencies are expected to see a decrease in their payments in CY 2010, ranging from 1.95 percent to 16.08 percent. However, we believe that the major contributors to the estimated decreases in payments for mid-size to small agencies are those agencies in areas of the country with high and suspect outlier payments. Consequently, as we did in the proposed rule, we have provided a more detailed discussion, and analysis in Table 8 below, that demonstrates where, in the country, these estimated large decreases for mid-size to small agencies are occurring.

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Table 7: IMPACT BY AGENCY TYPE

Group	Comparisons	
	Percent change due to the effects of the updated wage index only	Impact of CY 2010 Policies[1]
Type of Facility		
Free-Standing/Other Vol/NP	0.00%	3.07%
Free-Standing/Other Proprietary	-0.05%	-3.45%
Free-Standing/Other Government	-0.32%	2.47%
Facility-Based Vol/NP	-0.12%	3.78%
Facility-Based Proprietary	-0.22%	3.48%
Facility-Based Government	-0.27%	3.47%
Subtotal: Freestanding	-0.04%	-1.90%
Subtotal: Facility-based	-0.15%	3.72%
Subtotal: Vol/NP	-0.05%	3.36%
Subtotal: Proprietary	-0.05%	-3.32%
Subtotal: Government	-0.30%	2.94%
TOTAL	-0.06%	-1.03%
Type of Facility (Rural * Only)		
Free-Standing/Other Vol/NP	-0.44%	3.47%
Free-Standing/Other Proprietary	-0.14%	3.10%
Free-Standing/Other Government	-0.57%	3.48%
Facility-Based Vol/NP	-0.44%	3.50%
Facility-Based Proprietary	-0.61%	2.75%
Facility-Based Government	-0.42%	3.56%
Type of Facility (Urban * Only)		

Free-Standing/Other Vol/NP	0.06%	3.01%
Free-Standing/Other Proprietary	-0.03%	-4.35%
Free-Standing/Other Government	-0.04%	1.33%
Facility-Based Vol/NP	-0.04%	3.85%
Facility-Based Proprietary	0.03%	3.94%
Facility-Based Government	-0.03%	3.33%
Type of Facility (Urban* or Rural*)		
Rural	-0.30%	3.27%
Urban	-0.02%	-1.81%
TOTAL	-0.06%	-1.03%
Facility Location: Region*		
North	0.06%	3.66%
South	-0.05%	-4.19%
Midwest	-0.23%	3.48%
West	-0.07%	-1.70%
Outlying	0.37%	4.26%
TOTAL	-0.06%	-1.03%
Facility Location: Area of the Country		
New England	0.56%	4.78%
Mid Atlantic	-0.21%	3.05%
South Atlantic	0.27%	-11.84%
East South Central	-0.23%	3.53%
West South Central	-0.29%	0.23%
East North Central	-0.27%	3.44%
West North Central	-0.07%	3.66%
Mountain	0.34%	1.91%
Pacific	-0.23%	-3.09%
Outlying	0.37%	4.26%
TOTAL	-0.06%	-1.03%
Facility Size: (Number of First Episodes)		
< 19	0.12%	-16.08%
20 to 49	0.03%	-11.78%
50 to 99	-0.03%	-9.20%
100 to 199	-0.12%	-1.95%
200 or More	-0.07%	2.27%
TOTAL	-0.06%	-1.03%

Note: Based on a 20% sample of CY 2007 claims linked to OASIS assessments.
*Urban / rural status, for the purposes of these simulations, is based on the wage index on which episode payment is based. The wage index is based on the site of service of the beneficiary.

REGION KEY:
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

[1] **Percent change due to the effects of the update wage index, the 2.0% home health market basket update, the 2.75% reduction to the national standardized episode rates, the national per-visit rates, the LUPA add-on payment amount, and the NRS conversion factor for nominal increase in case-mix, the 2.5% increase in the rates due to the new approximate 2.5% target for outliers as a percentage of total HH PPS payments, a 0.67 FDL ratio, and a 10% outlier cap**

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Given the overall large negative impact observed by smaller agencies, we performed more detailed analysis targeted at identifying where the large negative impacts were occurring. Table 8 below presents the results of the regional analysis for small agencies. Column 1, of Table 8, shows the regional and agency size classifications similar to those in Table 7. In column 2 we repeat the overall impacts (from Table 7) for those classifications. In columns 3 through 7, we drill down in our analysis, looking at those classifications by the size of the agency (as defined by the number of first episodes). It is clear from this analysis that, for smaller agencies, the vast majority of the negative impact is occurring in areas of the country (such as the South and South Atlantic) where there exist high and suspect outlier payments. Specifically, in columns 3, 4, and 5 of Table 8, for the South Atlantic area of the country (which includes Miami-Dade, Florida), the negative percentage impacts in payment ranging from around 40 percent to just over 53 percent are evidence that it is the high and suspect outlier payments in areas such as this, that are skewing the results of the overall impact analysis. Estimated impacts for small agencies in the South (negative impacts ranging around 15 percent to 22 percent) and the Pacific (negative impacts ranging from around 12 percent to 17 percent) areas of the country, reflect similar results. Conversely, small HHAs in most other parts of the country are estimated to see increases in payments in CY 2010, ranging from 0.20 percent to almost 5 percent. Consequently, we believe that small HHAs without high and suspect outlier payments, on average, will see a positive impact on their payments in CY 2010. We do not believe there will be any significant impact on beneficiaries, as a result of the provisions of this rule. Areas where negative impacts have been estimated for HHAs, are primarily urban, and thus we believe that beneficiaries have a reasonable pool of HHAs from which to receive home health services.

Table 8: SMALL AGENCY IMPACTS

Group	Comparison of 2009-2010 Changes					
	Overall	< 20 Episodes	20-49 episodes	50-99 episodes	100-199 episodes	200 or more episodes
Facility Location: Region of the Country						
North	3.66%	0.10%	2.96%	2.95%	3.59%	3.71%
South	-4.19%	-22.08%	-17.60%	-14.86%	-3.85%	1.10%
Midwest	3.48%	2.46%	3.27%	3.33%	3.60%	3.56%
West	-1.70%	-5.83%	-10.37%	-9.32%	-3.95%	1.78%
Outlying	4.26%	4.30%	4.21%	4.68%	4.21%	4.25%
TOTAL	-1.03%	-16.08%	-11.78%	-9.20%	-1.95%	2.27%
Facility Location: Region of the Country (Census Region)						
New England	4.78%	-3.24%	3.40%	4.73%	3.99%	4.93%
Mid Atlantic	3.05%	3.77%	2.53%	1.26%	3.13%	3.08%
South Atlantic	-11.84%	-53.37%	-45.96%	-40.61%	-16.63%	-0.78%
East South Central	3.53%	3.90%	2.11%	3.72%	3.05%	3.60%
West South Central	0.23%	-5.81%	-2.73%	-1.44%	1.49%	2.08%
East North Central	3.44%	2.27%	3.02%	3.41%	3.70%	3.50%
West North Central	3.66%	3.90%	4.54%	3.00%	3.28%	3.80%
Mountain	1.91%	1.44%	-1.54%	1.35%	1.63%	2.80%
Pacific	-3.09%	-11.54%	-16.84%	-13.28%	-6.72%	1.46%
Outlying	4.26%	4.30%	4.21%	4.68%	4.21%	4.25%
TOTAL	-1.03%	-16.08%	-11.78%	-9.20%	-1.95%	2.27%
Facility Size (Number of First Episodes)						
< 19 episodes	-16.08%	-16.08%				
20 to 49	-11.78%		-11.78%			
50 to 99	-9.20%			-9.20%		
100 to 199	-1.95%				-1.95%	
200 or More	2.27%					2.27%
TOTAL	-1.03%	-16.08%	-11.78%	-9.20%	-1.95%	2.27%

REGION KEY:
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

C. Accounting Statement and Table

Whenever a rule is considered a significant rule under Executive Order 12866, we are required to develop an Accounting Statement showing the classification of the expenditures associated with the provisions of this rule.

