



Federal Register

5-1-09

Vol. 74 No. 83

Friday

May 1, 2009

Pages 20201-20404



The **FEDERAL REGISTER** (ISSN 0097-6326) is published daily, Tuesday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Tuesday, May 12, 2009
9:00 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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. FAA-2009-0353; Airspace Docket No. 09-ANM-5]

RIN 2120-AA66

Amendment to Restricted Areas R-6402 A&B, R-6404 A, B, C & D, R-6405, R-6406 A & B, and R-6407; Utah

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action changes the using agency of Restricted Area 6402 (R-6402 A & B), Dugway Proving Ground; R-6404 A, B, C & D, Hill AFB; R-6405, R-6406 A & B, Wendover; and R-6407, Hill AFB, Utah, from “Commander, 6501 Range Squadron, Air Force Systems Command, Hill AFB, UT.” to “388th Fighter Wing Air Combat Command, Hill AFB UT.” The FAA is taking this action in response to a request from the United States Department of Air Force to reflect an administrative change of responsibility for the restricted areas. There are no changes to the boundaries; designated altitudes; time of designation; or activities conducted within the affected restricted areas.

DATES: *Effective Date:* 0901 UTC, July 2, 2009.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules Group, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-8783.

SUPPLEMENTARY INFORMATION:

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 73 by

amending the using agency for Restricted Areas 6402 (R-6402 A & B), Dugway Proving Ground; R-6404 A, B, C & D, Hill AFB; R-6405, R-6406 A & B, Wendover; and R-6407, Hill AFB, Utah, from “Commander, 6501 Range Squadron, Air Force Systems Command, Hill AFB, UT.” to “388th Fighter Wing Air Combat Command, Hill AFB UT.” Accordingly, since this action only involves a change of administrative information and does not change the boundary, designated ceiling, or times of use of the restricted areas notice and public procedures under 5 U.S.C. 533(b) are unnecessary.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA’s authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency’s authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends the using agency for said restricted areas in Utah.

Section 73.64 of Title 14 CFR part 73 was republished in FAA Order 7400.8R, effective February 5, 2009.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with 311d., FAA Order 1050.1E, “Environmental Impacts: Policies and Procedures.” This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 73

Airspace, Prohibited areas, Restricted areas.

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73 as follows:

PART 73—SPECIAL USE AIRSPACE

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 73.64 [Amended]

■ 2. Section 73.64 is amended as follows:

* * * * *

R-6402A Dugway Proving Ground, UT [Amended]

Under Using agency, remove the words “Commander, 6501 Range Squadron, Air Force Systems Command, Hill AFB, UT.” and insert “388th Fighter Wing, Air Combat Command, Hill AFB UT.”

R-6402B Dugway Proving Ground, UT [Amended]

Under Using agency, remove the words “Commander, 6501 Range Squadron, Air Force Systems Command, Hill AFB, UT.” and insert “388th Fighter Wing, Air Combat Command, Hill AFB UT.”

* * * * *

R-6404A Hill AFB, UT [Amended]

Under Using agency, remove the words “Commander, 6501 Range Squadron, Air Force Systems Command, Hill AFB, UT.” and insert “388th Fighter Wing, Air Combat Command, Hill AFB UT.”

R-6404B Hill AFB, UT [Amended]

Under Using agency, remove the words "Commander, 6501 Range Squadron, Air Force Systems Command, Hill AFB, UT." and insert "388th Fighter Wing, Air Combat Command, Hill AFB UT."

R-6404C Hill AFB, UT [Amended]

Under Using agency, remove the words "Commander, 6501 Range Squadron, Air Force Systems Command, Hill AFB, UT." and insert "388th Fighter Wing, Air Combat Command, Hill AFB UT."

R-6404D Hill AFB, UT [Amended]

Under Using agency, remove the words "Commander, 6501 Range Squadron, Air Force Systems Command, Hill AFB, UT." and insert "388th Fighter Wing, Air Combat Command, Hill AFB UT."

R-6405 Wendover, UT [Amended]

Under Using agency, remove the words "Commander, 6501 Range Squadron, Air Force Systems Command, Hill AFB, UT." and insert "388th Fighter Wing, Air Combat Command, Hill AFB UT."

R-6406A Wendover, UT [Amended]

Under Using agency, remove the words "Commander, 6501 Range Squadron, Air Force Systems Command, Hill AFB, UT." and insert "388th Fighter Wing, Air Combat Command, Hill AFB UT."

R-6406B Wendover, UT [Amended]

Under Using agency, remove the words "Commander, 6501 Range Squadron, Air Force Systems Command, Hill AFB, UT." and insert "388th Fighter Wing, Air Combat Command, Hill AFB UT."

R-6407 Hill AFB, UT [Amended]

Under Using agency, remove the words "Commander, 6501 Range Squadron, Air Force Systems Command, Hill AFB, UT." and insert "388th Fighter Wing, Air Combat Command, Hill AFB UT."

* * * * *

Issued in Washington, DC, April 23, 2009.

Edith V. Parish,

Manager, Airspace and Rules Group.

[FR Doc. E9-9968 Filed 4-30-09; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Parts 91 and 135**

[Docket No. FAA-2002-14002; Amendment Nos. 91-306 and 135-110]

RIN 2120-AJ46

Communication and Area Navigation Equipment (RNAV) Operations in Remote Locations and Mountainous Terrain

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This final rule amends the regulations to allow the use of the published Obstacle Departure Procedures (ODP) or an alternative procedure or route assigned by Air Traffic Control (ATC). Also, this final rule amends the requirements to facilitate compliance and accurately reflect operating conditions in areas in which the terrain impedes communications. In August 2007, the FAA issued regulations relating to ODPs and Area Navigation equipment (RNAV). Among the amendments, the FAA prohibited Instrument Flight Rules (IFR) takeoffs from airports with published ODPs for the takeoff runway to be used unless the pilot uses the ODP for that runway. Following publication of the rule, the FAA determined that this requirement is unnecessarily restrictive because it prohibits pilots from using Standard Instrument Departure (SID) procedures and air traffic control (ATC) radar vectoring. The final rule also amended the communication and navigation equipment requirements for aircraft operations under Visual Flight Rules (VFR). The FAA determined that compliance with the new communications requirements may not be possible in remote locations and areas of mountainous terrain. This final rule is adopted without prior notice and public comment, but the public may comment prior to the effective date of the rule.

DATES: *Effective Date*—This amendment becomes effective June 30, 2009.

Comments Due—Comments must be received by June 1, 2009.

ADDRESSES: You may send comments identified by Docket Number FAA-2002-14002 using any of the following methods:

• *Federal eRulemaking Portal:* Go to <http://www.regulations.gov> and follow

the instructions for sending your comments electronically.

• *Mail:* Send comments to Docket Operations, M-30, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12-140, Washington, DC 20590.

• *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

• *Fax:* Fax comments to Docket Operations at 202-493-2251. For more information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

Privacy: We will post all comments we receive, without change, to <http://www.regulations.gov>, including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78) or you may visit <http://DocketsInfo.dot.gov>.

Docket: To read background documents or comments received, go to <http://www.regulations.gov> at any time or to Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this final rule, contact Dennis Mills, Aviation Safety Inspector, Air Transportation Division, Flight Standards Service, AFS-220, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 493-4901 facsimile (202) 267-5229, e-mail dennis.mills@faa.gov. For legal questions concerning this final rule, contact Robert Hawks, General Attorney, Office of the Chief Counsel, Regulations Division, AGC-240, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-7143, facsimile (202) 267-7971, e-mail rob.hawks@faa.gov.

SUPPLEMENTARY INFORMATION:**Comments Invited**

The FAA is adopting this final rule without prior notice and public

comment because an immediate action fulfills the FAA's regulatory intent and serves the public interest. The Regulatory Policies and Procedures of the Department of Transportation (DOT) (44 FR 1134; February 26, 1979) provide that, to the maximum extent possible, operating administrations for the DOT should provide an opportunity for public comment on regulations issued without prior notice. Accordingly, the FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The FAA also invites comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting this final rule. The most helpful comments reference a specific portion of the rule, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, please send only one copy of written comments, or, if filing comments electronically, please submit comments only once.

All comments received will be filed in the docket, as well as, a report summarizing each substantial public contact with FAA personnel concerning this rulemaking. The FAA will consider all comments received on or before the closing date for comments. The FAA may amend the final rule in light of the comments received.

Authority for This Rulemaking

The FAA's authority to issue rules on aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart III, Section 44701 "General requirements." Under Section 44701, the FAA is charged with prescribing regulations and minimum standards for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This final rule promotes safety in air commerce by utilizing air traffic procedures that provide obstacle and terrain clearance, and by facilitating air navigation in remote locations and areas of mountainous terrain.

Section 553(b)(3)(B) of the Administrative Procedure Act (APA) (5 U.S.C.) authorizes agencies to dispense with notice and comment procedures for rules when the agency for "good cause" finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under this section and upon finding good cause, an

agency may issue a final rule without seeking comment prior to the rulemaking.

The FAA finds that notice and comment procedures under the APA to this final rule are unnecessary and contrary to the public interest. Because operators cannot comply with the current rule as written, it is in the public interest to amend the rule without delay. Furthermore, the FAA solicits comments upon publication of this final rule.

Background

Discussion of the Final Rule

Changes to § 91.175

The Area Navigation and Miscellaneous Amendments Notice of Proposed Rulemaking (NPRM) proposed that published ODPs must be followed under IFR conditions to ensure adequate obstacle clearance (67 FR 77326, Dec. 17, 2002). The proposal also provided that if an operation did not use an ODP, the operator may use an alternative procedure or route assigned by ATC. The final RNAV rule however did not include the alternative procedures and prohibited IFR takeoffs from airports with published obstacle departure procedures (ODPs) for the takeoff runway to be used unless the pilot uses the ODP for that runway.¹ (72 FR 31662, June 7, 2007). The final rule inadvertently omitted the exception for ATC-assigned alternative routes. The rule without the proposed exception for ATC-assigned alternative routes is unnecessarily restrictive because it prohibits pilots from using Standard Instrument Departure (SID) procedures and ATC radar vectoring, which provide obstacle and terrain clearance comparable to an ODP.

Accordingly, this final rule corrects the omission and prescribes the use of an ODP or alternative procedure or route assigned by ATC in the circumstances set forth in § 91.175(f). This final rule accords with the intent of the final rule to ensure adequate obstacle clearance and provides a comparable level of safety to the final rule while increasing operational flexibility.

Changes to § 135.161

The Area Navigation and Miscellaneous Amendments final rule amended § 135.161 to require aircraft,

¹ Of the forty comments received in response to the proposed rule, four addressed portions of the amendments to section 91.175 (Takeoff and landing under IFR). However, those comments related only to engine-out departure procedures and not to ODPs or other departure procedures under normal operating conditions.

operating under VFR over routes that can be navigated by pilotage, be equipped with equipment to, in relevant part, communicate with at least one appropriate station from any point on the route and receive meteorological information from any point en route.² (72 FR 31662, June 7, 2007). Following publication of the final rule, the FAA determined that compliance with § 135.161(a)(1) and (a)(3) may be impossible in certain situations. Part 135 air carriers sometimes operate in remote and mountainous areas of the National Airspace System (NAS). Because of the terrain or gaps in communication coverage in these areas, it may be impossible to communicate from some points along the route, and therefore part 135 air carriers may be unable to comply with the current rule for reasons beyond their control.

Because this final rule corrects a situation where compliance with the requirement for continuous communication in certain remote regions and mountainous terrain may be impossible, this final rule will make compliance possible by reflecting actual operating conditions and accords with the intent of the rule.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires the FAA to consider the impact of paperwork and other information collection burdens imposed on the public. The FAA has determined there is no current or new requirement for information collection associated with these amendments.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined there are no ICAO Standards and Recommended Practices that correspond to these regulations.

Regulatory Evaluation, Regulatory Flexibility Determination, International Trade Impact Assessment, and Unfunded Mandates Assessment

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs.

² Of the forty comments received in response to the proposed rule, none addressed the proposed changes to section 135.161 which is the subject of this rulemaking.

Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure, by State, local, or Tribal governments, in the aggregate, or by the private sector, of \$100 million or more annually (adjusted for inflation with base year of 1995).

Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that a proposed or final rule does not warrant a full evaluation, this order allows a statement to that effect and the basis for it to be included in the preamble if a full regulatory evaluation of the cost and benefits is not prepared. Such a determination has been made for this final rule. The reasoning for this determination follows:

This final rule corrects an inadvertent omission of an exception allowing ATC-assigned alternative routes for takeoffs under IFR and an unintended requirement for continuous communication in certain remote regions and mountainous terrain for which compliance is impossible. The costs to part 121, 125, 129, and 135 operators resulting from these amendments are minimal because no subsequent actions are required, except that operators have the option of submitting comments for 30 days following **Federal Register** publication.

Accordingly, the FAA has determined that this final rule is not a “significant regulatory action” as defined in section 3(f) of Executive Order 12866, and is not “significant” as defined in DOT’s Regulatory Policies and Procedures.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes “as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and

governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.” The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This final rule corrects an inadvertent omission of an exception allowing ATC-assigned alternative routes for takeoffs under IFR and an unintended requirement for continuous communication in certain remote regions and mountainous terrain for which compliance is impossible. Although a substantial number of small entities are affected by this rule, the economic impact is insignificant because the rule does not include any added communication or equipment requirements.

Therefore, as the Acting FAA Administrator, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered unnecessary obstacles to the foreign commerce of the United States, so long as the standards have a legitimate domestic objective, such as the protection of safety, and do not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of

international standards and, where appropriate, that they be the basis for U.S. standards. The FAA notes the purpose is to ensure the safety of the American public, and has assessed the effects of this rule to ensure it does not exclude imports that meet this objective. As a result this final rule will have only a domestic impact, and, therefore, will not create any unnecessary obstacles to the foreign commerce of the United States.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of \$100 million or more (adjusted annually for inflation with the base year 1995) in any one year by State, local, and Tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a “significant regulatory action.” The level equivalent of \$100 million in CY 1995, adjusted for inflation to CY 2007 levels by the Consumer Price Index for all Urban Consumers (CPI-U) as published by the Bureau of Labor Statistics, is \$136.1 million.

This final rule does not contain such a mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). The FAA determined that it is not a “significant energy action” under the executive order because it is not a “significant regulatory action” under Executive Order 12866. Also, it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

Availability of Rulemaking Documents

You may obtain an electronic copy of rulemaking documents using the Internet by:

1. Searching the Federal eRulemaking Portal (<http://www.regulations.gov>);
2. Visiting the FAA’s Regulations and Policies Web page at http://www.faa.gov/regulations_policies/; or
3. Accessing the Government Printing Office’s Web page at <http://www.gpoaccess.gov/>.

You also may obtain a copy by sending a request to the Federal Aviation Administration, Office of

Rulemaking, ARM-1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-9680. Please identify the amendment number or docket number of this rulemaking.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting or signing the comment (if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78) or you may visit <http://docketsinfo.dot.gov/>.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires the FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. If you are a small entity and you have a question about this document, you may contact your local FAA official, or the person listed under the **FOR FURTHER INFORMATION CONTACT** heading at the beginning of the preamble. You can find out more about SBREFA on the Internet at http://www.faa.gov/regulations_policies/rulemaking/sbre_act/.

List of Subjects

14 CFR Part 91

Agriculture, Air traffic control, Aircraft, Airmen, Airports, Aviation safety, Freight, Noise control, Reporting and recordkeeping requirements.

14 CFR Part 135

Air taxis, Aircraft, Airmen, Aviation safety, Reporting and recordkeeping requirements.

The Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends Chapter I of Title 14, Code of Federal Regulations as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

■ 1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44704, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506-46507, 47122, 47508, 47528-47531, articles 12 and 29 of the Convention on International Civil Aviation (61 Stat. 1180).

■ 2. Revise § 91.175(f)(3) to read as follows:

§ 91.175 Takeoff and landing under IFR.

* * * * *

(f) * * *

(3) Except as provided in paragraph (f)(4) of this section, no pilot may takeoff under IFR from a civil airport having published obstacle departure procedures (ODPs) under part 97 of this chapter for the takeoff runway to be used, unless the pilot uses such ODPs or an alternative procedure or route assigned by air traffic control.

* * * * *

PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON DEMAND OPERATIONS AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

■ 3. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(g), 41706, 44113, 44701-44702, 44705, 44709, 44711-44713, 44715-44717, 44722, 45101-41505.

■ 4. In § 135.161, revise paragraphs (a)(1) and (a)(3) to read as follows:

§ 135.161 Communication and navigation equipment for aircraft operations under VFR over routes navigated by pilotage.

(a) * * *

(1) Communicate with at least one appropriate station from any point on the route, except in remote locations and areas of mountainous terrain where geographical constraints make such communication impossible.

* * * * *

(3) Receive meteorological information from any point en route, except in remote locations and areas of mountainous terrain where geographical constraints make such communication impossible.

* * * * *

Issued in Washington, DC, on March 16, 2009.

Lynne A. Osmus,

Acting Administrator.

[FR Doc. E9-10089 Filed 4-30-09; 8:45 am]

BILLING CODE 4910-13-P

FEDERAL TRADE COMMISSION

16 CFR Parts 3 and 4

Rules of Practice

AGENCY: Federal Trade Commission (“Commission” or “FTC”).

ACTION: Final rule.

SUMMARY: The FTC is amending Rules 3.1, 3.25, 3.31(g), and 4.2, and rescinding Rule 3.11A, of its Rules of Practice, 16 CFR Parts 3 and 4. Other

than these revisions, it is adopting as final all other amendments to the Part 3 and Part 4 Rules that were published as interim final rules on January 13, 2009. 74 Fed. Reg. 1804.

DATES: This rule is effective on May 1, 2009, and will govern all Commission adjudicatory proceedings that are commenced on or after that date.

FOR FURTHER INFORMATION CONTACT: Michael D. Bergman, Attorney, (202) 326-3184, or Lisa M. Harrison, Assistant General Counsel, (202) 326-3204, Office of the General Counsel, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington DC 20580.

SUPPLEMENTARY INFORMATION: On January 13, 2009, the Commission published comprehensive amendments to Part 3 and various amendments to Part 4 of its Rules of Practice, 16 CFR Parts 3 and 4, in order to further expedite its adjudicatory proceedings, improve the quality of adjudicative decision making, and clarify the respective roles of the Administrative Law Judge (“ALJ”) and the Commission in Part 3 proceedings. The Commission requested comments on the interim final rules and set a deadline of February 12, 2009, for any such comments. The Commission received no comments on its interim rules. Other than the rule provisions discussed below, the Commission is adopting the interim rules as final. While no comments were submitted, the Commission has determined, upon further deliberation, that four rule provisions should be amended and that one rule be rescinded. These amendments are discussed below.¹

Section 3.1: Scope of the rules in this part; expedition of proceedings.

The interim rule amendments that the Commission is adopting today as final will substantially expedite Part 3 proceedings. The expedited deadlines apply to all Part 3 matters and are accelerated further for administrative cases where the Commission is also seeking preliminary injunctive relief from a federal district court under Section 13(b) of the Federal Trade

¹ The final rule amendments are not subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601(2). The rule revisions to Part 3 are also not subject to the requirements of the Paperwork Reduction Act, which contains an exemption for information collected during the conduct of administrative proceedings or investigations. 44 U.S.C. 3518(c)(1)(B)(ii); 5 CFR 1320.4. To the extent that Rule 4.2 applies to filings that do not fall within this exception, OMB has approved the collection of information, along with other applications and notices to the Commission, and has assigned control number 3084-0047. The revisions to Rule 4.2 do not substantially or materially modify this collection of information.

Commission Act ("FTC Act"), 15 U.S.C. 53(b), which typically occurs (but is not limited to) when the Commission is challenging an unconsummated merger. The Commission is therefore further revising Rule 3.1 to emphasize that the expedited scheduling of a proceeding in which the Commission has sought or is seeking relief under Section 13(b) shall take priority over other proceedings, and is adding "expedition of proceedings" to the title of this Rule to reflect the importance of expedition to the Part 3 Rules.

Section 3.11A: Fast-track proceedings.

In light of the amendments made final today, the Commission is rescinding Rule 3.11A, which had established "fast-track" procedures for administrative cases when there was a collateral federal court proceeding under Section 13(b). The Commission has used Rule 3.11A to determine at the initiation of the litigation if an administrative proceeding is appropriate for fast-track procedures and to notify the respondent if such a determination had been made. The respondent could then choose the fast track procedures if the district court entered a preliminary injunction against it or if the Commission otherwise determined that the evidentiary record in the district court proceeding would materially facilitate resolution of the administrative proceeding.

The newly-revised Part 3 Rules published in the **Federal Register** on January 13, 2009 and made final today impose accelerated deadlines particularly for those cases in which the Commission is also seeking relief under Section 13(b). By doing so, the new rules obviate the need for the fast-track rule in its current form. Moreover, in the time since Rule 3.11A was promulgated in 1996, respondents have rarely elected fast-track procedures. The Commission has therefore determined to rescind Rule 3.11A. The Commission will continue to evaluate the effectiveness of its newly-issued Part 3 Rules particularly for unconsummated merger cases in which a parallel proceeding under Section 13(b) has been brought, and will consider alternative approaches to determine how best to expedite such unconsummated merger cases in Part 3.

Section 3.25: Consent agreement settlements.

Rule 3.25 governs motions for withdrawal of a matter or portions of a matter from adjudication to allow the Commission to consider a proposed consent agreement. The Commission is revising the standards for granting such

motions, and adding provisions to avoid any unnecessary delay in the determination. Paragraph (c) retains language in former paragraph (c) providing that, while a case is pending before an ALJ, the Secretary of the Commission will automatically withdraw the matter or portions of the matter if a respondent files a motion to withdraw accompanied by a proposed consent agreement conforming to Rule 2.32 that has also been executed by complaint counsel and approved by the Bureau Director. If respondent's consent agreement was not so executed and approved, then former Rule 3.25(d) established a process whereby the ALJ would decide, depending on the likelihood of settlement, whether to certify the motion (with his or her written recommendation) to the Commission, which would then determine whether to grant the motion for withdrawal.

The Commission is revising Rule 3.25 to ensure that the process for withdrawal does not unduly delay a Part 3 proceeding and to provide the Commission with greater latitude in its ability to withdraw matters or portions of matters from adjudication in order to consider a settlement proposal. As revised, Rule 3.25(c) requires that the ALJ shall certify the motion so long as he or she determines that there is a reasonable possibility of settlement. The previous "likelihood of settlement" language imposed too strict a standard given the important benefits that a consent agreement provides for an efficient resolution of a matter. Further, the Commission has changed "may certify" to "shall certify," thereby removing any suggestion that there might be good cause not to certify the motion once the ALJ has determined that there is a reasonable possibility of settlement.² The Commission is also making a corresponding change to Rule 3.25(b) that allows a respondent's motion for withdrawal to be accompanied by a consent proposal, even if the consent proposal does not conform to the requirements of Rule 2.32 or has not been executed by respondent.

Rule 3.25(c) now imposes a five-day deadline upon the ALJ to determine whether he or she will certify the motion. The rule also now allows only the Commission to order a stay of the proceedings once the ALJ has certified

the motion to withdraw. While the Commission should retain the discretion to stay a matter or portions of a matter for extraordinary circumstances, the Commission believes that the majority of situations would not warrant a stay during this period.

In addition, the Commission has eliminated the requirement that the Commission find a "likelihood of settlement" before issuing an order withdrawing a matter or portions of a matter from adjudication. The Commission should have the discretion to withdraw a matter or portions of a matter if it determines that there is sufficient prospect for settlement (even if not necessarily a "likelihood") to warrant a suspension of the adjudication. Rather than including a specific standard, the revised rule leaves it to the Commission's discretion whether to issue the order. Finally, the revisions to Rule 3.25(d) clarify that if the matter is pending before the Commission (rather than an ALJ) when the motion and accompanying consent proposal are filed, the Commission in its discretion may grant the motion for withdrawal.

Section 3.31(g): Inadvertent production.

Section 3.31 concerns general discovery provisions. In its interim rules, the Commission issued a new provision governing the inadvertent production of privileged or protected information, which read: "(g) *Inadvertent production.* The inadvertent production of information produced by a party or third party in discovery that is subject to a claim of privilege or immunity for hearing preparation material shall not waive such claims as to that or other information regarding the same subject matter if the Administrative Law Judge determines that the holder of the claim made efforts reasonably designed to protect the privilege or the hearing preparation material, provided, however, this provision shall not apply if the party, or an entity related to that party, who inadvertently produced the privileged information relies upon such information to support a claim or defense."

As explained in the rule commentary, the Commission determined that this provision was necessary to limit the risk of subject matter waiver resulting from inadvertent disclosure of privileged or protected information as long as parties have taken reasonable measures to protect the information, thereby limiting the time and costs incurred by parties to avoid waiver. The Commission stated that, by treating genuinely inadvertent disclosures as not waiving privilege

² The Commission has also amended the rule to enable the ALJ, in his or her discretion, to determine whether to supplement the determination that there is a reasonable possibility of settlement with a recommendation as to whether the Commission should grant the motion to withdraw.

claims, the rule revision, along with relevant provisions of the FTC Act that protect “privileged or confidential” information,³ would ensure that privileged and protected materials obtained by the Commission from both respondents and third parties would not be publicly disclosed.

Interim Rule 3.31(g), however, lacks some of the protections provided by new Fed. R. Evid. 502.⁴ That rule was designed to provide a “predictable, uniform set of standards under which parties can determine the consequences of disclosure of a communication or information covered by the attorney-client privilege or work-product protection.”⁵ The Rule was enacted for one of the very same reasons that prompted the Commission to issue interim Rule 3.31(g): Widespread concerns that the litigation costs necessary to protect against privileged or work product materials have become excessive due to concerns that any disclosure—even if inadvertent or minor—will operate as a waiver of protections not only for the inadvertently disclosed communication or information but of the protections for all related communications or information. This concern is particularly aggravated in current practice by the enormous amount of electronically stored information that needs to be reviewed in discovery.

Fed. R. Evid. 502(b), governing inadvertent disclosures, provides that: When made in a Federal proceeding or to a Federal office or agency, the disclosure does not operate as a waiver in a Federal or State proceeding if:

- 1) the disclosure is inadvertent;
- 2) the holder of the privilege or protection took reasonable steps to prevent disclosure; and
- 3) the holder promptly took reasonable steps to rectify the error, including (if applicable) following Federal Rule of Civil Procedure 26(b)(5)(B).

Fed. R. Civ. P. 26(b)(5)(B), in turn, provides that:

If information produced in discovery is subject to a claim of privilege or of protection as trial preparation material, the party making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and

any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The producing party must preserve the information until the claim is resolved.

The Advisory Committee noted that the rule of evidence adopted the approach of a majority of courts regarding when an inadvertent disclosure results in a waiver, and is flexible enough to consider various factors such as “the reasonableness of precautions taken, the time taken to rectify the error, the scope of discovery, the extent of disclosure, and the overriding issue of fairness.”⁶ Relevant considerations concerning the reasonableness of precautions taken include the number of documents to be reviewed, the time constraints for production, whether certain advanced analytical software application and linguistic tools were used for document screening, and the implementation of an efficient pre-litigation records management system. The Advisory Committee also noted that Fed. R. Evid. 502(b) does not require the producing party to engage in full-scale post-production review to determine whether there had been an inadvertent disclosure, but does require the producing party to follow up on any “obvious indications” that such protected materials had been produced inadvertently.

The Commission concludes that the standards in Fed. R. Evid. 502(b) in combination with the incorporated provisions from Fed. R. Civ. P. 26(b)(5)(B), including the reasonableness of efforts to prevent disclosure, steps taken by the privilege holder to rectify the error, and the subsequent obligations imposed on the receiving party after receiving the information, are sensible and should be incorporated into the Commission’s Part 3 rules. The new federal rule was the result of extensive deliberations regarding limitations on waiver and was approved by Congress as the appropriate model for federal and state judicial proceedings. The Commission concludes that its provisions are equally appropriate for its administrative proceedings whether the disclosure occurs during a Part 3 proceeding or during a Commission precomplaint

investigation. The rule does not address any additional obligations that may be imposed by state bar rules or opinions on attorneys who receive materials that appear to be subject to a privilege claim. Further, while Fed. R. Evid. 502 is expressly limited to the disclosure of information protected by the attorney-client privilege or work product doctrine, the Commission concludes that the principles underlying that provision reasonably should extend in Part 3 proceedings to other applicable privileges, such as the deliberative process privilege. The Commission adopts the federal provisions into its final Rule 3.31(g)(1).

The Commission also concludes that Fed. R. Evid. 502(a)—governing the scope of waiver of privilege for the intentional disclosure of information—is reasonable and should be incorporated into the Commission’s Part 3 rules. Fed. R. Evid. 502(a) provides that:

- When the disclosure is made in a Federal proceeding or to a Federal office or agency and waives the attorney-client privilege or work-product protection, the waiver extends to an undisclosed communication or information in a Federal or State proceeding only if:
- 1) the waiver is intentional;
 - 2) the disclosed and undisclosed communications or information concern the same subject matter; and
 - 3) they ought in fairness to be considered together.

The Advisory Committee noted that the voluntary disclosure of privileged or protected information or communications will result in subject matter waiver for undisclosed information only in those unusual circumstances “in which fairness requires a further disclosure of related protected information in order to prevent a selective and misleading presentation of evidence to the disadvantage of an adversary.” The Commission’s interim Rule 3.31(g), providing that an inadvertent production will waive protection only where a party relies upon the information in its case, similarly was animated by concerns about the unfairness of using selective protected materials to the disadvantage of an adversary. The Commission concludes that the scope of waiver considerations encompassed within Fed. R. Evid. 502(a), which apply to the voluntary production of protected materials, are reasonable and therefore adopts the language of the federal rule in its final Rule 3.31(g)(2).

³ FTC Act, 6(f), 21(d)(1)(B), 15 U.S.C. 46(f), 57b-2(d)(1)(B).

⁴ See Pub. L. 110-322 (Sept. 19, 2008), 122 Stat. 3537.

⁵ See Advisory Committee Notes to Fed. R. Evid. 502.

⁶ See Advisory Committee Notes to Fed. R. Evid. 502.

Section 4.2: Requirements as to form, and filing of documents other than correspondence.

In its interim rules, the Commission added a new paragraph (c)(4), and redesignated existing paragraph (c)(4) as (c)(5), to require that filing parties redact or omit “sensitive personal information” from their filings when such information is not needed to conduct the proceeding. Sensitive personal information, which is also protected by the standard protective order contained in Appendix A of Rule 3.31, will be accorded in camera treatment pursuant to Rule 3.45 if such material is to be introduced as evidence or otherwise used in the proceeding. The Commission intends that these procedures will safeguard the confidentiality of sensitive information in the event that such information must be filed or otherwise used in the proceeding.

The Commission has now determined to revise paragraphs (a) through (d) in a number of respects. First, paragraph (d) has been revised to provide that whenever a petition for certain types of Commission action in non-Part 3 matters is filed—such as a petition to quash or limit a Commission subpoena or civil investigative demand (CID)—and confidential treatment is requested, a redacted public version of both the petition and the showing of justification for confidential treatment required by Rule 4.9(c) must be filed at the same time. A petition that does not satisfy these requirements will be rejected by the Secretary of the Commission, pursuant to Rule 4.2(g), and therefore will not suspend performance by the petitioner of any pending obligations, such as compliance with a pending subpoena or CID. The Commission is taking this step to address problems arising from the recent filing of a number of petitions to quash or limit subpoenas or CIDs which were marked “confidential” in their entirety. Because the petitions were so designated, the Commission was unable to make public any part of the petitions at the time they were filed, and was unable to make public its responses to the petitions until after the requests for confidential treatment had been addressed. By requiring a public version of a petition to be filed concurrently with a nonpublic version, the revised rule will enable the Commission to place redacted versions of the petition and the Commission’s response on the public record without unnecessary delay. As revised, paragraph (d) will also facilitate Commission evaluation of any given request for confidential treatment under

Rule 4.9(c), by requiring the requester to provide a breakdown between the public and the confidential components of any given request at the time the request is filed.

Second, Rule 4.2 has been revised to require *all* filings with the Commission or an ALJ under any Part of Chapter I of Title 16 to be labeled clearly and accurately as “Public,” “*In Camera*,” or “Confidential” at the time they are filed. See revised paragraph (b). As a corollary, paragraph (d)(3) has been revised to permit the Secretary to place a document labeled “Public” on the public record of the Commission at the time it is filed. A significant number of requests for action filed with the Commission are made public by the requesters when filed, frequently by placing the requests on the Internet. The Commission has no objection to this approach; indeed, public disclosure of a given request at the time it is filed may facilitate the development of a response by encouraging interested parties to file comments. In some cases, however, current Commission rules otherwise provide that such requests remain confidential until the point at which Commission or staff responses are issued. Thus, for example, Rule 1.4 provides that requests for written advice “will be [made public] immediately after the requesting party has received the advice” Revised paragraph (d)(3) will resolve this anomaly.

Third, paragraphs (a) through (d) have been revised in a number of respects to facilitate the development of a new Commission electronic filing system under Part 3 of the Rules of Practice, to be modeled after the systems adopted by a number of federal district courts. See, e.g., paragraphs (c)(1), (c)(3), and (d)(1). Once operational, this system will greatly improve the process by which electronic copies of public filings can be received, processed, and posted on the public Commission Website. In addition, the rule has been revised in a number of respects to facilitate adapting Commission procedures to new electronic document formats as they arise, such as the increasingly widespread use of Adobe portable document format, to clarify their scope, and to facilitate compliance with their requirements.

Finally, unnecessary language has been eliminated, and other revisions have been made throughout the rule to clarify and limit the kinds of submissions to which the rule is intended to apply.

List of Subjects in 16 CFR Part 3

Administrative practice and procedure.

List of Subjects in 16 CFR Part 4

Administrative practice and procedure.

■ For the reasons set forth in the preamble, the Federal Trade Commission amends Title 16, Chapter 1, Subchapter A of the Code of Federal Regulations, parts 3 and 4, by adopting the interim rules published at 74 FR 1804, January 13, 2009, as final, with the following changes:

PART 3—RULES OF PRACTICE FOR ADJUDICATIVE PROCEEDINGS

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

Authority: 15 U.S.C. 46, unless otherwise noted.

■ 2. Revise § 3.1 to read as follows:

§ 3.1 Scope of the rules in this part; expedition of proceedings.

The rules in this part govern procedure in formal adjudicative proceedings. To the extent practicable and consistent with requirements of law, the Commission’s policy is to conduct such proceedings expeditiously. In the conduct of such proceedings the Administrative Law Judge and counsel for all parties shall make every effort at each stage of a proceeding to avoid delay. In the event of a scheduling conflict between a proceeding in which the Commission also has sought or is seeking relief under Section 13(b) of the FTC Act, 15 U.S.C. 53(b), and another proceeding, the proceeding in which the Commission also has sought or is seeking relief under Section 13(b) shall take precedence. The Commission, at any time, or the Administrative Law Judge at any time prior to the filing of his or her initial decision, may, with the consent of the parties, shorten any time limit prescribed by these Rules of Practice.

§ 3.11A [Removed]

■ 3. Remove § 3.11A.

■ 4. Revise § 3.25 to read as follows:

§ 3.25 Consent agreement settlements.

(a) The Administrative Law Judge may, in his or her discretion and without suspension of prehearing procedures, hold conferences for the purpose of supervising negotiations for the settlement of the case, in whole or in part, by way of consent agreement.

(b) A proposal to settle a matter in adjudication by consent shall be submitted by way of a motion to withdraw the matter from adjudication for the purpose of considering a proposed settlement. Such motion shall be filed with the Secretary of the Commission, as provided in § 4.2. Any

such motion shall be accompanied by a consent proposal; the proposal itself, however, shall not be placed on the public record unless and until it is accepted by the Commission as provided herein. If the consent proposal affects only some of the respondents or resolves only some of the charges in adjudication, the motion required by this paragraph shall so state and shall specify the portions of the matter that the proposal would resolve.

(c) If a consent agreement accompanying the motion has been executed by one or more respondents and by complaint counsel, has been approved by the appropriate Bureau Director, and conforms to § 2.32, and the matter is pending before an Administrative Law Judge, the Secretary shall issue an order withdrawing from adjudication those portions of the matter that the proposal would resolve and all proceedings before the Administrative Law Judge shall be stayed with respect to such portions, pending a determination by the Commission pursuant to paragraph (f) of this section. If a consent proposal is not in the form of a consent agreement executed by a respondent, does not otherwise conform to § 2.32, or has not been executed by complaint counsel, and the matter is pending before the Administrative Law Judge, he or she shall certify the motion and proposal to the Commission upon a written determination that there is a reasonable possibility of settlement. The certification may be accompanied by a recommendation to the Commission as to the disposition of the motion. The Administrative Law Judge shall make a determination as to whether to certify the motion within 5 days after the filing of the motion. The filing of a motion under paragraph (b) of this section and certification thereof to the Commission shall not stay proceedings before the Administrative Law Judge unless the Commission shall so order. Upon certification of such motion, the Commission in its discretion may issue an order withdrawing from adjudication those portions of the matter that the proposal would resolve for the purpose of considering the consent proposal.

(d) If the matter is no longer pending before the Administrative Law Judge, the Commission in its discretion may, upon motion filed under paragraph (b) of this section, issue an order withdrawing from adjudication those portions of the matter that the proposal would resolve for the purpose of considering the consent proposal. Such order may issue whether or not the consent proposal is in the form of a consent agreement executed by a

respondent, otherwise conforms to § 2.32, or has been executed by complaint counsel.

(e) The Commission will treat those portions of a matter withdrawn from adjudication pursuant to paragraphs (c) or (d) of this section as being in a nonadjudicative status. Portions not so withdrawn shall remain in an adjudicative status.

(f) After some or all of the allegations in a matter have been withdrawn from adjudication, the Commission may accept a proposed consent agreement, reject it and return the matter or affected portions thereof to adjudication for further proceedings, or take such other action as it may deem appropriate. If an agreement is accepted, it will be disposed of as provided in § 2.34 of this chapter, except that if, following the public comment period provided for in § 2.34, the Commission decides, based on comments received or otherwise, to withdraw its acceptance of the agreement, it will so notify the parties and will return to adjudication any portions of the matter previously withdrawn from adjudication for further proceedings or take such other action it considers appropriate.

(g) This rule will not preclude the settlement of the case by regular adjudicatory process through the filing of an admission answer or submission of the case to the Administrative Law Judge on a stipulation of facts and an agreed order.

■ 5. Amend § 3.31 by revising paragraph (g) to read as follows:

§ 3.31 General discovery provisions.

* * * * *

(g) Disclosure of privileged or protected information or communications; scope of waiver; obligations of receiving party.

(1)(i) The disclosure of privileged or protected information or communications during a Part 3 proceeding or during a Commission precomplaint investigation shall not operate as a waiver if:

(A) The disclosure is inadvertent;

(B) The holder of the privilege or protection took reasonable steps to prevent disclosure; and

(C) The holder promptly took reasonable steps to rectify the error, including notifying any party that received the information or communication of the claim and the basis for it.

(ii) After being notified, the receiving party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps

to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the Administrative Law Judge under seal for a determination of the claim. The producing party must preserve the information until the claim is resolved.

(2) The disclosure of privileged or protected information or communications during a Part 3 proceeding or during a Commission precomplaint investigation shall waive the privilege or protection as to undisclosed information or communications only if:

(i) The waiver is intentional;

(ii) The disclosed and undisclosed information or communications concern the same subject matter; and

(iii) They ought in fairness to be considered together.

* * * * *

PART 4—MISCELLANEOUS RULES

■ 1. The authority citation for part 4 continues to read as follows:

Authority: 15 U.S.C. 46, unless otherwise noted.

■ 2. Revise § 4.2(a) through (d) to read as follows:

§ 4.2 Requirements as to form, and filing of documents other than correspondence.

(a) Filing. (1) All paper and electronic documents filed with the Commission or with an Administrative Law Judge pursuant to part 0, part 1, part 2, or part 3 of this chapter shall be filed with the Secretary of the Commission, except that:

(i) Documents produced in response to compulsory process issued pursuant to part 2 or part 3 of this chapter shall instead be produced to the custodian, deputy custodian, or other person prescribed therein, and in the manner prescribed therein; and

(ii) Comments filed in response to a Commission request for public comment shall instead be filed in the manner prescribed in the **Federal Register** document or other Commission document containing the request for such comment.

(2) All paper and electronic documents filed with the Commission pursuant to parts 4–999 of this chapter shall be filed with the Secretary of the Commission, except as otherwise provided in such part.

(b) Title and public or nonpublic status. All paper and electronic documents filed with the Commission or with an Administrative Law Judge pursuant to any part of this chapter shall clearly show the file or docket number and title of the action in connection with which they are filed.

The first page of each such document shall be clearly and accurately labeled "Public", "In Camera", or "Confidential".

(c) Paper and electronic copies of and service of filings before the Commission or an Administrative Law Judge in adjudicative proceedings.

(1) Each document filed before the Commission or an Administrative Law Judge in an adjudicative proceeding, except documents covered by § 4.2(a)(1)(i), shall be filed with the Secretary of the Commission; shall comply with the requirements of § 4.2(b); and shall include a paper original (in 12-point font with 1-inch margins), one paper copy (if before the Administrative Law Judge) or twelve (12) paper copies (if before the Commission), and an electronic copy in Adobe portable document format or such other format as the Secretary may direct.

(2) If the document is labeled "In Camera" or "Confidential", it must include as an attachment either a motion requesting in camera or other confidential treatment, in the form prescribed by § 3.45, or a copy of a Commission, Administrative Law Judge, or federal court order granting such treatment. The document must also include as a separate attachment a set of only those pages of the document on which the in camera or otherwise confidential material appears and comply with all other requirements of § 3.45 and any other applicable rules governing in camera treatment.

(3)(i) If the document is labeled "Public", the electronic copy shall be filed as the Secretary shall direct, or through such electronic system as the Commission may provide.

(ii) If the document is labeled "In Camera" or "Confidential", the electronic copy shall be submitted on a compact disc (CD) or digital video disc (DVD) so labeled, which shall be physically attached to the paper original, and shall not be transmitted to the Commission by e-mail or any other electronic system.

(iii) Each electronic copy filed pursuant to § 4.2(c)(1) shall include a certification by the filing party that the copy is a true and correct copy of the paper original, and that a paper copy with an original signature is being filed with the Secretary of the Commission on the same day by other means.

(4) Sensitive personal information, as defined in § 3.45(b), shall not be included in, and must be redacted or omitted from, filings where the filing party determines that such information is not relevant or otherwise necessary for the conduct of the proceeding.

(5) A paper copy of each document filed in accordance with this section in an adjudicative proceeding shall be served by the party filing the document or person acting for that party on all other parties pursuant to § 4.4, at or before the time the original is filed.

(d) Paper and electronic copies of other documents filed with the Commission. Each paper or electronic document filed with the Commission, and not covered by § 4.2(a)(1)(i), § 4.2(a)(1)(ii), or § 4.2(c), shall be filed with the Secretary of the Commission, and shall be clearly and accurately labeled as required by § 4.2(b).

(1) Each such paper document shall be signed, and shall be accompanied by an electronic copy on a compact disc (CD) or digital video disc (DVD) in Adobe portable document format or such other format as the Secretary shall direct.

(2) Each such document filed pursuant to § 2.7(d), § 2.7(f), § 2.41(f), or § 2.51 shall also include twelve (12) paper copies of the signed paper original.

(3) Each such document labeled "Public" may be placed on the public record of the Commission at the time it is filed.

(4) If such a document is labeled "Confidential", and it is filed pursuant to § 2.7(d), § 2.7(f), § 2.41(f), or § 2.51, it will be rejected for filing pursuant to § 4.2(g), and will not stay compliance with any applicable obligation imposed by the Commission or the Commission staff, unless the filer simultaneously files:

(i) An explicit request for confidential treatment that includes the factual and legal basis for the request, identifies the specific portions of the document to be withheld from the public record, provides the name and address of the person(s) who should be notified in the event the Commission determines to disclose some or all of the material labeled "Confidential", and otherwise conforms to the requirements of § 4.9(c); and

(ii) A redacted public version of the document that is clearly labeled "Public".

* * * * *

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. E9-9972 Filed 4-30-09; 8:45 am]

BILLING CODE 6750-01-S

DEPARTMENT OF EDUCATION

34 CFR Parts 668, 686, 690, and 691

RIN 1840-AC96

[Docket ID ED-2009-OPE-0001]

Student Assistance General Provisions; Teacher Education Assistance for College and Higher Education (TEACH) Grant Program; Federal Pell Grant Program; Academic Competitiveness Grant Program and National Science and Mathematics Access To Retain Talent Grant Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Interim final rule; request for comments.

SUMMARY: The Secretary amends the regulations for the Academic Competitiveness Grant (ACG) and National Science and Mathematics Access to Retain Talent Grant (National SMART Grant) Programs. These interim final regulations are needed to implement provisions of the Higher Education Act of 1965 (HEA), as amended by the Ensuring Continued Access to Student Loans Act of 2008 (ECASLA) and the Higher Education Opportunity Act of 2008 (HEOA). The new statutory provisions are effective July 1, 2009. The Secretary also amends the regulations in the Student Assistance General Provisions, and the regulations for the Teacher Education Assistance for College and Higher Education (TEACH) Grant Program and the Federal Pell Grant Program to implement conforming changes based on the statutory amendments to the ACG and National SMART Grant programs.

DATES: These regulations are effective July 1, 2009. We must receive your comments on or before June 1, 2009.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments by fax or by e-mail. Please submit your comments only one time, in order to ensure that we do not receive duplicate copies. In addition, please include the Docket ID at the top of your comments.

• *Federal eRulemaking Portal:* Go to <http://www.regulations.gov> to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket is available on the site under "How To Use This Site."

• *Postal Mail, Commercial Delivery, or Hand Delivery:* If you mail or deliver your comments about these interim final regulations, address them to Sophia McArdle, U.S. Department of Education, 1990 K Street, NW., room 8019, Washington, DC 20006–8544.

Privacy Note: The Department’s policy for comments received from members of the public (including those comments submitted by mail, commercial delivery, or hand delivery) is to make these submissions available for public viewing in their entirety on the Federal eRulemaking Portal at

<http://www.regulations.gov>. Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available on the Internet.

FOR FURTHER INFORMATION CONTACT:

Topic	Contact person and information
General information and information related to <i>rigorous secondary school programs</i> and <i>eligible majors</i> .	Sophia McArdle. Telephone: (202) 219–7078 or via the Internet: sophia.mcardle@ed.gov .
Information related to <i>grade level progression</i>	Fred Sellers. Telephone: (202) 502–7502 or via the Internet: fred.sellers@ed.gov .
Information related to <i>payments for part-time students</i>	Jacquelyn Butler. Telephone: (202) 502–7890 or via the Internet: jacquelyn.butler@ed.gov .
Information related to <i>prior enrollment</i>	Carney McCullough. Telephone: (202) 502–7639 or via the Internet: carney.mccullough@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 may obtain this document in an accessible format (e.g., braille, large print, audiotape, or computer diskette) on request to the first contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION:

Invitation To Comment

We invite you to submit comments regarding these interim final regulations. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the interim final regulations that each of your comments addresses and to arrange your comments in the same order as the interim final regulations.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these interim final regulations. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about these interim final regulations by accessing Regulations.gov. You may also inspect the comments, in person, in room 8019, 1990 K Street, NW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these interim final regulations. If you want to schedule an appointment for this type of aid, please contact the first person listed under **FOR FURTHER INFORMATION CONTACT**.

Background

These interim final regulations implement certain provisions of the HEA, as amended by the ECASLA (Pub. L. 110–227) and the HEOA (Pub. L. 110–315), which become effective on July 1, 2009. The ECASLA makes ACGs and National SMART Grants available to eligible non-citizens and students enrolled at least half-time, provides that maximum ACG and National SMART Grant awards for part-time students be proportionally reduced consistent with the requirements in the Federal Pell Grant Program, and requires grant awards and payments to be determined on the same basis as in the Federal Pell Grant Program. Furthermore, the ECASLA provides that grant awards be based on a student’s grade level, instead of academic year. Additionally, the ECASLA authorizes the award of ACGs for students enrolled in a one- or two-year certificate program at a degree-granting institution and allows students who were once enrolled in an undergraduate program as part of a secondary school program of study to receive a first-year ACG if the student is otherwise eligible. Finally, the ECASLA creates three additional program options by which students can qualify for a National SMART Grant. The HEOA amends the method by which secondary

school programs of study are determined to be rigorous, while maintaining rigorous programs previously recognized by the Secretary in regulations.

Waiver of Rulemaking

Under the Administrative Procedure Act (APA) (5 U.S.C. 553), the Department is generally required to publish a notice of proposed rulemaking and provide the public with an opportunity to comment on proposed regulations prior to establishing a final rule. In addition, all Department regulations for programs authorized by Title IV of the HEA (Title IV, HEA programs) are subject to the negotiated rulemaking requirements of section 492 of the HEA.¹

Section 402(b) of the HEOA waives the negotiated rulemaking requirements in section 492 of the HEA (as well as the master calendar requirements in section 482 of the HEA) for changes made to the ACG and National SMART Grant Programs in both the ECASLA and in the HEOA. Consequently, the negotiated rulemaking requirements in section 492 of the HEA do not apply to the interim final regulations in this notice and we will not subject them to negotiated rulemaking.

We are waiving the notice-and-comment rulemaking requirements under the APA. The APA provides that an agency is not required to conduct notice-and-comment rulemaking when the agency for good cause finds that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest. Although these regulations are subject to the APA’s notice-and-comment requirements, the

¹ Section 492 provides specifically that any regulations issued for the Title IV, HEA programs shall be subject to negotiated rulemaking to obtain the advice of and recommendations from individuals and groups involved in the student financial assistance programs.

Secretary has determined that it would be impracticable to conduct notice-and-comment rulemaking in time to implement these changes for the 2009–2010 award year. Waiver of rulemaking under the impracticability exemption in the APA is warranted because it would not be possible for the Department to comply with the APA's rulemaking mandates and execute its statutory duties under the HEA, as amended by the ECASLA and the HEOA.² The Department cannot both implement these changes to the ACG and National SMART Grant programs, including making awards to eligible students, by the beginning of the 2009–2010 award year, and conduct notice-and-comment rulemaking for the regulations for these programs.

In the ECASLA, enacted on May 7, 2008, Congress made a number of changes to the ACG and National SMART Grant programs that were to be effective on January 1, 2009. On August 14, 2008, Congress enacted the HEOA, which amended some of the changes made in the ECASLA and made additional changes. The HEOA provides that amendments made by the ECASLA and HEOA are effective July 1, 2009. The Department therefore has a short window to plan the administration of the changes and make awards consistent with those changes for the 2009–2010 award year.

Even on an extremely expedited timeline, the Department could not feasibly conduct notice-and-comment rulemaking and then promulgate final regulations in time to make awards for the 2009–2010 award year. Publishing a notice of proposed rulemaking, reviewing the public comments, and issuing final regulations normally takes at least six months, and this could not be accomplished prior to the statutory July 1, 2009 effective date.

In addition to developing and issuing these regulations, there are a number of other steps necessary for the Department to implement the changes to the ACG and National SMART Grant programs for the 2009–2010 award year that make rulemaking impracticable. Implementation requires the Department to make a number of

changes to the Department's financial aid systems so that students can apply for and receive ACGs and National SMART Grants for which they are eligible. The process of completing all of these steps and developing program regulations through notice-and-comment rulemaking requires far more time than that available to the Department in order to make awards to students for the upcoming 2009–2010 award year.

Based upon this information, and in order to make timely grant awards for the 2009–2010 award year, the Secretary is issuing these interim final regulations without first publishing proposed regulations for public comment.

Although the Department is adopting these regulations on an interim final basis, the Department requests public comment on these regulations. After consideration of public comments, the Secretary will publish final regulations.

Significant Regulations

We discuss substantive issues under the sections of the interim final regulations to which they pertain. Generally, we do not address regulatory provisions that are technical or otherwise minor in effect.

Definitions (§ 691.2)

ACG and National SMART Grant Scheduled Award

Statute: Section 10 of the ECASLA amends section 401A of the HEA by replacing the term “academic year” with the term “year” in those provisions related to determining a student's period of eligibility for an ACG or a National SMART Grant (e.g., section 401A(b), (c)(3), (d)(1)(A)(iii), and (d)(2) of the HEA). Section 10 of the ECASLA also amends section 401A of the HEA by adding a third year of eligibility for National SMART Grants for any otherwise eligible student enrolled in a program with at least five full years of coursework (see section 401A(c)(3)(E)).

Current Regulations: Current § 691.2(d) defines an ACG or National SMART Grant Scheduled Award as the amount that would be paid to a full-time student for a full academic year.

Regulations: We are amending the definitions in § 691.2(d) to provide that an ACG Scheduled Award is the maximum amount of an ACG that would be paid to a full-time first-year student or a full-time second-year student for the applicable year. A National SMART Grant Scheduled Award is the maximum amount of a National SMART Grant that would be paid to a full-time third-year, fourth-year, or fifth-year student for the applicable year.

Reason: We are amending these definitions to reflect the statutory change that a student's eligibility for a grant is based on his or her grade level as a first-, second-, third-, fourth-, or fifth-year student, rather than the student's academic year.

Annual Award

Statute: Section 10(a)(3) of the ECASLA amends section 401A(c) of the HEA to provide that a student enrolled or accepted for enrollment in an institution of higher education on not less than a half-time basis may be an eligible student (see section 401A(c)(3) of the HEA). Prior to the ECASLA, only full-time students were eligible.

Current Regulations: None.

Regulations: We are amending § 691.2(d) to define the term *annual award* as the maximum ACG or National SMART Grant amount a student would receive for enrolling as a full-time, three-quarter-time, or half-time student and remaining in that enrollment status for one year.

Reason: We are adding this definition, in conjunction with other changes to Subpart F (Determination of Awards) of part 691, to ensure compliance with the statutory requirement that a student's payments be adjusted based on the student's enrollment status during a payment period.

Eligible Major

Statute: Section 10(a)(3)(C)(v) of the ECASLA amends the HEA by adding a new section 401A(c)(3)(D), which extends eligibility for a National SMART Grant to a student enrolled in a qualifying liberal arts curriculum. Prior to this statutory change, an eligible major for a National SMART Grant was a major in the physical, life, or computer sciences, mathematics, technology, or engineering (as determined by the Secretary pursuant to regulations), or a foreign language that the Secretary, in consultation with the Director of National Intelligence, determines is critical to the national security of the United States.

Current Regulations: Current § 691.2(d) defines the term *eligible major*, for purposes of the National SMART Grant Program, as a major, as determined by the Secretary under § 691.17, in one of the physical, life, or computer sciences, mathematics, technology, engineering, or a critical foreign language.

Regulations: We are amending the definition of the term *eligible major* to include, in addition to majors in physical, life, or computer sciences, mathematics, technology, engineering or a critical foreign language, a qualifying

² See *Riverbend Farms, Inc. v. Madigan*, 958 F.2d 1479, 1484, n.2 (9th Cir. 1992). The term “impracticable” has also been described as meaning “a situation in which the due and required execution of the agency functions would be unavoidably prevented by its undertaking rulemaking proceedings.” *Zhang v. Slattery*, 55 F.3d 732, 746 (2d Cir. 1995), citing *National Nutritional Foods Ass'n v. Kennedy*, 572 F.2d 377, 385 (2d Cir. 1978), citing S. Rep. No. 752, 79th Cong., 1st Sess. (1945). See also *New Jersey Dept of Env'tl. Prot. v. U.S. EPA*, 626 F.2d 1038, 1046 (D.C. Cir. 1980).

liberal arts curriculum as determined by the Secretary under new § 691.17(b).

Reason: The amendments to the definition of the term *eligible major* implement the new statutory provision that a student may be eligible for a National SMART Grant by enrolling in a qualifying liberal arts curriculum.

Eligible Program

Statute: Section 10(a)(3)(C)(ii) of the ECASLA amends section 401A(c)(3) of the HEA by providing that an eligible student enrolled in an institution of higher education in an undergraduate certificate program at least one year in length may be eligible for an ACG (see section 401A(c)(3)(A) of the HEA). Section 10(a)(3)(C)(v) of the ECASLA also amends section 401A(c)(3) of the HEA to provide that a student enrolled in a program at a degree-granting institution of higher education that requires at least five full years of coursework may be eligible for a National SMART Grant in his or her fifth—as well as third and fourth—year of enrollment (see section 401A(c)(3)(E) of the HEA).

Current Regulations: Current § 691.2(d) defines the term *eligible program* as an eligible program, as defined in 34 CFR 668.8, that (a) for the ACG Program, leads to an associate's or bachelor's degree, is a two-academic-year program acceptable for full credit toward a bachelor's degree, or is a graduate degree program that includes at least three academic years of undergraduate education or (b) for the National SMART Grant Program, leads to a bachelor's degree in an eligible major or is a graduate degree program in an eligible major that includes at least three academic years of undergraduate education.

Regulations: We are amending the definition of an *eligible program* in § 691.2 to include, for the ACG Program, an undergraduate certificate program of at least one academic year in length. We are also amending the definition of the term *eligible program* to include a degree program with at least five full undergraduate years of coursework at a degree-granting institution of higher education (a student in this type of program would be eligible for a National SMART Grant for the third, fourth, and fifth years of the program). In order to be consistent with the statutory changes regarding the inclusion of five-year programs under the National SMART Grant Program, we are amending the definition of *eligible program* to clarify that a five-year program is an eligible program if—(a) an appropriate official of an institution of higher education with authority to approve curricula certifies

that the program requires at least five full undergraduate years of coursework to complete (as documented in the institution's records), and (b) each year of the program, including the fifth year, is not less than 24 semester hours, 36 quarter credits, or 900 clock hours. Paragraph (2)(ii)(C) of the definition clarifies that a program with a qualifying liberal arts curriculum identified as an eligible major under § 691.17(b) is not eligible as a five-year program.

Reason: We are amending the definition of the term *eligible program* to implement the statutory changes that a student may be eligible for an ACG if the student is enrolled in a certificate program at least one academic year in length and that a student may be eligible for a National SMART Grant for his or her fifth year in an eligible five-year program.

We are amending the definition of the term *eligible program*, for purposes of the ACG Program, to include undergraduate programs of at least one academic year in length leading to a certificate. While the statutory language refers to “a program of not less than one year for which the institution awards a certificate,” we believe that the minimum length of the program should be tied to an “academic year,” and not a “year.” This is because to qualify as an institution of higher education under 34 CFR 600.4(a)(4)(iii) of the institutional eligibility regulations, an institution must offer a certificate program that is at least one academic year in length.

With respect to the fifth-year National SMART Grant, the certification requirement reflected in new paragraph (2)(ii)(A) of the definition is required by section 401A(c)(3)(E) of the HEA. The requirement that the certification be documented in the institution's records is intended to avoid any additional reporting burden on institutions.

First-, Second-, Third-, Fourth-, and Fifth-Year

Statute: Section 10 of the ECASLA amends section 401A of the HEA by replacing the term “academic year” with the term “year” in those provisions related to determining a student's period of eligibility for an ACG or a National SMART Grant (e.g., section 401A(b), (c)(3), (d)(1)(A)(iii) and (d)(2) of the HEA). Section 10 of the ECASLA also amends section 401A of the HEA by adding a third year of eligibility for National SMART Grants for any otherwise eligible student enrolled in a program with five full years of coursework (see section 401A(c)(3)(E)).

Current Regulations: None.

Regulations: We are adding a new § 691.2(e)(1) to define the terms “first-year,” “second-year,” “third-year,” “fourth-year,” and “fifth-year” as a student's grade level in the student's eligible program as determined by the institution for all students in the eligible program. We are also adding a new § 691.2(e)(2) to provide that a student's grade level for purposes of the ACG and National SMART Grant programs must be the same grade level used for determining annual loan limits under the FFEL and Direct Loan programs (34 CFR parts 682 and 685).

Reason: New § 691.2(e)(1) implements the statutory change from use of “academic year” to “year.” It is necessary for the Department to clarify that, in using the term “year,” we mean the student's grade level. New § 691.2(e)(2) ensures the consistent treatment of students in all Title IV, HEA programs.

Duration of Student Eligibility— Undergraduate Course of Study (§ 691.6)

Statute: Section 10 of the ECASLA amends section 401A of the HEA to provide that an eligible student may only receive one ACG for each of the first or second years of an undergraduate program and one National SMART Grant for each of the third, fourth, or fifth years of a bachelor's degree program, rather than the first, second, third, or fourth academic year of the program (see section 401A(c)(3) of the HEA). In addition, section 10 of the ECASLA amends section 401A of the HEA by adding a new paragraph (c)(3)(E) to provide that a student may be eligible for a third National SMART Grant for enrollment in the fifth year of an undergraduate baccalaureate program if that program requires at least five full years of coursework.

Current Regulations: Current § 691.6 bases the duration of student eligibility for the ACG and National SMART Grant programs on academic year and restricts a student to one grant for each of his or her first, second, third, or fourth academic years of enrollment in an eligible program.

Regulations: We are amending § 691.6 to provide that a student is eligible for one ACG Scheduled Award while enrolled as a first-year student, one ACG Scheduled Award while enrolled as a second-year student, one National SMART Grant Scheduled Award while enrolled as a third-year student, one National SMART Grant Scheduled Award while enrolled as a fourth-year student, and, in the case of a program with at least five full years of

coursework, one National SMART Grant Scheduled Award while enrolled as a fifth-year student. We are providing that a fourth-year student, enrolled in a National SMART Grant-eligible program with less than five full years of coursework, continues to be a fourth-year student until he or she completes his or her first undergraduate baccalaureate course of study. We are also providing that a fifth-year student, enrolled in a National SMART Grant-eligible program with at least five full years of coursework, continues to be a fifth-year student until he or she has completed his or her first undergraduate baccalaureate course of study.

Reason: These interim final regulations implement the changes to the HEA by providing that the duration of a student's eligibility is based on the student's year in postsecondary education, consistent with the use of this term in the FFEL and Direct Loan programs, rather than the number of academic years the student has completed.

Under the amendments to § 691.6, a student's eligibility is based on the student's grade level rather than academic year. This change in implementation of the ACG and National SMART Grant programs will begin in the 2009–2010 award year. We believe that awards for some continuing students may be affected as they progress to the comparable point in grade level that they were previously deemed to have reached in an academic year. However, most of these students will still be eligible to receive the same amount of grant funds over their entire period of enrollment. A student who received a third-academic-year National SMART Grant Scheduled Award in the 2008–2009 award year, for example, may now be considered to be in the second-year grade level of his or her National SMART Grant-eligible program in the 2009–2010 award year. That student would no longer be eligible for a National SMART Grant until the student advances to the fourth year of his or her National SMART Grant-eligible program. However, in this example, although the student has already received a third-year National SMART Grant Scheduled Award, the student may be paid for any remaining eligibility for a second-year ACG Scheduled Award, if otherwise eligible, because only the student's grade level is the determining factor, without regard to any particular progression.

Some of these students, however, will no longer be eligible to receive the same amount of grant funds over their entire period of enrollment. For example, a student who initially enrolled in the fall

of 2008 with 30 semester hours based on Advanced Placement courses and received a first-academic-year ACG Scheduled Award in the 2008–2009 award year while earning an additional 30 semester hours, may now be considered to be in the third-year grade level of his or her eligible program in the 2009–2010 award year and would not be eligible for a second-year ACG in 2009–2010. The student could receive a third-year National SMART Grant, if he or she met other eligibility criteria.

The provision that a fourth-year student enrolled in a National SMART Grant-eligible program with less than five full years of coursework continues to be considered a fourth-year student until he or she completes his or her first undergraduate baccalaureate course of study, and that a fifth-year student in a five-year program continues to be a fifth-year student until he or she completes his or her undergraduate baccalaureate course of study is designed to provide students with the greatest amount of National SMART Grant funds possible, by allowing a student who was ineligible for some part of his or her fourth or fifth year to obtain a fourth- or fifth-year award.

For example, a student is enrolled in a program that requires full-time attendance for nine semesters, and a student normally completes a grade level by successfully completing two semesters of coursework. In the fall of 2008, the student begins her fourth year and completes the 2008–2009 fall and spring terms which are the seventh and eighth semesters of the student's program. During the 2008–2009 award year, the student did not receive a Federal Pell Grant, and as a result none of the fourth-year National SMART Grant Scheduled Award was disbursed. In the fall term of 2009, the student enrolls for the final semester of her program and receives a Federal Pell Grant. For the fall term, as part of the extended fourth year, the student would also receive a National SMART Grant disbursement from the fourth-year National SMART Grant Scheduled Award, if otherwise eligible.

Enrollment Status for Students Taking Regular and Correspondence Courses (§ 691.8)

Statute: The statute does not address how taking correspondence courses affects a student's enrollment status in an eligible program. Section 10(c)(2) of the ECASLA, however, amends section 401A(c)(2) of the HEA to provide that a student may be eligible for an ACG or a National SMART Grant if he or she is enrolled or accepted for enrollment in an institution of higher education on at

least a half-time basis. Before the ECASLA, only full-time students were eligible for grants under these programs.

Current Regulations: Current § 691.8 sets forth the circumstances under which correspondence courses may be applied toward a student's full-time enrollment status in an eligible program.

Regulations: We are amending § 691.8 to describe how correspondence courses may be applied toward a student's enrollment status (i.e., as a half-time, three-quarter-time, and full-time student) in an eligible program.

Reason: Because the statute now allows students enrolled or accepted for enrollment in an institution of higher education on at least a half-time basis to be eligible for an ACG or a National SMART Grant, it is necessary to make changes to § 691.8, regarding how correspondence courses may be applied to a student's less-than-full-time enrollment in an eligible program.

Citizenship and Student Eligibility (§§ 668.33 and 691.15)

Statute: Section 10(a)(3) of the ECASLA amends section 401A(c) of the HEA by removing the requirement that a student be a U.S. citizen to be eligible for an ACG or a National SMART Grant.

Current Regulations: Current §§ 691.15(a)(1) and 668.33(c) provide that a student must be a U.S. citizen to be eligible to receive an ACG or a National SMART Grant.

Regulations: We are removing the provisions in §§ 691.15(a)(1) and 668.33(c) that only U.S. citizens are eligible to receive ACGs or National SMART Grants.

Reason: These amendments reflect the statutory change that eliminates the requirement that only students who are U.S. citizens may qualify for assistance under the ACG and National SMART Grant programs. Moreover, this change is consistent with section 484(a)(5) of the HEA, which provides that a student who is not a United States citizen or national but who can provide evidence that he or she is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident may qualify as an eligible student for the Title IV, HEA programs.

Enrollment Status and Student Eligibility (§§ 668.32, 691.2, 691.15, 691.76, and 691.80)

Statute: Section 10(a)(3) of the ECASLA amends section 401A(c) of the HEA to remove the requirement that a student be enrolled full-time to receive an ACG or a National SMART Grant. Instead, a student must be enrolled at

least half-time in order to receive an ACG or a National SMART Grant.

Current Regulations: Current § 691.15(a)(3) provides that a student must be enrolled full-time in order to be eligible to receive an ACG or a National SMART Grant.

Regulations: We are removing from § 691.15(a) the requirement that a student be enrolled full-time to be eligible to receive an ACG or a National SMART Grant. Also, we are amending the general student eligibility requirements for the Title IV, HEA programs in § 668.32(a)(2) by adding the ACG and National SMART Grant programs to the list of programs that require students to be enrolled at least half-time.

We are also amending the list of definitions used in the ACG and National SMART Grant regulations to refer to the existing definitions of the terms *half-time student* and *three-quarter-time student* contained in 34 CFR 668.2 of the Student Assistance General Provisions.

Finally, we are amending §§ 691.76 (Frequency of payment) and 691.80 (Redetermination of eligibility for a grant award) to address how (a) an institution determines a student's enrollment status for payment purposes for prior payment periods, and (b) changes in a student's enrollment status, which are now permitted under the statute, are handled for purposes of recalculation of award amounts.

Reason: We are making the changes to §§ 691.2 and 691.15 to implement the statutory change allowing students attending at least half-time to be eligible for an award under the ACG and National SMART Grant programs.

We also believe that it is appropriate to amend the student eligibility provisions in 34 CFR part 668 (Student Assistance General Provisions) to include the ACG and National SMART Grant programs among the other Title IV, HEA programs that have the same enrollment status requirement.

The amendments to §§ 691.76 and 691.80 enable institutions to adjust ACG and National SMART Grant award payments based on a change in a student's enrollment status. These amendments are consistent with 34 CFR 690.76 and 690.80 in the Federal Pell Grant Program regulations.

Prior Enrollment and Student Eligibility (§ 691.15)

Statute: Section 10(a)(3)(C)(ii)(III) of the ECASLA amends section 401A(c)(3)(A)(ii) of the HEA to clarify that students who were enrolled in a program of undergraduate education as part of a secondary school program of

study are not subject to the prior enrollment restriction for first-year students.

Current Regulations: Current § 691.15(b)(1)(ii)(C) provides that a student is not eligible for a first-year ACG if the student was enrolled as a regular student in an ACG-eligible program while the student was at or below the age of compulsory attendance while he or she was in high school.

Regulations: We are amending § 691.15(b)(1)(ii)(C) to provide that the restriction on prior enrollment does not apply to students who were enrolled as regular students in an eligible program of undergraduate education that was also part of a secondary school program of study. We are also clarifying in new § 691.15(b)(1)(ii)(C) that transfer students who are first-year students are not considered to have been previously enrolled and, therefore, are not subject to the prior enrollment restriction.

Reason: These interim final regulations implement the statutory clarification concerning prior enrollment and clarify that we do not consider transfer students to have been previously enrolled.

Rigorous Secondary School Program of Study (§ 691.16)

Statute: Section 401A(f) of the HEA, as amended by section 10(a)(3) of the ECASLA and section 401(c)(3) of the HEOA, require the Secretary to recognize not less than one rigorous secondary school program of study in each State for the purpose of determining student eligibility for an ACG.

Section 401A(c)(3)(A)(i)(I) of the HEA provides that a rigorous secondary school program of study established by a State educational agency (SEA) or local educational agency (LEA) after January 1, 2006, but before July 1, 2009, and recognized by the Secretary continues to be an eligible rigorous secondary school program of study for a first-year ACG. Section 401A(c)(3)(B)(i)(I) of the HEA provides that a rigorous secondary school program of study established by an SEA or LEA after January 1, 2005, but before July 1, 2009, and recognized by the Secretary continues to be an eligible rigorous secondary school program of study for a second-year ACG. Section 401A(c)(3)(A)(i)(II)(aa) and 401A(c)(3)(B)(i)(II)(aa) of the HEA provides that a rigorous secondary school program includes any secondary school program of study that, on or after July 1, 2009, a designated official recognizes—in a report to the Secretary—as a rigorous secondary school program of study that prepares

students for college. Section 401A(c)(3)(A)(i)(II)(bb) and (c)(3)(B)(i)(II)(bb) of the HEA further provides that a rigorous secondary school program includes any secondary school program of study recognized as rigorous by the Secretary in regulations that were in effect on May 6, 2008.

Current Regulations: Current § 691.16(a) provides that, for an award year, the Secretary recognizes in each State at least one rigorous secondary school program of study established by an SEA or, if authorized by the State to establish a separate secondary school program of study, an LEA. Current § 691.16(d) provides that, in addition to those programs established by States and LEAs and recognized by the Secretary under § 691.16(b) and (c), the Secretary recognizes certain other secondary school programs of study as rigorous, including continued recognition of advanced or honors secondary school programs of study by the Secretary for school years subsequent to the 2005–2006 school year. Also under current § 691.16(d)(4) and (d)(5), successful completion of a secondary school program that includes at least two AP or IB courses and scoring a 3 or higher on the corresponding AP exams or a 4 or higher on the corresponding IB exams is considered by the Secretary to demonstrate that the student completed a rigorous secondary school program of study. Furthermore, under current § 691.16(d)(2), the Secretary recognizes successful completion of the following coursework to fulfill the requirement that a student complete a rigorous secondary school program of study: four years of English; three years of mathematics, including Algebra I and a higher level class such as Geometry; three years of science, including one year each of at least two of the following courses: Biology, Chemistry, and Physics; three years of social studies; and one year of a language other than English.

Current § 691.16(b)(2) allows SEAs and LEAs to request recognition of rigorous secondary school programs of study for school years beyond the immediate next school year.

Pursuant to current § 691.16(e), the Secretary publishes a list of rigorous secondary school programs of study that the Secretary recognizes.

Regulations: We are amending and reorganizing current § 691.16 by removing paragraphs (a) and (c) because these provisions apply to the Secretary's recognition of rigorous secondary school programs of study as established by an SEA or LEA. Effective July 1, 2009, the Secretary will no longer recognize new

rigorous secondary school programs of study submitted by an SEA or LEA; thus paragraphs (a) and (c) are no longer needed. As a result of removing paragraphs (a) and (c) of this section, we are redesignating paragraphs (b) and (d) as paragraphs (a) and (b), respectively.

We are amending current § 691.16(b) (new § 691.16(a)) to provide that, starting with the 2009–2010 award year, a designated official, consistent with State law, may recognize and report to the Secretary any secondary school programs of study that prepare students for college and that the designated official deems rigorous. Programs reported to the Secretary by designated officials under new § 691.16(a) supplement the secondary school programs recognized by the Secretary as rigorous under the current regulations.

We are amending current § 691.16(b)(1) and (2) (new § 691.16(a)(2)(i) and (ii)) such that a designated official may report to the Secretary rigorous programs for students graduating during the current award year and for students graduating during award years subsequent to the current award year.

We are amending current § 691.16(d) (new § 691.16(b)) by adding paragraph (b)(6) to include—in the list of preapproved rigorous secondary school programs of study—any rigorous programs submitted by States and recognized by the Secretary as rigorous after January 1, 2005, but before July 1, 2009.

Reason: The amendments to § 691.16 implement the statutory change that, instead of submitting secondary school programs of study for the Secretary's recognition as rigorous, starting with the 2009–2010 award year, designated officials report to the Secretary rigorous secondary school programs of study, including such programs of study in home schools and private schools, that prepare students for college. As indicated in the Paperwork Reduction Act of 1995 section of this notice, we are specifically requesting comments on the most effective methods by which designated officials would report information about rigorous secondary school programs of study in private schools and home schools to the Secretary and how that information would most effectively be transmitted to institutions to allow them to determine a student's eligibility for an ACG.

These interim final regulations, consistent with changes made to the HEA by the HEOA, also retain as rigorous those secondary school programs of study submitted by States after January 1, 2005 but before July 1, 2009 and recognized as rigorous by the

Secretary. Finally, the interim final regulations allow designated officials to report their rigorous programs to the Secretary for both the current and future award years.

Eligible Majors (§§ 691.2(b), 691.15, and 691.17)

Declaring and Documenting a Major (§ 691.15)

Statute: Section 401A(c)(3)(C) and (c)(3)(D) of the HEA, as amended by section 10(a)(3) of the ECASLA, identify the majors that are eligible for a National SMART Grant for a student in his or her third or fourth year of undergraduate education at an institution of higher education. Section 401A(c)(3)(C)(i) of the HEA provides that a student pursuing a major in the physical, life, or computer sciences, mathematics, technology, engineering, or a critical foreign language (which is defined in section 103(3) of the HEA) may be eligible for a National SMART Grant. Section 401A(c)(3)(D)(i)(I) of the HEA provides that a student at an institution of higher education that offers a single liberal arts curriculum that was offered prior to February 8, 2006, under which a student is not permitted to declare a major in a particular subject area, may receive a National SMART Grant if the student studies a subject that has requirements that are at least equal to the requirements for an academic major in the physical, life, or computer sciences, mathematics, technology, engineering, or a critical foreign language at another institution of higher education that offers a baccalaureate degree in that subject. Alternatively, under section 401A(c)(3)(D)(i)(II) of the HEA, a student at such institution may undertake a rigorous course of study in mathematics, biology, chemistry, and physics that consists of at least four years of study in mathematics and three years of study in the sciences, with a laboratory component in each of those years.

Under section 401A(c)(3)(E) of the HEA, as amended by the ECASLA, a student may be eligible for a National SMART Grant in his or her fifth year of undergraduate education if the student pursues a major in the physical, life, or computer sciences, mathematics, technology, engineering, or a critical foreign language if an appropriate institutional official certifies that the program requires five full years of coursework.

Current Regulations: Current § 691.15(c)(2) requires that, to be eligible for a National SMART Grant, a student must formally declare his or her eligible major in accordance with the

institution's academic requirements. However, if under an institution's procedures, a student would not be able to formally declare a major in time to qualify for a National SMART Grant, the student must demonstrate his or her intent to declare an eligible major as documented by the institution. Under current § 691.15(c)(2), as soon as the student is able to formally declare a major, the student must do so in order to remain eligible for a National SMART Grant. In the case of a student who has declared or intends to declare an eligible major, the student must enroll in the courses necessary to complete the degree program and to fulfill the eligible major requirements.

Current §§ 691.15(d)(1) and 691.15(e) specify how an institution must document a student's declaration of an eligible major, and progress in the eligible program and major, by requiring the institution to maintain the following documentation: (a) Documentation of the declared major or, in the case of a student's intent to declare a major, a written declaration of intent provided by the student that has been received recently enough for the institution to determine that it still correctly reflects the student's stated intent; and (b) written documentation showing that the student is completing coursework at an appropriate pace in the student's declared or intended eligible program and eligible major.

Regulations: Section 691.15(d)(3) exempts a student enrolled in a qualifying liberal arts curriculum from the requirement that the student must declare an eligible major to receive a National SMART Grant.

We also are amending § 691.15(c)(2)(ii) and § 691.15(e) to provide that an institution need only document a student's progress in completing the program in the intended or declared National SMART Grant-eligible program.

Reason: Under the new statutory provision reflected in section 401A(c)(3)(D) of the HEA, a student enrolled in a qualifying liberal arts curriculum as a major is necessarily enrolled in a National SMART Grant-eligible major. Because students in a qualifying liberal arts curriculum do not declare majors, it is not possible for the institution to document the student's declaration of a major as required under the current regulations. We are, therefore, removing the documentation requirement for students in qualifying liberal arts curricula.

In addition, a major change to the National SMART Grant Program is the extension of eligibility to otherwise eligible students who are enrolled less

than full-time but at least half-time. A student who is enrolled on a less-than-full-time basis would have difficulty enrolling in a course in the eligible major each payment period as currently required because a part-time student will typically only enroll in two or three courses in a payment period. Thus, even though the part-time student could be progressing in a satisfactory manner in his or her program, the student would be ineligible for a National SMART Grant under the current requirements. Sections 691.15(c)(2) and (e), therefore, amend the current regulations to require an institution to document a student's progress in completing the program in the intended or declared National SMART Grant-eligible program rather than coursework strictly specific to the academic major's requirements each payment period.

Determination of Eligible Majors (§§ 691.2(b) and 691.17)

Statute: Section 401A(c)(3)(C) and (D) of the HEA, as amended by section 10(a)(3) of the ECASLA, identifies the majors that a student must pursue to be eligible for a National SMART Grant in his or her third or fourth year of undergraduate education at an institution of higher education.

Specifically, section 401A(c)(3)(C)(i) of the HEA provides that a student pursuing a major in the physical, life, or computer sciences, mathematics, technology, engineering, or a critical foreign language is eligible for a National SMART Grant, provided the student meets other eligibility criteria.

Section 401A(c)(3)(D) of the HEA extends eligibility for a National SMART Grant to a student enrolled in a program at an institution of higher education that offers a single liberal arts curriculum leading to a baccalaureate degree that was offered prior to February 8, 2006, and under which the student is not permitted to declare a major in a particular subject area. A student in this type of program may receive a National SMART Grant if (a) the student studies a subject that has requirements that are at least equal to the requirements for an academic major in the physical, life, or computer sciences, mathematics, technology, engineering, or a critical foreign language at another institution of higher education that offers a baccalaureate degree in that subject and the student has obtained a cumulative grade point average of at least 3.0 in the relevant coursework (see section 401A(c)(3)(D)(i)(I) of the HEA); or (b) the student undertakes a rigorous course of study in mathematics, biology, chemistry, and physics that consists of

at least four years of study in mathematics and three years of study in the sciences, with a laboratory component in each of those years (see section 401A(c)(3)(D)(i)(II) of the HEA).

Section 401A(c)(3)(E) of the HEA, as amended by the ECASLA, identifies the majors a student must pursue to be eligible for a National SMART Grant in his or her fifth year of undergraduate education. These majors are the same as those identified for eligibility for third- and fourth-year National SMART Grants except that the major may not be a liberal arts curriculum.

Current Regulations: Current § 691.17(a) provides that, for each award year, the Secretary identifies eligible majors in the physical, life, or computer sciences, mathematics, technology, engineering, and, after consulting with the Director of National Intelligence, critical foreign languages.

Regulations: Section 691.17(a) amends the current regulations to incorporate the new definition of a "critical foreign language" found in section 103(3) of the HEA. Current § 691.17(b) is removed and replaced with a new § 691.17(b) to include a qualifying liberal arts curriculum as an eligible major. Section 691.17(d) amends the current regulations for designating an additional eligible major by adding a requirement that an institution requesting designation of a liberal arts curriculum as an eligible major submit, in addition to the information requested in § 691.17(d)(1), information demonstrating that the liberal arts curriculum complies with the requirements in new § 691.17(b).

Reason: The interim final regulations are necessary to implement the statutory provisions that expand the list of majors eligible for a National SMART Grant and to provide a mechanism for an institution to request designation of a qualifying liberal arts curriculum as a National SMART Grant-eligible major.

Calculation of a Grant (§ 691.62)

Statute: Section 10(a)(3) of the ECASLA amends section 401A(c) of the HEA to provide that a student enrolled or accepted for enrollment in an institution of higher education on not less than a half-time basis may be an eligible student. Section 10(a)(4) of the ECASLA amends section 401A(d)(1)(B) of the HEA to clarify that, in any case in which a student attends on a less than full-time basis, the student's grant amount shall be reduced in the same manner as a Federal Pell Grant is reduced under section 401(b)(2)(B) of the HEA.

Current Regulations: Current § 691.62(b) describes the maximum ACG

and National SMART Grant Scheduled Award amounts for an eligible full-time student, but does not provide annual award amounts for three-quarter-time and half-time students.

Regulations: We are amending § 691.62 by adding paragraphs (c) and (d) to describe the ACG and National SMART Grant annual award amounts for full-time, three-quarter-time, and half-time students.

Reason: We are adding § 691.62(c) and (d) in conjunction with other changes to Subpart F, to ensure compliance with the statutory requirement that a student's payments be adjusted based on the student's enrollment status during a payment period consistent with the calculation of a payment for a payment period under the Federal Pell Grant Program.

Calculation of a Grant for a Payment Period (§§ 691.63 and 691.66)

General

Statute: Section 10(a)(3) of the ECASLA amends section 401A(c) of the HEA to provide that a student enrolled or accepted for enrollment in an institution of higher education on not less than a half-time basis may be an eligible student. Section 10(a)(4) of the ECASLA also amends section 401A(d)(1)(B)(i) of the HEA to provide that, in any case in which a student attends on a less than full-time basis, the student's grant amount shall be reduced in the same manner as a Federal Pell Grant is reduced under section 401(b)(2)(B) of the HEA.

Current Regulations: Current § 691.63 provides that an ACG or a National SMART Grant payment for a payment period is calculated only on the basis of the ACG or National SMART Grant Scheduled Award. This section does not address how an ACG Grant or a National SMART Grant payment for a payment period is calculated for less-than-full-time students.

Regulations: We are amending § 691.63(h) to describe how ACG and National SMART Grant payments for a payment period are calculated for full-time, three-quarter-time, and half-time students. In addition, throughout § 691.63, except as provided in § 691.63(e), we change references from "Scheduled Award" to "annual award under § 691.62" to account for a student's enrollment status as a full-time, three-quarter-time, or half-time student in calculating the student's payment for a payment period.

Finally, we are adding a new § 691.66 to address how institutions of higher education calculate an ACG and a National SMART Grant payment for a

payment period in a program of study offered by correspondence. Conforming changes are also made to § 686.25 and § 690.66.

Reason: We are amending § 691.63 and adding § 691.66, in conjunction with other changes to Subpart F, to ensure compliance with the statutory requirement that a student's payments be adjusted based on the student's enrollment status during a payment period and that a student enrolled at least half-time in a program of study offered by correspondence would be eligible for an ACG or a National SMART Grant.

Payment Period and Grade Level Progression

Statute: As discussed elsewhere in this notice, section 10 of the ECASLA amends the provisions of section 401A of the HEA by replacing the term "academic year" with the term "year" in those instances related to determining a student's period of eligibility for an ACG or a National SMART Grant (e.g., section 401A(b), (c)(3), (d)(1)(A)(iii) and (d)(2) of the HEA).

Current Regulations: Current § 691.63(h) provides that a student may not progress to the next academic year during a payment period.

Regulations: We are amending § 691.63(h) to provide that a student may not progress to the next year in a grade level (rather than next academic year) during a payment period.

Reason: We are making this change because eligibility for the ACG and National SMART Grant programs is no longer based on the student's academic year standing. Eligibility is based on "year," which refers to a student's grade level consistent with the FFEL and Direct Loan programs.

Executive Order 12866

1. Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether the regulatory action is "significant" and therefore subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as an action likely to result in a rule that may (1) have an annual effect on the economy of \$100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities in a material way (also referred to as an "economically significant" rule); (2)

create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive order.