Table 9, below provides our best estimate of the decrease in Medicare payments under the HH PPS as a result of the changes presented in this rule based on the best available data. The expenditures are classified as a transfer to the Federal Government of $140 million.

TABLE 9—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES, FROM THE 2009 HH PPS CALENDAR YEAR TO THE 2010 HH PPS CALENDAR YEAR

Category	Transfers
Annualized Monetized Transfers.	Negative transfer—Estimated decrease in expenditures: $140 million.
From Whom to Whom.	Federal Government to HH Providers.

D. Conclusion

In conclusion, we estimate that the net impact of the proposals in this rule, including a 2.75 percent reduction to the national standardized 60-day episode rates and the NRS conversion factor to account for the case-mix change adjustment, is approximately $140 million in CY 2010 savings. The $140 million impact reflects the distributional effects of an updated wage index (−$10 million) as well as the final 2.0 percent home health market basket increase (an additional $350 million in CY 2010 expenditures attributable only to the CY 2010 home

health market basket), and the 2.75 percent decrease (−$480 million for the third year of a 4-year phase-in) to the national standardized 60-day episode rates and the NRS conversion factor to account for the case-mix change adjustment under the HH PPS. This analysis above, together with the remainder of this preamble, provides a Regulatory Impact Analysis.

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

List of Subjects

42 CFR Part 409

Health facilities, Medicare.

42 CFR Part 424

Emergency medical services, Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 484

Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR chapter IV as set forth below:

PART 409—HOSPITAL INSURANCE BENEFITS

■ 1. The authority citation for part 409 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

■ 2. Section 409.42 is amended by revising paragraph (c)(1) to read as follows:

§ 409.42 Beneficiary qualifications for coverage of services.

* * * * *

(c) * * *

(1) Intermittent skilled nursing services that meet the criteria for skilled services and the need for skilled services found in § 409.32. (Also see § 409.33(a) and (b) for a description of examples of skilled nursing and rehabilitation services.) These criteria are subject to the following limitations in the home health setting:

(i) In the home health setting, management and evaluation of a patient care plan is considered a reasonable and necessary skilled service when underlying conditions or complications are such that only a registered nurse can ensure that essential non-skilled care is achieving its purpose. To be considered a skilled service, the complexity of the necessary unskilled services that are a necessary part of the medical treatment must require the involvement of licensed nurses to promote the patient's recovery and medical safety in view of the overall condition. Where nursing visits are not needed to observe and assess the effects of the non-skilled services being provided to treat the illness or injury, skilled nursing care would not be considered reasonable and necessary, and the management and evaluation of the care plan would not be considered a skilled service. In some cases, the condition of the patient may cause a service that would originally be considered unskilled to be considered a skilled nursing service. This would occur when the patient's underlying condition or complication requires that only a registered nurse can ensure that essential non-skilled care is achieving its purpose. The registered nurse is ensuring that service is safely and effectively performed. However, a service is not considered a skilled nursing service merely because it is performed by or under the supervision of a licensed nurse. Where a service can be safely and effectively performed (or self administered) by non-licensed staff without the direct supervision of a nurse, the service cannot be regarded as a skilled service even if a nurse actually provides the service.

(ii) In the home health setting, skilled education services are no longer needed if it becomes apparent, after a reasonable period of time, that the patient, family, or caregiver could not or would not be trained. Further teaching and training would cease to be reasonable and necessary in this case, and would cease to be considered a skilled service. Notwithstanding that the teaching or training was unsuccessful, the services for teaching and training would be considered to be reasonable and necessary prior to the point that it became apparent that the teaching or training was unsuccessful, as long as such services were appropriate to the patient's illness, functional loss, or injury.

* * * * *

■ 3. Section 409.43 is amended by revising paragraph (e)(1)(ii) to read as follows:

§ 409.43 Plan of care requirements.

* * * * *

(e) * * *

(1) * * *

(ii) Significant change in condition; or

* * * * *

■ 4. Section 409.44 is amended by revising the introductory text of paragraph (b)(1) to read as follows:

§ 409.44 Skilled services requirements.

* * * * *

(b) * * *

(1) Skilled nursing care consists of those services that must, under State law, be performed by a registered nurse, or practical (vocational) nurse, as defined in § 484.4 of this chapter, meet the criteria for skilled nursing services specified in § 409.32, and meet the qualifications for coverage of skilled services specified in § 409.42(c). See § 409.33(a) and (b) for a description of skilled nursing services and examples of them.

* * * * *

PART 424—CONDITIONS FOR MEDICARE PAYMENT

■ 5. The authority citation for part 424 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

■ 6. Section 424.22 is amended as follows:

■ A. Revising paragraph (a)(1)(i);

■ B. Revising paragraph (b)(2).

§ 424.22 Requirements for home health services.

(a) * * *

(1) * * *

(i) The individual needs or needed intermittent skilled nursing care, or physical or speech therapy, or (for the period from July through November 30, 1981) occupational therapy. If a patient's underlying condition or complication requires a registered nurse to ensure that essential non-skilled care is achieving its purpose, and necessitates a registered nurse be involved in the development, management, and evaluation of a patient's care plan, the physician will include a brief narrative describing the clinical justification of this need. If the narrative is part of the certification or recertification form, then the narrative must be located immediately prior to the physician's signature. If the narrative exists as an addendum to the certification or recertification form, in addition to the physician's signature on the certification or recertification form, the physician must sign immediately following the narrative in the addendum.

* * * * *

(b) * * *

(2) *Content and basis of recertification.* The recertification statement must indicate the continuing need for services and estimate how much longer the services will be required. Need for occupational therapy

may be the basis for continuing services that were initiated because the individual needed skilled nursing care or physical therapy or speech therapy. If a patient's underlying condition or complication requires a registered nurse to ensure that essential non-skilled care is achieving its purpose, and necessitates a registered nurse be involved in the development, management, and evaluation of a patient's care plan, the physician will include a brief narrative describing the clinical justification of this need. If the narrative is part of the certification or recertification form, then the narrative must be located immediately prior to the physician's signature. If the narrative exists as an addendum to the certification or recertification form, in addition to the physician's signature on the certification or recertification form, the physician must sign immediately following the narrative in the addendum.

* * * * *

■ 7. Section 424.540 is amended by revising paragraph (b)(3) to read as follows:

§ 424.540 Deactivation of Medicare billing privileges.

* * * * *

(b) * * *

(3) Except as provided in paragraph (b)(3)(i) of this section, reactivation of Medicare billing privileges does not require a new certification of the provider or supplier by the State survey agency or the establishment of a new provider agreement.

(i) An HHA whose Medicare billing privileges are deactivated under the provisions found at paragraph (a) of this section must obtain an initial State survey or accreditation by an approved accreditation organization before its Medicare billing privileges can be reactivated.

(ii) [Reserved]

* * * * *

■ 8. Section 424.550 is amended by adding paragraph (b)(1) and adding and reserving paragraph (b)(2), to read as follows:

§ 424.550 Prohibitions on the sale or transfer of billing privileges.

* * * * *

(b) * * *

(1) If an owner of a home health agency sells (including asset sales or stock transfers), transfers or relinquishes ownership of the HHA within 36 months after the effective date of the HHA's enrollment in Medicare, the provider agreement and Medicare billing privileges do not convey to the new owner. The prospective provider/owner of the HHA must instead:

(i) Enroll in the Medicare program as a new HHA under the provisions of § 424.510, and

(ii) Obtain a State survey or an accreditation from an approved accreditation organization.

(2) [Reserved]

* * * * *

PART 484—HOME HEALTH SERVICES

■ 9. The authority citation for part 484 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395(hh)).

Subpart C—Furnishing of Services

■ 10. Section 484.55 is amended by revising paragraph (d)(1)(ii) to read as follows:

§ 484.55 Condition of participation: Comprehensive assessment of patients.

* * * * *

(d) * * *

(1) * * *

(i) * * *

(ii) Significant change in condition; or

* * * * *

Subpart E—Prospective Payment System for Home Health Agencies

■ 11. Section 484.210 is amended by revising paragraph (e) to read as follows:

§ 484.210 Data used for the calculation of the national prospective 60-day episode payment.

* * * * *

(e) OASIS assessment data and other data that account for the relative resource utilization for different HHA Medicare patient case-mix. An HHA must submit to CMS the OASIS data described at § 484.55(b)(1) and (d)(1) in order for CMS to administer the payment rate methodologies described in §§ 484.215, 484.230 and 484.235.

■ 12. Revise § 484.250 to read as follows:

§ 484.250 Patient assessment data.

An HHA must submit to CMS the OASIS data described at § 484.55(b)(1) and (d)(1) in order for CMS to administer the payment rate methodologies described in §§ 484.215, 484.230, and 484.235.

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

Dated: *October 15, 2009.*

Charlene Frizzera,

Acting Administrator, Centers for Medicare & Medicaid Services.

Dated: *October 29, 2009.*

Kathleen Sebelius,

Secretary.

Note: The following addenda will not be published in the Code of Federal Regulations.

BILLING CODE 4120–01–P

ADDENDUM A. CY 2010 WAGE INDEX FOR RURAL AREAS BY CBSA; APPLICABLE PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX

CBSA Code	Nonurban Area	Wage Index
01	Alabama	0.7327
02	Alaska	1.1669
03	Arizona	0.8790
04	Arkansas	0.7332
05	California	1.2051
06	Colorado	0.9929
07	Connecticut	1.1093
08	Delaware	0.9910
10	Florida	0.8566
11	Georgia	0.7623
12	Hawaii	1.1113
13	Idaho	0.7733
14	Illinois	0.8312
15	Indiana	0.8529
16	Iowa	0.8624
17	Kansas	0.8167
18	Kentucky	0.7813
19	Louisiana	0.7611
20	Maine	0.8579

CBSA Code	Nonurban Area	Wage Index
21	Maryland	0.9131
22	Massachusetts[1]	1.1700
23	Michigan	0.8778
24	Minnesota	0.9160
25	Mississippi	0.7638
26	Missouri	0.7671
27	Montana	0.8399
28	Nebraska	0.8705
29	Nevada	0.9674
30	New Hampshire	0.9957
31	New Jersey[1]	------
32	New Mexico	0.8938
33	New York	0.8269
34	North Carolina	0.8535
35	North Dakota	0.7813
36	Ohio	0.8506
37	Oklahoma	0.7654
38	Oregon	1.0236
39	Pennsylvania	0.8306
40	Puerto Rico[1]	0.4047
41	Rhode Island[1]	------
42	South Carolina	0.8394
43	South Dakota	0.8510

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 CY 2010

CBSA Code	Nonurban Area	Wage Index
44	Tennessee	0.7808
45	Texas	0.7759
46	Utah	0.8363
47	Vermont	0.9763
48	Virgin Islands	0.7416
49	Virginia	0.7869
50	Washington	1.0224
51	West Virginia	0.7396
52	Wisconsin	0.9206
53	Wyoming	0.9535
65	Guam	0.9611

ADDENDUM B.- CY 2010 WAGE INDEX FOR URBAN AREAS BY CBSA; APPLICABLE PRE-FLOOR AND PRE-RECLASSIFIED HOSPITAL WAGE INDEX

CBSA Code	Urban Area (Constituent Counties)	Wage Index
10180	Abilene, TX Callahan County, TX Jones County, TX Taylor County, TX	0.7946
10380	Aguadilla-Isabela-San Sebastián, PR 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	0.3462

CBSA Code	Urban Area (Constituent Counties)	Wage Index
10420	Akron, OH Portage County, OH Summit County, OH	0.8850
10500	Albany, GA Baker County, GA Dougherty County, GA Lee County, GA Terrell County, GA Worth County, GA	0.8899
10580	Albany-Schenectady-Troy, NY Albany County, NY Rensselaer County, NY Saratoga County, NY Schenectady County, NY Schoharie County, NY	0.8777
10740	Albuquerque, NM Bernalillo County, NM Sandoval County, NM Torrance County, NM Valencia County, NM	0.9399
10780	Alexandria, LA Grant Parish, LA Rapides Parish, LA	0.8012
10900	Allentown-Bethlehem-Easton, PA-NJ Warren County, NJ Carbon County, PA Lehigh County, PA Northampton County, PA	0.9611
11020	Altoona, PA Blair County, PA	0.8863
11100	Amarillo, TX Armstrong County, TX Carson County, TX Potter County, TX Randall County, TX	0.8689
11180	Ames, IA Story County, IA	0.9493

CBSA Code	Urban Area (Constituent Counties)	Wage Index
11260	Anchorage, AK Anchorage Municipality, AK Matanuska-Susitna Borough, AK	1.2013
11300	Anderson, IN Madison County, IN	0.9052
11340	Anderson, SC Anderson County, SC	0.9023
11460	Ann Arbor, MI Washtenaw County, MI	1.0293
11500	Anniston-Oxford, AL Calhoun County, AL	0.7643
11540	Appleton, WI Calumet County, WI Outagamie County, WI	0.9289
11700	Asheville, NC Buncombe County, NC Haywood County, NC Henderson County, NC Madison County, NC	0.9057
12020	Athens-Clarke County, GA Clarke County, GA Madison County, GA Oconee County, GA Oglethorpe County, GA	0.9492

CBSA Code	Urban Area (Constituent Counties)	Wage Index
12060	Atlanta-Sandy Springs-Marietta, GA 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	0.9591
12100	Atlantic City-Hammonton, NJ Atlantic County, NJ	1.1554
12220	Auburn-Opelika, AL Lee County, AL	0.8138

CBSA Code	Urban Area (Constituent Counties)	Wage Index
12260	Augusta-Richmond County, GA-SC Burke County, GA Columbia County, GA McDuffie County, GA Richmond County, GA Aiken County, SC Edgefield County, SC	0.9409
12420	Austin-Round Rock, TX Bastrop County, TX Caldwell County, TX Hays County, TX Travis County, TX Williamson County, TX	0.9518
12540	Bakersfield, CA Kern County, CA	1.1232
12580	Baltimore-Towson, MD Anne Arundel County, MD Baltimore County, MD Carroll County, MD Harford County, MD Howard County, MD Queen Anne's County, MD Baltimore City, MD	1.0214
12620	Bangor, ME Penobscot County, ME	1.0154
12700	Barnstable Town, MA Barnstable County, MA	1.2618

CBSA Code	Urban Area (Constituent Counties)	Wage Index
12940	Baton Rouge, LA 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	0.8180
12980	Battle Creek, MI Calhoun County, MI	1.0000
13020	Bay City, MI Bay County, MI	0.9267
13140	Beaumont-Port Arthur, TX Hardin County, TX Jefferson County, TX Orange County, TX	0.8383
13380	Bellingham, WA Whatcom County, WA	1.1395
13460	Bend, OR Deschutes County, OR	1.1446
13644	Bethesda-Frederick-Rockville, MD Frederick County, MD Montgomery County, MD	1.0298
13740	Billings, MT Carbon County, MT Yellowstone County, MT	0.8781
13780	Binghamton, NY Broome County, NY Tioga County, NY	0.8780

CBSA Code	Urban Area (Constituent Counties)	Wage Index
13820	Birmingham-Hoover, AL Bibb County, AL Blount County, AL Chilton County, AL Jefferson County, AL St. Clair County, AL Shelby County, AL Walker County, AL	0.8554
13900	Bismarck, ND Burleigh County, ND Morton County, ND	0.7637
13980	Blacksburg-Christiansburg-Radford, VA Giles County, VA Montgomery County, VA Pulaski County, VA Radford City, VA	0.8394
14020	Bloomington, IN Greene County, IN Monroe County, IN Owen County, IN	0.9043
14060	Bloomington-Normal, IL McLean County, IL	0.9378
14260	Boise City-Nampa, ID Ada County, ID Boise County, ID Canyon County, ID Gem County, ID Owyhee County, ID	0.9318
14484	Boston-Quincy, MA Norfolk County, MA Plymouth County, MA Suffolk County, MA	1.2186
14500	Boulder, CO Boulder County, CO	1.0266
14540	Bowling Green, KY Edmonson County, KY Warren County, KY	0.8469
14600	Bradenton-Sarasota-Venice, FL	0.9735