Pursuant to the terms of the Executive order, it has been determined that this interim final regulatory action will have an annual effect on the economy of more than \$100 million. Therefore, this action is "economically significant" and subject to OMB review under section 3(f)(1) of Executive Order 12866.

Need for Federal Regulatory Action

These interim final regulations address a range of issues affecting students and institutions of higher education participating in the ACG and National SMART Grant programs. They are needed to implement statutory changes enacted through the ECASLA and the HEOA.

Regulatory Alternatives Considered

The Department cannot modify statutory program requirements through regulations. Because the interim final regulations merely implement specific statutory provisions, the Department had extremely limited discretion to consider alternative approaches. In general, as discussed in detail under the *Reason* sections that accompany the discussion of each interim final regulatory provision, the Department used this limited discretion to minimize burden and complexity and, to the extent possible, mirror comparable regulations for other student aid programs. In assessing the budgetary impact of these alternatives, the Department considered the effect of possible changes on student eligibility for ACG and National SMART Grant awards and on the size or timing of student awards. In all cases, the alternatives considered did not have a measurable effect on Federal costs.

Transfers

These interim final regulations broaden access to the ACG and National SMART Grant programs by implementing statutory changes that extend eligibility to part-time students who are enrolled at their institution on at least a half-time basis, eligible non-citizens, and students enrolled in certain certificate programs. The interim final regulations also allow eligible degree programs with at least five full undergraduate years to award National

SMART Grant awards in the third, fourth, and fifth years of the program. Mandatory funding for the ACG and National SMART Grant programs is provided through fiscal year 2010, after which the program would sunset. Funds for fiscal year 2010 would be used to support the 2010–2011 award year. The Department estimates that changes implemented through these interim final regulations, which become effective July 1, 2009, will result in 538,000 additional awards totaling \$448 million over award years 2009–2010 and 2010–2011. More specifically, under current estimates, expanding eligibility to less-than-full-time students, eligible non-citizens, and students at certificate programs will increase ACG awards by 209,000 in 2009–2010 and 241,000 in 2010–2011 and increase National SMART Grant awards by 43,000 in 2009–2010 and 45,000 in 2010–2011.

Other changes in these interim final regulations implement statutory changes replacing the term "academic year" with the term "year" for the purposes of determining a student's period of eligibility for an ACG or a National SMART Grant. These changes are expected to significantly simplify the process of determining eligibility for participating institutions of higher education and students.

As noted, statutory changes in program eligibility criteria implemented by these interim final regulations will increase the dollar amount of grant awards under the ACG and National SMART Grant programs by \$448 million over award years 2009–2010 and 2010–2011. This will increase Federal costs by the same amount.

Because institutions of higher education affected by these interim final regulations already participate in the ACG and National SMART Grant programs, these schools must have already established systems and procedures to meet program eligibility requirements. The interim final regulations reflect discrete changes in specific parameters associated with the Department's existing regulations for these programs, rather than entirely new requirements. Accordingly, entities wishing to continue to participate in the programs have already absorbed most of the administrative costs related to implementing these interim final regulations. Marginal costs over this baseline are primarily related to one-time changes that, while possibly significant in some cases, are an unavoidable cost of continued program participation.

Elsewhere in this **SUPPLEMENTARY INFORMATION** section, we identify and

explain burdens specifically associated with information collection requirements. See the heading *Paperwork Reduction Act of 1995*.

Accounting Statement

As required by OMB Circular A-4 (available at <http://www.Whitehouse.gov/omb/Circulars/a004/a-4.pdf>), in Table 1, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of these interim final regulations. As shown in the table, the Department estimates that these interim final regulations will increase Federal grant payments to students by \$448 million.

TABLE 1—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED SAVINGS

[In millions]	
Category	Transfer
Annualized monetized transfers	\$448

2. Clarity of the Regulations

Executive Order 12866 and the Presidential memorandum on “Plain Language in Government Writing” require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these interim final regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the interim final regulations clearly stated?
- Do the interim final regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the interim final regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the interim final regulations be easier to understand if we divided them into more (but shorter) sections? (A “section” is preceded by the symbol “§” and a numbered heading; for example, § 691.16 Rigorous Secondary School Program of Study.)
- Could the description of the interim final regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the interim final regulations easier to understand? If so, how?
- What else could we do to make the interim final regulations easier to understand?

To send any comments that concern how the Department could make these

interim final regulations easier to understand, see the instructions in the **ADDRESSES** section of this preamble.

Regulatory Flexibility Act Certification

The Secretary certifies that these interim final regulations will not have a significant economic impact on a substantial number of small entities. These interim final regulations affect institutions of higher education, States, State agencies, and individual students. The U.S. Small Business Administration (SBA) Size Standards define these institutions as “small entities” if they are for-profit or nonprofit institutions with total annual revenue below \$5,000,000 or if they are institutions controlled by governmental entities with populations below 50,000. Individuals are not defined as “small entities” under the Regulatory Flexibility Act.

A significant percentage of the schools participating in the ACG and National SMART Grant programs meet the definition of “small entities.” While these schools fall within the SBA size guidelines, these interim final regulations do not impose significant new costs on these entities.

Specific burden concerns are discussed in more detail elsewhere in this preamble, primarily in the *Paperwork Reduction Act of 1995* section.

Paperwork Reduction Act of 1995

Sections 691.15 and 691.16 contain information collection requirements. Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department has submitted a copy of these sections to OMB for its review.

Section 691.15(a)—Eligibility To Receive a Grant

The interim final regulations amend the eligibility requirements to receive an ACG or a National SMART Grant by removing several restrictive criteria. Currently, only students who are U.S. citizens are eligible to receive an ACG or a National SMART Grant. Under these interim final regulations, and consistent with other Title IV, HEA programs, in addition to U.S. citizens, students who can provide evidence from the United States Citizenship and Immigration Service, an office of the United States Department of Homeland Security, that they are in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident, may qualify as eligible non-citizens for the ACG and National SMART Grant programs.

The requirement that a student be enrolled on a full-time basis is also removed. Under these interim final regulations, students enrolled on at least a half-time or greater basis may be eligible to receive an ACG or a National SMART Grant.

The interim final regulations provide that the restriction on prior postsecondary enrollment does not apply to students who were enrolled as regular students in an eligible program of undergraduate education that was also part of a secondary school program of study. We also clarify that transfer students who are first-year students are not considered to have been previously enrolled and, therefore, are not subject to the prior enrollment restriction.

It is estimated that these changes regarding student eligibility will result in an increase in the burden hours associated with the programs through the Common Origination and Disbursement (COD) System. We estimate that the interim final regulations will increase burden for institutions of higher education by 12,412 hours, under OMB Control Number 1845-0039.

Section 691.16—Rigorous Secondary School Program of Study

The interim final regulations amend the current regulations to provide that, starting with the 2009–2010 award year, a designated official, consistent with State law, may recognize and report any information to the Secretary about rigorous secondary school programs of study that prepare students for college. These rigorous programs provide an option by which a student could meet the rigorous secondary school program of study requirement for receipt of an ACG.

Consistent with the amendments to section 401A of the HEA, rigorous programs submitted by States and recognized by the Secretary as rigorous after January 1, 2005, but before July 1, 2009, will continue to be listed in the document published annually by the Secretary listing rigorous secondary school programs of study. This listing also includes the new rigorous secondary programs of study as reported to the Department for students graduating during the current award year and for students graduating during award years subsequent to the current award year. In addition to any new programs of study, the information that designated officials report to the Department about rigorous secondary school programs of study also includes changes to previously reported rigorous programs of study or any deleted rigorous programs of study. Consistent

with the deadline set by the Secretary for reporting rigorous high school programs to the Department, we expect that 56 SEAs reporting for the State (and/or on behalf of the State's LEAs) will be reporting to the Department annually. In addition, designated officials will report information regarding the rigorous programs offered by private and home schools for an estimated 36,000 high school students who attend private high schools and

home schools for the year of the students' secondary school graduation or completion. We specifically request comments on the most effective methods by which designated officials would report information about rigorous secondary school programs of study in private schools and home schools to the Secretary and how that information would most effectively be transmitted to institutions to allow them to determine a student's eligibility for an ACG.

It is estimated that these changes regarding reporting of rigorous secondary school programs of study will result in an increase in burden hours. We estimate that the interim final regulations will increase burden for States, private high schools, home schools, and individuals by 18,280 hours, under new OMB Control Number 1845-XXXX.

COLLECTION OF INFORMATION

Regulatory section	Information collection	Collection
691.15	This interim final regulation expands student eligibility requirements for the ACG and National SMART Grant programs.	OMB 1845-0039. This is a revision of an existing collection which is being submitted to OMB with these interim final regulations.
691.16	This interim final regulation provides for States to report new, changed, or deleted rigorous secondary programs of study.	OMB 1845-XXXX. This will be a new collection. A separate 60-day FEDERAL REGISTER notice will be published to solicit comment on this form once it is developed.

If you want to comment on the information collection requirements, please send your comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for U.S. Department of Education. Send these comments by e-mail to OIRA_DOCKET@omb.eop.gov or by fax to (202) 395-6974. Commenters need only submit comments via one submission method. You may also send a copy of these comments to the Department contact named in the ADDRESSES section of this preamble.

We consider your comments on these collections of information in—

- Deciding whether the collections are necessary for the proper performance of our functions, including whether the information will have practical use;
- Evaluating the accuracy of our estimate of the burden of the collections, including the validity of our methodology and assumptions;
- Enhancing the quality, usefulness, and clarity of the information we collect; and
- Minimizing the burden on those who must respond. This includes exploring 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.

OMB is required to make a decision concerning the collections of information contained in these interim final regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, to ensure that OMB gives your comments

full consideration, it is important that OMB receives the comments within 30 days of publication. This does not affect the deadline for your comments to us on the interim final regulations.

Intergovernmental Review

These programs are subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive Order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Assessment of Educational Impact

We have determined that these interim final regulations do not require transmission of information that any other agency or authority of the United States gathers or makes available. However, in accordance with section 411 of the General Education Provisions Act, 20 U.S.C. 1221e-4, the Secretary requests comments on whether these interim final regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

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(Catalog of Federal Domestic Assistance Numbers: 84.063 Federal Pell Grants; 84.375 Academic Competitiveness Grants; 84.376 National SMART Grants; 84.379 TEACH Grants)

List of Subjects in 34 CFR Parts 668, 686, 690, and 691

Colleges and universities, Elementary and secondary education, Grant programs education, Student aid.

Dated: April 28, 2009.

Arne Duncan,
Secretary of Education.

■ For the reasons discussed in the preamble, the Secretary amends parts 668, 686, 690, and 691 of title 34 of the Code of Federal Regulations as follows:

PART 668—STUDENT ASSISTANCE GENERAL PROVISIONS

■ 1. The authority citation for part 668 continues to read as follows:

Authority: 20 U.S.C. 1001, 1002, 1003, 1070g, 1085, 1088, 1091, 1092, 1094, 1099c, and 1099c-1, unless otherwise noted.

§ 668.32 [Amended]

- 2. Section 668.32(a)(2) is amended by:
 - A. Adding the words “ACG, National SMART Grant,” after the words “For purposes of the”.
 - B. Adding the punctuation “,” after the word “FFEL”.

§ 668.33 [Amended]

- 3. Section 668.33 is amended by:
 - A. In paragraph (a), introductory text, removing the words “paragraphs (b) and (c)” and adding, in their place, the words “paragraph (b)”.
 - B. Removing paragraph (c).
 - C. Redesignating paragraph (d) as paragraph (c).

PART 686—TEACHER EDUCATION ASSISTANCE FOR COLLEGE AND HIGHER EDUCATION (TEACH) GRANT PROGRAM

- 4. The authority citation for part 686 continues to read as follows:

Authority: 20 U.S.C. 1070g, *et seq.*, unless otherwise noted.

§ 686.22 [Amended]

- 5. Section 686.22 is amended in paragraph (f), by removing the words “or (e)” both times they appear.

§ 686.25 [Amended]

- 6. Section 686.25 is amended by:
 - A. Removing paragraph (b)(1).
 - B. Redesignating paragraphs (b)(2)(i) and (b)(2)(ii) as paragraphs (b)(1) and (b)(2), respectively.
 - C. In paragraph (c)(2)(i), adding the words “to calculate the payment for the payment period” after the word “used”.
 - D. In paragraph (c)(2)(ii), adding the words “to calculate the payment for the payment period” after the word “used”.

PART 690—FEDERAL PELL GRANT PROGRAM

- 7. The authority citation for part 690 continues to read as follows:

Authority: 20 U.S.C. 1070a, 1070g, unless otherwise noted.

- 8. Section 690.63 is amended by:
 - A. Revising paragraph (d)(1)(i).
 - B. In paragraph (f), removing the words “or (e)” both times they appear and removing the word “paragraphs” and adding, in its place, the word “paragraph”.

The revision reads as follows:

§ 690.63 Calculation of a Federal Pell Grant for a payment period.

* * * * *

(d) * * *

- (1)(i) Determining his or her enrollment status for the term;

§ 690.66 [Amended]

- 9. Section 690.66 is amended by:
 - A. Removing paragraph (b)(1).
 - B. Redesignating paragraphs (b)(2)(i) and (b)(2)(ii) as paragraphs (b)(1) and (b)(2), respectively.
 - C. In newly redesignated paragraph (b)(1), removing the parenthetical “(4)”.
 - D. In newly redesignated paragraph (b)(2), removing the parentheticals “(a)(4)” and adding, in their place, the words “paragraph (a)”.
 - E. In paragraphs (c)(2)(i) and (c)(2)(ii), adding the words “to calculate the payment for the payment period” after the word “used” both times it is used.

PART 691—ACADEMIC COMPETITIVENESS GRANT (ACG) AND NATIONAL SCIENCE AND MATHEMATICS ACCESS TO RETAIN TALENT GRANT (NATIONAL SMART GRANT) PROGRAMS

- 10. The authority citation for part 691 continues to read as follows:

Authority: 20 U.S.C. 1070a-1, unless otherwise noted.

§ 691.1 [Amended]

- 11. Section 691.1(b) is amended by removing the words “and fourth-year” and adding, in their place, the words “, fourth-, and, in the case of a program with at least five full years, fifth-year”.

- 12. Section 691.2 is amended by:

- A. In paragraph (a), adding, in alphabetical order, the term “Federal Family Education Loan (FFEL) Programs”.
- B. In paragraph (b), adding, in alphabetical order, the terms “Half-time student”, “Three-quarter time student”, and “William D. Ford Federal Direct Loan (Direct Loan) Program”.
- C. In paragraph (d), revising the definitions of “ACG Scheduled Award”, “Eligible major”, “Eligible program”, and “National SMART Grant Scheduled Award”; and adding, in alphabetical order, the definition for “Annual award”.
- D. Adding a new paragraph (e).

The additions and revisions read as follows:

§ 691.2 Definitions.

* * * * *

(d) * * *

ACG Scheduled Award: The maximum amount of an ACG that would be paid to a full-time first-year student or a full-time second-year student for the applicable year.

Annual award: The maximum ACG or National SMART Grant amount a student would receive for enrolling as a full-time, three-quarter-time, or half-time student and remaining in that enrollment status for one year.

* * * * *

Eligible major: A major, as identified by the Secretary under § 691.17(a), in one of the physical, life, or computer sciences, mathematics, technology, engineering, or a critical foreign language as defined in section 103(3) of the HEA; or a qualifying liberal arts curriculum as identified by the Secretary under § 691.17(b).

Eligible program: An eligible program as defined in 34 CFR 668.8 that—

- (1) For purposes of the ACG Program, leads to an associate’s degree or a bachelor’s degree, is an undergraduate program at least one academic year in length leading to a certificate, is at least a two-academic-year program acceptable for full credit toward a bachelor’s degree, or is a graduate degree program that includes at least three years of undergraduate education; or

- (2) For purposes of the National SMART Grant Program—

- (i) Leads to a bachelor’s degree in an eligible major or is a graduate degree program in an eligible major that includes at least three years of undergraduate education; and
- (ii) In the case of a five-year program, is a program that—

- (A) Requires at least five full undergraduate years to complete, as certified by an appropriate institutional official in accordance with the institution’s policies and procedures and documented in the institution’s records;
- (B) Contains not less than 24 semester hours, 36 quarter credits, or 900 clock hours in each year of the program, including the fifth year; and
- (C) Is not a program that is a qualifying liberal arts curriculum identified as an eligible major under § 691.17(b).

(3) For purposes of paragraph (2)(ii)(A) of this definition, the appropriate official of an institution is the chief executive officer, provost, dean, academic department chairman, or other official with responsibility for setting a degree program’s coursework.

* * * * *

National SMART Grant Scheduled Award: The maximum amount of a National SMART Grant that would be paid to a full-time third-year, fourth-year, or fifth-year student for the applicable year.

* * * * *

(e)(1) As used in this part, the terms “first-year,” “second-year,” “third-

* * * * *

year,” “fourth-year,” and “fifth-year” refer to a student’s grade level in the student’s eligible program as determined by the institution for all students in the eligible program.

(2) A student’s grade level for purposes of the ACG and National SMART Grant programs must be the same grade level as used for determining annual loan limits under the FFEL and Direct Loan programs (34 CFR parts 682 and 685).

* * * * *

■ 13. Section 691.6 is revised to read as follows:

§ 691.6 Duration of student eligibility—undergraduate course of study.

(a) While enrolled in an ACG-eligible program, a student is eligible to receive up to one ACG Scheduled Award while enrolled as a first-year student and one ACG Scheduled Award while enrolled as a second-year student.

(b)(1) While enrolled in a National SMART Grant-eligible program, a student is eligible to receive up to one National SMART Grant Scheduled Award while enrolled as a third-year student, one National SMART Grant Scheduled Award while enrolled as a fourth-year student, and, in the case of a National SMART Grant-eligible program with five full years of

coursework, one National SMART Grant Scheduled Award while enrolled as a fifth-year student.

(2)(i) A student’s eligibility to receive up to one National SMART Grant Scheduled Award as a fourth-year student, in the case of a National SMART Grant-eligible program with less than five full years of coursework, extends from the beginning of the student’s fourth year until he or she completes his or her first undergraduate baccalaureate course of study.

(ii) A student’s eligibility to receive up to one National SMART Grant Scheduled Award as a fifth-year student, in the case of a National SMART Grant-eligible program with at least five full years of coursework, extends from the beginning of the student’s fifth year until he or she completes his or her first undergraduate baccalaureate course of study.

(c) A student may not receive more than two ACG Scheduled Awards and three National SMART Grant Scheduled Awards during the student’s undergraduate education in all eligible programs.

(Authority: 20 U.S.C. 1070a–1)

■ 14. Section 691.8 is amended by:

■ A. In paragraph (b)(1), adding the words “certificate or” after the word “or” the first time it appears.

■ B. Adding new paragraphs (c) and (d) to read as follows:

§ 691.8 Enrollment status for students taking regular and correspondence courses.

* * * * *

(c)(1) Notwithstanding the limitation in paragraph (b)(3) of this section, a student who would be a half-time student based solely on his or her correspondence work is considered a half-time student unless the calculation in paragraph (b) of this section produces an enrollment status greater than half-time.

(2) A student who would be a less-than-half-time student based solely on his or her correspondence work or based on a combination of his or her correspondence work and regular coursework is considered a less-than-half-time student and is ineligible for an ACG or a National SMART Grant.

(d) The following chart provides examples of the application of the regulations set forth in this section. It assumes that the institution of higher education defines full-time enrollment as 12 credits per term, making half-time enrollment equal to six credits per term.

Under § 691.8	Number of credit hours regular work	Number of credit hours correspondence	Total course load in credit hours to determine enrollment status	Enrollment status
(b)(3)	3	3	6	Half-time.
(b)(3)	3	6	6	Half-time.
(b)(3)	3	9	6	Half-time.
(b)(3)	6	3	9	Three-quarter-time.
(b)(3)	6	6	12	Full-time.
(b)(3) and (c)	2	6	6	Half-time.
(c)*	Less-than-half-time.

* Any combination of regular and correspondence work that is greater than zero, but less than six hours. A less-than-half-time student would be ineligible for an ACG or a National SMART Grant.

* * * * *

■ 15. Section 691.15 is amended by:

- A. Revising paragraph (a).
- B. In paragraph (b)(1)(ii), removing the word “academic”.
- C. Revising paragraphs (b)(1)(ii)(B) and (b)(1)(ii)(C).
- D. In paragraph (b)(1)(iii), removing the word “academic”.
- E. In paragraph (b)(1)(iii)(B), removing the words “as determined by the institution,” and removing the words “recognized by the Secretary”.
- F. Removing paragraph (b)(1)(iii)(C) and redesignating paragraph (b)(1)(iii)(D) as paragraph (b)(1)(iii)(C). In newly redesignated paragraph (b)(1)(iii)(C), removing the word “academic” the first time it appears.

- G. In paragraph (b)(3)(ii), removing the citation “691.16(d)(2)”, and adding, in its place, the citation “691.16”.
- H. In paragraph (b)(5)(i), removing the words “recognized by the Secretary”.
- I. In paragraph (c), introductory text, removing the words “third or fourth academic” and adding, in their place, the words “third, fourth, or fifth”.
- J. Removing paragraph (c)(2)(ii).
- K. Redesignating paragraphs (c)(2)(i)(A) and (c)(2)(i)(B) as paragraphs (c)(2)(i) and (c)(2)(ii), respectively.
- L. In newly redesignated paragraph (c)(2)(i), removing the word “or”.
- M. In newly redesignated paragraph (c)(2)(ii), removing the word “and” the second time it appears and adding, in its place, the word “or”.

- N. Adding a new paragraph (c)(2)(iii).
- O. In paragraph (c)(3), removing the punctuation “;” and adding, in its place, the punctuation “.”.
- P. Removing paragraphs (c)(4) and (c)(5).
- Q. Adding a new paragraph (d)(3).
- R. In paragraph (e), introductory text, adding the words “program in the” before the word “intended”, and removing the words “and major under paragraph (c)(2)(ii) of this section”.
- S. In paragraph (f)(1)(i), removing the words “for one academic year but less than the credit or clock hours for two academic years” and adding, in their place, the words “to be considered a second-year student”.

■ T. In paragraph (f)(1)(ii), removing the words “for one academic year” and adding, in their place, the words “to be considered a second-year student”.

■ U. In paragraph (f)(1)(ii)(B), removing the word “academic”.

The revisions and additions read as follows:

§ 691.15 Eligibility to receive a grant.

(a) *General.* A student who meets the requirements of 34 CFR part 668, Subpart C, is eligible to receive an ACG or a National SMART Grant if the student is receiving a Federal Pell Grant disbursement in the same award year.

(b) * * *

(1) * * *

(ii) * * *

(B) Has successfully completed, after January 1, 2006, a rigorous secondary school program of study under § 691.16;

(C) Has not been previously enrolled as a regular student in an eligible program of undergraduate education except as part of a secondary school program of study. A transfer student who is a first-year student is not considered to have been previously enrolled; and

* * * * *

(c) * * *

(2) * * *

(iii) Is at an institution that offers as an eligible major a qualifying liberal arts curriculum identified under § 691.17(b); and

* * * * *

(d) * * *

(3) If the student is enrolled in a qualifying liberal arts curriculum as a major, there is no requirement to declare a major.

* * * * *

■ 16. Section 691.16 is revised to read as follows:

§ 691.16 Rigorous secondary school program of study.

(a)(1) For each award year commencing with the 2009–2010 award year, the Secretary establishes a deadline for submission of information about secondary school programs of study that are recognized by a designated official, consistent with State law, to prepare students for college and that the designated official deems rigorous.

(2) The designated official may submit information pursuant to paragraph (a)(1) of this section—

(i) For students graduating during the current award year; and

(ii) For students graduating during one or more specified upcoming award years.

(b) In addition to those programs reported to the Secretary as rigorous by

the designated official under paragraph (a) of this section, the following secondary school programs of study are rigorous:

(1) Advanced or honors secondary school programs established by States and in existence for the 2004–2005 school year or later school years.

(2) Any secondary school program in which a student successfully completes at a minimum the following courses:

(i) Four years of English.

(ii) Three years of mathematics, including algebra I and a higher-level class such as algebra II, geometry, or data analysis and statistics.

(iii) Three years of science, including one year each of at least two of the following courses: biology, chemistry, and physics.

(iv) Three years of social studies.

(v) One year of a language other than English.

(3) A secondary school program identified by a State—level partnership that is recognized by the State Scholars Initiative of the Western Interstate Commission for Higher Education (WICHE), Boulder, Colorado.

(4) Any secondary school program for a student who completes at least two courses from an International Baccalaureate Diploma Program sponsored by the International Baccalaureate Organization, Geneva, Switzerland, and receives a score of “4” or higher on the examinations for at least two of those courses.

(5) Any secondary school program for a student who completes at least two Advanced Placement courses and receives a score of “3” or higher on the College Board’s Advanced Placement Program Exams for at least two of those courses.

(6) Rigorous secondary school programs of study established by an SEA or, if legally authorized by the State to establish a separate secondary school program of study, an LEA, where such programs were recognized by the Secretary as rigorous after January 1, 2005, but before July 1, 2009.

(Approved by the Office of Management and Budget under control number 1845–0078)

(Authority: 20 U.S.C. 1070a–1)

■ 17. Section 691.17 is amended by:

■ A. In paragraph (a), removing the words “or, as determined under paragraph (b) of this section, critical foreign languages.” and adding, in their place, the words “critical foreign languages as defined in section 103(3) of the HEA, or a qualifying liberal arts curriculum as an eligible major as determined under paragraph (b) of this section.”

■ B. Revising paragraph (b).

■ C. Redesignating paragraphs (d)(1) and (d)(2) as paragraphs (d)(2) and (d)(4), redesignating the introductory text after the heading of paragraph (d) as paragraph (d)(1), and adding a new paragraph (d)(3).

■ D. In paragraph (e), removing the words “under paragraph (a) of this section”.

The revisions and additions read as follows:

§ 691.17 Determination of eligible majors.

* * * * *

(b) *Qualifying liberal arts curriculum as an eligible major.* The Secretary may designate a baccalaureate-degree liberal arts curriculum as an eligible major if—

(1) The curriculum is the only curriculum at the institution of higher education and was offered prior to February 8, 2006;

(2) A student is not allowed to declare a major in a particular subject area; and

(3) The Secretary determines that the curriculum—

(i) Is at least equal to the requirements for an identified National SMART Grant-eligible major at an institution of higher education that offers a baccalaureate degree in that eligible major; or

(ii) Requires the student to undertake a rigorous course of study in mathematics, biology, chemistry, and physics that consists of at least four years of study in mathematics and three years of study in the sciences, with a laboratory component in each of those years.

* * * * *

(d) * * *

(3) In addition to the information in paragraph (d)(2) of this section, requests for designation of a liberal arts curriculum as an eligible major must include the information demonstrating that the liberal arts curriculum complies with the requirements described in paragraph (b) of this section.

* * * * *

■ 18. Section 691.62 is amended by:

■ A. In paragraph (b), removing the word “academic” each time it appears.

■ B. In paragraph (b)(2), removing the words “third and fourth academic” and adding, in their place, the words “third, fourth, and fifth”.

■ C. Redesignating paragraph (c) as paragraph (f).

■ D. Adding new paragraphs (c), (d), and (e).

■ E. In newly redesignated paragraph (f), removing the words “for an academic year”.

The additions read as follows:

§ 691.62 Calculation of a grant.

* * * * *

(c) The ACG first-year annual award for—

(1) A full-time student is the lesser of \$750 or a reduced ACG Scheduled Award as determined under paragraph (a)(2) of this section;

(2) A three-quarter-time student is the lesser of \$562.50 or 75 percent of a reduced ACG Scheduled Award; and

(3) A half-time student is the lesser of \$375 or 50 percent of a reduced ACG Scheduled Award.

(d) The ACG second-year annual award for—

(1) A full-time student is the lesser of \$1,300 or a reduced ACG Scheduled Award as determined under paragraph (a)(2) of this section;

(2) A three-quarter-time student is the lesser of \$975 or 75 percent of a reduced ACG Scheduled Award; and

(3) A half-time student is the lesser of \$650 or 50 percent of a reduced ACG Scheduled Award.

(e) The National SMART Grant annual award for—

(1) A full-time student is the lesser of \$4,000 or a reduced National SMART Grant Scheduled Award as determined under paragraph (a)(2) of this section;

(2) A three-quarter-time student is the lesser of \$3,000 or 75 percent of a reduced National SMART Grant Scheduled Award; and

(3) A half-time student is the lesser of \$2,000 or 50 percent of a reduced National SMART Grant Scheduled Award.

* * * * *

■ 19. Section 691.63 is amended by:

■ A. In paragraph (b)(1), removing the word “Confirming” and adding, in its place, the word “Determining”, and removing the word “full-time”.

■ B. In paragraph (b)(2), removing the word “Determining” and adding, in its place, the words “Based upon that enrollment status, determining”, and removing the words “Scheduled Award; and” and adding, in their place, the words “annual award under § 691.62; and”.

■ C. In paragraph (b)(3)(ii), removing the words “Scheduled Award” and adding, in their place, the words “annual award”.

■ D. In paragraph (b)(3)(ii)(A), removing the words “Scheduled Award” and

adding, in their place, the words “annual award”.

■ E. In paragraph (c)(1), removing the word “Confirming” and adding, in its place, the word “Determining”; and removing the word “full-time”.

■ F. In paragraph (c)(2), removing the word “Determining” and adding, in its place, the words “Based upon that enrollment status, determining”, and removing the words “Scheduled Award;” and adding, in their place, the words “annual award under § 691.62;”.

■ G. In paragraph (c)(3), removing the words “Scheduled Award” and adding, in their place, the words “annual award”, and adding in the denominator of each equation the words “of instructional time” immediately after the word “weeks”.

■ H. In paragraph (c)(4)(ii), removing the words “Scheduled Award” and adding, in their place, the words “annual award” each time they appear.

■ I. Removing paragraph (d)(2).

■ J. Redesignating paragraphs (d)(1)(i) and (d)(1)(ii) as paragraphs (d)(1) and (d)(2), respectively.

■ K. Revising newly redesignated paragraphs (d)(1) and (d)(2).

■ L. In paragraph (d)(3), removing the words “Scheduled Award” and adding, in their place, the words “annual award”.

■ M. In paragraph (e)(1), removing the word “full-time” and adding, in its place, the word “half-time”.

■ N. In paragraph (f), removing the words “Scheduled Award” and adding, in their place, the words “annual award” both times they appear, removing the word “paragraphs” the first time it appears and adding, in its place, the word “paragraph”, and removing the words “or (e)” both times they appear.

■ O. Revising paragraph (h).

The revisions read as follows:

§ 691.63 Calculation of a grant for a payment period.

* * * * *

(d) * * *

(1) Determining his or her enrollment status for the term;

(2) Based upon that enrollment status, determining his or her ACG or National SMART Grant annual award under § 691.62; and

* * * * *

(h) *Payment period and grade level progression.* A student may not progress to the next year during a payment period. The student’s payment for the payment period—

(1) Is from the ACG or National SMART Grant Scheduled Award of the year being completed; and

(2) Is calculated based on the student’s credit or clock hours for the payment period, and weeks of instructional time in the payment period.

* * * * *

§ 691.64 [Amended]

■ 20. Section 691.64(b) is amended by removing the words “an academic” and adding, in their place, the word “a”.

§ 691.65 [Amended]

■ 21. Section 691.65 is amended by:

■ A. In the section heading, removing the words “: Attendance at more than one institution during an academic year”.

■ B. In paragraph (c), removing the word “academic” the first time it appears; and removing the words “that academic year” and adding, in their place, the words “the student’s year at the second institution”.

■ C. In paragraph (d), removing the word “academic”.

■ D. In paragraph (f), removing the words “an academic” and adding, in their place, the word “a”.

* * * * *

■ 22. Section 691.66 is added to read as follows:

§ 691.66 Correspondence study.

(a) An institution calculates the ACG or National SMART Grant for a payment period for a student in a program of study offered by correspondence courses without terms, but not including any residential component, by—

(1) Determining that the student is attending at least half-time;

(2) Determining the student’s half-time annual award determined under § 691.62; and

(3) Multiplying the student’s half-time annual award by the lesser of—

(i)

The number of credit hours in the payment period / The number of credit hours in the program’s academic year

The number of weeks of instructional time in the payment period
The number of weeks of instructional time in the program's academic year

(b) For purposes of paragraph (a) of this section—

(1) The institution must make the first payment to a student for an academic year, as calculated under paragraph (a) of this section, after the student submits 25 percent of the lessons or otherwise completes 25 percent of the work scheduled for the program or the academic year, whichever occurs last; and

(2) The institution must make the second payment to a student for an academic year, as calculated under paragraph (a) of this section, after the student submits 75 percent of the lessons or otherwise completes 75 percent of the work scheduled for the program or the academic year, whichever occurs last.

(c) In a program of correspondence study offered by correspondence courses using terms but not including any residential component—

(1) The institution must prepare a written schedule for submission of lessons that reflects a workload of at least 30 hours of preparation per semester hour or 20 hours of preparation per quarter hour during the term;

(2)(i) If the student is enrolled in at least 6 credit hours that commence and are completed in that term, the student's half-time annual award determined under § 691.62 is used to calculate the payment for the payment period; or

(ii) If the student is enrolled in less than 6 credit hours that commence and are completed in that term, the student is not eligible for an ACG and National SMART Grant;

(3) A payment for a payment period is calculated using the formula in § 691.63(d) except that paragraphs (c)(1) and (c)(2) of this section are used in lieu of § 691.63(d)(1) and (2), respectively; and

(4) The institution must make the payment to a student for a payment period after that student completes 50 percent of the lessons or otherwise completes 50 percent of the work scheduled for the term, whichever occurs last.

(d) Payments for periods of residential training must be calculated under § 691.63(d) if the residential training is offered using terms and credit hours or § 691.63(e) if the residential training is offered using credit hours without terms.

(Authority: 20 U.S.C. 1070a-1)

§ 691.75 [Amended]

■ 23. Section 691.75 is amended by:

■ A. In paragraph (a)(3), removing the words “a full-time” and adding, in their place, the words “at least a half-time”.

■ B. In paragraph (b)(2), removing the word “academic”, and removing the citation “691.15(b)(1)(iii)(D)”, and adding, in its place, the citation “691.15(b)(1)(iii)(C)”.

■ C. In paragraph (c), removing the citation “691.15(b)(1)(iii)(D)”, and adding, in its place, the citation “691.15(b)(1)(iii)(C)”.

■ D. In paragraph (d)(1)(i), removing the word “academic”, and removing the citation “691.15(b)(1)(iii)(D)”, and adding, in its place, the citation “691.15(b)(1)(iii)(C)”.

■ 24. Section 691.76 is amended by revising paragraph (b) to read as follows:

§ 691.76 Frequency of payment.

* * * * *

(b) The institution may pay funds in one lump sum for all the prior payment periods for which the student was eligible under § 691.15 within the award year. The student's enrollment status must be determined according to work already completed.

* * * * *

■ 25. Section 691.80 is amended by revising paragraph (b) to read as follows:

§ 691.80 Redetermination of eligibility for a grant award.

* * * * *

(b) *Change in enrollment status.* (1) If the student's enrollment status changes from one payment period to another within the same award year, the institution must recalculate the student's award for the new payment period taking into account any changes in the cost of attendance.

(2)(i) If the student's projected enrollment status changes during a payment period after the student has begun attendance in all of his or her classes for that payment period, the institution may (but is not required to) establish a policy under which the student's award for the payment period is recalculated. If such a policy is established, it must apply to all students and be the same as the policy established for the Federal Pell Grant Program.

(ii)(A) If a student's projected enrollment status changes during a payment period before the student begins attendance in all of his or her classes for that payment period, the

institution must recalculate the student's enrollment status to reflect only those classes for which the student actually began attendance.

(B) If a student's projected enrollment status changes to less-than-half-time during a payment period before the student begins attendance in all of his or her classes for that payment period, the institution must determine that the student is ineligible for a grant for that payment period.

* * * * *

[FR Doc. E9-10094 Filed 4-30-09; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 38

RIN 2900-AN29

Headstones and Markers

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is amending existing regulations regarding the authority to provide Government-furnished memorial headstones and markers. Memorial headstones and markers are provided in certain circumstances to memorialize eligible veterans and certain family members whose remains are not available for interment. Pursuant to Sec. 810 of Public Law 110-389, the Veterans' Benefits Improvement Act of 2008, eligibility for a memorial headstone or marker for placement in a national or State veterans cemetery has been extended to a veteran's surviving spouse who had a subsequent remarriage and whose remains are unavailable for interment. Previously, a memorial headstone or marker could be provided for a veteran's surviving spouse who had a subsequent remarriage only if that remarriage was terminated by death or divorce. This final rule is necessary to incorporate a statutory amendment into VA regulations.

DATES: *Effective Date:* May 1, 2009.

Applicability Date: The amendment to 38 CFR 38.630 applies to eligible surviving spouse deaths occurring on or after October 10, 2008.

FOR FURTHER INFORMATION CONTACT: Joe Sturm, Legislative and Regulatory Division, National Cemetery

Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Telephone: (202) 461-6216 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: VA's National Cemetery Administration (NCA) is responsible for administering VA's headstone and marker program. The original purpose of the program, which began during the Civil War, was that no veteran should lie in an unmarked grave. Over time the program has expanded to include provision of headstones or markers for certain eligible family members.

Memorial headstones and markers are inscribed with "In Memory of" on the first line, and are furnished for eligible veterans whose remains are not recovered or identified, are buried at sea, are donated to science, or are cremated and scattered. VA may also provide a memorial headstone or marker for certain eligible family members whose remains are unavailable for burial in a national or State veterans cemetery. Memorial headstones and markers for eligible family members are not available for placement in private cemeteries.

Section 810 of Public Law 110-389, the Veterans' Benefits Improvement Act of 2008, enacted on October 10, 2008, amended the definition of a surviving spouse in 38 U.S.C. 2306(b)(4)(B). The change allows VA to provide a memorial headstone or marker for an eligible surviving spouse who remarried a non-veteran after the veteran's death, who died on or after October 10, 2008, and whose remains are unavailable, without regard to whether the remarriage was terminated. Prior to passage of Public Law 110-389, remarried surviving spouses were eligible for a memorial marker only if their subsequent remarriage to a non-veteran was terminated by death or divorce. Spouses who divorce a veteran remain ineligible for VA burial or memorialization benefits based on the marriage to that veteran.

This final rule amends 38 CFR 38.630 to make it consistent with the amended statute. We are also moving some information from paragraph (c)(3)(ii) to paragraphs (c)(1)(ii) and (iii), non-substantive changes to improve the organization and clarity of the rule.

Administrative Procedure Act

Because this amendment merely reflects a statutory change and makes other non-substantive changes, this rule-making is exempt from the prior notice-and-comment and delayed-effective-date requirements of 5 U.S.C. 553.

Paperwork Reduction Act

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

The Office of Management and Budget (OMB) assigns a control number for each collection of information it approves. VA may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a current valid OMB control number.

In § 38.630(c), this final rule amends provisions concerning information collection requirements that are currently approved by OMB under the following OMB control number: 2900-0222 (Application for Standard Government Headstone or Marker for Installation in Private or State Veterans Cemetery). The amended provisions remain within the scope of the approved collection of information because VA estimates that fewer than 10 requests for a memorial headstone or marker will be received under this expanded eligibility within any 12-month period.

Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Executive Order classifies a "significant regulatory action," requiring review by OMB unless OMB waives such review, as any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. VA has examined the economic, interagency, budgetary, legal, and policy implications of this final rule and has concluded that it does not constitute a significant regulatory action under the Executive Order.

Regulatory Flexibility Act

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

Unfunded Mandates

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

Catalog of Federal Domestic Assistance Numbers

The Catalog of Federal Domestic Assistance program numbers and titles for this final rule are 64.201, National Cemeteries; and 64.202, Procurement of Headstones and Markers and/or Presidential Memorial Certificates.

List of Subjects in 38 CFR Part 38

Administrative practice and procedure, Cemeteries, Veterans.

Approved: April 24, 2009.

John R. Gingrich,

Chief of Staff, Department of Veterans Affairs.

■ For the reasons stated in the preamble, the Department of Veterans Affairs amends 38 CFR part 38 as set forth below:

PART 38—NATIONAL CEMETERIES OF THE DEPARTMENT OF VETERANS AFFAIRS

■ 1. The authority citation for part 38 continues to read as follows:

Authority: 38 U.S.C. 501(a), 2306, unless otherwise noted.

■ 2. Amend § 38.630 by:

■ a. Revising paragraphs (c)(1)(ii), (c)(1)(iii) introductory text, and (c)(3)(ii).

■ b. Removing the authority citation that appears immediately at the end of paragraph (c).

■ c. Revising the authority citation at the end of the section.

The revision reads as follows:

§ 38.630 Headstones and markers.

* * * * *

(c) * * *

(1) * * *

(ii) A veteran's spouse or surviving spouse, including a surviving spouse who had a subsequent remarriage terminated by death or divorce, who died after November 11, 1998, or a surviving spouse who had a subsequent remarriage and died on or after October 10, 2008; or

(iii) A veteran's eligible dependent child who died after December 22, 2006.

* * * * *

(3) * * *

(ii) *Other eligible individuals.* A Government memorial headstone or marker to commemorate a veteran's eligible spouse, surviving spouse, or dependent child may be placed only in a national cemetery or in a State veterans cemetery.

(Authority: 38 U.S.C. 501, 2306)

[FR Doc. E9-10022 Filed 4-30-09; 8:45 am]

BILLING CODE P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 239 and 258

[EPA-R07-RCRA-2008-0849; FRL-8899-7]

Adequacy of Iowa Municipal Solid Waste Landfill Permit Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action approves modifications to Iowa's approved municipal solid waste landfill (MSWLF) program. The approved modification allows the State to issue research, development and demonstration (RD&D) permits to owners and operators of MSWLF units in accordance with its State law. On March 22, 2004, the EPA issued final regulations allowing RD&D permits to be issued to certain municipal solid waste landfills by approved states. This action also approves modifications to Iowa's approved MSWLF program for adding financial assurance mechanisms for local governments, adding the financial test and corporate guarantee to financial assurance mechanisms, adding a technical amendment to solid waste

location restrictions for airport safety, and adopting language from the Federal MSWLF criteria. On March 17, 2008, Iowa applied for approval of its RD&D permit provisions and its updated rules for its MSWLF program. On December 15, 2008, EPA issued a proposed rule for approving the above modifications, and public comment on the proposed rule closed on January 14, 2009.

DATES: This rule is effective on May 1, 2009.