CBSA Code	Urban Area (Constituent Counties)	Wage Index
	Manatee County, FL Sarasota, FL	
14740	Bremerton-Silverdale, WA Kitsap County, WA	1.0755
14860	Bridgeport-Stamford-Norwalk, CT Fairfield County, CT	1.2792
15180	Brownsville-Harlingen, TX Cameron County, TX	0.9020
15260	Brunswick, GA Brantley County, GA Glynn County, GA McIntosh County, GA	0.9178
15380	Buffalo-Niagara Falls, NY Erie County, NY Niagara County, NY	0.9740
15500	Burlington, NC Alamance County, NC	0.8749
15540	Burlington-South Burlington, VT Chittenden County, VT Franklin County, VT Grand Isle County, VT	1.0106
15764	Cambridge-Newton-Framingham, MA Middlesex County, MA	1.1278
15804	Camden, NJ Burlington County, NJ Camden County, NJ Gloucester County, NJ	1.0374
15940	Canton-Massillon, OH Carroll County, OH Stark County, OH	0.8813
15980	Cape Coral-Fort Myers, FL Lee County, FL	0.9076
16020	Cape Girardeau-Jackson, MO-IL Alexander County, IL Bollinger County, MO Cape Girardeau County, MO	0.9047
16180	Carson City, NV Carson City, NV	1.0531

CBSA Code	Urban Area (Constituent Counties)	Wage Index
16220	Casper, WY Natrona County, WY	0.9520
16300	Cedar Rapids, IA Benton County, IA Jones County, IA Linn County, IA	0.8984
16580	Champaign-Urbana, IL Champaign County, IL Ford County, IL Piatt County, IL	1.0108
16620	Charleston, WV Boone County, WV Clay County, WV Kanawha County, WV Lincoln County, WV Putnam County, WV	0.8141
16700	Charleston-North Charleston-Summerville, SC Berkeley County, SC Charleston County, SC Dorchester County, SC	0.9279
16740	Charlotte-Gastonia-Concord, NC-SC Anson County, NC Cabarrus County, NC Gaston County, NC Mecklenburg County, NC Union County, NC York County, SC	0.9474

CBSA Code	Urban Area (Constituent Counties)	Wage Index
16820	Charlottesville, VA Albemarle County, VA Fluvanna County, VA Greene County, VA Nelson County, VA Charlottesville City, VA	0.9372
16860	Chattanooga, TN-GA Catoosa County, GA Dade County, GA Walker County, GA Hamilton County, TN Marion County, TN Sequatchie County, TN	0.8831
16940	Cheyenne, WY Laramie County, WY	0.9344
16974	Chicago-Naperville-Joliet, IL Cook County, IL DeKalb County, IL DuPage County, IL Grundy County, IL Kane County, IL Kendall County, IL McHenry County, IL Will County, IL	1.0471
17020	Chico, CA Butte County, CA	1.1198

CBSA Code	Urban Area (Constituent Counties)	Wage Index
17140	Cincinnati-Middletown, OH-KY-IN 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	0.9483
17300	Clarksville, TN-KY Christian County, KY Trigg County, KY Montgomery County, TN Stewart County, TN	0.7980
17420	Cleveland, TN Bradley County, TN Polk County, TN	0.7564
17460	Cleveland-Elyria-Mentor, OH Cuyahoga County, OH Geauga County, OH Lake County, OH Lorain County, OH Medina County, OH	0.8914

CBSA Code	Urban Area (Constituent Counties)	Wage Index
17660	Coeur d'Alene, ID Kootenai County, ID	0.9235
17780	College Station-Bryan, TX Brazos County, TX Burleson County, TX Robertson County, TX	0.9498
17820	Colorado Springs, CO El Paso County, CO Teller County, CO	0.9821
17860	Columbia, MO Boone County, MO Howard County, MO	0.8618
17900	Columbia, SC Calhoun County, SC Fairfield County, SC Kershaw County, SC Lexington County, SC Richland County, SC Saluda County, SC	0.8789
17980	Columbus, GA-AL Russell County, AL Chattahoochee County, GA Harris County, GA Marion County, GA Muscogee County, GA	0.8724
18020	Columbus, IN Bartholomew County, IN	0.9536

CBSA Code	Urban Area (Constituent Counties)	Wage Index
18140	Columbus, OH Delaware County, OH Fairfield County, OH Franklin County, OH Licking County, OH Madison County, OH Morrow County, OH Pickaway County, OH Union County, OH	1.0101
18580	Corpus Christi, TX Aransas County, TX Nueces County, TX San Patricio County, TX	0.8693
18700	Corvallis, OR Benton County, OR	1.1002
19060	Cumberland, MD-WV Allegany County, MD Mineral County, WV	0.8045
19124	Dallas-Plano-Irving, TX Collin County, TX Dallas County, TX Delta County, TX Denton County, TX Ellis County, TX Hunt County, TX Kaufman County, TX Rockwall County, TX	0.9853
19140	Dalton, GA Murray County, GA Whitfield County, GA	0.8666
19180	Danville, IL Vermilion County, IL	0.8738

CBSA Code	Urban Area (Constituent Counties)	Wage Index
19260	Danville, VA Pittsylvania County, VA Danville City, VA	0.8323
19340	Davenport-Moline-Rock Island, IA-IL Henry County, IL Mercer County, IL Rock Island County, IL Scott County, IA	0.8284
19380	Dayton, OH Greene County, OH Miami County, OH Montgomery County, OH Preble County, OH	0.9211
19460	Decatur, AL Lawrence County, AL Morgan County, AL	0.7799
19500	Decatur, IL Macon County, IL	0.7995
19660	Deltona-Daytona Beach-Ormond Beach, FL Volusia County, FL	0.8865
19740	Denver-Aurora-Broomfield, CO 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	1.0731

CBSA Code	Urban Area (Constituent Counties)	Wage Index
19780	Des Moines-West Des Moines, IA Dallas County, IA Guthrie County, IA Madison County, IA Polk County, IA Warren County, IA	0.9649
19804	Detroit-Livonia-Dearborn, MI Wayne County, MI	0.9729
20020	Dothan, AL Geneva County, AL Henry County, AL Houston County, AL	0.7406
20100	Dover, DE Kent County, DE	0.9931
20220	Dubuque, IA Dubuque County, IA	0.8869
20260	Duluth, MN-WI Carlton County, MN St. Louis County, MN Douglas County, WI	1.0448
20500	Durham-Chapel Hill, NC Chatham County, NC Durham County, NC Orange County, NC Person County, NC	0.9618
20740	Eau Claire, WI Chippewa County, WI Eau Claire County, WI	0.9567
20764	Edison-New Brunswick, NJ Middlesex County, NJ Monmouth County, NJ Ocean County, NJ Somerset County, NJ	1.1061
20940	El Centro, CA Imperial County, CA	0.8766
21060	Elizabethtown, KY Hardin County, KY Larue County, KY	0.8388

CBSA Code	Urban Area (Constituent Counties)	Wage Index
21140	Elkhart-Goshen, IN Elkhart County, IN	0.9489
21300	Elmira, NY Chemung County, NY	0.8341
21340	El Paso, TX El Paso County, TX	0.8541
21500	Erie, PA Erie County, PA	0.8779
21660	Eugene-Springfield, OR Lane County, OR	1.1034
21780	Evansville, IN-KY Gibson County, IN Posey County, IN Vanderburgh County, IN Warrick County, IN Henderson County, KY Webster County, KY	0.8522
21820	Fairbanks, AK Fairbanks North Star Borough, AK	1.1114
21940	Fajardo, PR Ceiba Municipio, PR Fajardo Municipio, PR Luquillo Municipio, PR	0.3790
22020	Fargo, ND-MN Cass County, ND Clay County, MN	0.8172
22140	Farmington, NM San Juan County, NM	0.7889
22180	Fayetteville, NC Cumberland County, NC Hoke County, NC	0.9358
22220	Fayetteville-Springdale-Rogers, AR-MO Benton County, AR Madison County, AR Washington County, AR McDonald County, MO	0.8775
22380	Flagstaff, AZ Coconino County, AZ	1.2475

CBSA Code	Urban Area (Constituent Counties)	Wage Index
22420	Flint, MI Genesee County, MI	1.1234
22500	Florence, SC Darlington County, SC Florence County, SC	0.8114
22520	Florence-Muscle Shoals, AL Colbert County, AL Lauderdale County, AL	0.7998
22540	Fond du Lac, WI Fond du Lac County, WI	0.9660
22660	Fort Collins-Loveland, CO Larimer County, CO	1.0175
22744	Fort Lauderdale-Pompano Beach-Deerfield Beach, FL Broward County, FL	1.0383
22900	Fort Smith, AR-OK Crawford County, AR Franklin County, AR Sebastian County, AR Le Flore County, OK Sequoyah County, OK	0.7861
23020	Fort Walton Beach-Crestview-Destin, FL Okaloosa County, FL	0.8758
23060	Fort Wayne, IN Allen County, IN Wells County, IN Whitley County, IN	0.9012
23104	Fort Worth-Arlington, TX Johnson County, TX Parker County, TX Tarrant County, TX Wise County, TX	0.9499
23420	Fresno, CA Fresno County, CA	1.1267
23460	Gadsden, AL Etowah County, AL	0.8266
23540	Gainesville, FL Alachua County, FL Gilchrist County, FL	0.8978

CBSA Code	Urban Area (Constituent Counties)	Wage Index
23580	Gainesville, GA Hall County, GA	0.9123
23844	Gary, IN Jasper County, IN Lake County, IN Newton County, IN Porter County, IN	0.9288
24020	Glens Falls, NY Warren County, NY Washington County, NY	0.8456
24140	Goldsboro, NC Wayne County, NC	0.9056
24220	Grand Forks, ND-MN Polk County, MN Grand Forks County, ND	0.7775
24300	Grand Junction, CO Mesa County, CO	0.9721
24340	Grand Rapids-Wyoming, MI Barry County, MI Ionia County, MI Kent County, MI Newaygo County, MI	0.9178
24500	Great Falls, MT Cascade County, MT	0.8354
24540	Greeley, CO Weld County, CO	0.9578
24580	Green Bay, WI Brown County, WI Kewaunee County, WI Oconto County, WI	0.9621
24660	Greensboro-High Point, NC Guilford County, NC Randolph County, NC Rockingham County, NC	0.9062
24780	Greenville, NC Greene County, NC Pitt County, NC	0.9401

CBSA Code	Urban Area (Constituent Counties)	Wage Index
24860	Greenville-Mauldin-Easley, SC Greenville County, SC Laurens County, SC Pickens County, SC	0.9980
25020	Guayama, PR Arroyo Municipio, PR Guayama Municipio, PR Patillas Municipio, PR	0.3537
25060	Gulfport-Biloxi, MS Hancock County, MS Harrison County, MS Stone County, MS	0.8783
25180	Hagerstown-Martinsburg, MD-WV Washington County, MD Berkeley County, WV Morgan County, WV	0.8965
25260	Hanford-Corcoran, CA Kings County, CA	1.1010
25420	Harrisburg-Carlisle, PA Cumberland County, PA Dauphin County, PA Perry County, PA	0.9286
25500	Harrisonburg, VA Rockingham County, VA Harrisonburg City, VA	0.9025
25540	Hartford-West Hartford-East Hartford, CT Hartford County, CT Middlesex County, CT Tolland County, CT	1.1194
25620	Hattiesburg, MS Forrest County, MS Lamar County, MS Perry County, MS	0.7664
25860	Hickory-Lenoir-Morganton, NC Alexander County, NC Burke County, NC Caldwell County, NC Catawba County, NC	0.9000

CBSA Code	Urban Area (Constituent Counties)	Wage Index
25980[2]	Hinesville-Fort Stewart, GA Liberty County, GA Long County, GA	0.9028
26100	Holland-Grand Haven, MI Ottawa County, MI	0.8696
26180	Honolulu, HI Honolulu County, HI	1.1662
26300	Hot Springs, AR Garland County, AR	0.9004
26380	Houma-Bayou Cane-Thibodaux, LA Lafourche Parish, LA Terrebonne Parish, LA	0.7875
26420	Houston-Sugar Land-Baytown, TX 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	0.9841
26580	Huntington-Ashland, WV-KY-OH Boyd County, KY Greenup County, KY Lawrence County, OH Cabell County, WV Wayne County, WV	0.9097
26620	Huntsville, AL Limestone County, AL Madison County, AL	0.9064
26820	Idaho Falls, ID Bonneville County, ID Jefferson County, ID	0.9436

CBSA Code	Urban Area (Constituent Counties)	Wage Index
26900	Indianapolis-Carmel, IN 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	0.9742
26980	Iowa City, IA Johnson County, IA Washington County, IA	0.9548
27060	Ithaca, NY Tompkins County, NY	1.0112
27100	Jackson, MI Jackson County, MI	0.8720
27140	Jackson, MS Copiah County, MS Hinds County, MS Madison County, MS Rankin County, MS Simpson County, MS	0.8186
27180	Jackson, TN Chester County, TN Madison County, TN	0.8581
27260	Jacksonville, FL Baker County, FL Clay County, FL Duval County, FL Nassau County, FL St. Johns County, FL	0.9105
27340	Jacksonville, NC Onslow County, NC	0.8026
27500	Janesville, WI Rock County, WI	0.9201

CBSA Code	Urban Area (Constituent Counties)	Wage Index
27620	Jefferson City, MO Callaway County, MO Cole County, MO Moniteau County, MO Osage County, MO	0.8709
27740	Johnson City, TN Carter County, TN Unicoi County, TN Washington County, TN	0.7722
27780	Johnstown, PA Cambria County, PA	0.8233
27860	Jonesboro, AR Craighead County, AR Poinsett County, AR	0.7722
27900	Joplin, MO Jasper County, MO Newton County, MO	0.8285
28020	Kalamazoo-Portage, MI Kalamazoo County, MI Van Buren County, MI	1.0264
28100	Kankakee-Bradley, IL Kankakee County, IL	1.0174

CBSA Code	Urban Area (Constituent Counties)	Wage Index
28140	Kansas City, MO-KS 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	0.9679
28420	Kennewick-Pasco-Richland, WA Benton County, WA Franklin County, WA	1.0448
28660	Killeen-Temple-Fort Hood, TX Bell County, TX Coryell County, TX Lampasas County, TX	0.8702
28700	Kingsport-Bristol-Bristol, TN-VA Hawkins County, TN Sullivan County, TN Bristol City, VA Scott County, VA Washington County, VA	0.7999
28740	Kingston, NY Ulster County, NY	0.9367

CBSA Code	Urban Area (Constituent Counties)	Wage Index
28940	Knoxville, TN Anderson County, TN Blount County, TN Knox County, TN Loudon County, TN Union County, TN	0.7881
29020	Kokomo, IN Howard County, IN Tipton County, IN	0.9862
29100	La Crosse, WI-MN Houston County, MN La Crosse County, WI	0.9915
29140	Lafayette, IN Benton County, IN Carroll County, IN Tippecanoe County, IN	0.9181
29180	Lafayette, LA Lafayette Parish, LA St. Martin Parish, LA	0.8516
29340	Lake Charles, LA Calcasieu Parish, LA Cameron Parish, LA	0.7985
29404	Lake County-Kenosha County, IL-WI Lake County, IL Kenosha County, WI	1.0475
29420	Lake Havasu City-Kingman, AZ Mohave County, AZ	1.0567
29460	Lakeland-Winter Haven, FL Polk County, FL	0.8390
29540	Lancaster, PA Lancaster County, PA	0.9204
29620	Lansing-East Lansing, MI Clinton County, MI Eaton County, MI Ingham County, MI	0.9770
29700	Laredo, TX Webb County, TX	0.8078