ADDRESSES: EPA has established a docket for this action under Docket ID Number: EPA-R07-RCRA-2008-0849. All documents in the docket are listed on the www.regulations.gov Web site. Although listed in the index, some information is not publicly available, *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 in www.regulations.gov or in hard copy at the Environmental Protection Agency, Air and Waste Management Division, 901 North 5th Street, Kansas City, Kansas 66101. EPA requests that you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Nicole Cruise, EPA Region 7, Air and Waste Management Division, 901 North 5th Street, Kansas City, Kansas 66101, at (913) 551-7641, or by e-mail at cruise.nicole@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On March 22, 2004, the EPA issued a final rule amending the municipal solid waste landfill criteria in 40 CFR part 258 to allow for research, development and demonstration (RD&D) permits (69 FR 13242). This rule allows for variances from specified criteria for a limited period of time, to be implemented through State-issued RD&D permits. RD&D permits are only available in States with approved MSWLF permit programs which have been modified to incorporate RD&D permit authority. While States are not required to seek approval for this provision, those States that are interested in providing RD&D permits to owners and operators of MSWLFs must seek approval from EPA before issuing such permits. Also, EPA issued a final

rule on November 27, 1996, for financial assurance mechanisms for local governments (61 FR 60328 at 60337); a final rule on April 10, 1998, adding the financial test and corporate guarantee to financial assurance mechanisms (63 FR 17706 at 17729); and a final rule on October 15, 2003, providing a technical amendment to solid waste location restrictions for airport safety (68 FR 59335). The Federal MSWLF criteria are codified at 40 CFR part 258. Approval procedures for provisions of 40 CFR part 258 are outlined in 40 CFR 239.12.

Iowa's MSWLF permit program was approved on August 19, 1997 (62 FR 44127). On March 17, 2008, Iowa applied for approval of its RD&D permit provisions and its updated rules for its MSWLF program. On December 15, 2008, EPA issued a proposed rule to approve the above modifications, and public comment on the proposed rule closed on January 14, 2009.

II. Comments

EPA received one comment in support of the proposed rulemaking and four adverse comments. The adverse comments challenged EPA's certification that the action would not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, and requested that EPA provide a factual basis for the certification.

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant impact on a substantial number of small entities. This rule does not impose any

requirements or create impacts on small entities. This action will not in-and-of itself create any new requirements but simply approves modifications to Iowa's municipal solid waste landfill (MSWLF) program and its RD&D permit program. Accordingly, it affords no opportunity for EPA to fashion for small entities less burdensome compliance or reporting requirements or timetables or exemptions from all or part of the rule. Therefore, this action will not have a significant economic impact on a substantial number of small entities.

Additionally, on January 29, 2009, the State of Iowa notified EPA pursuant to 40 CFR 239.12(c) that Iowa would modify the state's MSWLF permitting program pursuant to rule modifications of Iowa Administrative Code 567, Chapter 113. These modifications to the Iowa rules became effective February 9, 2009.

On April 22, 2009, EPA Region 7 notified the State of Iowa pursuant to 40 CFR 239.12(e) that EPA Region 7 had determined the February 9, 2009, Iowa rule modifications did not require Iowa to submit a revised application for state permit program approval. As stated in EPA's letter to Iowa on April 22, 2009, compared to the requirements for MSWLF units that were in effect and approved at the time of the August 19, 1997, EPA initial approval of the Iowa MSWLF permit program (62 FR 44127), the 2009 Iowa modifications result only in augmenting the Iowa permitting program implementation requirements for MSWLF units.

As such, EPA Region 7 in this final rulemaking is approving for program adequacy the previously identified RD&D permit authority, financial assurance mechanisms for local governments, financial test and corporate guarantee as financial assurance mechanisms, location restrictions for airport safety, and adoption of language from the Federal MSWLF criteria at 40 CFR part 258; with the exception of rules that were rescinded under the February 9, 2009, Iowa rule modifications. Because EPA Region 7 has determined that Iowa is not required to submit a revised program application for state permit program approval for the 2009 rule modifications, no further action by EPA for the Iowa permit program approval is necessary. The Iowa permitting program and MSWLF rules in effect as of February 9, 2009, are considered adequate for EPA approval of the Iowa MSWLF permitting program.

III. Decision

After a thorough review, EPA Region 7 has determined that Iowa's RD&D

permit provisions and its updated rules for its Municipal Solid Waste Landfill Permit Program, as defined under Iowa Administrative Code (IAC) 567, Chapter 113, "Sanitary Landfills for Municipal Solid Waste: Groundwater Protection Systems for the Disposal of Non-Hazardous Wastes," effective December 10, 2007, are adequate to ensure compliance with the Federal criteria as defined at 40 CFR 258.4.

IV. Statutory and Executive Order Reviews

This action approves state solid waste requirements pursuant to Resource Conservation and Recovery Act (RCRA) Section 4005 and imposes no Federal requirements. Therefore, this rule complies with applicable executive orders and statutory provisions as follows:

1. *Executive Order 12866: Regulatory Planning Review*—The Office of Management and Budget has exempted this action from its review under Executive Order (EO) 12866;

2. *Paperwork Reduction Act: This action does not impose an information collection burden under the Paperwork Reduction Act;*

3. *Regulatory Flexibility Act: After considering the economic impacts of today's action on small entities under the Regulatory Flexibility Act, I certify that this action will not have a significant economic impact on a substantial number of small entities;*

4. *Unfunded Mandates Reform Act: Because this action approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, this action does not contain any unfunded mandate, or significantly or uniquely affect small governments, as described in the Unfunded Mandates Act;*

5. *Executive Order 13132: Federalism*—EO13132 does not apply to this action because this action will not have federalism implications (*i.e.*, there are not substantial direct effects on states, on the relationship between the national government and states, or on the distribution of power and responsibilities between Federal and State governments);

6. *Executive Order 13175: Consultation and Coordination with Indian Tribal Governments*—EO13175 does not apply to this action because it will not have tribal implications (*i.e.*, there are no substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and

responsibilities between the Federal government and Indian tribes);

7. *Executive Order 13045: Protection of Children from Environmental Health and Safety Risks*—This proposed action is not subject to EO 13045 because it is not economically significant and is not based on health or safety risks;

8. *Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use*—This action is not subject to EO 13211 because it is not a significant regulatory action as defined in EO 12866;

9. *National Technology Transfer Advancement Act: This provision directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impracticable. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards and bodies. EPA approves state programs so long as the State programs meet the criteria delineated in 40 CFR part 258. It would be inconsistent with applicable law for EPA, in its review of a state program, to require the use of any particular voluntary consensus standard in place of another standard that meets 40 CFR part 258 requirements. Thus, the National Technology Transfer and Advancement Act does not apply to this action;*

10. *Congressional Review Act: EPA will submit a report containing this action and other information required by the Congressional Review Act (5 U.S.C. 801 *et seq.*) to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the Federal Register.*

List of Subjects

40 CFR Part 239

Environmental protection, Administrative practice and procedure, Intergovernmental relations, Waste treatment and disposal.

40 CFR Part 258

Reporting and recordkeeping requirements, Waste treatment disposal, Water pollution control.

Authority: This action is issued under the authority of sections 2002, 4005 and 4010(c) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912, 6945 and 6949(a).

Dated: April 24, 2009.

William Rice,

Acting Regional Administrator, Region 7.

[FR Doc. E9-10063 Filed 4-30-09; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 622**

[Docket No. 090224234-9270-01]

RIN 0648-AX68

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Gulf Reef Fish Longline Restriction

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

ACTION: Temporary rule; emergency action; request for comments.

SUMMARY: This emergency rule implements area closures applicable to the bottom longline component of the reef fish fishery in the exclusive economic zone (EEZ) of the Gulf of Mexico, as requested by the Gulf of Mexico Fishery Management Council (Council), to reduce incidental take and mortality of sea turtles.

DATES: This rule is effective May 18, 2009 through October 28, 2009. Comments must be received no later than 5:00 p.m., eastern time, on June 1, 2009.

ADDRESSES: You may submit comments on the proposed rule, identified by "0648-AX68" by any of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal e-Rulemaking Portal: <http://www.regulations.gov>.
- Fax: 727-824-5308; Attention: Cynthia Meyer.
- Mail: Cynthia Meyer, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701.

Instructions: All comments received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

To submit comments through the Federal e-Rulemaking Portal: <http://www.regulations.gov>, enter "NOAA-NMFS-2009-0072" in the keyword search, then select "Send a Comment or Submission." NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit

attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Requests for copies of documents supporting this rule may be obtained from the Southeast Regional Office, NMFS, 263 13th Avenue South, Saint Petersburg, FL 33701.

FOR FURTHER INFORMATION CONTACT:

Cynthia Meyer, telephone: 727-551-5784, fax: 727-824-5308, e-mail: cynthia.meyer@noaa.gov.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf of Mexico is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The FMP was prepared by the Council and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

Background

NMFS takes this action in accordance with both the Endangered Species Act (ESA) and national standard 9 of the Magnuson-Stevens Act. ESA requires the Federal government to protect and conserve species and populations that are endangered, or threatened with extinction, and to conserve the ecosystems on which these species depend. National standard 9 under the Magnuson-Stevens Act requires that conservation and management measures, to the extent practicable, minimize bycatch and, to the extent bycatch cannot be avoided, minimize the mortality of such bycatch. Results from a recent Southeast Fisheries Science Center observer analysis indicate the number of sea turtle takes authorized in the 2005 biological opinion on the bottom longline component of the reef fish fishery in the Gulf of Mexico has been exceeded. In addition, this component of the reef fish fishery operates primarily off the west Florida shelf, which is an important sea turtle foraging habitat. Individual sea turtles incidentally caught by the longline component of the fishery include sexually immature juveniles and mature adult loggerhead sea turtles that have high reproductive potential. A recent scientific study suggested the observed decline in the annual counts of loggerhead sea turtle nests in peninsular Florida can best be explained by a decline in the number of adult female loggerheads in the population. The biological opinion being developed by NMFS in light of this new information could result in a jeopardy determination for loggerhead sea turtles unless action

is taken to reduce the fishery's impact on this threatened species.

Based on this information, the Council and NMFS are considering long-term measures to reduce bycatch of sea turtles in the eastern Gulf of Mexico bottom longline component of the reef fish fishery in Amendment 31 to the FMP. These measures are needed to provide protection for loggerhead sea turtles in compliance with the ESA and to reduce sea turtle bycatch and bycatch mortality in compliance with national standard 9 of the Magnuson-Stevens Act. While the Council is considering long-term measures to reduce sea turtle bycatch, short-term action is needed to reduce sea turtle bycatch. Therefore, the Council requested that NMFS take emergency action to achieve these short-term reductions.

Management Measures Established by this Temporary Rule

Consistent with the Council's request, as well as with ESA and Magnuson-Stevens Act requirements, this rule will prohibit the use of bottom longline gear to harvest reef fish east of 85°30' W longitude in the portion of the EEZ shoreward of the coordinates established to approximate a line following the 50-fathom (91.4-m) contour as long as the 2009 deep-water grouper and tilefish quotas are unfilled. Once the quotas have been filled, the use of bottom longline gear to harvest reef fish in water of all depths east of 85°30' W. longitude will be prohibited.

Future Action

NMFS finds that this emergency rule is necessary to reduce the incidental take and mortality of sea turtles in the bottom longline component of the reef fish fishery in the Gulf of Mexico EEZ while the Council completes Amendment 31 to the FMP. NMFS issues this emergency rule, effective for not more than 180 days, as authorized by section 305(c) of the Magnuson-Stevens Act. NMFS has reinitiated consultation of the reef fish fishery under Section 7 of the ESA, and the biological opinion is expected to be completed during the closure established by this rule. Based on the information presented in the biological opinion, and the Council's proposed long-term actions, NMFS may determine that less restrictive measures would suffice to adequately reduce turtle takes by the longline component of the reef fish fishery. If so, NMFS may rescind the closure before the 180-day effective period of this emergency rule has been reached, and potentially implement less restrictive measures.

This emergency rule may be extended for up to an additional 186 days, provided that the public has had an opportunity to comment on the rule and provided that the Council is actively preparing a plan amendment or proposed regulations to address this emergency on a permanent basis. Public comments on this emergency rule are invited and will be considered in determining whether to maintain or extend this rule to address the incidental take and mortality of sea turtles in the Gulf of Mexico. The Council is preparing an FMP amendment to address this issue on a permanent basis which, if approved, would be implemented through notice and comment rulemaking.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), has determined that this emergency rule is necessary to reduce the incidental take and mortality of sea turtles in the bottom longline component of the reef fish fishery in the Gulf of Mexico EEZ and is consistent with the Magnuson-Stevens Act and other applicable laws.

This emergency rule has been determined to be not significant for purposes of E.O. 12866.

Pursuant to 5 U.S.C. 553(b)(B), the AA finds good cause to waive prior notice and opportunity for public comment. Prior notice and opportunity for public comment would be contrary to the public interest, as delaying action to reduce the incidental take and mortality of sea turtles in the bottom longline component of the reef fish fishery would increase the likelihood of additional sea turtle mortality in excess of that allowed under the incidental take statement established under the ESA.

For the same reasons, the AA finds good cause to waive the 30-day delay in effective date under 5 U.S.C. 553(d)(3). However, the effective date of this rule will be delayed until 15 days after the date of publication in the **Federal Register**. A typical bottom longline fishing trip lasts approximately 2 weeks. Advance preparation for such a trip often takes a couple of days for purchasing and loading necessary provisions and involves substantial expenditures. Immediate, or nearly immediate, implementation of this rule would be very disruptive of trips for which advance preparations and expenses had already occurred or for trips that had already been initiated and provisioned based on the expectation of a full 2-week trip. A 15-day delay will provide adequate time to inform the bottom longline component of the Gulf

of Mexico reef fish fishery of the impending restrictions and allow them to plan and adjust their fishing activities accordingly.

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* are inapplicable.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: April 28, 2009.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

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

■ 2. In § 622.34, paragraph (q) is added to read as follows:

§ 622.34 Gulf EEZ seasonal and/or area closures.

* * * * *

(q) *Prohibitions applicable to bottom longline fishing for Gulf reef fish.* (1) Bottom longlining for Gulf reef fish is prohibited in the portion of the Gulf EEZ east of 85°30' W. long. that is shoreward of rhumb lines connecting, in order, the following points:

Point	North lat.	West long.
A	28°58.5'	85°30.0'
B	28°42.5'	85°05.0'
C	28°12.5'	84°50.0'
D	27°52.0'	84°30.0'
E	27°28.0'	84°19.0'
F	26°28.5'	83°50.0'
G	25°30.0'	83°44.5'
H	25°04.0'	83°44.5'
I	24°48.0'	83°54.4'
J	24°39.5'	83°41.0'
K	24°28.5'	83°14.5'
L	24°25.0'	83°00.0'

(2) If both the commercial deep-water grouper and tilefish components of the Gulf reef fish fishery are closed, bottom longlining for Gulf reef fish is prohibited in all waters of the Gulf EEZ east of 85°30' W. long.

(3) A vessel with bottom longline gear on board or that is using bottom longline gear to fish for species other

than Gulf reef fish may not possess Gulf reef fish within the prohibited areas specified in paragraphs (q)(1) of this section or within the prohibited area specified in paragraph (q)(2) of this section when that prohibition is applicable, unless the bottom longline gear is appropriately stowed. For the purposes of paragraph (q) of this section, appropriately stowed means that a longline may be left on the drum if all gangions and hooks are disconnected and stowed below deck; hooks cannot be baited; and all buoys must be disconnected from the gear but may remain on deck.

* * * * *

[FR Doc. E9-10042 Filed 4-28-09; 4:15 pm]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 090206149-9658-02]

RIN 0648-AX57

Fisheries of the Northeastern United States; 2009 Specifications for the Spiny Dogfish Fishery

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

ACTION: Final rule.

SUMMARY: NMFS announces specifications for the spiny dogfish fishery for the 2009 fishing year (FY) (May 1, 2009, through April 30, 2010), and modifies existing management measures. NMFS is implementing a spiny dogfish quota of 12 million lb (5,443.11 mt) for FY 2009, and a possession limit of 3,000 lb (1.36 mt).

DATES: The rule is effective May 1, 2009. The specifications are effective May 1, 2009 through April 30, 2010.

ADDRESSES: Copies of supporting documents used by the Mid-Atlantic Fishery Management Council (Council), including the Environmental Assessment (EA) and Regulatory Impact Review (RIR)/Initial Regulatory Flexibility Analysis (IRFA), are available from: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19904-6790. The EA/RIR/IRFA is also accessible via the Internet at <http://www.nero.noaa.gov>.

NMFS prepared a Final Regulatory Flexibility Analysis (FRFA), which is

contained in the Classification section of this rule. Copies of the FRFA and the Small Entity Compliance Guide are available from the Regional Administrator, Northeast Regional Office, NMFS, 55 Great Republic Drive, Gloucester, MA 01930 2276, and are also available via the internet at <http://www.nero.nmfs.gov>.

FOR FURTHER INFORMATION CONTACT: Jamie Goen, Fishery Policy Analyst, phone: 978-281-9220, fax: 978-281-9135.

SUPPLEMENTARY INFORMATION:

Background

A proposed rule for this action was published in the **Federal Register** on March 19, 2009 (74 FR 11706), with public comment accepted through April 3, 2009. The final specifications and management measures are unchanged from those that were proposed. A complete discussion of the development of the specifications and management measures appears in the preamble to the proposed rule and is not repeated here.

2009 Specifications and Management Measures

The commercial spiny dogfish quota for the 2009 fishing year is 12 million lb (5,443.11 mt). As specified in the FMP, quota Period 1 (May 1 through October 31) is allocated 57.9 percent of the quota, 6,948,000 lb (3,151.56 mt), and quota Period 2 (November 1 through April 30) is allocated 42.1 percent of the quota, 5,052,000 lb (2,291.55 mt). The possession limits, specified in regulations at 50 CFR 648.235, are revised from 600 lb (272 kg) to 3,000 lb (1.36 mt) for both quota periods.

Comments and Responses

NMFS received 23 comments on the proposed measures from 9 organizations and 14 individuals.

Comment 1: Two organizations (including processors) and three individuals, all from either New York, New Jersey, or Massachusetts, support the increased quota and possession limits for spiny dogfish for FY 2009 as described in the proposed rule.

Response: NMFS agrees with these comments for the reasons described in the preamble to the proposed rule for this action.

Comment 2: Five organizations (including processors) and nine individuals, all from Massachusetts, support the increased quota but oppose the increased possession limits for the spiny dogfish fishery in Federal waters as proposed. Six commenters recommended keeping the possession

limit somewhere between 600 lb (272 kg) and approximately 2,000 lb (907 kg) for the entire fishing year. Eight commenters recommended starting the fishing year with the status quo possession limit, 600 lb (272 kg), and increasing the quota to between 1,500 lb (680 kg) and 3,000 lb (1.36 mt) starting September 1, 2009, to better match the existing markets for the fishery and to mirror Massachusetts Division of Marine Fisheries (MA DMF) proposed action. Many of these commenters expressed concern that higher possession limits will flood the market. They claim that there are not enough processors willing to buy dogfish, and also claim that the large supply of dogfish will drive down the price. Some commenters also stated concern that a 3,000 lb (1.36 mt) possession limit at the start of the fishery may cause the fishery to close early and preclude a state fishery in the fall.

Response: For the first time in years, the Atlantic States Marine Fisheries Commission (Commission), the group that develops fishery management for state waters from 0 to 3 nm, and the parties involved in management of the Federal spiny dogfish fishery from 3 to 200 nm (the Mid-Atlantic Fishery Management Council, the New England Fishery Management Council and NMFS) have agreed on the quota and possession limits for spiny dogfish. Management of the spiny dogfish resource in both Federal and state waters is intended to be collaborative and covers the entire spiny dogfish population along the Atlantic coast of the U.S. (i.e., in both state and Federal waters from 0 to 200 nm). Agreement on the quota and possession limits between the Commission, Councils, and NMFS is a step in the right direction for management of the dogfish fishery.

Both the Commission and the Council process for the FY 2009 spiny dogfish specifications started in the fall of 2008 and both processes relied on the best available science first presented at the Commission's Spiny Dogfish Technical Committee meeting on October 16, 2008. The best available science was an update of the spiny dogfish stock status from the Northeast Fisheries Science Center (NEFSC) using the model from the 43rd Northeast Regional Stock Assessment Workshop (SAW)/Stock Assessment Review Committee (SARC), 2007 catch data, and results from the 2008 trawl survey. Even though both the Commission and Council processes rely on the same scientific advice, they do not always agree on what quota and possession limits should result from that advice. However, for 2009, they have agreed on a 12-million-lb

(5,443.11-mt) quota and 3,000-lb (1.36-mt) possession limit for both Federal and state waters. While the Commission has adopted a 3,000-lb (1.36-mt) possession limit for state waters along the east coast, the individual states may have more restrictive measures.

The measures recently proposed by the MA DMF under the Commission plan would establish more restrictive possession limits than this action. The MA DMF has proposed a 600-lb (272-kg) possession limit for May through August, and a 1,500 (680-kg) to 2,000-lb (907-kg) possession limit beginning September 1, 2009, depending on the level of landings at that time. Once the Commission's 58 percent regional allocation (described in more detail below) of the 12-million-lb (5,443.11-mt) quota is reached, the state fisheries (Maine through Connecticut) will close. Federal spiny dogfish permit holders who possess or land dogfish in Massachusetts would be subject to these more restrictive measures. MA DMF is proposing these possession limits in response to feedback from members of the fishing industry who are concerned with flooding the market with dogfish too early in the season and driving down the price paid for dogfish.

As previously stated, individual states may have more restrictive quotas and possession limits than those adopted by the Commission and Council. In addition, fishermen may choose to land less than the possession limit if they conclude that it is in their best interest to do so. The possession limit established by this rule provides gives fishermen the flexibility to land any amount up to 3,000 lb (1.36 mt).

The concern over the dogfish fishery closing before the fall when dogfish prices are better is moderated by the fact that the Federal spiny dogfish commercial quota is distributed between two periods (Period 1 is May 1 through October 31 and Period 2 is November 1 through April 30) based on the historical percentage of commercial landings for each semi-annual period during the years 1990 through 1997. Period 1 is allocated 57.9 percent of the quota (6,948,000 lb (3,151.56 mt)) and Period 2 is allocated 42.1 percent (5,052,000 lb (2,291.55 mt)). This was intended to preserve the traditional distribution of landings, both geographically and seasonally. If the Period 1 fishery closes early due to quota attainment, the Period 2 fishery would open in the fall starting November 1, 2009. However, for state waters, the Commission has removed this seasonal quota beginning in 2009. Instead, the Commission has adopted an annual regional quota for state waters

with 58 percent of the quota going to Maine through Connecticut, 26 percent of the quota going to New York through Virginia, and 16 percent of the quota going to North Carolina. This means that while the Federal seasonal allocation of the quota (Period 1 and Period 2) would preserve a fall fishery, it could be possible that fishing by non-federally permitted vessels in state waters would result in early attainment of the 12-million-lb (5,443.11-mt) quota. This is the only inconsistency between the state and Federal programs, and could cause the Federal Period 2 fishery not to open or to open with less than the full amount allocated to Period 2 remaining for harvest. There is no current provision in the Federal FMP that would enable NMFS to address this inconsistency.

Comment 3: One organization and two individuals commented on the status of the spiny dogfish resource and the resulting quota. One commenter requested that NMFS report on the population trends of the species, and asked why the specifications are set consistent with a fishing mortality rate of 0.11 (F_{rebuild}) versus the target fishing mortality rate for a rebuilt stock ($F=0.28$). The commenter asked about the uncertainty associated with these estimates of F . One commenter stated that NMFS should manage the fishery for the longer term recovery of the stock and with an ecosystem perspective.

One commenter noted that the proposed rule does not follow the recommendations of the 2007 report of the ASMFC Spiny Dogfish Technical Committee. The commenter questioned how a species can be considered "not overfished" given the skewed sex ratio, declining size of females, and reduction in the number of pups. The commenter recommended allowing the stock more time to recover before increasing the quota or possession limits.

One commenter recommended that the quota be reduced by a certain percentage each year. The commenter also stated that environmentalists should have a seat on the Council's Committees.

Response: Trends in the status of the spiny dogfish resource are reported through the stock assessment and, between stock assessments, through stock status updates. Stock assessments include biomass estimates going back to the 1960s and projections on future trends. The most recent stock assessment for the spiny dogfish resource occurred at the NEFSC's 43rd SAW/SARC (<http://www.nefsc.noaa.gov/nefsc/publications/crd/crd0625/>). The most recent stock status update was provided at the

Commission's Spiny Dogfish Technical Committee and the Council's Spiny Dogfish Monitoring Committee and the Joint Committee meetings in the fall of 2008. As explained in the proposed rule, the stock status update used the model from the 43rd SAW/SARC, the 2007 catch data, and results from the 2008 trawl survey to provide the information that was used to develop these specifications.

The FMP for spiny dogfish specifies that the biomass threshold below which spiny dogfish would be considered overfished is the value equal to half the maximum female spawning stock biomass ($\frac{1}{2} \text{SSB}_{\text{max}}$) (or 100,000 mt). The proposed rule for Framework Adjustment 2 to the Spiny Dogfish FMP (74 FR 9208, March 3, 2009) proposes a process to change the stock status determination criteria and provides options for other biological parameters to define dogfish as overfished. Specifically, the rule proposes to define dogfish as overfished if the minimum stock size threshold (MSST) reaches half the biomass necessary to support the maximum sustainable yield ($\frac{1}{2} B_{\text{MSY}}$ or a reasonable proxy thereof). The MSST may be defined as a function of (but not limited to): total stock biomass, spawning stock biomass, total pup production, and may include males, females, both, or combinations and ratios thereof which provide the best measure of productive capacity for spiny dogfish. While spiny dogfish is currently considered "not overfished," as one commenter suggests, if Framework 2 is approved, the determination of whether spiny dogfish is considered overfished may change in the future if different biological parameters are used to determine the stock's overfished status.

The stock update that provides the basis for these specifications evaluated the uncertainty associated with the most recent estimate of fishing mortality for the stock, and concluded that the probability that F in 2006 was lower than the F threshold is near 100 percent. The analysis concluded that 75 percent of the computed values for SSB exceeded the target biomass value.

In light of the likelihood that the stock could be considered rebuilt, the advisory bodies to the Commission and Councils could have recommended increasing the fishing mortality above $F=0.11$ and up to the fishing mortality associated with a rebuilt stock ($F_{\text{target}}=0.28$). However, the advisory bodies took a more risk averse approach given concern over the biology of the stock (concentrated size frequency of the female population, low pup production, skewed sex ratio); and

concern that projections of future biomass include assumptions about pup survivorship and selectivity of gear that may be optimistic. Because of these concerns and uncertainty, the advisory bodies recommended keeping the fishing mortality at the level associated with rebuilding the dogfish stock ($F=0.11$) to ensure the long-term recovery of the stock. The resulting 12-million-lb (5,443.11-mt) quota is much higher than previous years because the stock biomass has been increasing.

One commenter noted that the proposed rule does not follow the recommendations of the Spiny Dogfish Technical Committee report (2007) by the ASMFC. As mentioned in the response to Comment 2 above, both the Commission and the Council process for the FY 2009 spiny dogfish specifications started in the fall of 2008 and both processes relied on the best available science first presented at the Commission's Spiny Dogfish Technical Committee meeting on October 16, 2008. The best available science was an update on the spiny dogfish stock status from the NEFSC using the model from the 43rd SAW/SARC, 2007 catch data, and results from the 2008 trawl survey. The Commission action to establish a 12-million-lb (5,443.11-mt) quota and 3,000-lb (1.36-mt) maximum possession limit was consistent with the recommendations of the Spiny Dogfish Technical Committee's 2008 recommendation, not the recommendation from 2007.

NMFS does not agree with the comment that the quota should be reduced by an arbitrary percentage each year. The FMP specifies the process for establishing the spiny dogfish management measures and that methodology resulted in a risk averse quota for FY 2009, as discussed above.

NMFS agrees with the comment that environmentalists should provide input to the Councils' process. While there is not a voting seat reserved on the Council's Committees specifically for an environmentalist, such constituents are included on the Advisory Panel to the Council and are actively involved in public meetings.

Comment 4: One organization opposed the 15-day public comment period on the proposed rule for this action, claiming that it did not provide reasonable notice and opportunity to comment. The commenter also suggested NMFS provide more widely publicized notice to the public.

Response: The Administrative Procedures Act (APA) (5 U.S.C. Subchapter II) outlines the rulemaking process for Federal agencies, including "notice and comment" rulemaking.

While NMFS may allow more than 15 days for public comment, a 15-day comment period is consistent with the APA. In this instance, because the spiny dogfish specifications for FY 2009 relieve a restriction for the fishing community, NMFS determined that a shortened public comment period was reasonable and appropriate in order to have the final rule effective at the start of the fishery, May 1, 2009. In addition, the public had several opportunities to comment on the development of the spiny dogfish specifications and management measures in writing or verbally through the Council process, including the Council meetings and meetings of its advisory bodies that were held starting in the fall of 2008. Notification of these meetings and opportunities were publicized widely by the Councils on their websites and in mailings to interested members of the public.

Classification

Pursuant to section 304 (b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this rule is consistent with the Spiny Dogfish FMP, other provisions of the Magnuson-Stevens Act, and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

Because this rule relieves a restriction by increasing the spiny dogfish quota and possession limits, it is not subject to the 30-day delayed effectiveness provision of the APA pursuant to 5 U.S.C. 553(d)(1). The Spiny Dogfish FMP was first implemented in 2000 in response to the classification of the stock as overfished in 1998. Since the FMP was implemented, the commercial quota has been set at 4 million lb (1,814.37 mt) and the possession limits have been no higher than 600 lb (272 kg). These restrictions on the harvest of spiny dogfish were necessary to rebuild the stock. As explained in the preamble to the proposed rule (74 FR 11706, March 19, 2009), the latest Northeast Fisheries Science Center stock status update from the fall of 2008 estimated that the spiny dogfish female spawning stock biomass is likely to be above the most recently calculated maximum sustainable yield biomass (Bmsy), which would indicate the stock is not overfished and could be considered rebuilt. This action maintains a conservative rebuilding fishing mortality value (F value) of 0.11 as the target in FY 2009, as opposed to the F = 0.28 target that is associated with a rebuilt stock, and still results in a 12-million-lb (5,443.11 mt) quota for FY

2009. This quota represents a 200 percent increase from the 4-million-lb (1,814.37-mt) quota from prior years. Because the best available science shows that the stock biomass is at a level that could support a higher quota and possession limit, the fishing community should be allowed to harvest that available spiny dogfish biomass. This rule relieves a restriction by increasing the commercial quota from 4 million lb (1,814.37 mt) to 12 million lb (5,443.11 mt) and increasing the possession limits from 600 lb (272 kg) to 3,000 lb (1.36 mt).

Waiving the 30-day delayed effectiveness provision avoids unnecessary economic harm to the fishing industry that would result from confining them to the lower 600-lb possession limit. Confining fishermen to the lower possession limits would reduce their potential economic benefits on the trip level of being able to land a larger amount of dogfish. In addition, processors may have already made business plans (e.g., additional personnel to process, trucking services) in anticipation of the increased Federal possession limits.

Waiving the 30-day delayed effectiveness provision also reduces confusion by making the Federal regulations and those adopted by the Commission for state waters consistent at the start of the fishery, May 1, 2009. Otherwise, the Federal fishery will start with the lower 600-lb possession limit, while the possession limits in state waters may be up to 3,000 lb. This will cause confusion because of the different Federal and state limits and will likely push effort in to state waters. Federal spiny dogfish permit holders may relinquish their Federal permit, an open access permit, to fish in state waters until the Federal quota and possession limit is effective.

NMFS, pursuant to section 604 of the Regulatory Flexibility Act, has prepared a final regulatory flexibility analysis (FRFA), included in this final rule, in support of the 2009 spiny dogfish specifications and management measures. The FRFA describes the economic impact that this final rule, along with other non-preferred alternatives, will have on small entities.

The FRFA incorporates the economic impacts and analysis summarized in the IRFA, a summary of the significant issues raised by the public, and a summary of analyses prepared to support the action (i.e., the EA and the RIR). The contents of these documents are not repeated in detail here. A copy of the IRFA, the RIR, and the EA are available upon request (see ADDRESSES). A complete description of the reasons

why this action is being considered, and the objectives of and legal basis for this action, is contained in the preamble to the proposed rule and is not repeated here.

Final Regulatory Flexibility Analysis

Statement of Objective and Need

A description of the reasons why this action is being considered, and the objectives of and legal basis for this action, is contained in the preamble to the proposed rule (74 FR 11706, March 19, 2009) and is not repeated here.

Summary of Public Comment on IRFA and Agency Response

No comments were received about the IRFA. However, eight comments received during the public comment period mentioned the general economic effects of the proposed rule. One comment supported the economic benefit of the higher quota and possession limits. Seven comments, all from Massachusetts, recommended a lower possession limit from May through August to preserve the economic markets that are stronger in the fall. NMFS response to these comments are included in the response to Comment 2 in the preamble of this rule.

Description and Estimate of Number of Small Entities to Which the Rule Will Apply

All of the potentially affected businesses are considered small entities under the standards described in NMFS guidelines because they have gross receipts that do not exceed \$3.5 million annually. Therefore, there are no disproportionate economic impacts on small entities. Information from FY 2007 was used to evaluate impacts of this action, as that is the most recent year for which data are complete. According to NMFS permit file data, 3,142 vessels were issued Federal spiny dogfish permits in FY 2007, while 257 of these vessels contributed to overall landings.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

This action does not contain any new collection-of-information, reporting, recordkeeping, or other compliance requirements. It does not duplicate, overlap, or conflict with any other Federal rules.

Minimizing Significant Economic Impacts on Small Entities

The Council's analysis, the EA/RIR/IRFA, considered three alternatives. The action recommended in this rule,

Alternative 1, includes a commercial quota of 12 million lb (5,443.11 mt), and the possession limit at 3,000 lb (1.36 mt), for both quota periods during FY 2009. Alternative 2 is the same as Alternative 1, but with a more liberal quota of 36.5 million lb (16,556.14 mt). Alternative 3, the status quo/no action alternative, would result in commercial quota of 4 million lb (1,814.37 mt) and a possession limit of 600 lb (272 kg) for both quota periods.

Alternatives 1 and 2 have higher quotas than prior years. Assuming that the quota implemented would be attained, Alternatives 1 and 2 would be expected to increase overall revenue from dogfish landings, a beneficial economic impact on small entities. FY 2008 revenue is estimated using the average FY 2007 price/lb (\$0.20) and the FY 2008 state quota of 8 million lb (3,628.74 mt) to equal \$1.6 million. The increase in revenue in FY 2009 compared to FY 2008 could amount to \$800,000 under Alternative 1 (preferred) and Alternative 3, and \$5.7 million under Alternative 2. Alternative 3 is expected to result in a revenue increase because landings for spiny dogfish would presumably continue in state waters even after Federal waters closed until the 12-million-lb (5,443.11-mt) state quota implemented by the ASMFC for FY 2009 was reached. The net economic benefits by alternative would be greatest under Alternative 2, then Alternative 1 (preferred), and lastly by Alternative 3. As noted in the preamble, however, Alternative 2 was not recommended by the Councils or NMFS because, while stock biomass has

increased, there are several other biological indicators that continue to raise concern about the condition of the stock. Although total dogfish revenues may be the same under Alternative 1 and 3, the lower trip limit under Alternative 3 would distribute revenues at a lower rate over a longer period. Alternatives 1 and 2 would have a beneficial economic impact on small entities, including fishermen, processors, and the businesses that support them.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a letter to permit holders that also serves as small entity compliance guide (guide) was prepared and will be sent to all holders of permits issued for the spiny dogfish fishery. In addition, copies of this final rule and guide (i.e., permit holder letter) are available from the Northeast Regional Administrator (see **ADDRESSES**) and may be found at the following web site: <http://www.nero.noaa.gov/nero/>.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: April 27, 2009

John Oliver,

Deputy Assistant Administrator For Operations, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

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

■ 2. In § 648.235, paragraphs (a) and (b) are revised to read as follows:

§ 648.235 Possession and landing restrictions.

(a) *Quota Period 1.* From May 1 through October 31, vessels issued a valid Federal spiny dogfish permit specified under § 648.4(a)(11) may:

(1) Possess up to 3,000 lb (1.36 mt) of spiny dogfish per trip; and

(2) Land only one trip of spiny dogfish per calendar day.

(b) *Quota Period 2.* From November 1 through April 30, vessels issued a valid Federal spiny dogfish permit specified under § 648.4(a)(11) may:

(1) Possess up to 3,000 lb (1.36 mt) of spiny dogfish per trip; and

(2) Land only one trip of spiny dogfish per calendar day.

* * * * *

[FR Doc. E9-10058 Filed 4-30-09; 8:45 am]

BILLING CODE 3510-22-S

Proposed Rules

Federal Register

Vol. 74, No. 83

Friday, May 1, 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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 37

RIN 3150-A112

[NRC-2008-0120]

Physical Protection of Byproduct Material

AGENCY: Nuclear Regulatory Commission.

ACTION: Availability of preliminary draft rule language.

SUMMARY: The Nuclear Regulatory Commission (NRC) is making available preliminary draft proposed rule language to amend its regulations to add a new part 37 to Title 10 of the Code of Federal Regulations. This new part 37 will contain the security (physical protection) requirements that are designed to provide reasonable assurance of preventing the theft, sabotage, or diversion of category 1 and category 2 quantities of radioactive material as designated by the International Atomic Energy Agency (IAEA). The new provisions will address background investigations, access control, physical security during use and storage, and physical security during any transport of category 1 and category 2 quantities of radioactive material. At this time the staff is only posting the preliminary draft language on the proposed requirements for physical security during use and storage. These requirements will be contained in subpart C of the new part 37. The draft preliminary language for the transportation security was noticed in November 2008 (73 FR 69590; November 19, 2008). Draft preliminary language for background investigations and access control programs was noticed on April 20, 2009 (74 FR 17794). The availability of the preliminary draft rule language is intended to inform stakeholders of the current status of the NRC's activities and solicit public comments on the information being provided at this time.

Comments may be provided as indicated under the **ADDRESSES** heading. The NRC may post updates periodically under Docket # NRC-2008-0120 on the Federal eRulemaking Portal at <http://www.regulations.gov> that may be of interest to stakeholders.

DATES: Submit comment by June 15, 2009. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any one of the following methods. Please include the number RIN 3150-A112 in the subject line of your comments. Comments on rulemakings submitted in writing or in electronic form will be made available to the public in their entirety in NRC's Agencywide Documents Access and Management System (ADAMS) and at <http://www.regulations.gov>. Personal information, such as your name, address, telephone number, e-mail address, etc., will not be removed from your submission.

Federal e-Rulemaking Portal: Go to <http://www.regulations.gov> and search for documents filed under Docket ID [NRC-2008-0120]. Address questions about NRC dockets to Carol Gallagher 301-415-5905; e-mail Carol.Gallagher@nrc.gov.

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

E-mail comments to: Rulemaking.Comments@nrc.gov. If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at 301-415-1677. Comments can also be submitted via the Federal eRulemaking Portal <http://www.regulations.gov>.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. Federal workdays. (Telephone 301-415-1677).

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

You can access publicly available documents related to this document 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 O-1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852-2738.

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.

Federal e-Rulemaking Portal: Go to <http://www.regulations.gov> and search for documents filed under Docket ID [NRC-2008-0120].

FOR FURTHER INFORMATION CONTACT: Robert MacDougall, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone 301-415-5175, e-mail robert.macdougall@nrc.gov.

SUPPLEMENTARY INFORMATION:

The preliminary draft rule language can be viewed and downloaded electronically via the Federal eRulemaking Portal at <http://www.regulations.gov> by searching for Docket # NRC-2008-0120 as well as in ADAMS under ADAMS Accession Number ML090970142.

The staff is proposing to add a new part 37 that will contain the security (physical protection) requirements that are designed to provide reasonable assurance of preventing the theft, sabotage, or diversion of category 1 and category 2 quantities of radioactive material as designated by the International Atomic Energy Agency. The new provisions will address background investigations and access control, physical security during use and storage, and physical security during any transport of category 1 and category 2 quantities of radioactive material. At this time the staff is only posting the preliminary draft language for physical security during use and storage. These requirements will be contained in subpart C of the new part 37.

The NRC is making a preliminary version of this draft proposed rule language available to inform stakeholders of the current status of this proposed rulemaking. The NRC is inviting stakeholders to comment on the draft preliminary language. This preliminary draft rule language may be subject to significant revisions during the rulemaking process. Public input at this stage will help inform the development of the proposed rule.

The NRC will review and consider any comments received; however, the NRC will not respond to any comments received at this pre-rulemaking stage. As appropriate, the Statements of Consideration for the proposed rule will briefly discuss any substantive changes made to the preliminary draft proposed rule language as a result of comments received on this preliminary version. Stakeholders will also have an opportunity to comment on the rule language when it is published as a proposed rule in accordance with the provisions of the Administrative Procedure Act. The NRC will respond to any such comments in the Statements of Consideration for the final rule.

The NRC may post updates to the preliminary draft proposed rule language on the Federal eRulemaking Portal under Docket # NRC-2008-0120. Regulations.gov allows members of the public to set-up notifications so that they may be alerted when documents are added to a docket. Users are notified via e-mail at an e-mail address provided at the time of registration for the notification. Directions for signing up for the automatic notifications can be found at <http://www.regulations.gov>. To do so, search for the docket you are interested in and then choose "Notification," found under the title of each action.

Dated at Rockville, Maryland, this 24th day of April 2009.

For the Nuclear Regulatory Commission.

Kevin Hsueh,

Acting Director, Division of Intergovernmental Liaison and Rulemaking, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. E9-10041 Filed 4-30-09; 8:45 am]

BILLING CODE 7590-01-P

FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1282

RIN 2590-AA25

2009 Enterprise Transition Affordable Housing Goals

AGENCY: Federal Housing Finance Agency.

ACTION: Proposed rule.

SUMMARY: Section 1128(b) of the Housing and Economic Recovery Act of 2008 (HERA) transferred the authority to establish, monitor and enforce the affordable housing goals for the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) (collectively, Enterprises) from the Department of Housing and Urban Development (HUD) to the Federal Housing Finance Agency (FHFA). Section 1128(b) further provides that the annual housing goals in effect for 2008 as established by HUD shall remain in effect for 2009, except that the Director of FHFA shall review such goals to determine their feasibility given current market conditions, and make appropriate adjustments consistent with such market conditions. Pursuant to this directive, FHFA has analyzed current market conditions and is issuing and seeking comments on a proposed rule that would adjust the affordable housing goal and home purchase subgoal levels for the Enterprises for 2009. The proposed rule would also permit loans owned or guaranteed by an Enterprise that are modified in accordance with the Administration's Homeowner Affordability and Stability Plan announced on March 4, 2009, to be treated as mortgage purchases and count for purposes of the housing goals. In addition, the proposed rule would exclude purchases of jumbo conforming loans from counting towards the 2009 housing goals. FHFA's housing goals regulation would be set forth in new part 1282 of FHFA's regulations, and would be generally consistent with the housing goals provisions previously established by HUD in 24 CFR part 81, except as modified herein. Pursuant to section 1302 of HERA and 12 U.S.C. 4603, to the extent FHFA is adopting provisions from part 81 in new part 1282, those provisions in part 81 will no longer be in effect.

DATES: Written comments must be received on or before May 22, 2009.

ADDRESSES: You may submit your comments, identified by regulatory information number (RIN) 2590-AA25, by any of the following methods:

- *U.S. Mail, United Parcel Post, Federal Express, or Other Mail Service:* The mailing address for comments is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590-AA25, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552.

- *Hand Delivered/Courier:* The hand delivery address is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590-AA25, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The package should be logged at the Guard Desk, First Floor, on business days between 9 a.m. and 5 p.m.

- *E-mail:* Comments to Alfred M. Pollard, General Counsel may be sent by e-mail to RegComments@fhfa.gov. Please include "RIN 2590-AA25" in the subject line of the message.

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments. If you submit your comment to the *Federal eRulemaking Portal*, please also send it by e-mail to FHFA at RegComments@fhfa.gov to ensure timely receipt by the Agency. Please include "RIN 2590-AA25" in the subject line of the message.

FOR FURTHER INFORMATION CONTACT:

Brian Doherty, Acting Manager, Housing Mission and Goals—Policy, (202) 408-2991, or Paul Manchester, Acting Manager, Housing Mission and Goals—Quantitative Analysis, (202) 408-2946 (these are not toll-free numbers); Sharon Like, Associate General Counsel, (202) 414-8950, Lyn Abrams, Attorney-Advisor, (202) 414-8951, or Kevin Sheehan, Attorney-Advisor, (202) 414-8952 (these are not toll-free numbers), Office of General Counsel, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The telephone number for the Hearing Impaired is (800) 877-8339.

SUPPLEMENTARY INFORMATION:

I. Comments

FHFA invites comments on all aspects of the proposed rule, and will revise the language of the proposed rule as appropriate after taking all comments into consideration. Copies of all comments will be posted on the FHFA Internet Web site at <http://www.fhfa.gov>. In addition, copies of all comments received will be available for examination by the public on business days between the hours of 10 a.m. and 3 p.m., at the Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. To make an appointment to inspect comments,

please call the Office of General Counsel at (202) 414-3751.

II. Background

A. Establishment of FHFA

Effective July 30, 2008, Division A of HERA, Public Law 110-289, 122 Stat. 2654 (2008), amended the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (Safety and Soundness Act), 12 U.S.C. 4501 *et seq.*, and created the FHFA as an independent agency of the Federal government.¹ HERA transferred the safety and soundness supervisory and oversight responsibilities over the Enterprises from the Office of Federal Housing Enterprise Oversight (OFHEO) to FHFA. HERA also transferred the charter compliance authority and responsibility to establish, monitor and enforce the affordable housing goals for the Enterprises from HUD to FHFA. HERA provides for the abolishment of OFHEO one year after the date of enactment. FHFA is responsible for ensuring that the Enterprises operate in a safe and sound manner, including maintenance of adequate capital and internal controls, that their operations and activities foster liquid, efficient, competitive, and resilient national housing finance markets, and that they carry out their public policy missions through authorized activities. *See* 12 U.S.C. 4513.

Section 1302 of HERA provides, in part, that all regulations, orders and determinations issued by the Secretary of HUD (Secretary) with respect to the Secretary's authority under the Safety and Soundness Act, the Federal National Mortgage Association Charter Act, 12 U.S.C. 1716 *et seq.*, and the Federal Home Loan Mortgage Corporation Act, 12 U.S.C. 1451 *et seq.*, (Charter Acts), shall remain in effect and be enforceable by the Secretary or the Director of FHFA, as the case may be, until modified, terminated, set aside or superseded by the Secretary or the Director, any court, or operation of law. The Enterprises continue to operate under regulations promulgated by OFHEO and HUD until FHFA issues its own regulations. *See* HERA at section 1302, 122 Stat. 2795; 12 U.S.C. 4603. The Enterprises are government-sponsored enterprises (GSEs) chartered by Congress for the purpose of establishing secondary market facilities for residential mortgages. *See* 12 U.S.C. 1716 *et seq.*; 12 U.S.C. 1451 *et seq.* Specifically, Congress established the Enterprises to provide stability in the

secondary market for residential mortgages, respond appropriately to the private capital market, provide ongoing assistance to the secondary market for residential mortgages, and promote access to mortgage credit throughout the nation. *Id.*

B. Statutory and Regulatory Background

Prior to HERA, the Safety and Soundness Act provided the Secretary with the authority to establish, monitor and enforce affordable housing goals for the Enterprises. *See* 12 U.S.C. 4561 *et seq.* (2008). HUD issued regulations establishing affordable housing goals for the Enterprises, which were periodically updated, most recently in 2004 when HUD established new housing goal levels for 2005 through 2008. *See* 24 CFR part 81. HUD's regulations provide that the housing goal levels for 2008 continue in effect in 2009 and each year thereafter until replaced by new annual housing goals established by HUD. *See* 24 CFR 81.12 through 81.14.

Section 1331(c) of the Safety and Soundness Act, as amended by section 1128(b) of HERA, provides that the housing goal levels established by HUD for 2008 "shall remain in effect for 2009, except that not later than the expiration of the 270-day period beginning on the date of the enactment of [HERA], the Director shall review such goals applicable for 2009 to determine the feasibility of such goals given the market conditions current at such time and, after seeking public comment for a period not to exceed 30 days, may make appropriate adjustments consistent with such market conditions." *See* 12 U.S.C. 4561(c). Under section 1336 of the Safety and Soundness Act, as amended by section 1130 of HERA, the Director of FHFA has authority to monitor and enforce compliance with the 2009 housing goals, as well as the housing goals established by FHFA for subsequent years. *See* 12 U.S.C. 4566.²

C. Conservatorship

On September 7, 2008, the Director of FHFA appointed FHFA as conservator of the Enterprises in accordance with the Safety and Soundness Act, as amended by HERA, to maintain the Enterprises in a safe and sound financial condition. The Enterprises remain under conservatorship at this time.

² Sections 1331 through 1335 of the Safety and Soundness Act, as amended by HERA, also contain new housing goal and other requirements for the Enterprises effective for 2010 and each year thereafter. FHFA will implement these requirements pursuant to a separate rulemaking. *See* 12 U.S.C. 4561 through 4565.

III. Summary of Proposed Amendments

A. Adoption of Housing Goals Provisions in New 12 CFR Part 1282

HUD's regulations on establishing, monitoring and enforcing the housing goals for the Enterprises are set forth in 24 CFR part 81, Subparts A and B. Under section 1302 of HERA, part 81 continues in effect and is enforceable by the Director of FHFA until modified, terminated, set aside or superseded by the Secretary or the Director, any court, or operation of law. The proposed rule would establish housing goals requirements for the Enterprises for 2009 in new part 1282 of title 12 of FHFA's regulations. The housing goals requirements would be generally consistent with the HUD housing goals provisions in Subparts A and B, except as modified herein. Upon FHFA's adoption of the final rule for the 2009 housing goals, the related housing goals provisions adopted by FHFA in chapter XII from 24 CFR part 81 will no longer be in effect pursuant to section 1302 of HERA.

B. Adjustment of Housing Goal and Home Purchase Subgoal Levels

Section 1128(b) of HERA authorizes the Director of FHFA to adjust the housing goal levels established by HUD for 2009 based on current market conditions. FHFA has reviewed the current market conditions and has determined that the 2009 housing goal and home purchase subgoal levels established in 24 CFR part 81 are not feasible unless they are adjusted.³ Adverse market conditions, such as stricter underwriting standards, the increased standards of private mortgage insurers, and the high rate of unemployment will result in the origination of fewer goals-qualifying loans. Moreover, the increase in the share of the mortgage market of mortgages insured by the government and the decline in private label securities backed by mortgages are two of several factors that contribute to fewer goals-qualifying mortgages available for purchase by the

³ Performance under each of the housing goals is measured using a fraction that is converted into a percentage. *See* proposed § 1282.15(a); 24 CFR 81.15(a). The numerator of each fraction is the number of dwelling units financed by an Enterprise's mortgage purchases in a particular year that count toward achievement of the housing goal. The denominator of each fraction is, for all mortgages purchased, the number of dwelling units that could count toward achievement of the goal under appropriate circumstances. The denominator may not include Enterprise transactions or activities that are not mortgages or mortgage purchases as defined by the FHFA or transactions that are specifically excluded as ineligible under the rule. *See id.*

¹ *See* Division A, titled the "Federal Housing Finance Regulatory Reform Act of 2008," Title I, Section 1101 of HERA.

Enterprises. Consequently, FHFA is proposing to lower the 2009 housing goal and home purchase subgoal levels, based on current market conditions, to the following:

- Low- and moderate-income housing goal: 51 percent;
- Special affordable housing goal: 23 percent;
- Underserved areas housing goal: 37 percent;
- Low- and moderate-income home purchase subgoal: 40 percent;
- Special affordable home purchase subgoal: 14 percent;
- Underserved areas home purchase subgoal: 30 percent.

No adjustments would be made to the Enterprises' 2009 minimum dollar-based special affordable multifamily housing subgoals, which would remain at \$5.49 billion for Fannie Mae, and \$3.92 billion for Freddie Mac.

FHFA's analysis that serves as the basis for these determinations is set forth in section IV. **Analysis of Proposed Rule** below.

C. New Counting Requirements

Exclusion of jumbo conforming loans. The proposed rule would exclude the Enterprises' purchases of jumbo conforming loans from counting towards the 2009 housing goals.

HASP loan modifications. The proposed rule would permit loans owned or guaranteed by an Enterprise that are modified in accordance with the Administration's Homeowner Affordability and Stability Plan announced on March 4, 2009 (HASP), to be treated as mortgage purchases and count for purposes of the housing goals.

IV. Analysis of Proposed Rule

A. Scope of Part—Proposed § 1282.1

Proposed § 1282.1 would set forth the scope of new part 1282. Section 81.1 of HUD's regulations describes the scope with regard to the respective duties of HUD and OFHEO in relation to the Enterprises. 24 CFR 81.1. Proposed § 1282.1 would describe the scope with reference to the Director of FHFA's regulatory authority, since HUD's housing goals authority and OFHEO's safety and soundness supervisory authority were transferred to FHFA by HERA.

B. Definitions—Proposed § 1282.2

Proposed § 1282.2 would set forth definitions of terms used in the proposed rule that would be generally consistent with the definitions in § 81.2 of HUD's regulations, except for minor technical and clarifying changes and the addition of several new definitions in

light of the transfer of the housing goals authority from HUD to FHFA and other changes made by HERA. See 24 CFR 81.2.

C. Housing Goal and Subgoal Levels for 2009—Proposed §§ 1282.12 Through 1282.14

In 2004, HUD established by regulation new housing goal levels for years 2005 through 2008, with the 2008 levels applicable in 2009 pending establishment by HUD of goals for 2009 (2004 Rule). See 69 FR 63639 (Nov. 2, 2004) (codified at 24 CFR 81.12 through 81.14). The 2004 Rule also implemented home purchase subgoals under each housing goal and established target levels for each subgoal. *Id.* These levels rose in yearly increments, capping out at the highest levels in 2008. HUD had not established new goal levels for 2009 before HERA was enacted and HUD's housing goals authority was transferred to FHFA.

1. Adjustment of Housing Goal and Home Purchase Subgoal Levels

Section 1128(b) of HERA provides that the housing goals established by HUD for the Enterprises shall continue in effect for 2009 at their 2008 levels, unless the Director of FHFA adjusts the levels based on current market conditions. FHFA has reviewed the feasibility of the 2009 housing goal and subgoal levels established by HUD in light of current market conditions, and has determined that the current goal and home purchase subgoal levels are not feasible given current market conditions.

Accordingly, FHFA proposes the following downward adjustments to the housing goal levels for 2009 consistent with current market conditions:

- *Low- and moderate-income housing goal*—The low- and moderate-income housing goal level for 2008 and 2009 was 56 percent. For calendar year 2009, FHFA proposes to lower this goal level to 51 percent. That is, under proposed § 1282.12, the 2009 goal for each Enterprise's purchases of mortgages on housing for low- and moderate-income families would be 51 percent of the total number of dwelling units financed by that Enterprise's mortgage purchases.

- *Underserved areas housing goal*—The underserved areas housing goal level for 2008 and 2009 was 39 percent. For calendar year 2009, FHFA proposes to lower this goal level to 37 percent. That is, under proposed § 1282.13, the 2009 goal for each Enterprise's purchases of mortgages on housing located in central cities, rural areas, and other underserved areas would be 37 percent of the total number of dwelling

units financed by that Enterprise's mortgage purchases.

- *Special affordable housing goal*—The special affordable housing goal level for 2008 and 2009 was 27 percent. For calendar year 2009, FHFA proposes to lower this goal level to 23 percent. That is, under proposed § 1282.14, the 2009 goal for each Enterprise's purchases of mortgages on rental and owner-occupied housing meeting the then-existing, unaddressed needs of and affordable to low-income families in low-income areas and very low-income families would be 23 percent of the total number of dwelling units financed by that Enterprise's mortgage purchases.

In addition, FHFA proposes the following downward adjustments to the home purchase subgoal levels for 2009 consistent with current market conditions:

- *Low- and moderate-income home purchase subgoal*—The low- and moderate-income home purchase subgoal level for 2008 and 2009 was 47 percent. FHFA proposes to lower this subgoal level to 40 percent for calendar year 2009. That is, under proposed § 1282.12, 40 percent of the total number of home purchase mortgages in metropolitan areas financed by the Enterprise's mortgage purchases shall be home purchase mortgages in metropolitan areas which count toward the low- and moderate-income housing goal for 2009.

- *Underserved areas home purchase subgoal*—The underserved areas home purchase subgoal level for 2008 and 2009 was 34 percent. FHFA proposes to lower this subgoal level to 30 percent for calendar year 2009. That is, under proposed § 1282.13, 30 percent of the total number of home purchase mortgages in metropolitan areas financed by the Enterprise's mortgage purchases shall be home purchase mortgages in metropolitan areas which count toward the underserved areas housing goal for 2009.

- *Special affordable home purchase subgoal*—The special affordable home purchase subgoal level for 2008 and 2009 was 18 percent. FHFA proposes to lower this subgoal level to 14 percent for calendar year 2009. That is, under proposed § 1282.14, 14 percent of the total number of home purchase mortgages in metropolitan areas financed by the Enterprise's mortgage purchases shall be home purchase mortgages in metropolitan areas which count toward the special affordable housing goal for 2009.

The proposed overall housing goals, while generally below those set by HUD for calendar years 2006 through 2008, are higher than the goals for calendar

year 2004 and almost identical to the 2005 goals. In 2005, the low- and moderate-income housing goal was 52 percent, the underserved areas housing goal was 37 percent, and the special affordable housing goal was 22 percent. The proposed goals are well in excess of those in effect in 2000, when the low- and moderate-income housing goal was 42 percent, the underserved areas housing goal was 24 percent,⁴ and the special affordable housing goal was 14 percent.

At the time the 2004 Rule was implemented, mortgage markets were still evidencing significant expansion. However, as discussed further below, based on current market conditions, FHFA estimates that market shares for certain goals and home purchase subgoals have declined significantly. Adjusting the 2009 housing goals and home purchase subgoals to levels that reflect market conditions consistent with current projections is necessary to ensure that the Enterprises continue to serve their secondary market purposes at feasible and appropriate levels that reflect their capacity to lead the market. Even so, as described below, the proposed 2009 goals are generally at the upper end of FHFA's market estimates for 2009.

Notably, this proposed rule, for the first time, would allow housing goals credit for certain loan modifications, which would tend to improve the Enterprises' performance on the housing goals. By adjusting the goals and home purchase subgoals to challenging levels for 2009, and by allowing housing goals credit for important activities that directly affect the 2009 housing market, FHFA seeks to ensure that the Enterprises place a high priority on the achievement of their affordable housing mission based on performance standards that align with current market conditions.

2. Special Affordable Multifamily Subgoals—Proposed § 1282.14

The 2004 Rule also established minimum dollar-based special affordable multifamily subgoals for each Enterprise. 24 CFR 81.14. These were established as a percentage of the aggregate dollar volume of total mortgage purchases by each Enterprise in a base period (2000, 2001 and 2002). The subgoal applicable to 2009 is \$5.49 billion for Fannie Mae and \$3.92 billion for Freddie Mac. FHFA is not proposing

to adjust these levels downward for 2009 because both Enterprises have exceeded their respective multifamily subgoals by wide margins in recent years, especially in 2007. FHFA also is not proposing to increase the subgoal levels for 2009 because the prospects for multifamily mortgage market volume in 2009 are significantly less favorable than in recent years. Accordingly, proposed § 1282.14 would retain these subgoal levels for 2009.

FHFA will monitor the size of the refinance market closely in 2009. Refinances may be a very large part of the market in 2009, with the likely effect of a lower percentage of goals-qualifying loans available for purchase by the Enterprises, thus making it more difficult to achieve the goals proposed in this rule. FHFA will consider the size of the refinance market in any determination as to the feasibility of any goal an Enterprise fails to achieve in 2009.

3. Market Conditions

a. Market Conditions Do Not Support the Current Goal and Home Purchase Subgoal Levels

FHFA has determined that the current turmoil in the housing and mortgage markets has created less than favorable conditions for expansions in credit to borrowers on the margins of homeownership. The adverse market conditions considered in setting the proposed goal levels for 2009 include: (1) Tightened credit underwriting practices; (2) the sharply increased standards of private mortgage insurance companies; (3) the increased role of the Federal Housing Administration (FHA) in the marketplace; (4) the collapse of the mortgage private label securities (PLS) market; (5) increasing unemployment; (6) multifamily market volatility; and (7) the prospect of a refinancing surge in 2009. FHFA finds that while the existence of lower home prices and lower mortgage interest rates has increased affordability, there is ample evidence to support a conclusion that the housing goal and home purchase subgoal levels for 2009 that were set in 2004 are not attainable.

Tightened underwriting practices. In general, tighter underwriting standards result in fewer goals-qualifying loans and a lower percentage of goals-qualifying loans in the market. Underwriting standards in the mortgage market generally, and at Fannie Mae and Freddie Mac, tightened considerably in 2008 in response to declining market conditions and early payment defaults, among other factors. For example, in May 2008, responding

to private mortgage insurance underwriting changes, Fannie Mae revised its down payment policy to lower the maximum loan-to-value (LTV) for loans underwritten by Desktop Underwriter and for manually underwritten loans. Freddie Mac similarly tightened its underwriting standards. These industry-wide underwriting standards are expected to remain in place for 2009.

Sharply increased standards of private mortgage insurers. Much like tighter underwriting standards generally, higher underwriting standards of private mortgage insurance (MI) result in fewer goals-qualifying loans and a lower percentage of goals-qualifying loans in the market. Beginning in late 2007, MI providers implemented profound and sweeping changes in the types of risk they were willing to insure. Most MI providers faced substantial ratings downgrades and acted to minimize losses by imposing stricter underwriting standards on loans with high LTVs. For example, on February 12, 2009, Moody's downgraded the internal strength rating of the Mortgage Guaranty Insurance Corporation (MGIC) to Ba1 from A1, and downgraded the ratings of other mortgage insurers. These actions may limit the ability of MI providers to write new business in 2009 and reduce the overall mortgage lending volume, particularly for higher LTV mortgages, which tend to be more goals-rich. By increasing the cost of borrowing and the difficulty in obtaining loan approval, the tighter underwriting standards limit the number of goals-qualifying mortgages. This has an adverse effect on high-LTV loan purchases by the Enterprises, which generally require some form of credit enhancement.

MI providers have implemented measures in "declining markets" that have sharply limited the insurability of certain higher LTV mortgage loans. Generally, the availability of MI for high LTV or low FICO loans is much reduced relative to a few years ago. The proportion of goals-qualifying loans in the market is thereby reduced as it becomes more difficult and more expensive for borrowers requiring mortgages with lower down payments to qualify for mortgages eligible for purchase by the Enterprises.

Increased role of FHA in the marketplace. Another factor having a much greater impact on the Enterprises' housing goals in 2009 than in recent years is the increase in the share of the mortgage market of mortgages insured by FHA and guaranteed by the Veterans Administration (VA). These loans generally are pooled into mortgage-

⁴ The underserved areas housing goal in 2001–2004 was based on the 1990 Census. The underserved areas housing goal for 2005–2008 was based on the 2000 Census. This switch from the 1990 to 2000 Census had the effect of adding several percentage points to the goal.

backed securities issued by the Government National Mortgage Association (GNMA). Purchases of mortgages insured by FHA and VA ordinarily do not receive goals credit. In general, the impact of the FHA market on the goal-richness of the conventional market depends on: (1) The goal-richness of the overall market (conventional plus FHA); (2) the share of the market accounted for by FHA mortgages; and (3) the goal-richness of FHA mortgages.

The market share of mortgages insured by FHA and VA has risen dramatically from 3 percent in 2006 to 35 percent in the fourth quarter of 2008. A key reason for this growth is that Fannie Mae and Freddie Mac generally cannot buy loans with original LTV ratios greater than 80 percent without some form of credit enhancement. With the stresses on private mortgage insurers, borrowers without substantial down payments are increasingly dependent on government insurance programs.

In order to assess the impact that the increased FHA share is likely to have on the housing goals for 2009, FHFA analyzed mortgages originated in 2007 with loan amounts no greater than the conforming loan limit for Fannie Mae and Freddie Mac for 1-unit properties in that year—\$417,000 for most areas, but 50 percent higher in Alaska, Hawaii, Guam, and the Virgin Islands. Loans guaranteed by VA or the Rural Housing Service were excluded from this analysis, as were loans with missing information necessary to determine whether they qualified for the housing goals. The remaining loans included both conventional and FHA loans with information about whether they qualified for the housing goals, resulting in a total of 2.7 million home purchase mortgages and 3.3 million refinance mortgages.

The shares of FHA mortgages that would have qualified for the Enterprises' housing goals were much higher than the goal-qualifying shares of conventional mortgages, especially for the two income-based goals (low- and moderate-income housing and special affordable housing). Specifically, 60 percent of FHA home purchase mortgages qualified for the low- and moderate-income housing goal in 2007, but only 40 percent of conventional home purchase mortgages so qualified. Similarly, 23 percent of FHA home purchase mortgages qualified for the special affordable housing goal, but only 15 percent of conventional home purchase mortgages so qualified. The discrepancy was comparable for underserved areas, where 46 percent of

FHA home purchase mortgages qualified for the underserved areas housing goal versus 34 percent of conventional home purchase mortgages.

The discrepancies between the goal-qualifying shares of FHA refinance mortgages and conventional refinance mortgages were similar to those for home purchase mortgages. For example, 56 percent of FHA refinance mortgages qualified for the low- and moderate-income housing goal, but only 42 percent of conventional refinance mortgages so qualified.

This analysis measures the degree to which FHA mortgages "siphon off" goal-rich mortgages from the overall mortgage market. That is, in 2007, 42 percent of all home purchase mortgages were for low- and moderate-income families, but because 60 percent of FHA home purchase mortgages were for such families, only 40 percent of conventional conforming mortgages were in this category. While in 2007 the goal-qualifying shares of FHA mortgages were much higher than the corresponding shares of conventional mortgages, the impact on the goal-qualifying shares of conventional mortgages was mitigated by the fact that in 2007, FHA accounted for only 9.9 percent of home purchase mortgages and only 4.7 percent of refinance mortgages. Although Home Mortgage Disclosure Act (HMDA) data for 2008 is not yet available, this data will likely show a much larger impact of FHA mortgages because FHA's share of the mortgage market was much higher in 2008 than it was in 2007.

Based on FHA's estimated market share in late 2008, its shares of both the home purchase mortgage and refinance mortgage markets may be significantly higher in 2009 than they were for 2008. The impact of these higher shares may again be mitigated to some extent by reduced goal-richness of FHA mortgages as higher-income borrowers obtain FHA loans. The net impact of the FHA market on the goal-richness of the conventional mortgage market in 2009, however, is likely to be greater than it was in either 2007 or 2008. Accordingly, the projected increase in the size of the FHA market was a major factor taken into account in adjusting the Enterprises' housing goals for 2009.

Collapse of PLS market. The lack of PLS backed by mortgages will make it more difficult for the Enterprises to achieve the existing housing goals in 2009. Future rulemaking will determine whether, and if so, under what conditions PLS investment may contribute to meeting housing goals.

Between 2005 and 2008, the period covered by the 2004 Rule, Fannie Mae

and Freddie Mac were major purchasers of the AAA-rated tranches of PLS that included substantial amounts of subprime mortgages. These purchases were due in part to the goal-richness of the securities and, particularly, their subgoal-richness.

While the size and nature of the Enterprises' subprime holdings differed, such purchases had an impact on the achievement of the housing goals for each Enterprise, particularly for the home purchase subgoals. Such loans were not a large factor in the mortgage marketplace in 2008, and are unlikely to be a major factor in 2009. FHFA guidance incorporating interagency policy guidance from the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System and the National Credit Union Administration now restricts the purchase of such securities by the Enterprises when certain terms of mortgages backing those securities are harmful to the borrower.⁵

Increasing unemployment. Unemployment increased significantly during 2008 and in early 2009, which added to demands on mortgage servicers to address increasing delinquencies and foreclosures. Unemployment and underemployment have an effect on mortgage default rates and on the number of borrowers seeking and obtaining a purchase money mortgage or a refinance.

NeighborWorks, a national network of approximately 230 community-based organizations actively involved in foreclosure mitigation counseling, has estimated that as of January 14, 2009, the two leading causes of mortgage default rates were a reduction in income (28 percent of defaults) and loss of income (17 percent of defaults).⁶ While a reduction in income by itself does not necessarily lead to a mortgage default, with falling home prices it is difficult for the home owner with little or no

⁵ In 2007, OFHEO issued letters directing the Enterprises to apply the principles and practices of the interagency *Statement on Subprime Mortgage Lending* to their purchases of subprime loans in the regular flow of business, including bulk purchases. OFHEO directed that, not later than September 13, 2007, nontraditional and subprime loans purchased by Fannie Mae and Freddie Mac as part of PLS transactions comply with the *Interagency Guidance on Nontraditional Mortgage Product Risks* and the *Statement on Subprime Mortgage Lending*. This application to PLS conforms to the underwriting provisions of the guidance. Further, OFHEO directed that the Enterprises adopt such business practices and take such quality control steps as necessary to ensure the orderly and effective implementation of the guidance with respect to the purchase of PLS.

⁶ NeighborWorks, *National Foreclosure Mitigation Counseling Program Update*, January 23, 2009.

home equity to either sell the home or refinance into an affordable mortgage. The high rates of unemployment and underemployment are likely to continue to have a significant impact on the size of the mortgage market in 2009.

Multifamily market volatility. The multifamily housing market faces great uncertainty in 2009. Recent housing data suggests that multifamily housing activity (new construction and refinances) will continue to decline in 2009 after slowing significantly in 2008. Because multifamily housing tends to have high percentages of units that qualify for one or more housing goals, declines in multifamily housing activity make it more difficult for the Enterprises to achieve the housing goals.

As a result of the financial crisis and ensuing credit crunch, important sources of affordable multifamily financing have all but disappeared or have been severely diminished, including Commercial Mortgage-Backed Securities (CMBS) and Low-Income Housing Tax Credits (LIHTC). Other traditional providers of financing for multifamily housing, including thrifts, commercial banks and life insurance companies, have drastically reduced their multifamily financing activities. The Enterprises, FHA and GNMA are the principal sources of multifamily financing now.

New multifamily construction will not provide a significant source of goals-eligible units in 2009. In February 2009, the U.S. Census Bureau released preliminary data showing that multifamily starts plunged from 404,000 units annualized in June 2008 to 114,000 units annualized in November 2008.⁷ Some markets, such as New York City, Los Angeles, and Miami, have seen rents fall substantially as vacancy rates have risen sharply. Declining rents, increasing vacancy rates and decreasing multifamily property values in many markets will be significant obstacles confronting Enterprise multifamily activity in 2009. Additional fees and tighter underwriting standards may make it difficult for many multifamily investors to qualify for financing. Declining multifamily prices will especially impact owners who financed with interest only loans over the past decade. As these loans come due, properties with interest only loans will not have accumulated additional equity over the term of the loan to counter the effects of declining property values. The lack of new CMBS issuances will also

significantly affect the number of multifamily units financed by the Enterprises, thereby making the housing goals more difficult to achieve.

Prospect of a refinancing surge in 2009. A significant increase in the volume of refinancings of single-family mortgages would make it more difficult for the Enterprises to achieve the housing goals. Higher income borrowers are more likely to take advantage of falling interest rates and refinance. Furthermore, when single-family owner-occupied refinance loans dominate both the market and the Enterprises' purchases, the share of goals-rich multifamily mortgages declines, which hampers the ability of the Enterprises to meet goal targets. The extent to which these historical effects of high refinance rates might repeat in 2009 is uncertain, and numerous variables may affect these historical patterns. Unlike in previous years, borrowers experiencing payment difficulties may have fewer refinancing options because falling house prices reduce the amount of homeowner equity, while tighter lending standards limit the range of mortgages available, particularly for nonprime borrowers.

Many forecasters expect significantly high rates of refinancing in 2009. The Mortgage Bankers Association, for example, forecasts a single-family refinance rate of 69 percent.⁸ Fannie Mae also forecasts a single-family refinance rate of 69 percent.⁹ Freddie Mac estimates a refinance rate for 2009 of 67%.¹⁰ In addition, HASP includes an initiative to allow more borrowers with loans owned or guaranteed by Fannie Mae or Freddie Mac to refinance into a new mortgage that will be held or guaranteed by Fannie Mae or Freddie Mac.

b. *Size of the Mortgage Market that Qualifies for the Housing Goals*

FHFA's estimates of the size of the conventional mortgage market for the income-based housing goals and subgoals are lower than HUD's estimates for the 2004 Rule. As noted by HUD in prior rules, FHFA recognizes that there still is no single, comprehensive data set for estimating the size of the affordable lending market, and that available databases on different sectors of the market must be combined in order to implement FHFA's market share model. The major public data sources from which these market estimates were developed are: (1) Market originations data submitted by lenders in accordance

with HMDA for the years 2003 through 2007; (2) the 2000 Decennial Census; (3) the American Community Survey (ACS) for years 2005 and 2006; (4) the American Housing Survey (AHS); and (5) the 2001 Residential Finance Survey (RFS). To a lesser extent, other privately available data and information, including market forecasts, were also used. Sources included the Mortgage Bankers Association,¹¹ *Inside Mortgage Finance Publications, Inc.*,¹² First American Loan Performance,¹³ Global Insight,¹⁴ Fannie Mae, and Freddie Mac.

FHFA's market size estimates for the three housing goal categories for 2009 are as follows:

- 43–51 percent of units financed in the conventional conforming primary mortgage market will qualify for the low- and moderate-income housing goal;
- 32–37 percent of units will qualify for the underserved areas housing goal;
- 16–23 percent of units will qualify for the special affordable housing goal.

These market estimates are lower than those estimated by HUD for 2005 through 2008. Specifically, the low- and moderate-income share was estimated at 51–56 percent, the underserved areas share was estimated at 35–39 percent, and the special affordable share was estimated at 23–27 percent.

For each home purchase subgoal category, FHFA's market size estimates for 2009 are:

- 35–41 percent of single-family home purchase mortgages on properties in metropolitan areas will qualify for the low- and moderate-income home purchase subgoal;
- 27–31 percent of such mortgages will qualify for the underserved areas home purchase subgoal;
- 10–15 percent of such mortgages will qualify for the special affordable home purchase subgoal.

The Economic Stimulus Act of 2008 (Stimulus Act) temporarily increased the conforming loan limits for certain high-cost areas for loans originated between July 1, 2007 and December 31,

¹¹ The Mortgage Bankers Association (MBA) is a national association representing the real estate finance industry.

¹² *Inside Mortgage Finance Publications, Inc.* is a company providing business-to-business news and statistics on the residential mortgage market.

¹³ First American Loan Performance databases track the delinquency and prepayment performance of 50 million active individual mortgage payments per month, and provide loan-level information on more than \$2.0 trillion in non-agency mortgage-backed and asset-backed securities.

¹⁴ Global Insight is a privately-held company formed from two former economic and financial information and forecasting companies: DRI (Data Resources, Inc.) and WEFA (Wharton Econometric Forecasting Associates).

⁷ *New Residential Construction in January 2009*, Joint Release of Census Bureau and Department of Housing and Urban Development, February 18, 2009.

⁸ *MBA Mortgage Finance Forecast*, March 24, 2009.

⁹ *Fannie Mae Economics and Mortgage Market Analysis*, March 10, 2009.

¹⁰ *Freddie Mac Economic and Housing Market Outlook*, March 10, 2009.

2008. Public Law 110–185, section 201, 122 Stat. 618, 619. The Stimulus Act also excluded purchases of jumbo conforming loans (those which exceed the nationwide conforming loan limits in certain high-cost areas and exceed 150% of the nationwide conforming loan limits in Alaska, Guam, Hawaii and the Virgin Islands) from counting towards the housing goals for 2008. The limit for each high-cost area was set at 125% of the area median price of a residence, up to a limit of \$729,750 for one-unit properties (175% of the overall conforming loan limit for 2008). HERA established the 2009 conforming loan limit at \$417,000 for one-unit properties and correspondingly higher for two- to four-unit properties. Public Law 110–289, section 1124, 122 Stat. 2654, 2691 (2008) (to be codified at 12 U.S.C. 1717, 1454). HERA also established permanent increases in the loan limit for certain high-cost areas, at 115% of the area median price of a residence, up to a limit of \$625,500 for one-unit properties in 2009 (150% of the overall conforming loan limit for 2009). The American Recovery and Reinvestment Act of 2009 (Recovery Act), signed into law by the President on February 17, 2009, generally established the limits that were in place in 2008 as a floor for the 2009 limits. Public Law 111–5, section 1203, 123 Stat. 115.

FHFA has determined that the treatment of jumbo conforming loans in 2008 should remain in effect for 2009, *i.e.*, that purchases of such loans should not be counted toward the housing goals in 2009. This treatment is consistent with section 1336(a)(2) of the Safety and Soundness Act, which provides FHFA with authority to exclude certain categories of mortgage purchases from counting towards the housing goals. See 12 U.S.C. 4566(a)(2). Accordingly, in determining the market share estimates for the three housing goal categories for 2009, FHFA has excluded all jumbo conforming loans on one- to four-unit properties.

4. Past Performance of the Enterprises on the Housing Goals

This section describes the Enterprises' past performance on the three overall housing goals, the three home purchase subgoals, and the special affordable multifamily subgoals as determined by HUD for 2005 and 2006 and by FHFA for 2007. In addition, performance for 2008, as preliminarily reported by the Enterprises, is discussed.¹⁵ Although

¹⁵ The Enterprises submitted their Annual Housing Activities Reports (AHARs), tables on 2008 goals performance, and loan-level data on mortgages purchased to FHFA on March 16, 2009.

HERA does not explicitly require consideration of the Enterprises' past performance on the housing goals in determining whether to adjust the 2009 goals, FHFA believes that the Enterprises' past performance is relevant to this determination. Consideration of past performance was required in establishing the goals for 2008 and prior years, and is required in establishing the goals for 2010 and thereafter. See 12 U.S.C. 4562(e)(2)(B)(iii). Current market conditions depend in part on the Enterprises' loan purchase activities, including their goal performance, in previous years. For example, if the Enterprises purchased a substantial volume of a certain type of loan to meet the housing goals in 2008, lenders might be induced to originate more loans of that type in 2009. In addition, in 2008, the Enterprises' combined shares of the single-family conventional conforming market and the multifamily market were likely at record levels. Given these high levels and the collapse of the subprime market, combined Enterprise past performance on the goals is likely a good measure of the goal-qualifying shares of the primary market. Thus, FHFA has analyzed combined Enterprise past performance, and finds that it approximates FHFA's estimates of the goal-qualifying shares of the 2008 market.

a. Housing Goals

The goal levels for 2005 through 2008 were set to increase each year so that by 2008 the goal levels would correspond with the top end of the range of estimates for the goal-qualifying shares of units financed in the primary mortgage market. Analysis of loan-level data for 2005 through 2007 and preliminary results for 2008, as reported by the Enterprises, indicates the following results for overall goal performance:

- *Low- and moderate-income housing goal*—This goal level was set at 52 percent for 2005, 53 percent for 2006, 55 percent for 2007, and 56 percent for 2008. Fannie Mae's performance was 55.1 percent in 2005, 56.9 percent in 2006, and 55.1 percent in 2007. Freddie Mac's performance was 54.0 percent in 2005, 55.9 percent in 2006, and 56.1 percent in 2007. Both Enterprises' performance exceeded the low- and moderate-income housing goal levels from 2005 through 2007. In 2008, preliminary results indicate that both Enterprises fell significantly short of

FHFA will make its official determination on their 2008 goals performance later this year based on review of loan-level data.

meeting the goal level, with Fannie Mae at 53.6 percent and Freddie Mac at 51.5 percent. In letters to Fannie Mae and Freddie Mac, dated March 16, 2009, FHFA notified the Enterprises of its final determination that there is a substantial probability of failure by the Enterprises to meet this goal level, and that achievement of the goal was not feasible for each Enterprise.¹⁶

- *Underserved areas housing goal*—This goal level was set at 37 percent for 2005, 38 percent for 2006 and 2007, and 39 percent for 2008. Fannie Mae's performance was 41.4 percent in 2005, 43.6 percent in 2006, and fell slightly to 43.4 percent in 2007. Freddie Mac's performance was 42.3 percent in 2005, 42.7 percent in 2006, and 43.1 percent in 2007. Both Enterprises' performance exceeded the underserved areas housing goal levels from 2005 through 2007. In 2008, preliminary results indicate that Fannie Mae barely exceeded the goal level at 39.4 percent, and Freddie Mac fell short at 37.7 percent. In the 2008 Goals Feasibility Letter to Freddie Mac, FHFA notified the Enterprise of its final determination that there is a substantial probability of failure by Freddie Mac to meet this goal level, and that achievement of the goal was feasible but challenging.

- *Special affordable housing goal*—This goal level was set at 22 percent for 2005, 23 percent for 2006, 25 percent for 2007, and 27 percent for 2008. Fannie Mae's performance was 26.3 percent in 2005, 27.8 percent in 2006, and 26.8 percent in 2007. Freddie Mac's performance was 24.3 percent in 2005, 26.4 percent in 2006, and 25.8 percent in 2007. Both Enterprises surpassed this goal level from 2005 through 2007. In 2008, preliminary results indicate that Fannie Mae's performance fell slightly to 26.0 percent, and Freddie Mac's performance fell sharply to 23.0 percent. In the 2008 Goals Feasibility Letters, FHFA notified the Enterprises of its final determination that there is a substantial probability of failure by the Enterprises to meet this goal level, and that achievement of the goal was not feasible for each Enterprise.

These results are shown in Table 1.

¹⁶ See Letter from Edward J. DeMarco, Chief Operating Officer & Senior Deputy Director for Housing Mission and Goals, FHFA, to Herb Allison, Chief Executive Officer, Fannie Mae, dated March 16, 2009; Letter from Edward J. DeMarco, Chief Operating Officer & Senior Deputy Director for Housing Mission and Goals, FHFA, to John Koskinen, Interim Chief Executive Officer, Freddie Mac, dated March 16, 2009 (2008 Goals Feasibility Letters).

b. Special Affordable Multifamily Subgoals

In order to encourage the Enterprises to play a significant role in the multifamily mortgage market, HUD established minimum dollar-based special affordable multifamily subgoals. These were established based on a percentage of the aggregate dollar volume of total mortgage purchases by each Enterprise in a base period. Unlike the overall goals, these subgoals differ between the Enterprises. Specifically, for 2005 through 2008, the subgoal was established at \$5.49 billion per year for Fannie Mae, and \$3.92 billion per year for Freddie Mac.

Results for these dollar-based special affordable multifamily subgoals are also presented in Table 1. As indicated, the Enterprises surpassed these subgoals by wide margins in each year through 2008. In 2008, Fannie Mae's performance was 244 percent of its subgoal (\$13.42 billion compared with its subgoal of \$5.49 billion), and Freddie Mac's performance was 196 percent of its subgoal (\$7.68 billion compared with its subgoal of \$3.92 billion).

c. Home Purchase Subgoals

In the 2004 Rule, HUD established home purchase subgoals for the first time. The overall housing goals are expressed in terms of minimum qualifying shares of all dwelling units financed by the Enterprises, combining mortgages on both single-family and multifamily, owner-occupied and rental housing. They include all mortgages, whether for home purchase, refinancing, or some other purpose. The home purchase subgoals are expressed in terms of minimum qualifying shares of each Enterprise's acquisitions of single-family home purchase mortgages in

metropolitan areas. The subgoals specify minimum shares of home purchase mortgages that the Enterprises must purchase under each category of the housing goals. The home purchase subgoals are expressed in terms of mortgages, rather than dwelling units.

Analysis of loan-level data for 2005 through 2007 and preliminary results for 2008, as reported by the Enterprises, indicate the following results for home purchase subgoal performance:

- *Low- and moderate-income home purchase subgoal*—This subgoal level was set at 45 percent for 2005, 46 percent for 2006, and 47 percent for 2007 and 2008. Fannie Mae's performance was 44.6 percent in 2005, 46.9 percent in 2006, and 42.1 percent in 2007. Freddie Mac's performance was 46.8 percent in 2005, 47.0 percent in 2006, and 43.5 percent in 2007. Neither Enterprise met this subgoal level in 2007, but in letters to the Enterprises dated April 24, 2008, HUD declared that the subgoal level for 2007 was not feasible. In 2008, Fannie Mae's performance was 38.9 percent, and Freddie Mac's performance was 39.4 percent. In the 2008 Goals Feasibility Letters, FHFA notified the Enterprises of its final determination that there is a substantial probability of failure by the Enterprises to meet this subgoal level, and that achievement of the subgoal was not feasible for each Enterprise.

- *Underserved areas home purchase subgoal*—This subgoal level was set at 32 percent for 2005, 33 percent for 2006 and 2007, and 34 percent for 2008. Fannie Mae's performance was 32.6 percent in 2005, 34.5 percent in 2006, and decreased to 33.4 percent in 2007, slightly exceeding the subgoal level in that year. Freddie Mac's performance was 35.5 percent in 2005, exceeding both Fannie Mae's performance and the

32 percent subgoal level by wide margins. In 2006 and 2007, Freddie Mac exceeded this subgoal level by narrow margins at 33.6 percent and 33.8 percent, respectively. In 2008, both Enterprises fell short of the subgoal level, at 30.4 percent and 30.2 percent for Fannie Mae and Freddie Mac, respectively. In the 2008 Goals Feasibility Letters, FHFA notified the Enterprises of its final determination that there is a substantial probability of failure by the Enterprises to meet this subgoal level, and that achievement of the subgoal was not feasible for each Enterprise.