CBSA Code	Urban Area (Constituent Counties)	Wage Index
29740	Las Cruces, NM Dona Ana County, NM	0.8939
29820	Las Vegas-Paradise, NV Clark County, NV	1.2130
29940	Lawrence, KS Douglas County, KS	0.8580
30020	Lawton, OK Comanche County, OK	0.7847
30140	Lebanon, PA Lebanon County, PA	0.8119
30300	Lewiston, ID-WA Nez Perce County, ID Asotin County, WA	0.9570
30340	Lewiston-Auburn, ME Androscoggin County, ME	0.9085
30460	Lexington-Fayette, KY Bourbon County, KY Clark County, KY Fayette County, KY Jessamine County, KY Scott County, KY Woodford County, KY	0.8889
30620	Lima, OH Allen County, OH	0.9379
30700	Lincoln, NE Lancaster County, NE Seward County, NE	0.9563
30780	Little Rock-North Little Rock-Conway, AR Faulkner County, AR Grant County, AR Lonoke County, AR Perry County, AR Pulaski County, AR Saline County, AR	0.8559
30860	Logan, UT-ID Franklin County, ID Cache County, UT	0.8993

CBSA Code	Urban Area (Constituent Counties)	Wage Index
30980	Longview, TX Gregg County, TX Rusk County, TX Upshur County, TX	0.8049
31020	Longview, WA Cowlitz County, WA	1.0707
31084	Los Angeles-Long Beach-Santa Ana, CA Los Angeles County, CA	1.2039
31140	Louisville-Jefferson County, KY-IN 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	0.8964
31180	Lubbock, TX Crosby County, TX Lubbock County, TX	0.8751
31340	Lynchburg, VA Amherst County, VA Appomattox County, VA Bedford County, VA Campbell County, VA Bedford City, VA Lynchburg City, VA	0.8521
31420	Macon, GA Bibb County, GA Crawford County, GA Jones County, GA Monroe County, GA Twiggs County, GA	0.9826

CBSA Code	Urban Area (Constituent Counties)	Wage Index
31460	Madera-Chowchilla, CA Madera County, CA	0.7958
31540	Madison, WI Columbia County, WI Dane County, WI Iowa County, WI	1.1234
31700	Manchester-Nashua, NH Hillsborough County, NH	1.0171
31740	Manhattan, KS Geary County, KS Pottawatomie County, KS Riley County, KS	0.7878
31860	Mankato-North Mankato, MN Blue Earth County, MN Nicollet County, MN	0.9177
31900	Mansfield, OH Richland County, OH	0.9100
32420	Mayagüez, PR Hormigueros Municipio, PR Mayagüez Municipio, PR	0.3704
32580	McAllen-Edinburg-Mission, TX Hidalgo County, TX	0.8852
32780	Medford, OR Jackson County, OR	1.0070
32820	Memphis, TN-MS-AR Crittenden County, AR DeSoto County, MS Marshall County, MS Tate County, MS Tunica County, MS Fayette County, TN Shelby County, TN Tipton County, TN	0.9268
32900	Merced, CA Merced County, CA	1.2123
33124	Miami-Miami Beach-Kendall, FL Miami-Dade County, FL	0.9954

CBSA Code	Urban Area (Constituent Counties)	Wage Index
33140	Michigan City-La Porte, IN LaPorte County, IN	0.9311
33260	Midland, TX Midland County, TX	0.9546
33340	Milwaukee-Waukesha-West Allis, WI Milwaukee County, WI Ozaukee County, WI Washington County, WI Waukesha County, WI	1.0151
33460	Minneapolis-St. Paul-Bloomington, MN-WI 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	1.1095
33540	Missoula, MT Missoula County, MT	0.9206
33660	Mobile, AL Mobile County, AL	0.7785
33700	Modesto, CA Stanislaus County, CA	1.2502
33740	Monroe, LA Ouachita Parish, LA Union Parish, LA	0.7752
33780	Monroe, MI Monroe County, MI	0.8885

CBSA Code	Urban Area (Constituent Counties)	Wage Index
33860	Montgomery, AL Autauga County, AL Elmore County, AL Lowndes County, AL Montgomery County, AL	0.8304
34060	Morgantown, WV Monongalia County, WV Preston County, WV	0.8459
34100	Morristown, TN Grainger County, TN Hamblen County, TN Jefferson County, TN	0.7201
34580	Mount Vernon-Anacortes, WA Skagit County, WA	1.0452
34620	Muncie, IN Delaware County, IN	0.8386
34740	Muskegon-Norton Shores, MI Muskegon County, MI	0.9823
34820	Myrtle Beach-North Myrtle Beach-Conway, SC Horry County, SC	0.8730
34900	Napa, CA Napa County, CA	1.4453
34940	Naples-Marco Island, FL Collier County, FL	0.9662
34980	Nashville-Davidson—Murfreesboro-Franklin, TN 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	0.9689

CBSA Code	Urban Area (Constituent Counties)	Wage Index
35004	Nassau-Suffolk, NY Nassau County, NY Suffolk County, NY	1.2477
35084	Newark-Union, NJ-PA Essex County, NJ Hunterdon County, NJ Morris County, NJ Sussex County, NJ Union County, NJ Pike County, PA	1.1419
35300	New Haven-Milford, CT New Haven County, CT	1.1545
35380	New Orleans-Metairie-Kenner, LA 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	0.9092
35644	New York-White Plains-Wayne, NY-NJ 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	1.3005
35660	Niles-Benton Harbor, MI Berrien County, MI	0.8903
35980	Norwich-New London, CT New London County, CT	1.1399

CBSA Code	Urban Area (Constituent Counties)	Wage Index
36084	Oakland-Fremont-Hayward, CA Alameda County, CA Contra Costa County, CA	1.6404
36100	Ocala, FL Marion County, FL	0.8556
36140	Ocean City, NJ Cape May County, NJ	1.0160
36220	Odessa, TX Ector County, TX	0.9862
36260	Ogden-Clearfield, UT Davis County, UT Morgan County, UT Weber County, UT	0.9361
36420	Oklahoma City, OK Canadian County, OK Cleveland County, OK Grady County, OK Lincoln County, OK Logan County, OK McClain County, OK Oklahoma County, OK	0.8900
36500	Olympia, WA Thurston County, WA	1.1531
36540	Omaha-Council Bluffs, NE-IA Harrison County, IA Mills County, IA Pottawattamie County, IA Cass County, NE Douglas County, NE Sarpy County, NE Saunders County, NE Washington County, NE	0.9608
36740	Orlando-Kissimmee, FL Lake County, FL Orange County, FL Osceola County, FL Seminole County, FL	0.8951
36780	Oshkosh-Neenah, WI	0.9152

CBSA Code	Urban Area (Constituent Counties)	Wage Index
	Winnebago County, WI	
36980	Owensboro, KY Daviess County, KY Hancock County, KY McLean County, KY	0.8357
37100	Oxnard-Thousand Oaks-Ventura, CA Ventura County, CA	1.2301
37340	Palm Bay-Melbourne-Titusville, FL Brevard County, FL	0.9060
37380	Palm Coast, FL Flagler County, FL	0.9603
37460	Panama City-Lynn Haven-Panama City Beach, FL Bay County, FL	0.8324
37620	Parkersburg-Marietta-Vienna, WV-OH Washington County, OH Pleasants County, WV Wirt County, WV Wood County, WV	0.7716
37700	Pascagoula, MS George County, MS Jackson County, MS	0.8433
37764	Peabody, MA Essex County, MA	1.0871
37860	Pensacola-Ferry Pass-Brent, FL Escambia County, FL Santa Rosa County, FL	0.8312
37900	Peoria, IL Marshall County, IL Peoria County, IL Stark County, IL Tazewell County, IL Woodford County, IL	0.9155
37964	Philadelphia, PA Bucks County, PA Chester County, PA Delaware County, PA Montgomery County, PA	1.0739