- *Special affordable home purchase subgoal*—This subgoal level was set at 17 percent for 2005 and 2006, and 18 percent for 2007 and 2008. Fannie Mae's performance was 17.0 percent in 2005, and 17.9 percent in 2006, and decreased to 15.5 percent in 2007. Freddie Mac's performance was 17.7 percent in 2005, and 17.0 percent in 2006, and decreased further to 15.9 percent in 2007. Thus, Freddie Mac surpassed this goal level in 2005, and barely met it in 2006. Conversely, Fannie Mae barely met the goal level in 2005, and surpassed it in 2006. Both Enterprises fell short on this subgoal level in 2007, but in letters to the Enterprises dated April 24, 2008, HUD declared that the subgoal level for 2007 was not feasible. In 2008, Fannie Mae's performance was 13.6 percent, and Freddie Mac's performance was 15.1 percent. In the 2008 Goals Feasibility Letters, FHFA notified the Enterprises of its final determination that there is a substantial probability of failure by the Enterprises to meet this subgoal level, and that achievement of the subgoal was not feasible for each Enterprise.

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Table 1
Overview of the Enterprises' Housing Goals and Performance, 2005-2008¹

Goal ²	2005	2006	2007	2008 ³	2005	2006	2007	2008
	Goals	Goals	Goals	Goals	Goals	Goals	Goals	Goals
Low- and Moderate-Income:								
Fannie Mae	55.1%	56.9%	55.5%	53.6%	52%	53%	55%	56%
Freddie Mac	54.0%	55.9%	56.1%	51.5%				
Ratio ⁴	0.98	0.98	1.01	0.96				
Underserved Areas:								
Fannie Mae	41.4%	43.6%	43.4%	39.4%	37%	38%	38%	39%
Freddie Mac	42.3%	42.7%	43.1%	37.7%				
Ratio ⁴	1.02	0.98	0.99	0.96				
Special Affordable:								
Fannie Mae	26.3%	27.8%	26.8%	26.0%	22%	23%	25%	27%
Freddie Mac	24.3%	26.4%	25.8%	23.0%				
Ratio ⁴	0.92	0.95	0.96	0.88				
Special Affordable Multifamily⁵								
Fannie Mae	\$10.39	\$13.31	\$19.84	\$13.42	\$5.49	\$5.49	\$5.49	\$5.49
Freddie Mac	\$12.35	\$13.58	\$15.12	\$7.68	\$3.92	\$3.92	\$3.92	\$3.92

Source HUD and FHFA analysis of data submitted by the Enterprises. Some results for 2005-07 differ from performance reported by the Enterprises in their Annual Housing Activities Reports (AHARs)

¹ Percentages of dwelling units in properties whose mortgages were purchased by the Enterprises that qualified for each goal in 2005-08, based on HUD's November 2004 rule, and goals for 2005-2008. Underserved areas goals for 2005-08 based on 2000 census data.

² Abbreviated definitions of goals:

Low- and Moderate-Income: Households with income less than or equal to area median income (AMI).

Underserved Areas: Dwelling units in metropolitan census tracts with (1) tract median family income less than or equal to 90 percent of AMI or (2) minority concentration of at least 30 percent and tract median family income less than or equal to 120 percent of AMI; a somewhat different definition applies to properties in nonmetropolitan counties.

Special Affordable: Households with income (1) less than or equal to 60 percent of AMI or (2) less than or equal to 80 percent of AMI and located in low-income areas.

For the low- and moderate-income and special affordable goals, AMI is median income for the MSA for borrowers in metropolitan areas, and the greater of county or state nonmetro median income for borrowers outside metropolitan areas.

³ Performance for 2008 as reported by the Enterprises in their Annual Housing Activities Reports for 2008, submitted to FHFA, March 16, 2009. In March 2009 FHFA declared that the 2008 low- and moderate-income goal and the special affordable goal were infeasible, and so notified the Enterprises and Congress.

⁴ Ratio of Freddie Mac goal performance to Fannie Mae goal performance.

⁵ Performance and goals in billions of dollars. Goals for 2005-08 were 1.0 percent of each Enterprise's average total mortgage purchases in 2000-02

Table 2

**Enterprises' Single-Family Home Purchase Mortgages in
Metropolitan Areas Qualifying for Home Purchase Subgoals, 2005-08**

Category ¹	2005 HP Subgoal		2006 HP Subgoal		2007 HP Subgoal ²		2008 HP Subgoal ³	
	Required	Actual	Required	Actual	Required	Actual	Required	Actual
Low- and Moderate-Income:								
Fannie Mae	45%	44.6%	46%	46.9%	47%	42.1%	47%	38.9%
Freddie Mac	45%	46.8%	46%	47.0%	47%	43.5%	47%	39.4%
Ratio ⁴		1.05		1.00		1.03		1.01
Underserved areas: ⁵								
Fannie Mae	32%	32.6%	33%	34.5%	33%	33.4%	34%	30.4%
Freddie Mac	32%	35.5%	33%	33.6%	33%	33.8%	34%	30.2%
Ratio ⁴		1.09		0.97		1.01		0.99
Special Affordable:								
Fannie Mae	17%	17.0%	17%	17.9%	18%	15.5%	18%	13.6%
Freddie Mac	17%	17.7%	17%	17.0%	18%	15.9%	18%	15.1%
Ratio ⁴		1.04		0.95		1.03		1.11

Source: HUD and FHFA analysis of data submitted by the Enterprises. Some results for 2005-07 differ from performance reported by the Enterprises in their Annual Housing Activities Reports (AHARs). Home purchase subgoals first took effect in 2005.

¹ Abbreviated definitions of categories:

Low- and Moderate-Income: Households with income less than or equal to area median income (AMI).

Underserved areas: Dwelling units in metropolitan census tracts with (1) tract median family income less than or equal to 90 percent of AMI or (2) minority concentration of at least 30 percent *and* tract median family income less than or equal to 120 percent of AMI; a somewhat different definition applies to properties in nonmetropolitan counties.

Special Affordable: Households with income (1) less than or equal to 60 percent of AMI or (2) less than or equal to 80 percent of AMI and located in low-income areas.

For the low- and moderate-income and special affordable goals, AMI is median income for the MSA for borrowers in metropolitan areas, and the greater of county or state nonmetro median income for borrowers outside metropolitan areas.

² In April 2008 HUD declared that the 2007 low- and moderate-income and special affordable home purchase subgoals were infeasible.

³ Performance for 2008 as reported by the Enterprises in their Annual Housing Activities Reports for 2008, submitted to FHFA, March 16, 2009. In March 2009 FHFA declared that the 2008 home purchase subgoals were infeasible, and so notified the Enterprises and Congress.

⁴ Ratio of Freddie Mac performance to Fannie Mae performance.

d. Estimating the Size of the Conventional Conforming Market for Each Housing Goal in 2009

Since 2005, the market's goal-qualifying share for the two borrower income-based goals has decreased, as shown in Table 3, and the market's goal-qualifying share for the underserved areas housing goal has decreased in 2007 and most likely also in 2008.

Following the methodology HUD used in 2004 and prior rulemakings, there are three steps involved in sizing the market. The first step is to estimate the number of conventional conforming units expected to be financed with new mortgages in the overall market each year, broken out by property-type, loan purpose, and owner-type. The second step is to estimate the percentage ranges of goal- and subgoal-qualifying units

among the number of conventional conforming units expected to be financed for each property-type, loan purpose and owner-type. The third step is to multiply the estimates from the first step by the percentage ranges in the second step and sum the result, giving FHFA's goal-qualifying shares of the overall market. This process is repeated for each goal.

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Table 3
Goal-Qualifying Shares of Units Financed by Conventional Conforming Mortgages

Goal Category	2003	2004	2005	2006	2007	2008*
Low- and Moderate-Income						
Main Goal	52.9%	58.1%	57.2%	55.4%	52.4%	50 - 53%
Home Purchase Subgoal**	45.2%	45.5%	42.4%	39.5%	41.9%	36 - 40%
Underserved Areas						
Main Goal	33.7%	42.2%	43.9%	44.0%	40.1%	36 - 39%
Home Purchase Subgoal**	32.2%	34.6%	35.9%	36.3%	33.4%	27 - 31%
Special Affordable***						
Main Goal	24.5%	28.0%	27.9%	27.5%	24.7%	22 - 25%
Home Purchase Subgoal**	16.5%	16.4%	15.0%	14.1%	15.5%	11 - 15%

Source: Analysis of Home Mortgage Disclosure Act (HMDA) data and data on multifamily mortgage originations. Excludes B&C Loans.

*2008 goal-qualifying shares are estimates based on FHFA's market model.

**Home purchase subgoals are expressed as shares of home purchase mortgages on properties in Metropolitan Areas, thus this analysis excludes mortgages on properties outside of metro areas.

***Very low-income families and low-income families in low-income areas.

Several issues need to be taken into account when producing the market estimates for 2009. The temporary increase in the FHA loan limits will affect the share of the government-backed market in 2009. A corresponding reduction in the conventional share is expected, affecting the goal-qualifying proportion of the conforming conventional market as FHA serves more of the goal-qualifying market than it has in the recent past. In addition, FHFA is projecting that refinance loans will account for 59 percent of the single-family conventional conforming market.

To accomplish the first step noted above, FHFA analyzed the single-family and multifamily mortgage markets separately. Single-family refers to 1- to 4-unit properties, and multifamily refers to 5- or more unit properties. The process began by estimating the total dollar volume of the single-family mortgage origination market, and separating out the estimated portion that is expected to comprise conforming, conventional loans.

FHFA then broke out the conforming conventional loan volumes by loan purpose (home purchase or refinance), after which FHFA converted the home purchase and refinance dollar volumes to mortgage volumes using data and trend information on average loan sizes for home purchase and refinance loans. FHFA separated the mortgages into three property-type groups (for both home purchase and refinance loans): (1) Owner-occupied 1-unit; (2) owner-occupied 2–4 unit; and (3) investor-owned 1–4 unit properties. Using historical patterns from HMDA data and expected market conditions, the mortgages were divided between the owner-occupied and investor-owned properties. Based on the 2001 RFS data, the owner-occupied units were divided between 1-unit and 2–4 unit properties. Finally, using information from the 2001 RFS, the mortgages by property type were converted to units, and units from single-family owner-occupied 2–4 unit properties were divided between the owner-occupied and rental units. The unit counts were converted into owner-occupied unit and rental unit shares of the conventional conforming mortgage market.

FHFA then projected the multifamily unit share, or “multifamily mix,” of the total (single-family and multifamily) mortgage market. The multifamily mix is an important parameter in FHFA’s model because the multifamily segment of the mortgage market has a disproportionate importance for the housing goals, given that most multifamily rental units are occupied by households with low or moderate incomes. FHFA arrived at the multifamily mix estimate through an analysis of historical trends in multifamily dollar volumes and average mortgage amount per unit to calculate historical multifamily mixes. The multifamily mortgage volume was then projected for 2009 based on expected market conditions and then converted to the multifamily mix. The multifamily market was then combined with the single-family market to obtain single-family owner-occupied unit, single-family rental unit and multifamily unit shares of the total mortgage market (not including jumbo and government-insured mortgages).

Later in the process, FHFA removed non-investment grade loans (B- or C-grade subprime loans) to further refine the conforming market estimates. In the economic environment for this proposed rule, the exclusion of the B and C (B&C) subprime segment of the market is especially important because subprime and other non-conforming loans were an increasing share of the total single-family market between 2004 and mid-2007, but are expected to be greatly reduced in volume for the foreseeable future.

The second major step in FHFA’s market model, estimating the goal- and subgoal-qualifying performance of the market for all three goal categories, was accomplished as follows: FHFA first projected the expected goal-qualifying shares for single-family rental and multifamily units. FHFA then estimated expected ranges of single-family owner-occupied units that would qualify for the housing goals for home purchase and refinance mortgages, including B&C loans.¹⁷ FHFA proceeded to project the

overall goals performance by combining the single-family owner-occupied segment with the projected goal performances of single-family rental and the multifamily segments.

As described above, the market model required estimates to be made of the investor mortgage share (*i.e.*, 7–9 percent of the overall single-family market), and the multifamily mix (*i.e.*, 9–13 percent of the total conventional market). Also, in this step, units associated with B&C-grade loans (single-family owner-occupied and investor-owned) were removed from the overall goals- and subgoals-qualifying estimates. The results of the market model for 2009 are presented in Table 4. The market and subgoal-qualifying ranges in Table 4 reflect the uncertainty in projecting single-family owner-occupied goal richness, investor-owned property mortgage volume and multifamily mortgage volume, given the anticipated economic environment in 2009. Also, there is considerable uncertainty in the refinance rate for 2009. As noted above, the market estimates in Table 4 are based on the expectation that refinance loans will be 59 percent of the single-family conventional conforming market. Table 5 provides the following three scenarios of alternative refinance activity assumptions:

Scenario A—low- and moderate-income share for home purchase units of 36 percent and 32 percent for refinance loans, and a refinance rate of 50 percent;

Scenario B—low- and moderate-income share for home purchase units of 36 percent and 32 percent for refinance loans, and a refinance rate of 70 percent; and

Scenario C—low- and moderate-income share for home purchase units of 36 percent and 29 percent for refinance loans, and a refinance rate of 70 percent.

This analysis assumes an investor mortgage share of 9.0 percent.

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refinance goal-qualifying shares will be significantly lower than home purchase goal-qualifying shares.

¹⁷ In a high refinance activity environment, as FHFA expects for 2009, it is anticipated that

Table 4**Housing Goals Market Estimates****Mortgage Market by Property Type**

Market Estimates (units)	2009 Projected		
	Low-End¹	High-End²	Mid-Point³
Single-Family Owner-Occupied Units	80.3	- 74.7%	77.5%
Single-Family Rental Units	9.6	- 11.2%	10.4%
Multifamily Rental Units	10.1	- 14.1%	12.1%
	100.0%		100.0%

Mortgage Market Affordability by Mortgage Characteristic

Market Estimates (units)	2009 Projected		
	Range		Mid-Point
Single-Family Owner-Occupied Home Purchase in Metropolitan Areas			
Low- and Moderate-Income Borrowers	35	- 41%	38.0%
Underserved Areas	27	- 31%	29.0%
Special Affordable Borrowers	10	- 15%	12.5%
Total Market (Single-Family and Multifamily)⁴			
Low- and Moderate-Income Borrowers	43.3	- 51.0%	47.3%
Underserved Areas	31.8	- 36.7%	34.3%
Special Affordable Borrowers	16.5	- 22.6%	19.6%

¹ Assumes investor mortgages are seven percent of all single-family mortgages and multifamily's share is nine percent of all units (including B and C mortgages).

² Assumes investor mortgages are nine percent of all single-family mortgages and multifamily's share is 13 percent of all units (including B and C mortgages).

³ Assumes investor mortgages are eight percent of all single-family mortgages and multifamily's share is 11 percent of all units (including B and C mortgages).

⁴ The FHFA total market projections in this table result from the various combinations of investor shares (7 - 9 percent), multifamily mixes (9 - 13 percent) and single-family owner-occupied home purchase mortgages in metropolitan areas affordabilities from this table.

Table 5
Market Estimates of Goal-Qualifying Shares of the Primary Mortgage Market in Various Refinance Environments

Multifamily Mix*	Low-Mod			Underserved Areas			Special Affordable		
	Scenario A	Scenario B	Scenario C	Scenario A	Scenario B	Scenario C	Scenario A	Scenario B	Scenario C
	14%	47.5%	46.9%	45.3%	35.3%	35.0%	32.9%	20.5%	20.2%
13	47.0	46.4	44.8	35.0	34.7	32.6	20.1	19.8	18.7
12	46.5	45.9	44.3	34.8	34.4	32.3	19.8	19.5	18.4
11	46.0	45.4	43.8	34.5	34.2	32.0	19.4	19.1	18.0
10	45.5	44.9	43.3	34.2	33.9	31.7	19.1	18.8	17.7
9	45.0	44.4	42.7	33.9	33.6	31.3	18.7	18.4	17.3
8	44.5	43.9	42.2	33.6	33.3	31.0	18.4	18.1	16.9
7	44.0	43.4	41.7	33.3	33.0	30.7	18.0	17.7	16.6
6	43.5	42.9	41.2	33.0	32.7	30.4	17.7	17.4	16.2
5	43.0	42.4	40.6	32.7	32.4	30.1	17.3	17.0	15.8

Note: Scenario A - low-mod share for home purchase units of 36 percent and 32 percent for refinance loans, and a refinance rate of 50 percent;
 Scenario B - low-mod share for home purchase units of 36 percent and 32 percent for refinance loans, and a refinance rate of 70 percent; and
 Scenario C - low-mod share for home purchase units of 36 percent and 29 percent for refinance loans, and a refinance rate of 70 percent.

*Multifamily mix refers to the share of all units financed in the conventional conforming market which are accounted for by mortgages on multifamily properties.

The impact of alternative refinance assumptions is illustrated with the low- and moderate-housing income goal. The low- and moderate-income share decreases by 0.5 to 0.8 percent for every 1.0 percent decrease in the multifamily mix. Under scenario B, the low- and moderate-income percentages are all 60 basis points lower than those of scenario A when the refinance rate is increased 20 percent to 70 percent. The results under the higher spread between home purchase and refinance single-family owner-occupied low- and moderate-income, scenario C, are lower by approximately 170 basis points from comparable numbers in scenario B. The scenario C low- and moderate-income market shares are 200 basis points lower than comparable low- and moderate-income shares produced from FHFA's market model.

Comparing results across all three scenarios, increasing the low- and moderate-income spread between home purchase and refinances from 400 to 700 basis points has a larger negative impact on the low- and moderate-income share than increasing the refinance rate from 50 percent to 70 percent. As the amount of refinance loans increases and single-family owner-occupied units dominate the model, the decrease in low- and moderate-income shares can be significant. The key to updating the estimated market ranges for the income-based goals and subgoals lies in: (1) An analysis of data on recent actual market experience; and (2) making adjustments to recent experience to account for known but not empirically quantifiable market trends. As noted above, FHFA's 2009 market estimates for the housing goals and subgoals are lower than projected in HUD's 2004 Rule. The data available to FHFA show a decline in the goals-qualifying market for single-family owner-occupied mortgages through 2007. However, the extensive market turmoil during 2008 is not fully captured in the empirical data.

FHFA's analysis of the mortgage market for 2009 that is the basis for this market forecast, as well as a detailed description of FHFA's market model, are provided in a document entitled "Estimating the Size of the Conventional Conforming Market for each Housing Goal in 2009," which is available at <http://www.fhfa.gov>.

D. General Requirements—Proposed § 1282.15

Proposed § 1282.15 would set forth general requirements for the counting of mortgage purchases toward the achievement of the housing goals. These requirements are generally consistent with those in 24 CFR 81.15.

E. Special Counting Requirements—Proposed § 1282.16

Proposed § 1282.16 would set forth special counting requirements for the receipt of full, partial or no credit for a transaction toward achievement of the housing goals. These requirements are generally consistent with those in 24 CFR 81.16, with the addition of two counting requirements discussed below. In some provisions, where the HUD regulatory language cites to specific statutory provisions that no longer appear in the statute due to amendment by HERA, the proposed rule incorporates the applicable statutory language.

1. Exclusion of Jumbo Conforming Loans—Proposed § 1282.16(b)(10)

The Stimulus Act excluded purchases of jumbo conforming loans from counting towards the housing goals for 2008. Under section 1336(a)(2) of the Safety and Soundness Act, FHFA has authority to exclude certain categories of mortgage purchases from counting towards the housing goals. See 12 U.S.C. 4566(a)(2). Consistent with the treatment of jumbo conforming loans in 2008, proposed § 1282.16(b)(10) would exclude purchases of jumbo conforming loans from counting towards the 2009 housing goals.

2. HASP Loan Modifications—Proposed § 1282.16(c)(10)

Currently, Enterprise purchases of loans that have been modified by third parties are eligible for goals credit. To address the increasing importance of loan modifications, proposed § 1282.16(c)(10) would provide that an Enterprise's modification of a loan in accordance with HASP that is held in portfolio, or in a pool backing a security guaranteed by the Enterprise, would be treated as a mortgage purchase and count for purposes of the housing goals. Many homeowners face the prospect of sharp increases in monthly mortgage costs as a result of rate resets. While loan modifications cannot prevent all defaults or foreclosures from occurring, they can help some existing homeowners stay in their homes, which will enhance the stability and liquidity of the housing and credit markets. In addition, such loan modifications may help to stabilize local communities and preserve the home values of homeowners who are not in danger of losing their jobs. HASP is designed to help families restructure or refinance their troubled mortgages to achieve an affordable payment and avoid foreclosure. HASP includes access to low-cost refinance loans for borrowers

with loans that are owned or guaranteed by the Enterprises. Many borrowers may also be eligible for loan modification assistance under HASP. Allowing goals credit for HASP loan modifications may encourage the Enterprises to modify more loans in their portfolios. FHFA requests comment on whether other types of loan modifications in addition to those made in accordance with HASP should receive goals credit.

The general rule for counting mortgages in proposed § 1282.16(a), consistent with 24 CFR 81.16(a), permits FHFA to assign goals credit upon its determination that a transaction or activity is substantially equivalent to a mortgage purchase, adds liquidity to an existing market, and fulfills an Enterprise's purpose and is in accordance with its Charter Act. FHFA believes that the proposed loan modifications meet the standards in § 1282.16(a) for goals credit. In today's unique market conditions, the largest threat to home ownership, including for the low- and moderate-income borrowers and communities at whom the housing goals are targeted, is the risk of default and foreclosure. The Administration's HASP loan modification initiative is a principal means of combating that risk. Therefore, during these unique conditions, FHFA finds that loan modifications within the HASP initiative are "substantially equivalent to a mortgage purchase" for purposes of the housing goals. FHFA also finds that they add liquidity, fulfill an Enterprise's purpose, and are consistent with the Charter Acts.

F. Affordability—Income Level and Rent Level Definitions—Proposed §§ 1282.17 Through 1282.19

Proposed §§ 1282.17 through 1282.19 would include income level and rent level definitions for purposes of determining whether a dwelling or rental unit is affordable to very low-, low- or moderate-income families. The proposed definitions are consistent with the definitions in 24 CFR 81.17 through 81.19.

G. Actions To Meet the Goals—Proposed § 1282.20

Proposed § 1282.20 would provide that to meet the housing goals under this rule, the Enterprises shall operate in accordance with 12 U.S.C. 4565(b). This is generally consistent with 24 CFR 81.20.

H. Notice and Determination of Failure To Meet Goals—Proposed § 1282.21

Proposed § 1282.21 would provide that if the Director of FHFA preliminarily determines that an

Enterprise has failed, or there is a substantial probability that an Enterprise will fail, to meet any housing goal, the Director shall follow the procedures in 12 U.S.C. 4566(b) for purposes of making a final determination on the Enterprises' achievement of the goals and the feasibility of the goals. This is generally consistent with 24 CFR 81.21.

I. Housing Plans—Proposed § 1282.22

Proposed § 1282.22 includes requirements for submission of a housing plan by an Enterprise for failure or substantial probability of failure to meet any housing goal that was or is feasible. The requirements are generally consistent with 24 CFR 81.22, except that the requirement to submit a housing plan would be at the discretion of the Director, pursuant to the amendments made by HERA to § 1336(c) of the Safety and Soundness Act. *See* 12 U.S.C. 4566(c).

IV. Paperwork Reduction Act

The proposed rule does not contain any information collection requirement that requires the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

V. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). FHFA has considered the impact of the proposed rule under the Regulatory Flexibility Act. The General Counsel of FHFA certifies that the proposed rule, if adopted as a final rule, is not likely to have a significant economic impact on a substantial number of small business entities because the regulation is applicable only to the Enterprises, which are not small entities for purposes of the Regulatory Flexibility Act.

List of Subjects in 12 CFR Part 1282

Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Securities.

Accordingly, for the reasons stated in the preamble, FHFA proposes to amend chapter XII of title 12 of the Code of

Federal Regulations, by adding new part 1282 to subchapter E to read as follows:

Chapter XII—Federal Housing Finance Agency

Subchapter E—Housing Goals and Mission

PART 1282—ENTERPRISE HOUSING GOALS AND MISSION

Subpart A—General

Sec.

1282.1 Scope of part.

1282.2 Definitions.

Subpart B—Housing Goals

1282.11 General.

1282.12 Low- and Moderate-Income Housing Goal.

1282.13 Central Cities, Rural Areas, and Other Underserved Areas Housing Goal.

1282.14 Special Affordable Housing Goal.

1282.15 General requirements.

1282.16 Special counting requirements.

1282.17 Affordability—Income level definitions—family size and income known (owner-occupied units, actual tenants, and prospective tenants).

1282.18 Affordability—Income level definitions—family size not known (actual or prospective tenants).

1282.19 Affordability—Rent level definitions—tenant income is not known.

1282.20 Actions to be taken to meet the goals.

1282.21 Notice and determination of failure to meet goals.

1282.22 Housing plans.

Authority: 12 U.S.C. 4501, 4502, 4511, 4513, 4526, 4561(c), 4565(b), 4566, 4603.

Subpart A—General

§ 1282.1 Scope of part.

The Director has general regulatory and supervisory authority over Fannie Mae and Freddie Mac, and is required to make such regulations as are necessary to carry out the Director's duties under the Safety and Soundness Act, the Fannie Mae Charter Act, and the Freddie Mac Act, and to ensure that the purposes of such statutes are accomplished.

§ 1282.2 Definitions.

(a) *Statutory terms.* All terms defined in the Safety and Soundness Act are used in accordance with their statutory meaning unless otherwise defined in paragraph (b) of this section.

(b) *Other terms.* As used in this part, the term—

AHAR means the Annual Housing Activities Report that an Enterprise submits to the Director under section 309(n) of the Fannie Mae Charter Act or section 307(f) of the Freddie Mac Act.

AHAR information means data or information contained in the AHAR.

AHS means the American Housing Survey published by HUD and the Department of Commerce.

Balloon mortgage means a mortgage providing for payments at regular intervals, with a final payment ("balloon payment") that is at least 5 percent more than the periodic payments. The periodic payments may cover some or all of the periodic principal or interest. Typically, the periodic payments are level monthly payments that would fully amortize the mortgage over a stated term and the balloon payment is a single payment due after a specified period (but before the mortgage would fully amortize) and pays off or satisfies the outstanding balance of the mortgage.

Book-entry GSE Security means a GSE Security issued or maintained in the Book-entry System. Book-entry GSE Security also means the separate interest and principal components of a Book-entry GSE Security if such security has been designated by the GSE as eligible for division into such components and the components are maintained separately on the books of one or more Federal Reserve Banks.

Book-entry System means the automated book-entry system operated by the Federal Reserve Banks acting as the fiscal agent for the GSEs, on which Book-entry GSE Securities are issued, recorded, transferred and maintained in book-entry form.

Central city means the underserved areas located in any political subdivision designated as a central city by the Office of Management and Budget of the Executive Office of the President.

Charter Act means the Fannie Mae Charter Act or the Freddie Mac Act.

Contract rent means the total rent that is, or is anticipated to be, specified in the rental contract as payable by the tenant to the owner for rental of a dwelling unit, including fees or charges for management and maintenance services and those utility charges that are included in the rental contract. In determining contract rent, rent concessions shall not be considered, *i.e.*, contract rent is not decreased by any rent concessions. Contract rent is rent net of rental subsidies.

Conventional mortgage means a mortgage other than a mortgage as to which an Enterprise has the benefit of any guaranty, insurance or other obligation by the United States or any of its agencies or instrumentalities.

Day means a calendar day.

Definitive GSE Security means a GSE Security in engraved or printed form, or that is otherwise represented by a certificate.

Director means the Director of FHFA or his or her designee.

Dwelling unit means a room or unified combination of rooms intended for use, in whole or in part, as a dwelling by one or more persons, and includes a dwelling unit in a single-family property, multifamily property, or other residential or mixed-use property.

ECOA means the Equal Credit Opportunity Act (15 U.S.C. 1691 *et seq.*).

Eligible Book-entry Enterprise Security means a Book-entry Enterprise Security issued or maintained in the Book-entry System which by the terms of its Security Documentation is eligible to be converted from book-entry form into definitive form.

Enterprise means Fannie Mae or Freddie Mac (*Enterprises* means, collectively, Fannie Mae and Freddie Mac).

Entitlement Holder means a Person or a GSE to whose account an interest in a Book-entry GSE Security is credited on the records of a Securities Intermediary.

Family means one or more individuals who occupy the same dwelling unit.

Fannie Mae means the Federal National Mortgage Association and any affiliate thereof.

Fannie Mae Charter Act means the Federal National Mortgage Association Charter Act (12 U.S.C. 1715 *et seq.*).

Federal Reserve Bank Operating Circular means the publication issued by each Federal Reserve Bank that sets forth the terms and conditions under which the Reserve Bank maintains book-entry Securities accounts (including Book-entry GSE Securities) and transfers book-entry Securities (including Book-entry GSE Securities).

FHFA means the Federal Housing Finance Agency.

FOIA means the Freedom of Information Act (5 U.S.C. 552).

Freddie Mac means the Federal Home Loan Mortgage Corporation and any affiliate thereof.

Freddie Mac Act means the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1451 *et seq.*).

Government-sponsored enterprise or *GSE* means Fannie Mae or Freddie Mac.

GSE Security means any security or obligation of Fannie Mae or Freddie Mac issued under its respective Charter Act in the form of a Definitive GSE Security or a Book-entry GSE Security.

HOEPA mortgage means a mortgage for which the annual percentage rate (as calculated in accordance with the relevant provisions of section 107 of the Home Ownership Equity Protection Act (HOEPA) (15 U.S.C. 1606)) exceeds the

threshold described in section 103(aa)(1)(A) of HOEPA (15 U.S.C. 1602(aa)(1)(A)), or for which the total points and fees payable by the borrower exceed the threshold described in section 103(aa)(1)(B) of HOEPA (15 U.S.C. 1602(aa)(1)(B)), as those thresholds may be increased or decreased by the Federal Reserve Board or by Congress, unless the Enterprises are otherwise notified in writing by FHFA. Notwithstanding the exclusions in section 103(aa)(1) of HOEPA, for purposes of this part, the term “HOEPA mortgage” includes all types of mortgages as defined in this section, including residential mortgage transactions as that term is defined in section 103(w) of HOEPA (15 U.S.C. 1602(w)), but does not include reverse mortgages.

Home Purchase Mortgage means a residential mortgage for the purchase of an owner-occupied single-family property.

HUD means the United States Department of Housing and Urban Development.

Lender means any entity that makes, originates, sells, or services mortgages, and includes the secured creditors named in the debt obligation and document creating the mortgage.

Low-income area means a census tract or block numbering area in which the median income does not exceed 80 percent of the area median income.

Median income means, with respect to an area, the unadjusted median family income for the area as most recently determined by HUD. FHFA will provide the Enterprises annually with information specifying how the median family income estimates for metropolitan areas are to be applied for the purposes of determining median family income.

Metropolitan area means a metropolitan statistical area (“MSA”), or a portion of such an area for which median family income estimates are determined by HUD.

Minority means any individual who is included within any one or more of the following racial and ethnic categories:

(1) American Indian or Alaskan Native—a person having origins in any of the original peoples of North and South America (including Central America), and who maintains tribal affiliation or community attachment;

(2) Asian—a person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent, including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam;

(3) Black or African American—a person having origins in any of the black racial groups of Africa;

(4) Hispanic or Latino—a person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race; and

(5) Native Hawaiian or Other Pacific Islander—a person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

Mortgage means a member of such classes of liens, including subordinate liens, as are commonly given or are legally effective to secure advances on, or the unpaid purchase price of, real estate under the laws of the State in which the real estate is located, or a manufactured home that is personal property under the laws of the State in which the manufactured home is located, together with the credit instruments, if any, secured thereby, and includes interests in mortgages. “Mortgage” includes a mortgage, lien, including a subordinate lien, or other security interest on the stock or membership certificate issued to a tenant-stockholder or resident-member by a cooperative housing corporation, as defined in section 216 of the Internal Revenue Code of 1986, and on the proprietary lease, occupancy agreement, or right of tenancy in the dwelling unit of the tenant-stockholder or resident-member in such cooperative housing corporation.

Mortgage data means data obtained by the Director from the Enterprises under subsection 309(m) of the Fannie Mae Charter Act and subsection 307(e) of the Freddie Mac Act.

Mortgage purchase means a transaction in which an Enterprise bought or otherwise acquired with cash or other thing of value, a mortgage for its portfolio or for securitization.

Mortgages contrary to good lending practices means a mortgage or a group or category of mortgages entered into by a lender and purchased by an Enterprise where it can be shown that a lender engaged in a practice of failing to:

(1) Report monthly on the borrower’s repayment history to credit repositories on the status of each Enterprise loan that a lender is servicing;

(2) Offer mortgage applicants products for which they qualify, but rather steer applicants to high cost products that are designed for less credit worthy borrowers. Similarly, for consumers who seek financing through a lender’s higher-priced subprime lending channel, lenders should not fail to offer or direct such consumers toward the lender’s standard mortgage line if they are able to qualify for one of the standard products;

(3) Comply with fair lending requirements; or

(4) Engage in other good lending practices that are:

- (i) Identified in writing by an Enterprise as good lending practices for inclusion in this definition; and
- (ii) Determined by the Director to constitute good lending practices.

Mortgages with unacceptable terms or conditions or resulting from unacceptable practices means a mortgage or a group or category of mortgages with one or more of the following terms or conditions:

(1) Excessive fees, where the total points and fees charged to a borrower exceed the greater of 5 percent of the loan amount or a maximum dollar amount of \$1000, or an alternative amount requested by an Enterprise and determined by the Director as appropriate for small mortgages.

(i) For purposes of this definition, points and fees include:

- (A) Origination fees;
- (B) Underwriting fees;
- (C) Broker fees;
- (D) Finder's fees; and
- (E) Charges that the lender imposes as a condition of making the loan, whether they are paid to the lender or a third party.

(ii) For purposes of this definition, points and fees do not include:

- (A) Bona fide discount points;
- (B) Fees paid for actual services rendered in connection with the origination of the mortgage, such as attorneys' fees, notary's fees, and fees paid for property appraisals, credit reports, surveys, title examinations and extracts, flood and tax certifications, and home inspections;
- (C) The cost of mortgage insurance or credit-risk price adjustments;
- (D) The costs of title, hazard, and flood insurance policies;
- (E) State and local transfer taxes or fees;
- (F) Escrow deposits for the future payment of taxes and insurance premiums; and
- (G) Other miscellaneous fees and charges that, in total, do not exceed 0.25 percent of the loan amount.

(2) Prepayment penalties, except where:

- (i) The mortgage provides some benefits to the borrower (e.g., a rate or fee reduction for accepting the prepayment premium);
- (ii) The borrower is offered the choice of another mortgage that does not contain payment of such a premium;
- (iii) The terms of the mortgage provision containing the prepayment penalty are adequately disclosed to the borrower; and

(iv) The prepayment penalty is not charged when the mortgage debt is accelerated as the result of the borrower's default in making his or her mortgage payments.

(3) The sale or financing of prepaid single-premium credit life insurance products in connection with the origination of the mortgage;

(4) Evidence that the lender did not adequately consider the borrower's ability to make payments, *i.e.*, mortgages that are originated with underwriting techniques that focus on the borrower's equity in the home, and do not give full consideration of the borrower's income and other obligations. Ability to repay must be determined and must be based upon relating the borrower's income, assets, and liabilities to the mortgage payments; or

(5) Other terms or conditions that are:

- (i) Identified in writing by an Enterprise as unacceptable terms or conditions or resulting from unacceptable practices for inclusion in this definition; and
- (ii) Determined by the Director as an unacceptable term or condition of a mortgage for which goals credit should not be received.

Multifamily housing means a residence consisting of more than four dwelling units. The term includes cooperative buildings and condominium projects.

New England means Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.

Ongoing program means a program that is expected to continue for the foreseeable future.

Other underserved area means any underserved area that is in a metropolitan area, but not in a central city.

Owner-occupied unit means a dwelling unit in single-family housing in which a mortgagor of the unit resides.

Participant means a Person or GSE that maintains a Participant's Securities Account with a Federal Reserve Bank.

Participation means a fractional interest in the principal amount of a mortgage.

Person, as used in subpart H, means and includes an individual, corporation, company, governmental entity, association, firm, partnership, trust, estate, representative, and any other similar organization, but does not mean or include the United States, a GSE, or a Federal Reserve Bank.

Portfolio of loans means 10 or more loans.

Proprietary information means all mortgage data and all AHAR information that the Enterprises submit to the Director in the AHARs that

contain trade secrets or privileged or confidential, commercial, or financial information that, if released, would be likely to cause substantial competitive harm.

Public data means all mortgage data and all AHAR information that the Enterprises submit to the Director in the AHARs that the Director determines are not proprietary and may appropriately be disclosed consistent with other applicable laws and regulations.

Real estate mortgage investment conduit (REMIC) means multi-class mortgage securities issued by a tax-exempt entity.

Refinancing means a transaction in which an existing mortgage is satisfied or replaced by a new mortgage undertaken by the same borrower. The term does not include:

- (1) A renewal of a single payment obligation with no change in the original terms;
- (2) A reduction in the annual percentage rate of the mortgage as computed under the Truth in Lending Act, with a corresponding change in the payment schedule;
- (3) An agreement involving a court proceeding;
- (4) A workout agreement, in which a change in the payment schedule or collateral requirements is agreed to as a result of the mortgagor's default or delinquency, unless the rate is increased or the new amount financed exceeds the unpaid balance plus earned finance charges and premiums for the continuation of insurance;

(5) The renewal of optional insurance purchased by the mortgagor and added to an existing mortgage;

(6) A renegotiated balloon mortgage on a multifamily property where the balloon payment was due within 1 year after the date of the closing of the renegotiated mortgage; and

(7) A conversion of a balloon mortgage note on a single family property to a fully amortizing mortgage note where the Enterprise already owns or has an interest in the balloon note at the time of the conversion.

Rent means, for a dwelling unit:

- (1) When the contract rent includes all utilities, the contract rent; or
- (2) When the contract rent does not include all utilities, the contract rent plus:

- (i) The actual cost of utilities not included in the contract rent; or
- (ii) A utility allowance.

Rental housing means dwelling units in multifamily housing and dwelling units that are not owner-occupied in single-family housing.

Rental unit means a dwelling unit that is not owner-occupied and is rented or available to rent.

Residence means a property where one or more families reside.

Residential mortgage means a mortgage on single-family or multifamily housing.

Revised Article 8 has the same meaning as in 31 CFR 357.2.

Rural area means any underserved area located outside of any metropolitan area.

Safety and Soundness Act means the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, as amended by the Housing and Economic Recovery Act of 2008, codified generally at 12 U.S.C. 4501 *et seq.*

Seasoned mortgage means a mortgage on which the date of the mortgage note is more than 1 year before the Enterprise purchased the mortgage.

Second mortgage means any mortgage that has a lien position subordinate only to the lien of the first mortgage.

Secondary residence means a dwelling where the mortgagor maintains (or will maintain) a part-time place of abode and typically spends (or will spend) less than the majority of the calendar year. A person may have more than one secondary residence at a time.

Security means any mortgage participation certificate, note, bond, debenture, evidence of indebtedness, collateral-trust certificate, transferable share, certificate of deposit for a security, or, in general, any interest or instrument commonly known as a "security".

Securities Documentation means the applicable statement of terms, trust indenture, securities agreement or other documents establishing the terms of a Book-entry GSE Security.

Single-family housing means a residence consisting of one to four dwelling units. Single-family housing includes condominium dwelling units and dwelling units in cooperative housing projects.

Transfer message means an instruction of a Participant to a Federal Reserve Bank to effect a transfer of a Book-entry Security (including a Book-entry GSE Security) maintained in the Book-entry System, as set forth in Federal Reserve Bank Operating Circulars.

Underserved area means:

(1) For purposes of the definitions of "Central city" and "Other underserved area", a census tract, a Federal or State American Indian reservation or tribal or individual trust land, or the balance of a census tract excluding the area within any Federal or State American Indian reservation or tribal or individual trust land, having:

(i) A median income at or below 120 percent of the median income of the

metropolitan area and a minority population of 30 percent or greater; or
(ii) A median income at or below 90 percent of median income of the metropolitan area.

(2) For purposes of the definition of "Rural area", a whole census tract, a Federal or State American Indian reservation or tribal or individual trust land, or the balance of a census tract excluding the area within any Federal or State American Indian reservation or tribal or individual trust land, having:

(i) A median income at or below 120 percent of the greater of the State non-metropolitan median income or the nationwide non-metropolitan median income and a minority population of 30 percent or greater; or

(ii) A median income at or below 95 percent of the greater of the State non-metropolitan median income or nationwide non-metropolitan median income.

(3) Any Federal or State American Indian reservation or tribal or individual trust land that includes land that is both within and outside of a metropolitan area and that is designated as an underserved area by FHFA. In such cases, FHFA will notify the Enterprises as to applicability of other definitions and counting conventions.

Utilities means charges for electricity, piped or bottled gas, water, sewage disposal, fuel (oil, coal, kerosene, wood, solar energy, or other), and garbage and trash collection. Utilities do not include charges for telephone service.

Utility allowance means either:

(1) The amount to be added to contract rent when utilities are not included in contract rent (also referred to as the "AHS-derived utility allowance"), as issued periodically by FHFA; or

(2) The utility allowance established under the HUD Section 8 Program (42 U.S.C. 1437f) for the area where the property is located.

Very low-income means, for purposes of the 2009 housing goals:

(i) In the case of owner-occupied units, income not in excess of 60 percent of area median income; and

(ii) In the case of rental units, income not in excess of 60 percent of area median income, with adjustments for smaller and larger families, as determined by the Director.

Wholesale exchange means a transaction in which an Enterprise buys or otherwise acquires mortgages held in portfolio or securitized by the other Enterprise, or where both Enterprises swap such mortgages.

Working day means a day when FHFA is officially open for business.

(c) *Subpart H terms.* Unless the context requires otherwise, terms used in subpart H of this part that are not defined in this part, have the meanings as set forth in 31 CFR 357.2. Definitions and terms used in 31 CFR part 357 should read as though modified to effectuate their application to the GSEs.

Subpart B—Housing Goals

§ 1282.11 General.

This subpart establishes three housing goals for 2009 as required by section 1331(c) of the Safety and Soundness Act, requirements for measuring performance under the goals, and procedures for monitoring and enforcing the goals.

§ 1282.12 Low- and Moderate-Income Housing Goal.

(a) *Purpose of goal.* This annual goal for the purchase by each Enterprise of mortgages on housing for low- and moderate-income families ("the Low- and Moderate-Income Housing Goal") is intended to achieve increased purchases by the Enterprises of such mortgages.