CBSA Code	Urban Area (Constituent Counties)	Wage Index
	Philadelphia County, PA	
38060	Phoenix-Mesa-Scottsdale, AZ Maricopa County, AZ Pinal County, AZ	1.0630
38220	Pine Bluff, AR Cleveland County, AR Jefferson County, AR Lincoln County, AR	0.7281
38300	Pittsburgh, PA Allegheny County, PA Armstrong County, PA Beaver County, PA Butler County, PA Fayette County, PA Washington County, PA Westmoreland County, PA	0.8625
38340	Pittsfield, MA Berkshire County, MA	1.0658
38540	Pocatello, ID Bannock County, ID Power County, ID	0.9239
38660	Ponce, PR Juana Díaz Municipio, PR Ponce Municipio, PR Villalba Municipio, PR	0.4220
38860	Portland-South Portland-Biddeford, ME Cumberland County, ME Sagadahoc County, ME York County, ME	1.0187

CBSA Code	Urban Area (Constituent Counties)	Wage Index
38900	Portland-Vancouver-Beaverton, OR-WA Clackamas County, OR Columbia County, OR Multnomah County, OR Washington County, OR Yamhill County, OR Clark County, WA Skamania County, WA	1.1498
38940	Port St. Lucie, FL Martin County, FL St. Lucie County, FL	0.9896
39100	Poughkeepsie-Newburgh-Middletown, NY Dutchess County, NY Orange County, NY	1.1216
39140	Prescott, AZ Yavapai County, AZ	1.0121
39300	Providence-New Bedford-Fall River, RI-MA Bristol County, MA Bristol County, RI Kent County, RI Newport County, RI Providence County, RI Washington County, RI	1.0782
39340	Provo-Orem, UT Juab County, UT Utah County, UT	0.9548
39380	Pueblo, CO Pueblo County, CO	0.8570
39460	Punta Gorda, FL Charlotte County, FL	0.8774
39540	Racine, WI Racine County, WI	0.9373
39580	Raleigh-Cary, NC Franklin County, NC Johnston County, NC Wake County, NC	0.9663

CBSA Code	Urban Area (Constituent Counties)	Wage Index
39660	Rapid City, SD Meade County, SD Pennington County, SD	1.0046
39740	Reading, PA Berks County, PA	0.9263
39820	Redding, CA Shasta County, CA	1.4039
39900	Reno-Sparks, NV Storey County, NV Washoe County, NV	1.0285
40060	Richmond, VA 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	0.9521
40140	Riverside-San Bernardino-Ontario, CA Riverside County, CA San Bernardino County, CA	1.1285

CBSA Code	Urban Area (Constituent Counties)	Wage Index
40220	Roanoke, VA Botetourt County, VA Craig County, VA Franklin County, VA Roanoke County, VA Roanoke City, VA Salem City, VA	0.8671
40340	Rochester, MN Dodge County, MN Olmsted County, MN Wabasha County, MN	1.1136
40380	Rochester, NY Livingston County, NY Monroe County, NY Ontario County, NY Orleans County, NY Wayne County, NY	0.8724
40420	Rockford, IL Boone County, IL Winnebago County, IL	1.0152
40484	Rockingham County-Strafford County, NH Rockingham County, NH Strafford County, NH	1.0125
40580	Rocky Mount, NC Edgecombe County, NC Nash County, NC	0.8845
40660	Rome, GA Floyd County, GA	0.8915
40900	Sacramento--Arden-Arcade--Roseville, CA El Dorado County, CA Placer County, CA Sacramento County, CA Yolo County, CA	1.4073
40980	Saginaw-Saginaw Township North, MI Saginaw County, MI	0.9122
41060	St. Cloud, MN Benton County, MN Stearns County, MN	1.1107

CBSA Code	Urban Area (Constituent Counties)	Wage Index
41100	St. George, UT Washington County, UT	0.9236
41140	St. Joseph, MO-KS Doniphan County, KS Andrew County, MO Buchanan County, MO DeKalb County, MO	1.0189
41180	St. Louis, MO-IL 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	0.9102
41420	Salem, OR Marion County, OR Polk County, OR	1.0974
41500	Salinas, CA Monterey County, CA	1.5207
41540	Salisbury, MD Somerset County, MD Wicomico County, MD	0.9110

CBSA Code	Urban Area (Constituent Counties)	Wage Index
41620	Salt Lake City, UT Salt Lake County, UT Summit County, UT Tooele County, UT	0.9378
41660	San Angelo, TX Irion County, TX Tom Green County, TX	0.7914
41700	San Antonio, TX Atascosa County, TX Bandera County, TX Bexar County, TX Comal County, TX Guadalupe County, TX Kendall County, TX Medina County, TX Wilson County, TX	0.8857
41740	San Diego-Carlsbad-San Marcos, CA San Diego County, CA	1.1752
41780	Sandusky, OH Erie County, OH	0.8888
41884	San Francisco-San Mateo-Redwood City, CA Marin County, CA San Francisco County, CA San Mateo County, CA	1.5874
41900	San Germán-Cabo Rojo, PR Cabo Rojo Municipio, PR Lajas Municipio, PR Sabana Grande Municipio, PR San Germán Municipio, PR	0.4740
41940	San Jose-Sunnyvale-Santa Clara, CA San Benito County, CA Santa Clara County, CA	1.6404

CBSA Code	Urban Area (Constituent Counties)	Wage Index
41980	San Juan-Caguas-Guaynabo, PR	0.4363
	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	

CBSA Code	Urban Area (Constituent Counties)	Wage Index
	Vega Alta Municipio, PR Vega Baja Municipio, PR Yabucoa Municipio, PR	
42020	San Luis Obispo-Paso Robles, CA San Luis Obispo County, CA	1.2550
42044	Santa Ana-Anaheim-Irvine, CA Orange County, CA	1.1972
42060	Santa Barbara-Santa Maria-Goleta, CA Santa Barbara County, CA	1.2213
42100	Santa Cruz-Watsonville, CA Santa Cruz County, CA	1.6735
42140	Santa Fe, NM Santa Fe County, NM	1.0694
42220	Santa Rosa-Petaluma, CA Sonoma County, CA	1.5891
42340	Savannah, GA Bryan County, GA Chatham County, GA Effingham County, GA	0.9043
42540	Scranton--Wilkes-Barre, PA Lackawanna County, PA Luzerne County, PA Wyoming County, PA	0.8375
42644	Seattle-Bellevue-Everett, WA King County, WA Snohomish County, WA	1.1577

CBSA Code	Urban Area (Constituent Counties)	Wage Index
42680	Sebastian-Vero Beach, FL Indian River County, FL	0.9362
43100	Sheboygan, WI Sheboygan County, WI	0.9166
43300	Sherman-Denison, TX Grayson County, TX	0.8064
43340	Shreveport-Bossier City, LA Bossier Parish, LA Caddo Parish, LA De Soto Parish, LA	0.8383
43580	Sioux City, IA-NE-SD Woodbury County, IA Dakota County, NE Dixon County, NE Union County, SD	0.9094
43620	Sioux Falls, SD Lincoln County, SD McCook County, SD Minnehaha County, SD Turner County, SD	0.8983
43780	South Bend-Mishawaka, IN-MI St. Joseph County, IN Cass County, MI	0.9690
43900	Spartanburg, SC Spartanburg County, SC	0.9341
44060	Spokane, WA Spokane County, WA	1.0444
44100	Springfield, IL Menard County, IL Sangamon County, IL	0.9545
44140	Springfield, MA Franklin County, MA Hampden County, MA Hampshire County, MA	1.0373