(b) *Factors.* In establishing the Low- and Moderate-Income Housing Goals for 2009, the Director considered the feasibility of the goals given the current market conditions as required by section 1331(c) of the Safety and Soundness Act.

(c) *Goals.* For the year 2009, the goal for each Enterprise's purchases of mortgages on housing for low- and moderate-income families shall be 51 percent of the total number of dwelling units financed by that Enterprise's mortgage purchases in 2009. In addition, as a Low- and Moderate-Income Housing Home Purchase Subgoal, 40 percent of the total number of home purchase mortgages in metropolitan areas financed by that Enterprise's mortgage purchases shall be home purchase mortgages in metropolitan areas which count toward the Low- and Moderate-Income Housing Goal for 2009.

§ 1282.13 Central Cities, Rural Areas, and Other Underserved Areas Housing Goal.

(a) *Purpose of the goal.* This annual goal for the purchase by each Enterprise of mortgages on housing located in central cities, rural areas, and other underserved areas is intended to achieve increased purchases by the Enterprises of mortgages financing housing in areas that are underserved in terms of mortgage credit.

(b) *Factors.* In establishing the Central Cities, Rural Areas, and Other Underserved Areas Goals for 2009, the Director considered the feasibility of the goals given the current market

conditions as required by section 1331(c) of the Safety and Soundness Act.

(c) *Goals.* For the year 2009, the goal for each Enterprise's purchases of mortgages on housing located in central cities, rural areas, and other underserved areas shall be 37 percent of the total number of dwelling units financed by that Enterprise's mortgage purchases in 2009. In addition, as a Central Cities, Rural Areas, and Other Underserved Areas Home Purchase Subgoal, 30 percent of the total number of home purchase mortgages in metropolitan areas financed by that Enterprise's mortgage purchases shall be home purchase mortgages in metropolitan areas which count toward the Central Cities, Rural Areas, and Other Underserved Areas Housing Goal for 2009.

(d) *Measuring performance.* The Enterprises shall determine on a mortgage-by-mortgage basis, through geocoding or any similarly accurate and reliable method, whether a mortgage finances one or more dwelling units located in a central city, rural area, or other underserved area.

§ 1282.14 Special Affordable Housing Goal.

(a) *Purpose of the goal.* This goal is intended to achieve increased purchases by the Enterprises of mortgages on rental and owner-occupied housing meeting the then-existing unaddressed needs of, and affordable to, low-income families in low-income areas and very low-income families.

(b) *Factors.* In establishing the Special Affordable Housing Goals for 2009, the Director considered the feasibility of the goals given the current market conditions as required by section 1331(c) of the Safety and Soundness Act.

(c) *Goals.* For the year 2009, the goal for each Enterprise's purchases of mortgages on rental and owner-occupied housing meeting the then-existing, unaddressed needs of and affordable to low-income families in low-income areas and very low-income families shall be 23 percent of the total number of dwelling units financed by that Enterprise's mortgage purchases in 2009. The goal for the year 2009 shall include mortgage purchases financing dwelling units in multifamily housing totaling not less than 1.0 percent of the annual average dollar volume of combined (single-family and multifamily) mortgages purchased by the respective Enterprise in the years 2000, 2001, and 2002. In addition, as a Special Affordable Housing Home Purchase Subgoal, 14 percent of the

total number of home purchase mortgages in metropolitan areas financed by that Enterprise's mortgage purchases shall be home purchase mortgages in metropolitan areas which count toward the Special Affordable Housing Goal for 2009.

(d) *Counting of multifamily units.*—(1) Dwelling units affordable to low-income families and financed by a particular purchase of a mortgage on multifamily housing shall count toward achievement of the Special Affordable Housing Goal where at least:

(i) 20 percent of the dwelling units in the particular multifamily property are affordable to especially low-income families; or

(ii) 40 percent of the dwelling units in the particular multifamily property are affordable to very low-income families.

(2) Where only some of the units financed by a purchase of a mortgage on multifamily housing count under the multifamily component of the goal, only a portion of the unpaid principal balance of the mortgage attributable to such units shall count toward the multifamily component. The portion of the mortgage counted under the multifamily requirement shall be equal to the ratio of the total units that count to the total number of units in the mortgage property.

(e) *Full Credit Activities.*—(1) For purposes of this paragraph (e), full credit means that each unit financed by a mortgage purchased by an Enterprise and meeting the requirements of this section shall count toward achievement of the Special Affordable Housing Goal for that Enterprise.

(2) The following mortgages meet the requirements of paragraph (e)(3) of this section: Mortgages insured under HUD's Home Equity Conversion Mortgage ("HECM") Insurance Program, 12 U.S.C. 1715z-20; mortgages guaranteed under the Rural Housing Service's Single Family Housing Guaranteed Loan Program, 42 U.S.C. 1472; mortgages on properties on tribal lands insured under FHA's Section 248 program, 12 U.S.C. 1715z-13, HUD's Section 184 program, 12 U.S.C. 1515z-13a, or Title VI of the Native American Housing Assistance and Self-Determination Act of 1996, 25 U.S.C. 4191 through 4195.

(3) FHFA will give full credit toward achievement of the Special Affordable Housing Goal for the purchase or securitization of Federally insured or guaranteed mortgages if such mortgages cannot be readily securitized through the Government National Mortgage Association or any other Federal Agency, and participation of the Enterprise substantially enhances the affordability of the housing subject to

such mortgages, provided the Enterprise submits documentation to FHFA that supports eligibility under this paragraph for FHFA's approval.

(4)(i) FHFA will give full credit toward achievement of the Special Affordable Housing Goal for the purchase or refinancing of existing seasoned portfolios of loans if the seller is engaged in a specific program to use the proceeds of such sales to originate additional loans that meet such goal, and such purchases or refinancings support additional lending for housing that otherwise qualifies under such goal to be considered for purposes of such goal. For purposes of determining whether a seller meets the requirement in this paragraph (e)(4), a seller must currently operate on its own or actively participate in an on-going, discernible, active, and verifiable program directly targeted at the origination of new mortgage loans that qualify under the Special Affordable Housing Goal.

(ii) A seller's activities must evidence a current intention or plan to reinvest the proceeds of the sale into mortgages qualifying under the Special Affordable Housing Goal, with a current commitment of resources on the part of the seller for this purpose.

(iii) A seller's actions must evidence willingness to buy qualifying loans when these loans become available in the market as part of active, on-going, sustainable efforts to ensure that additional loans that meet the goal are originated.

(iv) Actively participating in such a program includes purchasing qualifying loans from a correspondent originator, including a lender or qualified housing group, that operates an on-going program resulting in the origination of loans that meet the requirements of the goal, has a history of delivering, and currently delivers qualifying loans to the seller.

(v) The Enterprise must verify and monitor that the seller meets the requirements in paragraphs (e)(4)(i) through (e)(4)(iv) of this section and develop any necessary mechanisms to ensure compliance with the requirements, except as provided in paragraphs (e)(4)(vi) and (vii) of this section.

(vi) Where a seller's primary business is originating mortgages on housing that qualifies under this Special Affordable Housing Goal, such seller is presumed to meet the requirements in paragraphs (e)(4)(i) through (e)(4)(iv) of this section. Sellers that are institutions that are:

(A) Regularly in the business of mortgage lending;

(B) Depository institutions insured under the Deposit Insurance Fund; and

(C) Subject to, and have received at least a satisfactory performance evaluation rating for:

(1) At least the two most recent consecutive examinations under the Community Reinvestment Act, if the lending institutions have total assets in excess of \$250 million; or

(2) The most recent examination under the Community Reinvestment Act if the lending institutions which have total assets no more than \$250 million are identified as sellers that are presumed to have a primary business of originating mortgages on housing that qualifies under this Special Affordable Housing Goal and, therefore, are presumed to meet the requirements in paragraphs (e)(4)(i) through (e)(4)(iv) of this section.

(vii) Classes of institutions or organizations that are presumed to have as their primary business originating mortgages on housing that qualifies under this Special Affordable Housing Goal and, therefore, are presumed in paragraphs (e)(4)(i) through (e)(4)(iv) of this section to meet the requirements are as follows: State housing finance agencies; affordable housing loan consortia; and Federally insured credit unions that are:

(A) Members of the Federal Home Loan Bank System and meet the first-time homebuyer lending standard of the Community Support Program; or

(B) Community development credit unions; community development financial institutions; public loan funds; or non-profit mortgage lenders. FHFA may determine that additional classes of institutions or organizations are primarily engaged in the business of financing affordable housing mortgages for purposes of this presumption, and if so, will notify the Enterprises in writing.

(viii) For purposes of paragraph (e)(4) of this section, if the seller did not originate the mortgage loans but the originator of the mortgage loans fulfills the requirements of either paragraphs (e)(4)(i) through (e)(4)(iv), paragraph (e)(4)(vi) or paragraph (e)(4)(vii) of this section, and the seller has held the loans for six months or less prior to selling the loans to the Enterprise, FHFA will consider that the seller has met the requirements of this paragraph (e)(4).

(f) *Partial credit activities.* Mortgages insured under HUD's Title I program, which includes property improvement and manufactured home loans, shall receive one-half credit toward the Special Affordable Housing Goal until such time as the Government National Mortgage Association fully implements a program to purchase and securitize Title I loans.

(g) *No credit activities.* Neither the purchase nor the securitization of mortgages associated with the refinancing of an Enterprise's existing mortgages or mortgage-backed securities portfolios shall receive credit toward the achievement of the Special Affordable Housing Goal. Refinancings that result from the wholesale exchange of mortgages between the two Enterprises shall not count toward the achievement of this goal. Refinancings of individual mortgages shall count toward achievement of this goal when the refinancing is an arms-length transaction that is borrower-driven and the mortgage otherwise counts toward achievement of this goal. For purposes of this paragraph (g), "mortgages or mortgage-backed securities portfolios" includes mortgages retained by Fannie Mae or Freddie Mac and mortgages utilized to back mortgage-backed securities.

§ 1282.15 General requirements.

(a) *Calculating the numerator and denominator.* Performance under each of the housing goals shall be measured using a fraction that is converted into a percentage.

(1) *The numerator.* The numerator of each fraction is the number of dwelling units financed by an Enterprise's mortgage purchases in a particular year that count toward achievement of the housing goal.

(2) *The denominator.* The denominator of each fraction is, for all mortgages purchased, the number of dwelling units that could count toward achievement of the goal under appropriate circumstances. The denominator shall not include Enterprise transactions or activities that are not mortgages or mortgage purchases as defined by FHFA or transactions that are specifically excluded as ineligible under § 1282.16(b).

(3) *Missing data or information.* When an Enterprise lacks sufficient data or information to determine whether the purchase of a mortgage originated after 1992 counts toward achievement of a particular housing goal, that mortgage purchase shall be included in the denominator for that housing goal, except under the circumstances described in paragraphs (d) and (e)(6) of this section.

(b) *Properties with multiple dwelling units.* For the purposes of counting toward the achievement of the goals, whenever the property securing a mortgage contains more than one dwelling unit, each such dwelling unit shall be counted as a separate dwelling unit financed by a mortgage purchase.

(c) *Credit toward multiple goals.* A mortgage purchase (or dwelling unit financed by such purchase) by an Enterprise in a particular year shall count toward the achievement of each housing goal for which such purchase (or dwelling unit) qualifies in that year.

(d) *Counting owner-occupied units.*

(1) For purposes of counting owner-occupied units toward achievement of the Low- and Moderate-Income Housing Goal or the Special Affordable Housing Goal, mortgage purchases financing such units shall be evaluated based on the income of the mortgagors and the area median income at the time of origination of the mortgage. To determine whether mortgages may be counted under a particular family income level, *i.e.*, especially low-, very low-, low- or moderate-income, the income of the mortgagors is compared to the median income for the area at the time of the mortgage application, using the appropriate percentage factor provided under § 1282.17.

(2)(i) When the income of the mortgagor(s) is not available to determine whether an owner-occupied unit in a property securing a single-family mortgage originated after 1992 and purchased by an Enterprise counts toward achievement of the Low- and Moderate-Income Housing Goal or the Special Affordable Housing Goal, an Enterprise's performance with respect to such unit may be evaluated using estimated affordability information in accordance with one of the following methods:

(A) Excluding from the denominator and the numerator single-family owner-occupied units located in census tracts with median incomes less than, or equal to, area median income based on the most recent decennial census, up to a maximum of one percent of the total number of single-family owner-occupied dwelling units eligible to be counted toward the respective housing goal in the current year. Mortgage purchases with missing data in excess of the maximum will be included in the denominator and excluded from the numerator;

(B) For home purchase mortgages and for refinance mortgages separately, multiplying the number of owner-occupied units with missing borrower income information in properties securing mortgages purchased by the Enterprise in each census tract by the percentage of all single-family owner-occupied mortgage originations in the respective tracts that would count toward achievement of each goal, as determined by FHFA based on the most recent Home Mortgage Disclosure Act data available; or

(C) Such other data source and methodology as may be approved by FHFA.

(ii) In any calendar year, an Enterprise may use only one of the methods specified in paragraph (d)(2)(i) of this section to estimate affordability information for single-family owner-occupied units.

(iii) If an Enterprise chooses to use an estimation methodology under paragraph (d)(2)(i)(B) or (d)(2)(i)(C) of this section to determine affordability for owner-occupied units in properties securing single-family mortgage purchases eligible to be counted toward the respective housing goal, then that methodology may be used up to nationwide maximums for home purchase mortgages and for refinance mortgages that shall be calculated by multiplying, for each census tract, the percentage of all single-family owner-occupied mortgage originations with missing borrower incomes (as determined by FHFA based on the most recent Home Mortgage Disclosure Act data available for home purchase and refinance mortgages, respectively) by the number of single-family owner-occupied units in properties securing mortgages purchased by the Enterprise for each census tract, summed up over all census tracts. If this nationwide maximum is exceeded, then the estimated number of goal-qualifying units will be adjusted by the ratio of the applicable nationwide maximum number of units for which income information may be estimated to the total number of single-family owner-occupied units with missing income information in properties securing mortgages purchased by the Enterprise. Owner-occupied units in excess of the nationwide maximum, and any units for which estimation information is not available, shall remain in the denominator of the respective goal calculation.

(e) *Counting rental units*—(1) *Use of income, rent*—(i) *Generally*. For purposes of counting rental units toward achievement of the Low- and Moderate-Income Housing Goal or the Special Affordable Housing Goal, mortgage purchases financing such units shall be evaluated based on the income of actual or prospective tenants where such data is available, *i.e.*, known to a lender.

(ii) *Availability of income information*.—(A) Each Enterprise shall require lenders to provide to the Enterprise tenant income information under paragraphs (e)(3) and (4) of this section, but only when such information is known to the lender.

(B) When such tenant income information is available for all occupied units, the Enterprise's performance shall be based on the income of the tenants in the occupied units. For unoccupied units that are vacant and available for rent and for unoccupied units that are under repair or renovation and not available for rent, the Enterprise shall use the income of prospective tenants, if paragraph (e)(4) of this section is applicable. If paragraph (e)(4) of this section is not applicable, the Enterprise shall use rent levels for comparable units in the property to determine affordability.

(2) *Model units and rental offices*. A model unit or rental office in a multifamily property may count toward achievement of the housing goals only if an Enterprise determines that:

(i) It is reasonably expected that the units will be occupied by a family within one year;

(ii) The number of such units is reasonable and minimal considering the size of the multifamily property; and

(iii) Such unit otherwise meets the requirements for the goal.

(3) *Income of actual tenants*. When the income of actual tenants is available, to determine whether a tenant is very low-, low-, or moderate-income, the income of the tenant shall be compared to the median income for the area, adjusted for family size as provided in § 1282.17.

(4) *Income of prospective tenants*. When income for tenants is available to a lender because a project is subject to a Federal housing program that establishes the maximum income for a tenant or a prospective tenant in rental units, the income of prospective tenants may be counted at the maximum income level established under such housing program for that unit. In determining the income of prospective tenants, the income shall be projected based on the types of units and market area involved. Where the income of prospective tenants is projected, each Enterprise must determine that the income figures are reasonable considering the rents (if any) on the same units in the past and considering current rents on comparable units in the same market area.

(5) *Use of rent*. When the income of the prospective or actual tenants of a dwelling unit is not available, performance under these goals will be evaluated based on rent and whether the rent is affordable to the income group targeted by the housing goal. A rent is affordable if the rent does not exceed 30 percent of the maximum income level of very low-, low-, or moderate-income families as provided in § 1282.19. In

determining contract rent for a dwelling unit, the actual rent or average rent by unit type shall be used.

(6) *Affordability data unavailable*.—(i) *Multifamily*.—(A) When an Enterprise lacks sufficient information to determine whether a rental unit in a property securing a multifamily mortgage purchased by an Enterprise counts toward achievement of the Low- and Moderate-Income Housing Goal or the Special Affordable Housing Goal because neither the income of prospective or actual tenants, nor the actual or average rental data, are available, an Enterprise's performance with respect to such unit may be evaluated using estimated affordability information in accordance with one of the following methods:

(1) Multiplying the number of rental units with missing affordability information in properties securing multifamily mortgages purchased by the Enterprise in each census tract by the percentage of all rental dwelling units in the respective tracts that would count toward achievement of each goal, as determined by FHFA based on the most recent decennial census. For units with missing affordability information in tracts for which such methodology is not possible, such units will be excluded from the denominator as well as the numerator in calculating performance under the respective housing goal(s); or

(2) Such other data source and methodology as may be approved by FHFA.

(B) In any calendar year, an Enterprise may use only one of the methods specified in paragraph (e)(6)(i)(A) of this section to estimate affordability information for multifamily rental units.

(C) If an Enterprise chooses to use an estimation methodology under paragraph (e)(6)(i)(A) of this section to determine affordability for rental units in properties securing multifamily mortgage purchases eligible to be counted toward the respective housing goal, then that methodology may be used up to a nationwide maximum of ten percent of the total number of rental units in properties securing multifamily mortgages purchased by the Enterprise in the current year. If this maximum is exceeded, the estimated number of goal-qualifying units will be adjusted by the ratio of the nationwide maximum number of units for which affordability information may be estimated to the total number of multifamily rental units with missing affordability information in properties securing mortgages purchased by the Enterprise. Multifamily rental units in excess of the maximum set forth in this paragraph

(e)(6)(i)(C), and any units for which estimation information is not available, shall be removed from the denominator of the respective goal calculation.

(ii) *Rental units in 1–4 unit single-family properties.*—(A) When an Enterprise lacks sufficient information to determine whether a rental unit in a property securing a single-family mortgage purchased by an Enterprise counts toward achievement of the Low- and Moderate-Income Housing Goal or the Special Affordable Housing Goal because neither the income of prospective or actual tenants, nor the actual or average rental data, are available, an Enterprise's performance with respect to such unit may be evaluated using estimated affordability information in accordance with one of the following methods:

(1) Excluding rental units in 1- to 4-unit properties with missing affordability information from the denominator as well as the numerator in calculating performance under those goals;

(2) Multiplying the number of rental units with missing affordability information in properties securing single family mortgages purchased by the Enterprise in each census tract by the percentage of all rental dwelling units in the respective tracts that would count toward achievement of each goal, as determined by FHFA based on the most recent decennial census. For units with missing affordability information in tracts for which such methodology is not possible, such units will be excluded from the denominator as well as the numerator in calculating performance under the respective housing goal(s); or

(3) Such other data source and methodology as may be approved by FHFA.

(B) In any calendar year, an Enterprise may use only one of the methods specified in paragraph (e)(6)(ii)(A) of this section to estimate affordability information for single-family rental units.

(C) If an Enterprise chooses to use an estimation methodology under paragraph (e)(6)(ii)(A)(2) or (e)(6)(ii)(A)(3) of this section to determine affordability for rental units in properties securing single-family mortgage purchases eligible to be counted toward the respective housing goal, then that methodology may be used up to nationwide maximums of five percent of the total number of rental units in properties securing non-seasoned single-family mortgage purchases by the Enterprise in the current year and 20 percent of the total number of rental units in properties

securing seasoned single-family mortgage purchases by the Enterprise in the current year. If either or both of these maximums are exceeded, the estimated number of goal-qualifying units will be adjusted by the ratio of the applicable nationwide maximum number of units for which affordability information may be estimated to the total number of single-family rental units with missing affordability information in properties securing seasoned or unseasoned mortgages purchased by the Enterprise, as applicable. Single-family rental units in excess of the maximums set forth in this paragraph (e)(6)(ii)(C), and any units for which estimation information is not available, shall be removed from the denominator of the respective goal calculation.

(7) *Timeliness of information.* In determining performance under the housing goals, each Enterprise shall use tenant and rental information as of the time of mortgage:

(i) Acquisition for mortgages on multifamily housing; and

(ii) Origination for mortgages on single-family housing.

(f) *Application of median income.*—(1) For purposes of determining an area's median income under §§ 1282.17 through 1282.19 and for the definition of "low-income area," the area is:

(i) The metropolitan area, if the property which is the subject of the mortgage is in a metropolitan area; and

(ii) In all other areas, the county in which the property is located, except that where the State nonmetropolitan median income is higher than the county's median income, the area is the State nonmetropolitan area.

(2) When an Enterprise cannot precisely determine whether a mortgage is on dwelling unit(s) located in one area, the Enterprise shall determine the median income for the split area in the manner prescribed by the Federal Financial Institutions Examination Council for reporting under the Home Mortgage Disclosure Act, if the Enterprise can determine that the mortgage is on dwelling unit(s) located in:

(i) A census tract;

(ii) A census place code;

(iii) A block-group enumeration district;

(iv) A nine-digit zip code; or

(v) Another appropriate geographic segment that is partially located in more than one area ("split area").

(g) *Sampling not permitted.* Performance under the housing goals for each year shall be based on a complete tabulation of mortgage purchases for

that year; a sampling of such purchases is not acceptable.

(h) *Newly available data.* When an Enterprise uses data to determine whether a mortgage purchase counts toward achievement of any goal and new data is released after the start of a calendar quarter, the Enterprise need not use the new data until the start of the following quarter.

(i) *Counting mortgages toward the Home Purchase Subgoals.*—(1) *General.* The requirements of this section, except for paragraphs (b) and (e) of this section, shall apply to counting mortgages toward the Home Purchase Subgoals at §§ 1282.12 through 1282.14. However, performance under the subgoals shall be counted using a fraction that is converted into a percentage for each subgoal and the numerator of the fraction for each subgoal shall be the number of home purchase mortgages in metropolitan areas financed by each Enterprise's mortgage purchases in a particular year that count towards achievement of the applicable housing goal. The denominator of each fraction shall be the total number of home purchase mortgages in metropolitan areas financed by each Enterprise's mortgage purchases in a particular year. For purposes of each subgoal, the procedure for addressing missing data or information, as set forth in paragraph (d) of this section, shall be implemented using numbers of home purchase mortgages in metropolitan areas and not single-family owner-occupied dwelling units.

(2) *Special counting rule for mortgages with more than one owner-occupied unit.* For purposes of counting mortgages toward the Home Purchase Subgoals, where a single home purchase mortgage finances the purchase of two or more owner-occupied units in a metropolitan area, the mortgage shall count once toward each subgoal that applies to the Enterprise's mortgage purchase.

§ 1282.16 Special counting requirements.

(a) *General.* FHFA shall determine whether an Enterprise shall receive full, partial, or no credit for a transaction toward achievement of any of the housing goals. In this determination, FHFA will consider whether a transaction or activity of the Enterprise is substantially equivalent to a mortgage purchase and either creates a new market or adds liquidity to an existing market, provided however that such mortgage purchase actually fulfills the Enterprise's purposes and is in accordance with its Charter Act.

(b) *Not counted.* The following transactions or activities shall not count

toward achievement of any of the housing goals and shall not be included in the denominator in calculating either Enterprise's performance under the housing goals:

(1) Equity investments in housing development projects;

(2) Purchases of State and local government housing bonds except as provided in § 1282.16(c)(8);

(3) Purchases of non-conventional mortgages except:

(i) Where such mortgages are acquired under a risk-sharing arrangement with a Federal agency;

(ii) Mortgages insured under HUD's Home Equity Conversion Mortgage ("HECM") insurance program, 12 U.S.C. 1715z-20; mortgages guaranteed under the Rural Housing Service's Single Family Housing Guaranteed Loan Program, 42 U.S.C. 1472; mortgages on properties on lands insured under FHA's Section 248 program, 12 U.S.C. 1715z-13, HUD's Section 184 program, 12 U.S.C. 1515z-13a, or Title VI of the Native American Housing Assistance and Self-Determination Act of 1996, 25 U.S.C. 4191 through 4195; and mortgages with expiring assistance contracts as defined at 42 U.S.C. 1737f;

(iii) Mortgages under other mortgage programs involving Federal guarantees, insurance or other Federal obligation where FHFA determines in writing that the financing needs addressed by the particular mortgage program are not well served and that the mortgage purchases under such program should count under the housing goals, provided the Enterprise submits documentation to FHFA that supports eligibility and that FHFA makes such a determination; or

(iv) As provided in § 1282.14(e)(3);

(4) Commitments to buy mortgages at a later date or time;

(5) Options to acquire mortgages;

(6) Rights of first refusal to acquire mortgages;

(7) Any interests in mortgages that the Director determines, in writing, shall not be treated as interests in mortgages;

(8) Mortgage purchases to the extent they finance any dwelling units that are secondary residences;

(9) Single family mortgage refinancings that result from conversion of balloon notes to fully amortizing notes, if the Enterprise already owns or has an interest in the balloon note at the time conversion occurs;

(10) Purchases of mortgages on one- to four-unit properties with maximum original principal obligations that exceed:

(i) The nationwide conforming loan limits for properties of a particular size; or

(ii) 150 percent of the nationwide conforming loan limits for properties of a particular size located in Alaska, Guam, Hawaii and the Virgin Islands; and

(11) Any combination of factors in paragraphs (b)(1) through (10) of this section.

(c) *Other special rules.* Subject to FHFA's primary determination of whether an Enterprise shall receive full, partial, or no credit for a transaction toward achievement of any of the housing goals as provided in paragraph (a) of this section, the following supplemental rules apply:

(1) *Credit enhancements.*—(i) Dwelling units financed under a credit enhancement entered into by an Enterprise shall be treated as mortgage purchases and count toward achievement of the housing goals when:

(A) The Enterprise provides a specific contractual obligation to ensure timely payment of amounts due under a mortgage or mortgages financed by the issuance of housing bonds (such bonds may be issued by any entity, including a State or local housing finance agency);

(B) The Enterprise assumes a credit risk in the transaction substantially equivalent to the risk that would have been assumed by the Enterprise if it had securitized the mortgages financed by such bonds; and

(C) Such dwelling units otherwise qualify under this part.

(ii) When an Enterprise provides a specific contractual obligation to ensure timely payment of amounts due under any mortgage originally insured by a public purpose mortgage insurance entity or fund, the Enterprise may, on a case-by-case basis, seek approval from the Director for such activities to count toward achievement of the housing goals.

(2) *Real estate mortgage investment conduits ("REMICs").*—(i) An Enterprise's purchase or guarantee of all or a portion of a REMIC shall be treated as a mortgage purchase and receive credit toward the achievement of the housing goals provided:

(A) The underlying mortgages or mortgage-backed securities for the REMIC were not:

(1) Guaranteed by the Government National Mortgage Association; or

(2) Previously counted toward any housing goal by the Enterprise; and

(B) The Enterprise has the information necessary to support counting the dwelling units financed by the REMIC, or that part of the REMIC purchased or guaranteed by the Enterprise, toward the achievement of a particular housing goal.

(ii) For REMICs that meet the requirements in paragraph (c)(2)(i) of this section and for which the Enterprise purchased or guaranteed:

(A) The whole REMIC, all of the units financed by the REMIC shall be treated as a mortgage purchase and count toward achievement of the housing goals; or

(B) A portion of the REMIC, the Enterprise shall receive partial credit toward achievement of the housing goals. This credit shall be equal to the percentage of the REMIC purchased or guaranteed by the Enterprise (the dollar amount of the purchase or guarantee divided by the total dollar amount of the REMIC) multiplied by the number of dwelling units that would have counted toward the goal(s) if the Enterprise had purchased or guaranteed the whole REMIC. In calculating performance under the housing goals, the denominator shall include the number of dwelling units included in the whole REMIC multiplied by the percentage of the REMIC purchased or guaranteed by the Enterprise.

(3) *Risk-sharing.* Mortgage purchases under risk-sharing arrangements between the Enterprises and any Federal agency where the units would otherwise count toward achievement of the housing goal under which the Enterprise is responsible for a substantial amount (50 percent or more) of the risk shall be treated as mortgage purchases and count toward achievement of the housing goal or goals.

(4) *Participations.* Participations purchased by an Enterprise shall be treated as mortgage purchases and count toward the achievement of the housing goals, if the Enterprise's participation in the mortgage is 50 percent or more.

(5) *Cooperative housing and condominium projects.*—(i) The purchase of a mortgage on a cooperative housing unit ("a share loan") or a condominium unit is a mortgage purchase. Such a purchase is counted toward achievement of a housing goal in the same manner as a mortgage purchase of single-family owner-occupied units, *i.e.*, affordability is based on the income of the owner(s).

(ii) The purchase of a mortgage on a cooperative building ("a blanket loan") or a condominium project is a mortgage purchase and shall count toward achievement of the housing goals.

Where an Enterprise purchases both "a blanket loan" and mortgages for units in the same building ("share loans"), both the blanket loan and the share loan(s) are mortgage purchases and shall count toward achievement of the housing goals. Where an Enterprise purchases

both a condominium project mortgage and mortgages on condominium dwelling units in the same project, both the condominium project mortgages and the mortgages on condominium dwelling units are mortgage purchases and shall count toward achievement of the housing goals.

(6) *Seasoned mortgages.* An Enterprise's purchase of a seasoned mortgage shall be treated as a mortgage purchase for purposes of these goals and shall be included in the numerator, as appropriate, and the denominator in calculating the Enterprise's performance under the housing goals, except where:

(i) The Enterprise has already counted the mortgage under a housing goal applicable to 1993 or any subsequent year; or

(ii) FHFA determines, based upon a written request by an Enterprise, that a seasoned mortgage or class of such mortgages should be excluded from the numerator and the denominator in order to further the purposes of the Special Affordable Housing Goal.

(7) *Purchase of refinanced mortgages.* Except as otherwise provided in this part, the purchase of a refinanced mortgage by an Enterprise is a mortgage purchase and shall count toward achievement of the housing goals to the extent the mortgage qualifies.

(8) *Mortgage revenue bonds.*—(i) The purchase of a state or local mortgage revenue bond shall be treated as a mortgage purchase and units financed under such mortgage revenue bond shall count toward achievement of the goals where:

(A) The mortgage revenue bond is to be repaid only from the principal and interest of the underlying mortgages originated with funds made available by the mortgage revenue bond; and

(B) The mortgage revenue bond is not a general obligation of a state or local government or agency or is not credit enhanced by any government or agency, third party guarantor or surety.

(ii) Dwelling units financed by a mortgage revenue bond meeting the requirements of paragraph (c)(8)(i) of this section shall count toward achievement of a housing goal to the extent such dwelling units otherwise qualify under this part.

(9) *Expiring assistance contracts.* Actions that assist in maintaining the affordability of assisted units in eligible multifamily housing projects with expiring contracts, as defined under the Multifamily Assisted Housing Reform and Affordability Act of 1997, shall receive credit under the housing goals as provided in paragraph (b)(3)(ii) and

in accordance with paragraphs (b) and (c)(1) through (c)(10) of this section.

(i) For restructured (modified) multifamily mortgage loans with an expiring assistance contract where an Enterprise holds the loan in portfolio and facilitates modification of loan terms that results in lower debt service to the project's owner, the Enterprise shall receive full credit under any of the housing goals for which the units covered by the mortgage otherwise qualify.

(ii) Where an Enterprise undertakes more than one action to assist a single project or where an Enterprise engages in an activity that it believes assists in maintaining the affordability of assisted units in eligible multifamily housing projects but which is not otherwise covered in paragraph (c)(9)(i) of this section, the Enterprise must submit the transaction to FHFA for a determination on appropriate goals counting treatment.

(10) *Loan modifications.* An Enterprise's modification of a loan in accordance with the Homeowner Affordability and Stability Plan announced on March 4, 2009, that is held in the Enterprise's portfolio or that is in a pool backing a security guaranteed by the Enterprise, shall be treated as a mortgage purchase for purposes of the housing goals.

(11) [Reserved]

(12) *HOEPA mortgages and mortgages with unacceptable terms and conditions.* HOEPA mortgages and mortgages with unacceptable terms or conditions as defined in § 1282.2 shall not receive credit toward any of the three housing goals.

(13) *Mortgages contrary to good lending practices.* The Director shall monitor the practices and processes of the Enterprises to ensure that they are not purchasing loans that are contrary to good lending practices as defined in § 1282.2. Based on the results of such monitoring, the Director may determine in accordance with paragraph (d) of this section that mortgages or categories of mortgages where a lender has not engaged in good lending practices shall not receive credit toward the three housing goals.

(14) *Seller dissolution option.*—(i) Mortgages acquired through transactions involving seller dissolution options shall be treated as mortgage purchases and receive credit toward the achievement of the housing goals, only when:

(A) The terms of the transaction provide for a lockout period that prohibits the exercise of the dissolution option for at least one year from the date

on which the transaction was entered into by the Enterprise and the seller of the mortgages; and

(B) The transaction is not dissolved during the one-year minimum lockout period.

(ii) The Director may grant an exception to the one-year minimum lockout period described in paragraph (c)(14)(i)(A) and (B) of this section, in response to a written request from an Enterprise, if the Director determines that the transaction furthers the purposes of the Safety and Soundness Act and the Enterprise's Charter Act;

(iii) For purposes of this paragraph (c)(14), "seller dissolution option" means an option for a seller of mortgages to the Enterprises to dissolve or otherwise cancel a mortgage purchase agreement or loan sale.

(d) *FHFA review of transactions.* FHFA will determine whether a class of transactions counts as a mortgage purchase under the housing goals. If an Enterprise seeks to have a class of transactions counted under the housing goals that does not otherwise count under the rules in this part, the Enterprise may provide FHFA detailed information regarding the transactions for evaluation and determination by FHFA in accordance with this section. In making its determination, FHFA may also request and evaluate additional information from an Enterprise with regard to how the Enterprise believes the transactions should be counted. FHFA will notify the Enterprise of its determination regarding the extent to which the class of transactions may count under the goals.

§ 1282.17 Affordability—Income level definitions—family size and income known (owner-occupied units, actual tenants, and prospective tenants).

In determining whether a dwelling unit is affordable to very low-, low-, or moderate-income families, where the unit is owner-occupied or, for rental housing, family size and income information for the dwelling unit is known to the Enterprise, the affordability of the unit shall be determined as follows:

(a) *Moderate-income* means:

(1) In the case of owner-occupied units, income not in excess of 100 percent of area median income; and

(2) In the case of rental units, where the income of actual or prospective tenants is available, income not in excess of the following percentages of area median income corresponding to the following family sizes:

Number of persons in family	Percentage of area median income
1	70
2	80
3	90
4	100
5 or more	*

*100% plus (8% multiplied by the number of persons in excess of 4).

(b) *Low-income* means:

(1) In the case of owner-occupied units, income not in excess of 80 percent of area median income; and

(2) In the case of rental units, where the income of actual or prospective tenants is available, income not in excess of the following percentages of area median income corresponding to the following family sizes:

Number of persons in family	Percentage of area median income
1	56
2	64
3	72
4	80
5 or more	*

*80% plus (6.4% multiplied by the number of persons in excess of 4).

(c) *Very-low-income* means:

(1) In the case of owner-occupied units, income not in excess of 60 percent of area median income; and

(2) In the case of rental units, where the income of actual or prospective tenants is available, income not in excess of the following percentages of area median income corresponding to the following family sizes:

Number of persons in family	Percentage of area median income
1	42
2	48
3	54
4	60
5 or more	*

*60% plus (4.8% multiplied by the number of persons in excess of 4).

(d) *Especially-low-income* means, in the case of rental units, where the income of actual or prospective tenants is available, income not in excess of the following percentages of area median income corresponding to the following family sizes:

Number of persons in family	Percentage of area median income
1	35

Number of persons in family	Percentage of area median income
2	40
3	45
4	50
5 or more	*

*50% plus (4.0% multiplied by the number of persons in excess of 4).

§ 1282.18 Affordability—Income level definitions—family size not known (actual or prospective tenants).

In determining whether a rental unit is affordable to very low, low-, or moderate-income families where family size is not known to the Enterprise, income will be adjusted using unit size, and affordability determined as follows:

(a) *For moderate-income*, the income of prospective tenants shall not exceed the following percentages of area median income with adjustments, depending on unit size:

Unit size	Percentage of area median income
Efficiency	70
1 bedroom	75
2 bedrooms	90
3 bedrooms or more	*

*104% plus (12% multiplied by the number of bedrooms in excess of 3).

(b) *For low-income*, income of prospective tenants shall not exceed the following percentages of area median income with adjustments, depending on unit size:

Unit size	Percentage of area median income
Efficiency	56
1 bedroom	60
2 bedrooms	72
3 bedrooms or more	*

*83.2% plus (9.6% multiplied by the number of bedrooms in excess of 3).

(c) *For very low-income*, income of prospective tenants shall not exceed the following percentages of area median income with adjustments, depending on unit size:

Unit size	Percentage of area median income
Efficiency	42
1 bedroom	45
2 bedrooms	54
3 bedrooms or more	*

*62.4% plus (7.2% multiplied by the number of bedrooms in excess of 3).

(d) *For especially low-income*, income of prospective tenants shall not exceed the following percentages of area median income with adjustments, depending on unit size:

Unit size	Percentage of area median income
Efficiency	35
1 bedroom	37.5
2 bedrooms	45
3 bedrooms or more	*

*52% plus (6.0% multiplied by the number of bedrooms in excess of 3).

§ 1282.19 Affordability—Rent level definitions—tenant income is not known.

For purposes of determining whether a rental unit is affordable to very low-, low-, or moderate-income families where the income of the family in the dwelling unit is not known to the Enterprise, the affordability of the unit is determined based on unit size as follows:

(a) *For moderate-income*, maximum affordable rents to count as housing for moderate-income families shall not exceed the following percentages of area median income with adjustments, depending on unit size:

Unit size	Percentage of area median income
Efficiency	21
1 bedroom	22.5
2 bedrooms	27
3 bedrooms or more	*

*31.2% plus (3.6% multiplied by the number of bedrooms in excess of 3).

(b) *For low-income*, maximum affordable rents to count as housing for low-income families shall not exceed the following percentages of area median income with adjustments, depending on unit size:

Unit size	Percentage of area median income
Efficiency	16.8
1 bedroom	18
2 bedrooms	21.6
3 bedrooms or more	*

*24.96% plus (2.88% multiplied by the number of bedrooms in excess of 3).

(c) *For very low-income*, maximum affordable rents to count as housing for very low-income families shall not exceed the following percentages of area median income with adjustments, depending on unit size:

Unit size	Percentage of area median income
Efficiency	12.6
1 bedroom	13.5
2 bedrooms	16.2
3 bedrooms or more	*

*18.72% plus (2.16% multiplied by the number of bedrooms in excess of 3).

(d) For especially low-income, maximum affordable rents to count as housing for especially low-income families shall not exceed the following percentages of area median income with adjustments, depending on unit size:

Unit size	Percentage of area median income
Efficiency	10.5
1 bedroom	11.25
2 bedrooms	13.5
3 bedrooms or more	*

*15.6% plus (1.8% multiplied by the number of bedrooms in excess of 3).

(e) *Missing Information.* Each Enterprise shall make every effort to obtain the information necessary to make the calculations in this section. If an Enterprise makes such efforts but cannot obtain data on the number of bedrooms in particular units, in making the calculations on such units, the units shall be assumed to be efficiencies except as provided in § 1282.15(e)(6)(i).

§ 1282.20 Actions to be taken to meet the goals.

To meet the goals under this rule, each Enterprise shall operate in accordance with 12 U.S.C. 4565(b).

§ 1282.21 Notice and determination of failure to meet goals.

If the Director determines that an Enterprise has failed or there is a substantial probability that an Enterprise will fail to meet any housing goal, the Director shall follow the procedures at 12 U.S.C. 4566(b).

§ 1282.22 Housing plans.

(a) If the Director determines, under § 1282.21, that an Enterprise has failed or there is a substantial probability that an Enterprise will fail to meet any housing goal and that the achievement of the housing goal was or is feasible, the Director may require the Enterprise to submit a housing plan for approval by the Director.

(b) *Nature of plan.* If the Director requires a housing plan, the housing plan shall:

- (1) Be feasible;
- (2) Be sufficiently specific to enable the Director to monitor compliance periodically;

(3) Describe the specific actions that the Enterprise will take:

- (i) To achieve the goal for the next calendar year; and
- (ii) If the Director determines that there is a substantial probability that the Enterprise will fail to meet a housing goal in the current year, to make such improvements and changes in its operations as are reasonable in the remainder of the year; and

(4) Address any additional matters relevant to the plan as required, in writing, by the Director.

(c) *Deadline for submission.* The Enterprise shall submit the housing plan to the Director within 30 days after issuance of a notice under § 1282.21 requiring the Enterprise to submit a housing plan. The Director may extend the deadline for submission of a plan, in writing and for a time certain, to the extent the Director determines an extension is necessary.

(d) *Review of housing plans.* The Director shall review and approve or disapprove housing plans in accordance with 12 U.S.C. 4566(c)(4) and (5).

(e) *Resubmission.* If the Director disapproves an initial housing plan submitted by an Enterprise, the Enterprise shall submit an amended plan acceptable to the Director not later than 15 days after the Director's disapproval of the initial plan; the Director may extend the deadline if the Director determines an extension is in the public interest. If the amended plan is not acceptable to the Director, the Director may afford the Enterprise 15 days to submit a new plan.

Dated: April 27, 2009.

James B. Lockhart III,
 Director, Federal Housing Finance Agency.
 [FR Doc. E9-9994 Filed 4-30-09; 8:45 am]
BILLING CODE 8070-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 135

[Docket No. FAA-2009-0023; Notice No. 09-02]

RIN 2120-AJ32

Crew Resource Management Training for Crewmembers in Part 135 Operations

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This proposed rule would require all certificate holders

conducting operations under part 135 to include in their training programs crew resource management for crewmembers, including pilots and flight attendants. This proposal is needed to ensure that crewmembers in part 135 operations receive training and practice in the use of crew resource management principles, as appropriate for their operation. This proposed rule would respond to National Transportation Safety Board (NTSB) recommendations, address a recommendation from the Part 125/135 Aviation Rulemaking Committee (ARC), and would codify current FAA guidance. The intended effect of this proposal is to reduce the frequency and severity of errors that are crew based, which will reduce the frequency of accidents and incidents within the scope of part 135 operations.

DATES: Send your comments on or before July 30, 2009.