CBSA Code	Urban Area (Constituent Counties)	Wage Index
44180	Springfield, MO Christian County, MO Dallas County, MO Greene County, MO Polk County, MO Webster County, MO	0.8453
44220	Springfield, OH Clark County, OH	0.9195
44300	State College, PA Centre County, PA	0.9096
44700	Stockton, CA San Joaquin County, CA	1.2331
44940	Sumter, SC Sumter County, SC	0.8152
45060	Syracuse, NY Madison County, NY Onondaga County, NY Oswego County, NY	0.9785
45104	Tacoma, WA Pierce County, WA	1.1195
45220	Tallahassee, FL Gadsden County, FL Jefferson County, FL Leon County, FL Wakulla County, FL	0.8406
45300	Tampa-St. Petersburg-Clearwater, FL Hernando County, FL Hillsborough County, FL Pasco County, FL Pinellas County, FL	0.8982
45460	Terre Haute, IN Clay County, IN Sullivan County, IN Vermillion County, IN Vigo County, IN	0.9061
45500	Texarkana, TX-Texarkana, AR Miller County, AR Bowie County, TX	0.8113

CBSA Code	Urban Area (Constituent Counties)	Wage Index
45780	Toledo, OH Fulton County, OH Lucas County, OH Ottawa County, OH Wood County, OH	0.9541
45820	Topeka, KS Jackson County, KS Jefferson County, KS Osage County, KS Shawnee County, KS Wabaunsee County, KS	0.9026
45940	Trenton-Ewing, NJ Mercer County, NJ	1.0552
46060	Tucson, AZ Pima County, AZ	0.9505
46140	Tulsa, OK Creek County, OK Okmulgee County, OK Osage County, OK Pawnee County, OK Rogers County, OK Tulsa County, OK Wagoner County, OK	0.8662
46220	Tuscaloosa, AL Greene County, AL Hale County, AL Tuscaloosa County, AL	0.8698
46340	Tyler, TX Smith County, TX	0.8312
46540	Utica-Rome, NY Herkimer County, NY Oneida County, NY	0.8460
46660	Valdosta, GA Brooks County, GA Echols County, GA Lanier County, GA Lowndes County, GA	0.7944
46700	Vallejo-Fairfield, CA	1.4934

CBSA Code	Urban Area (Constituent Counties)	Wage Index
	Solano County, CA	
47020	Victoria, TX Calhoun County, TX Goliad County, TX Victoria County, TX	0.8054
47220	Vineland-Millville-Bridgeton, NJ Cumberland County, NJ	1.0207
47260	Virginia Beach-Norfolk-Newport News, VA-NC 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	0.8960
47300	Visalia-Porterville, CA Tulare County, CA	1.0221
47380	Waco, TX McLennan County, TX	0.8377
47580	Warner Robins, GA Houston County, GA	0.8754
47644	Warren-Troy-Farmington Hills, MI Lapeer County, MI Livingston County, MI Macomb County, MI Oakland County, MI St. Clair County, MI	0.9806

CBSA Code	Urban Area (Constituent Counties)	Wage Index
47894	Washington-Arlington-Alexandria, DC-VA-MD-WV 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	1.0882
47940	Waterloo-Cedar Falls, IA Black Hawk County, IA Bremer County, IA Grundy County, IA	0.8518
48140	Wausau, WI Marathon County, WI	0.9440
48260	Weirton-Steubenville, WV-OH Jefferson County, OH Brooke County, WV Hancock County, WV	0.7368
48300	Wenatchee-East Wenatchee, WA Chelan County, WA Douglas County, WA	0.9719
48424	West Palm Beach-Boca Raton-Boynton Beach, FL Palm Beach County, FL	0.9879

CBSA Code	Urban Area (Constituent Counties)	Wage Index
48540	Wheeling, WV-OH Belmont County, OH Marshall County, WV Ohio County, WV	0.6869
48620	Wichita, KS Butler County, KS Harvey County, KS Sedgwick County, KS Sumner County, KS	0.9018
48660	Wichita Falls, TX Archer County, TX Clay County, TX Wichita County, TX	0.9197
48700	Williamsport, PA Lycoming County, PA	0.7877
48864	Wilmington, DE-MD-NJ New Castle County, DE Cecil County, MD Salem County, NJ	1.0555
48900	Wilmington, NC Brunswick County, NC New Hanover County, NC Pender County, NC	0.8986
49020	Winchester, VA-WV Frederick County, VA Winchester City, VA Hampshire County, WV	0.9777
49180	Winston-Salem, NC Davie County, NC Forsyth County, NC Stokes County, NC Yadkin County, NC	0.8953
49340	Worcester, MA Worcester County, MA	1.1089
49420	Yakima, WA Yakima County, WA	0.9949

CBSA Code	Urban Area (Constituent Counties)	Wage Index
49500	Yauco, PR Guánica Municipio, PR Guayanilla Municipio, PR Peñuelas Municipio, PR Yauco Municipio, PR	0.3348
49620	York-Hanover, PA York County, PA	0.9299
49660	Youngstown-Warren-Boardman, OH-PA Mahoning County, OH Trumbull County, OH Mercer County, PA	0.8679
49700	Yuba City, CA Sutter County, CA Yuba County, CA	1.1265
49740	Yuma, AZ Yuma County, AZ	0.9143

[2]At this time, there are no hospitals in these urban areas on which to base a wage index. Therefore, the urban wage index value is based on the average wage index of all urban areas within the State.

[FR Doc. E9–26503 Filed 10–30–09; 4:15 pm]
BILLING CODE 4120–01–C

Federal Register

Tuesday,
November 10, 2009

Part III

The President

Notice of November 6, 2009—Continuation of Emergency with Respect to Weapons of Mass Destruction

Federal Register
Vol. 74, No. 216
Tuesday, November 10, 2009

Presidential Documents

Title 3—

The President

Notice of November 6, 2009

Continuation of Emergency with Respect to Weapons of Mass Destruction

On November 14, 1994, by Executive Order 12938, the President declared a national emergency with respect to the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States posed by the proliferation of nuclear, biological, and chemical weapons (weapons of mass destruction) and the means of delivering such weapons. On July 28, 1998, the President issued Executive Order 13094 amending Executive Order 12938 to respond more effectively to the worldwide threat of weapons of mass destruction proliferation activities. On June 28, 2005, the President issued Executive Order 13382 that, *inter alia*, further amended Executive Order 12938 to improve our ability to combat proliferation. The proliferation of weapons of mass destruction and the means of delivering them continues to pose an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States; therefore, the national emergency first declared on November 14, 1994, and extended in each subsequent year, must continue. In accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared in Executive Order 12938, as amended.

This notice shall be published in the *Federal Register* and transmitted to the Congress.

THE WHITE HOUSE,
November 6, 2009.

[FR Doc. E9–27239
Filed 11–9–09; 11:15 am]
Billing code 3195–W9–P

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Federal Register

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Tuesday, November 10, 2009

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

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H.R. 1209/P.L. 111–91
Medal of Honor Commemorative Coin Act of 2009 (Nov. 6, 2009; 123 Stat. 2980)

H.R. 3548/P.L. 111–92
Worker, Homeownership, and Business Assistance Act of 2009 (Nov. 6, 2009; 123 Stat. 2984)

H.R. 3606/P.L. 111–93
Credit CARD Technical Corrections Act of 2009 (Nov. 6, 2009; 123 Stat. 2998)

H.J. Res. 26/P.L. 111–94
Proclaiming Casimir Pulaski to be an honorary citizen of the United States posthumously. (Nov. 6, 2009; 123 Stat. 2999)

S. 832/P.L. 111–95

To amend title 36, United States Code, to grant a Federal charter to the Military Officers Association of America, and for other purposes. (Nov. 6, 2009; 123 Stat. 3001)

S. 1694/P.L. 111–96

To allow the funding for the interoperable emergency communications grant program established under the Digital Television Transition and Public Safety Act of 2005 to remain available until expended through fiscal year 2012, and for other purposes. (Nov. 6, 2009; 123 Stat. 3005)

Last List November 5, 2009

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