ADDRESSES: You may send comments identified by Docket Number FAA-2009-0023 using any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov> and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Operations, M-30; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Room W12-140, West Building Ground Floor, Washington, DC 20590-0001.
- *Hand Delivery or Courier:* Bring comments to the Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to the Docket Operations at 202-493-2251.

For more information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

Privacy: We will post all comments we receive, without change, to <http://www.regulations.gov>, including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78) or you may visit <http://DocketsInfo.dot.gov>.

Docket: To read background documents or comments received, go to

<http://www.regulations.gov> at any time and follow the online instructions for accessing the docket, or to the Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this proposed rule, contact Nancy Lauck Claussen, Federal Aviation Administration, Flight Standards Service, Air Transportation Division (AFS-200), 800 Independence Avenue, SW., Washington, DC 20591; Telephone: 202-267-8166; E-mail:

nancy.l.claussen@faa.gov. For legal questions concerning this proposed rule, contact Anne Bechdolt, Federal Aviation Administration, Office of the Chief Counsel, 800 Independence Avenue, SW., Washington, DC 20591; Telephone: 202-267-3073; E-mail: anne.bechdolt@faa.gov.

SUPPLEMENTARY INFORMATION: Later in this preamble under the Additional Information section, we discuss how you can comment on this proposal and how we will handle your comments. Included in this discussion is related information about the docket, privacy, and the handling of proprietary or confidential business information. We also discuss how you can get a copy of related rulemaking documents.

Authority for This Rulemaking

The FAA's authority to issue rules on aviation safety is found in Title 49 of the United States Code. This rulemaking is promulgated under the authority described in 49 U.S.C. 44701(a)(5), which requires the Administrator to promulgate regulations and minimum standards for other practices, methods, and procedures necessary for safety in air commerce and national security.

Background

Crew Resource Management (CRM) training is the incorporation of team management concepts in flight operations. This training focuses on communication and interactions among pilots, flight attendants, operations personnel, maintenance personnel, air traffic controllers, flight service stations, and others. CRM also focuses on single pilot communications, decision making, and situational awareness.

Consequently, CRM activities include team building, transfer of information, problem solving, decision making, maintaining situational awareness, and using automated systems. Training in these areas helps to prevent errors such as runway incursions, misinterpreting

information from tower controllers, crewmembers' loss of situational awareness, and crewmembers failing to fully prepare for takeoff or landing.

The Federal Aviation Administration (FAA), National Transportation Safety Board (NTSB), and industry stakeholders have consistently recognized the problems associated with poor decision making, ineffective communication, inadequate leadership, and poor task or resource management as major contributors to accidents and incidents within the aviation industry. Effective CRM training for crewmembers is a critical element in reducing accidents and incidents resulting from these problems. This proposed rule would require all certificate holders conducting part 135 operations that are required to have a training program under 14 CFR 135.341 to implement CRM training for crewmembers in part 135 dual and single-pilot operations.

Previous Crew Resource Management Training Rulemaking

On December 20, 1995, the FAA published Air Carrier and Commercial Operator Training Programs. See 60 FR 65940. This final rule required all certificate holders operating under part 121 to include CRM training for crewmembers in their training programs. This requirement also extended to certificate holders conducting operations under part 135 that are required to comply with part 121 training and qualification requirements, such as those certificate holders that conduct commuter operations with airplanes for which two pilots are required by aircraft certification rules, and those that conduct commuter operations with airplanes having a passenger seating configuration of 10 seats or more. Today's proposed rule, which, if adopted, would require all certificate holders conducting operations under part 135 to include CRM training in their programs, continues the precedent set by the December 20, 1995 final rule.

In considering this proposal to extend CRM training requirements to cover part 135 operators, the FAA conducted a review of all accidents involving airplanes and helicopters that occurred between March 20, 1997 (the compliance date for training and qualifying under part 121 for certain part 135 operators as set forth in the 1995 CRM final rule) and March 7, 2008. The FAA initially identified 268 accidents in part 135 operations that may have been directly or indirectly related to ineffective CRM. Upon further review, the FAA found that 24 of these accidents were directly related to

ineffective CRM. These 24 accidents were responsible for 83 fatalities and 12 serious injuries. The causal CRM factors in these accidents did not discriminate between dual and single pilot operations: 14 accidents involved single pilots and 10 involved dual-pilot operations. The following accident histories, identified during this review, signify the critical need to require CRM training in both single and dual-pilot part 135 operations.

On October 25, 2002, a Raytheon (Beechcraft) King Air A100, operating under the part 135 on-demand operation regulations, crashed while the dual-pilot flight crew was attempting to execute a very high frequency omnirange station (VOR) approach to runway 27 at Eveleth-Virginia Municipal Airport, in Eveleth, Minnesota. In its final report on the accident, the NTSB noted that the evidence clearly indicated that neither flightcrew member was monitoring the airspeed indicator or course deviation indicator during the approach. The NTSB found that if the flightcrew had been adhering to the operator's approach procedures and effectively applying CRM techniques in the cockpit, at least one of the flightcrew members should have been monitoring the instruments during the approach. The two pilots and six passengers were killed in this accident. The airplane was also destroyed by impact forces and a post-crash fire. See NTSB Aircraft Accident Report AAR-03/03 (Nov. 18, 2003).

On September 25, 1999, a single pilot operating an on-demand aerial sightseeing tour crashed into the northeast slope of the Mauna Loa volcano near Volcano, Hawaii. The NTSB determined that the accident was caused by the pilot's decision to continue under visual flight rules (VFR) into instrument meteorological conditions (IMC) in an area of cloud-covered mountainous terrain. In addition, the NTSB found that the pilot's failure to properly navigate and his disregard for standard operating procedures, including flying into IMC while on a VFR flight plan and failure to obtain a current preflight weather briefing, also contributed to the accident. These issues are typically addressed in CRM training. The pilot and all nine passengers were killed, and the airplane was destroyed by impact forces and a post-impact fire. See NTSB Aircraft Accident Report AAB-01-02 (Sept. 26, 2001).

On June 25, 1998, a single pilot operating an on-demand aerial sightseeing tour crashed into a mountainside in Mt. Waialeale, Hawaii. Three helicopters had departed on the

tour, with about 2 minutes between each departure. The company's most experienced pilot was leading the tour, followed by the company's second most-experienced pilot, and last, the accident pilot. The pilots had not received a weather briefing from an FAA-approved source, as required by the company's operations specifications. Throughout the flight, the three pilots were in radio contact with each other. During the flight, weather conditions worsened. The accident pilot became disoriented, misjudged his location, and while cruising toward what he believed was the prescribed crater entranceway, inadvertently entered IMC and collided into the mountainside. The NTSB determined that the probable cause of the accident was the failure of the lead pilot, who had first observed the deteriorating weather conditions, to notify the following pilots of the conditions and direct them to avoid the area. The pilot and all five passengers were killed. See NTSB Accident Report LAX98FA211 (May 17, 2001).

These three accidents were all the result of poor decision making, a loss of situational awareness, a lack of communication between multiple pilots or between pilots and other key operational personnel, and inadequate leadership. Under this proposal, all of these issues would be addressed in CRM initial and recurrent training.

National Transportation Safety Board Recommendations

In addition to addressing the issues identified in these accidents, this proposed rule would respond to the following NTSB recommendations: NTSB recommendation A-01-12 to require CRM training for all pilots conducting part 135 on-demand operations in aircraft that require two or more pilots; A-03-52, to require part 135 on-demand operators to provide CRM training to all pilots conducting dual-pilot operations; and A-95-124 to require certificate holders that conduct part 135 operations to provide flightcrew members, during initial and recurrent training programs, with aeronautical decision-making and judgment training that is tailored to the company's flight operations and aviation environment. Further emphasizing the need for the FAA to address CRM training in part 135 operations, on May 14, 2008, the NTSB issued a letter to the FAA noting that recommendation A-03-52 remains on its most wanted list of Transportation Safety Improvements.

This NPRM exceeds the requirements outlined in NTSB recommendation A-03-52, which only addressed CRM

training for dual-pilot operations in part 135. These issues are not limited to dual-pilot operations, but rather, as indicated by the accident review, extend to all operations. Therefore, the FAA has decided it is necessary to require CRM training for crewmembers conducting either dual-or single-pilot operations under part 135.

Recommendations From the Part 135/125 Aviation Rulemaking Committee (ARC)

This proposal is also based in part on recommendations submitted by the Part 135/125 ARC, which was established on April 8, 2003. The ARC recommended that all pilots in part 135 operations be proficient at mastering the resources available to them while managing many operational factors, such as communications with air traffic control, advanced cockpit technology, weather services, managing time, maintaining situational awareness, mitigating fatigue and stress, and other factors. The FAA recognizes the importance of training in these areas and has incorporated the ARC's suggestions in this regard.

In addition to the curriculum components, the Part 135/125 ARC recommended CRM training for flight followers. The FAA, however, has decided not to require CRM training for these individuals in this proposal. Current regulations require flight locating in part 135 operations, but there is no associated training requirement for the individuals that perform this function, typically referred to as "flight followers." Furthermore, there are no requirements for dispatchers in part 135 regulations. Therefore, while the FAA recognizes the value and encourages the training of all operational personnel regarding key CRM principles, this proposal does not include CRM training requirements for flight followers or dispatchers in part 135 operations.

Current FAA Guidance

The proposed amendments also codify certain elements of FAA guidance contained in Advisory Circular (AC) 120-51, *Crew Resource Management Training*, and AC 00-64, *Air Medical Resource Management*, as amended. These ACs present guidelines for developing, implementing, reinforcing, and assessing CRM training for crewmembers and other personnel essential to flight safety. The curriculum components and training methodologies contained in these ACs are designed to become an integral part of training and operations, and as such, have been included in the rule as the basic

curriculum components for every CRM training program.

AC 120-51 and AC 00-64, as amended, also contain information regarding recognition of fatigue and stress reduction. These ACs suggest that training may include a review of scientific evidence on fatigue and stress and their effects on performance in both normal operations and emergency situations. These topics are appropriately addressed in CRM training, which may also include training crewmembers on identifying various countermeasures for coping with stressors, recognition of cues that indicate lack or loss of situational awareness, and training in countermeasures to restore that awareness.

General Discussion of the Proposal

Components of CRM Training

In the 1995 final rule, the FAA anticipated that for a CRM training program to be approved, it would include three distinct components: (1) Initial CRM training, during which CRM issues are defined and discussed; (2) a recurrent practice and feedback component during which trainees gain experience with CRM techniques; and (3) a continuing reinforcement component which ensures that CRM principles are addressed throughout the trainee's employment with the certificate holder. The FAA continues to expect these three components in today's proposal.

Initial CRM training is a curriculum segment with a variety of instructional methods, which can include lectures, discussions, videos, and practice in an operational setting or a Line Oriented Flight Training (LOFT) scenario, with feedback from an instructor. Under the proposed rule, initial CRM training must be provided to crewmembers in part 135 operations. At a minimum, the training should address the authority of the pilot in command; communication processes; how to build and maintain a flight team, manage workload and time, and maintain situational awareness; recognizing and mitigating fatigue and stress; and particular aeronautical decision-making skills tailored to the certificate holder's operations. This training is in addition to current training requirements for crewmembers under part 135.

Recurrent CRM training is best accomplished through the use of operational, performance-based scenarios that provide an opportunity for practice and feedback. Feedback should be directed by a facilitator who has had appropriate CRM training and

can identify the CRM markers in a performance-based scenario. Practice and feedback provide participants with opportunities to improve communication, decision-making, and leadership skills.

Program Hours and Approval of Training Programs

Consistent with other part 135 training requirements, this proposal does not establish required program hours. In evaluating and approving part 135 CRM training programs, the FAA would consider instructional techniques, the number of students in a class, the use of performance-based scenarios, new training technology, the use of student feedback, the measurement of training outcomes, as well as the number of hours of training time.

Compliance Date

For initial CRM training, the FAA is proposing a compliance date 2 years after the effective date of the final rule. After the compliance date, a certificate holder conducting part 135 operations would be prohibited from using a crewmember unless that person has completed approved initial CRM training. Since a large number of certificate holder employees are required to have this training, the delayed compliance date would allow sufficient time to train instructors who will conduct CRM training, and then, in turn, provide this training to all crewmembers. The delay in compliance is also necessary because most of these operators may be classified as small businesses and may need additional time to develop the training program.

Credit for Previous CRM Training

As part of the proposal, the FAA may credit some CRM training received by crewmembers before the compliance date. Specifically, the FAA would consider training aids, devices, methods, and procedures, in accordance with AC 120-51 and AC 00-64, as amended, used by a certificate holder in a voluntary CRM program included in a

training program required by 14 CFR 135.341, 135.345, or 135.349.

In addition, the FAA recognizes that many crewmembers in part 135 operations work for multiple part 135 operators throughout their careers. In light of the uniform CRM curriculum components proposed in this rule, the FAA has decided that it would be appropriate to credit initial CRM training that a crewmember completed while working for one part 135 operator toward the initial CRM training required by another part 135 operator if the crewmember is able to provide appropriate training records to his or her new employer.

Conclusion

Effective Crew Resource Management (CRM) training for crewmembers is a critical element in the reduction of accidents and incidents. This proposed rule would require certificate holders conducting operations under part 135 to implement CRM training for crewmembers conducting both dual and single-pilot operations. The intended effect is to reduce accidents and incidents within the scope of part 135 operations. This rule is supported by the NTSB findings and recommendations, long-standing FAA guidance, and the precedent set in 1995 with the promulgation of the final rule requiring a CRM training component for certificate holders conducting operations under part 121, as well as those part 135 operators that must operate under the rules of part 121.

Paperwork Reduction Act

This proposal contains the following new information collection requirements. As required by the Paperwork Reduction Act of 1995, the FAA has submitted the information requirements associated with this proposal to the Office of Management and Budget for its review. See 44 U.S.C. 3507(d).

Title: Crew Resource Management Training for Crewmembers in Part 135 Operations.

Summary: This proposed rule would require CRM training for crewmembers, in 14 CFR part 135 operations. This proposal is needed to ensure that crewmembers in part 135 operations receive training and practice in the use of CRM principles, as appropriate for their operation. The intended effect of this proposal is to reduce the frequency and severity of errors that are crew based, which will reduce the frequency of accidents and incidents within the scope of part 135 operations.

Use of: This project is in direct support of the Department of Transportation's Strategic Plan—Strategic Goal—SAFETY; *i.e.*, to promote the public health and safety by working toward the elimination of transportation-related deaths and injuries. This request for clearance reflects requirements necessary under Title 14 CFR part 135 to ensure safety-of-flight by making certain that complete and adequate training is obtained and maintained by those who operate under this part of the regulation. The FAA will use the information it collects and reviews to ensure compliance and adherence to regulations and, where necessary, to take enforcement action on violators of the regulations.

Respondents (including number of): The FAA estimates there are 1,625 certificate holders who would be required to provide information in accordance with the proposed rule. The respondents to this proposed information requirement are certificate holders using the training requirements in 14 CFR part 135.

Frequency: The FAA estimates certificate holders will have a one-time information collection, and will then collect or report information occasionally thereafter.

Annual Burden Estimate This proposal would result in a 10-year recordkeeping and reporting burden as follows:

SUMMARY OF TIME AND COSTS (10-YEAR)

	Cost	Hours
Development and submission of CRM Training Program	\$302,260.00	8,636.0
Crewmember Training Record Keeping	65,540.5	1,872.5
Total	367,800.50	10,508.5

The agency is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions

of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of collecting information on those who are to respond, including by using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Individuals and organizations may send comments on the information collection requirement by July 30, 2009, and should direct them to the address listed in the **ADDRESSES** section at the beginning of this preamble. Comments also should be submitted to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for FAA, New Executive Building, Room 10202, 725 17th Street, NW., Washington, DC 20053.

According to the 1995 amendments to the Paperwork Reduction Act (5 CFR 1320.8(b)(2)(vi)), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid OMB control number. The OMB control number for this information collection will be published in the **Federal Register**, after the Office of Management and Budget approves it.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to these proposed regulations.

Economic Evaluation, Regulatory Flexibility Determination, International Trade Impact Assessment, and Unfunded Mandates Assessment

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96-354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96-39) prohibits agencies from setting standards that create

unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or Tribal governments, in the aggregate, or by the private sector, of \$100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this proposed rule. We suggest readers seeking greater detail read the full regulatory evaluation, a copy of which we have placed in the docket for this rulemaking.

In conducting these analyses, the FAA has determined that this proposed rule: (1) Has benefits that justify its costs; (2) is not an economically "significant regulatory action" as defined in section 3(f) of Executive Order 12866; (3) is not "significant" as defined in DOT's Regulatory Policies and Procedures; (4) would not have a significant economic impact on a substantial number of small entities; (5) would not create unnecessary obstacles to the foreign commerce of the United States; and (6) would not impose an unfunded mandate on state, local, or Tribal governments, or on the private sector by exceeding the threshold identified above. These analyses are summarized as follows.

Total Benefits and Costs of This Proposed Rule

The estimated cost of this proposed rule is \$11.2 million, or \$8 million in present value terms. An upper bound estimate of the potential benefits would be a 25 percent reduction in part 135 accidents in which the lack of CRM training would be a causal factor, and is estimated at about \$121 million. If one accident could be averted like the 2002 Beechcraft accident where the NTSB found effective CRM techniques should have been followed, then the benefits of this rule would easily exceed the costs.

Aviation Industry Affected

The proposed rule would affect operators of airplanes and helicopters and crewmembers who fly under part 135. There would be 1,625 part 135 operators that employ 25,033 crewmembers, of whom 24,447 would be pilots and 586 would be flight attendants.

Period of Analysis

We used a 10-year time period to calculate the CRM training costs and potential benefits from CRM training. A 10-year period of analysis is sufficient to determine costs and benefits.

Risk of an Accident Caused by the Absence of CRM Training

We evaluated part 135 accidents from March 20, 1997, through March 7, 2008. During this time period, there were 24 accidents (18 involving airplanes and 6 involving helicopters) with causal factors directly related to a lack of effective CRM. These accidents were responsible for 83 fatalities (66 involving airplanes and 17 involving helicopters) and 12 serious injuries (all involving airplanes).

Further, of the 18 airplane accidents, 8 involved single pilot operations and 10 involved dual-pilot operations. All 6 of the helicopter accidents involved single pilot operations. The individual accident histories are provided in the Initial Regulatory Evaluation, which is in the docket.

Assumptions and Data Used To Estimate Benefits

The value of a prevented fatality is \$5.8 million, which is the Department of Transportation value of a statistical life.

Potential CRM Training Effectiveness and Benefits

We reviewed all part 121 accidents contained in the NTSB database between 1988 through 2007 involving the same causal factors and divided them into accidents occurring from 1988 through 1997, and accidents occurring after 1997. As described earlier, the CRM rule for part 121 and for some part 135 operations became effective in 1997. We then calculated the CRM training-related accident rates for these two groups and found that the accident rates decreased from 0.0000206 to 0.0000182 (an 11.65 percent decline) and the accident rate for all fatal accidents decreased from 0.0000048 to 0.0000036 (a 25 percent decline). Although this accident rate reduction is not statistically significant due to the infrequency of these accidents, it is useful in establishing an upper bound for the potential CRM training effectiveness rate for part 135 operations.

In order to illustrate the potential part 135 CRM training benefits, we applied the part 121 accident rate reductions of 25 percent for fatal accidents and 11.65 percent for non-fatal accidents to the 24 CRM-related part 135 accidents. Had the proposed CRM training rule been in effect in 1997, it could have prevented

2.75 of these fatal airplane accidents involving 16.5 fatalities and 2.25 serious injuries, as well as 1 fatal helicopter accident involving 4.25 fatalities. It also could have prevented one non-fatal airplane and helicopter accident. On that basis, the proposed rule could have prevented 3.75 fatal accidents involving 20.75 fatalities and 2.25 serious injuries. Thus, applying the DOT values to the accidents hypothetically prevented, an upper-bound quantified benefit of about \$121 million would have resulted had the proposed rule been in effect since 1997.

Compliance Cost Assumptions

Current industry practice is the baseline for the incremental compliance costs. CRM training is classroom training that would be incorporated into the annual training already required of each part 135 operator.

All 26 large part 135 operators with more than 100 crewmembers and 10 percent of the 400 part 135 operators with 10–99 crewmembers (40 operators) provide CRM training and would incur minimal compliance costs. The FAA estimates that 360 of the medium-sized operators and none of the 1,199 small operators with less than 10 crewmembers currently provide CRM training and all would incur compliance costs.

We based training costs on the guidelines in the FAA Advisory Circular 120–51E and on the size of the firm.

The average cost to develop a CRM training program would be \$1,170 for a medium-sized operator and \$680 for a small operator.

Current pilots and future new pilots in medium-sized operations would need 4 hours for initial CRM training while those in small operations would need 3 hours.

Current flight attendants and future new flight attendants would need 2 hours for initial CRM training.

Annual recurrent CRM training would take one-half of the time that initial CRM training would require.

There would be an average of 10 pilots in an initial or recurrent CRM training session for a medium-sized operator and an average of 3.66 for a small operator.

There would be an average of 3.92 flight attendants in an initial or recurrent CRM training session for a medium-sized operator and an average of 1.1 flight attendants for a small operator.

The average cost for an initial CRM pilot training session would be \$1,293 for a medium-sized operator and \$428 for a small operator.

The average cost for an initial CRM flight attendant training session would

be \$207 for a medium-sized operator and \$94 for a small operator.

The average cost for recurrent CRM pilot training would be \$647 for a medium-sized operator and \$214 for a small operator.

The average cost for recurrent CRM flight attendant training would be \$104 for a medium-sized operator and \$47 for a small operator.

Initial CRM training for new entrants would be done on a one-to-one basis with the trainer. The average cost would be \$208 per new pilot hire for medium-sized operators and \$156 for small operators. The average cost would be \$76 per new flight attendant hire for medium-sized and small operators.

A crewmember who has received initial CRM training from an operator would not need to repeat this initial CRM training if the crewmember changes part 135 employers.

Compliance Costs

Based on those data and assumptions, as shown in Table 1, we estimated that the proposed rule from 2009 through 2018 would have a total cost of \$11.2 million, which would have a present value of \$8 million using a 7 percent discount rate, and a present value of \$9.6 million using a 3 percent discount rate.

TABLE 1—SUMMARY OF THE TOTAL CRM TRAINING COSTS BY SOURCE OF COST (2009 THROUGH 2018)

[Rounded to the nearest thousand dollars]

Source of cost	Total costs		
	Nominal	Present value (7%)	Present value (3%)
CURRENT OPERATOR CRM PLAN	\$1,177	\$1,101	\$1,143
NEW OPERATOR CRM PLAN	345	234	290
CURRENT PILOT TRAINING	1,476	1,289	1,391
NEW PILOT TRAINING	1,437	964	1,203
PILOT RECURRENT TRAINING	6,684	4,326	5,510
CURRENT FLIGHT ATTENDANT TRAINING	6	5	6
NEW FLIGHT ATTENDANT TRAINING	18	12	15
FLIGHT ATTENDANT RECURRENT TRAINING	50	32	41
TOTAL	11,193	7,963	9,599

Cost-Benefit Comparison

As presented earlier, an upper-bound estimate of the quantified benefits of a \$5.8 million value for a prevented fatality would be \$121 million, which would be larger than the undiscounted compliance cost of \$11.2 million. As we do not predict the number of prevented accidents that would occur from this proposed rule, we do not provide present value benefits from preventing future accidents.

An alternative way of looking at the cost-benefit analysis is that if the

proposed rule were to prevent only 2 fatalities during this 10-year period, the rule would be cost beneficial.

Finally, 9 out of 9 operators we surveyed already provide CRM training. Thus, these operators have already made an implied internal cost-benefit analysis that the benefits from CRM training are worth its costs.

For those reasons, we conclude that the proposed CRM training rule would be cost beneficial.

Regulatory Flexibility Assessment

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes “as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their

actions to assure that such proposals are given serious consideration.” The RFA covers a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The FAA reviewed the North American Industrial Classification System codes to determine which entities affected by this rule would be considered small businesses. Applying NAICS codes 481211 (Non-Scheduled Chartered Air Services), 481212 (Non-Scheduled Chartered Freight Services), and 621910 (Ambulance Services), the FAA determined that 1,559 entities employing 11,815 crewmembers would be affected by the proposed rule. The average number of crewmembers per entity would be 7.6. The Small Business Administration (SBA) has established that all operators with fewer than 1,500 employees in NAICS codes 481211 and 481212 are considered small businesses, and operators in NAICS code 621910 who have annual receipts of less than \$7,000,000 are also small businesses. Thus, all 1,559 operators in these NAICS codes that would be affected by the proposed rule would be considered small businesses under the applicable SBA size standard. *See* 13 CFR 121.201.

Although the proposed rule would impact a substantial number of small businesses, the FAA has determined that the economic impact on these businesses would not be significant. The average initial cost per operator would be between \$680 and \$1,170. Further, the average annual cost per operator would be \$450. Thus, even for the smallest of these operators that may have revenues of \$250,000, the initial costs would range from 0.25 percent to 0.45 percent of revenues. Thus, in accordance with 5 U.S.C. 605(b), the FAA certifies that this proposed rule would not have a significant economic impact on a substantial number of small

entities. The FAA solicits comments regarding this determination.

International Trade Impact Analysis

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standards have a legitimate domestic objective, such as the protection of safety, and do not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA notes the purpose is to ensure the safety of the American public, and has assessed the effects of this proposed rule to ensure it does not exclude imports that meet this objective. As a result, this proposed rule is not considered as creating an unnecessary obstacle to foreign commerce and has determined that it would only have a domestic impact and therefore no effect on international trade.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of \$100 million or more (in 1995 dollars) in any one year by State, local, and Tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a “significant regulatory action.” The FAA currently uses an inflation-adjusted value of \$136.1 million in lieu of \$100 million. This proposed rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, would not have federalism implications.

Regulations Affecting Intrastate Aviation in Alaska

Section 1205 of the FAA Reauthorization Act of 1996 (110 Stat. 3213) requires the Administrator, when modifying regulations in title 14 of the CFR in a manner affecting intrastate aviation in Alaska, to consider the extent to which Alaska is not served by transportation modes other than aviation, and to establish appropriate regulatory distinctions. Because this proposed rule would apply to part 135 operations in Alaska, it could, if adopted, affect intrastate aviation in Alaska. We note that 7 of the 24 accidents previously referenced occurred in Alaskan operations. The FAA, therefore, specifically requests comments on whether there is justification for applying the proposed rule differently in intrastate operations in Alaska.

Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this proposed rulemaking action qualifies for the categorical exclusion identified in paragraph 312f and involves no extraordinary circumstances.

Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this NPRM under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). We have determined that it is not a “significant regulatory action” under the executive order because it is not a “significant regulatory action” under Executive Order 12866 and DOT’s Regulatory Policies and Procedures, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

Additional Information

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include

supporting data. To ensure the docket does not contain duplicate comments, please send only one copy of written comments, or if you are filing comments electronically, please submit your comments only one time.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

Proprietary or Confidential Business Information

Do not file in the docket information that you consider to be proprietary or confidential business information. Send or deliver this information directly to the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this document. You must mark the information that you consider proprietary or confidential. If you send the information on a disk or CD ROM, mark the outside of the disk or CD ROM and also identify electronically within the disk or CD ROM the specific information that is proprietary or confidential.

Under 14 CFR 11.35(b), when we are aware of proprietary information filed with a comment, we do not place it in the docket. We hold it in a separate file to which the public does not have access, and we place a note in the docket that we have received it. If we receive a request to examine or copy this information, we treat it as any other request under the Freedom of Information Act (5 U.S.C. 552). We process such a request under the DOT procedures found in 49 CFR part 7.

Availability of Rulemaking Documents

You can get an electronic copy of rulemaking documents using the Internet by—

1. Searching the Federal eRulemaking Portal (<http://www.regulations.gov>);
2. Visiting the FAA's Regulations and Policies Web page at http://www.faa.gov/regulations_policies or
3. Accessing the Government Printing Office's Web page at <http://www.gpoaccess.gov/fr/index.html>.

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue, SW., Washington, DC 20591, or by

calling (202) 267-9680. Make sure to identify the docket number or notice number of this rulemaking.

You may access all documents the FAA considered in developing this proposed rule, including economic analyses and technical reports, from the Internet through the Federal eRulemaking Portal referenced in paragraph 1.

List of Subjects in 14 CFR Part 135

Air carriers, Aircraft, Aviation safety, Reporting and recordkeeping requirements, Safety, Transportation.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend Chapter I of Title 14, Code of Federal Regulations, as follows:

PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON DEMAND OPERATIONS AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

1. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(g), 41706, 40113, 44701-44702, 44705, 44709, 44711-44713, 44715-44717, 44722, 45101-45105.

2. In § 135.329, add paragraph (a)(4) to read as follows:

§ 135.329 Crewmember training requirements.

(a) * * *
(4) Crew resource management training in § 135.330.

* * * * *

3. Add § 135.330 to subpart H to read as follows:

§ 135.330 Crew resource management training.

(a) Each certificate holder must have an approved crew resource management training program that includes initial and recurrent training. The training program must include at least the following:

- (1) Authority of the pilot in command;
- (2) Communication processes, decisions, and coordination, to include communication with Air Traffic Control, personnel performing flight locating and other operational functions, and passengers;
- (3) Building and maintenance of a flight team;
- (4) Workload and time management;
- (5) Situational awareness;
- (6) Effects of fatigue on performance, avoidance strategies and countermeasures;
- (7) Effects of stress and stress reduction strategies; and

(8) Aeronautical decision-making and judgment training tailored to the operator's flight operations and aviation environment.

(b) After [Two years after the effective date of the rule], no certificate holder may use a person as a flightcrew member or flight attendant unless that person has completed approved crew resource management initial training with that certificate holder or with another certificate holder.

(c) For flightcrew members and flight attendants, the Administrator, at his or her discretion, may credit crew resource management training received before [Two years after the effective date of the rule] toward all or part of the initial CRM training required by this section.

(d) In granting credit for initial CRM training, the Administrator considers training aids, devices, methods and procedures used by the certificate holder in a voluntary CRM program included in a training program required by § 135.341, § 135.345, or § 135.349.

4. In § 135.351, revise paragraph (b)(2) to read as follows:

§ 135.351 Recurrent Training.

* * * * *

(b) * * *

(2) Instruction as necessary in the subjects required for initial ground training by this subpart, as appropriate, including low-altitude windshear training and training on operating during ground icing conditions as prescribed in § 135.341 and described in § 135.345, crew resource management training as prescribed in § 135.330, and emergency training as prescribed in § 135.331.

* * * * *

Issued in Washington, DC, on April 27, 2009.

John McGraw,

Acting Director, Flight Standards Service.

[FR Doc. E9-10085 Filed 4-30-09; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2009-0274]

RIN 1625-AA00

Safety Zone; Norfolk Tides Post-Game Fireworks Displays, Elizabeth River, Norfolk, VA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes establishing a safety zone on the Elizabeth River in the vicinity of Harbor Park, Norfolk, VA in support of the post-game fireworks displays over the Elizabeth River scheduled to take place on June 6, July 2, July 3, August 21, September 3, and September 4, 2009. This action would protect the maritime public on the Elizabeth River from the hazards associated with fireworks displays.

DATES: Comments and related material must be received by the Coast Guard on or before June 1, 2009.

ADDRESSES: You may submit comments identified by docket number USCG–2009–0274 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 four 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 Lieutenant Tiffany Duffy, Chief, Waterways Management Division, Sector Hampton Roads, Coast Guard; telephone 757–668–5580, e-mail Tiffany.A.Duffy@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–2009–0274),

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 (via <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 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 telephone 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>, select the Advanced Docket Search option on the right side of the screen, insert “USCG–2009–0274” in the Docket ID box, press Enter, 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 comments 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>, select the Advanced Docket Search option on the right side of the screen, insert USCG–2009–0274 in the Docket ID box, press Enter, and then click on the item in the Docket ID 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 using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting 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

Coast Guard Sector Hampton Roads has been notified that fireworks displays are scheduled to occur after certain Norfolk Tides home baseball games. Although these displays are fired from land, a portion of the fallout zone is over the Elizabeth River. 33 CFR part 165, subpart C describes a safety zone “as a water area, shore area, or water and shore area to which for safety or environmental purposes, access is limited to authorized persons, vehicles or vessels.” Due to the need to protect mariners and spectators from the hazards associated with fireworks displays, the Coast Guard proposes a safety zone limiting access to the Elizabeth River within a 210 foot radius of the fireworks launching area.

Discussion of Proposed Rule

The Coast Guard proposes establishing a safety zone on the specified waters of the Elizabeth River in the vicinity of Harbor Park, Norfolk, VA. This safety zone would encompass all navigable waters within a 210 foot radius of the fireworks launch site, located on land, directly behind the stadium at approximate position 36°50′30″ N/76°16′42″ W (NAD 1983). The proposed regulated area would be established in the interest of public safety during the fireworks display and would be enforced on June 6, July 2, July 3, August 21, September 3, and September 4, 2009, for ten consecutive minutes immediately following the conclusion of the baseball games, between 9 p.m. and 10:30 p.m. Access to the safety zone would be restricted during the specified dates and times. Except for participants and vessels authorized by the Captain of the Port or his Representative, no person or vessel may enter or remain in the regulated area.

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. Although this proposed regulation would restrict access to the safety zone, the effect of this proposed rule would not be significant because: (i) The safety zone would be in effect for a limited duration; (ii) the zone would be of limited size; and (iii) the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly. For the above reasons, the Coast Guard does not anticipate any significant economic impact.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which may be small entities: Owners and operators of vessels intending to transit or anchor in that portion of the Elizabeth River from 9 p.m. until 10:30 p.m. on June 6, July 2, July 3, August 21, September 3, and September 4, 2009. The safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons. The safety zone will only be in place for a limited duration. The safety zone would be of limited size. Maritime advisories will be issued allowing the mariners to adjust their plans accordingly. Furthermore, the safety zone would apply to only a small portion of the Elizabeth River; there would be adequate space for

mariners to safely transit around the zone.

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 Lieutenant Tiffany Duffy, Chief, Waterways Management Division, Sector Hampton Roads, Coast Guard; telephone 757–668–5580, e-mail Tiffany.A.Duffy@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 would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these

standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

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

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide 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. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under **ADDRESSES**. This proposed rule involves establishing a safety zone around a fireworks display. The fireworks will be launched from a land area; however some fallout may enter the water within a 210 foot radius of the launching site. This zone is designed to protect the maritime public from the hazards associated with fireworks displays. 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 165

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 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. 3306, 3703 and Chapter 701; 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 § 165.T05-0274 to read as follows:

§ 165.T05-0274 Safety Zone; Norfolk Tides Post-Game Fireworks Displays, Elizabeth River, Norfolk, VA.

(a) *Regulated Area:* The following area is a safety zone: specified waters of the Elizabeth River located within a 210 foot radius of the fireworks launching site located at approximate position 36°50'30" N/76°16'42" W (NAD 1983), directly behind Harbor Park Stadium in the vicinity of Norfolk, VA.

(b) *Definition:* For the purposes of this part, Captain of the Port Representative means any U.S. Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain

of the Port, Hampton Roads, Virginia to act on his behalf.

(c) *Regulations:* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port, Hampton Roads or his designated representatives.

(2) The operator of any vessel in the immediate vicinity of this safety zone shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant or petty officer on shore or on board a vessel that is displaying a U.S. Coast Guard Ensign.

(ii) Proceed as directed by any commissioned, warrant or petty officer on shore or on board a vessel that is displaying a U.S. Coast Guard Ensign.

(3) The Captain of the Port, Hampton Roads can be reached through the Sector Duty Officer at Sector Hampton Roads in Portsmouth, Virginia at telephone Number (757) 668-5555.

(4) The Coast Guard Representatives enforcing the safety zone can be contacted on VHF-FM marine band radio channel 13 (165.65Mhz) and channel 16 (156.8 Mhz).

(d) *Enforcement Dates:* This regulation will be enforced on June 6, July 2, July 3, August 21, September 3, and September 4, 2009 from 9 p.m. until 10:30 p.m.

Dated: April 21, 2009.

P.B. Trapp,

Captain, U.S. Coast Guard, Captain of the Port Hampton Roads.

[FR Doc. E9-10112 Filed 4-30-09; 8:45 am]

BILLING CODE 4910-15-P

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

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request: Supplemental Nutrition Assistance Program, Store Reauthorization Application, Form FNS-252-R

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on proposed information collections. The proposed collection is a new information collection requirement.

DATES: Written comments must be received on or before June 30, 2009 to be assured of consideration.

ADDRESSES: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, 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 the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to Ronald K. Ward, Chief, Retailer Operations Branch, Benefit Redemption Division, U.S. Department of Agriculture, Food and Nutrition Service, 3101 Park Center Drive, Room 404, Alexandria, VA 22302. Comments may also be submitted via fax to the attention of

Ronald K. Ward at (703) 305-1863 or via e-mail to BRDHQ-Web@fns.usda.gov.

All written comments will be open for public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday) at 3101 Park Center Drive, Alexandria, Virginia 22302, Room 404.

All responses to this notice will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Ronald K. Ward at (703) 305-2523.

SUPPLEMENTARY INFORMATION:

Title: Supplemental Nutrition Assistance Program—Store Reauthorization Application.

Form Number: FNS-252-R.

Type of Request: New information collection.

Abstract: The Food and Nutrition Service (FNS) of the U.S. Department of Agriculture is the Federal agency responsible for the Supplemental Nutrition Assistance Program (SNAP), formerly known as the Food Stamp Program. The Food and Nutrition Act of 2008, as amended, (7 U.S.C. 2011 *et seq.*) requires that the FNS determine the eligibility of retail food stores and certain food service organizations to accept and redeem SNAP benefits and to monitor them for compliance and continued eligibility.

Part of FNS' responsibility is to accept applications from retail food stores that wish to participate in the SNAP, review the applications in order to determine whether or not applicants meet eligibility requirements, and make determinations whether to grant or deny authorization to accept and redeem SNAP benefits. FNS is also responsible for requiring updates to application information and reviewing that information to determine whether or not the retail firms continue to meet eligibility requirements. There are currently four application forms designed for that purpose approved under OMB No. 0584-0008—the Supplemental Nutrition Assistance Program Application for Stores, Form FNS-252 and FNS-252-E (paper and electronic version, respectively); the Meal Service Application, Form FNS-252-2; and the Corporate Supplemental

Application, Form FNS-252-C used for individual (chain) stores under a Corporation.

Previous submissions to OMB regarding this information collection reflected the elimination of the Supplemental Nutrition Assistance Program Application for Stores—Reauthorization, Form FNS-252-R, due to FNS' streamlining efforts. Since the elimination of the Form FNS-252-R, FNS has determined that additional information is needed to ensure that retailers meet the necessary requirements of operation to carry out the intent of the SNAP, and to ensure efficient and effective operation of the Program.

Our ability to reduce the information collection burden has been hampered by our need to obtain verifiable annual gross sales and food sales income from all participating retailers. Because FNS no longer has a specific form that captures reauthorization information, we are seeking approval from OMB for information collection requirements to be imposed on retail/wholesale firms and food service organizations for the continued eligibility of such respondents once authorized. Upon OMB approval, FNS intends to incorporate this form into the information collection associated with OMB No. 0584-0008, as these respondents are also considered the "normal channels of trade" for delivery of SNAP benefits to low-income households.

It is our experience that most firms will remain eligible and continue to deliver Program benefits. Form FNS-252-R is needed to obtain verifiable annual gross sales and food sales income from all participating retailers, and to ensure continued eligibility for SNAP participation. FNS intends to implement the use of this form on October 1, 2009. FNS is committed to complying with the E-Government Act of 2002, which requires that, when practicable, Federal agencies use electronic forms, electronic filing, and electronic signature to conduct official business. Current technological opportunities allow us to improve information collection in accordance with these statutes. FNS is developing an online application for the Form FNS-252-R, as an electronic alternative for retailers who wish to complete and submit the reauthorization application

via the Internet on the FNS Web site. Efforts are being made to streamline and simplify the data collection burden imposed on respondents. Only those questions that have any relevance to the reauthorization process are being asked on Form FNS-252-R. Approximately 9 questions will be on Form FNS-252-R.

In accordance with Section 278.1(j)-(n) of the SNAP regulations, all firms must be reauthorized at least once every five years. The burden associated with the Form FNS-252-R is determined from the number currently authorized stores (178,793) obtained from the STARS Database as of February, 2009. Approximately 9 percent of all currently authorized retailers (16,381 individual firms) will be subject to reauthorization in Fiscal Year (FY) 2010. We do not know how many retailers will use the online reauthorization application. We estimate that, initially, 6,552 (or 40%) of the 16,381 individual firms subject to reauthorization will be completed using the online Form FNS-252-R in FY 2010. The remaining 9,829 (or 60%) retailers will complete the paper application, Form FNS-252-R. We estimate the hourly burden time per response for retailers completing either the online or paper Form FNS-252-R to be 7 minutes. This burden estimate includes the time to review instructions, search existing data resources, gather and copy the data needed, complete and review the application and submit the form and documentation to FNS.

Respondents: Retail food stores.

Estimated Number of Respondents: 16,381.

Number of Responses per Respondent: 1.

Estimated Number of Annual Responses: 16,381.

Estimated Time per Response: .1169 or 7 minutes.

Estimate Total Annual Burden on Respondents: 1,915 hours.

Dated: April 23, 2009.

E. Enrique Gomez,

Acting Administrator, Food and Nutrition Service.

[FR Doc. E9-10052 Filed 4-30-09; 8:45 am]

BILLING CODE 3410-30-P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Request for Comments; Advertised Timber for Sale

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the

Forest Service is seeking comments from all interested individuals and organizations on the revision with changes of the currently approved information collection 0596-0066 Advertised Timber for Sale.

DATES: Comments must be received in writing on or before June 30, 2009 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to Director, Forest Management, 1400 Independence Avenue, SW., Mail Stop 1103, Washington, DC 20250-1103.

Comments also may be submitted via facsimile to 202-205-1045 or by e-mail to: bidforms@fs.fed.us.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Office of the Director, Forest Management, Third Floor, Southwest Wing, Yates Building, 201 14th Street, SW., Washington, DC. Visitors are encouraged to call ahead at 202-205-1496 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Lathrop Smith, Forest Management Staff, at 202-205-0858. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Relay Service (FRS) at 1-800-877-8339, 24 hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

Title: Advertised Timber for Sale

OMB Number: 0596-0066.

Expiration Date of Approval: November 30, 2009.

Type of Request: Extension with revision.

Abstract: Pursuant to statutory requirements at 16 U.S.C. 472a, unless extraordinary conditions exist as defined by regulation, the Secretary of Agriculture must: (1) Advertise sales of all National Forest System timber or forest products exceeding \$10,000 in appraised value; (2) select bidding methods that ensure open and fair competition; (3) select bidding methods that ensure that the Federal Government receives not less than appraised value of the timber or forest product; and (4) monitor bidding patterns for evidence of unlawful bidding practices.

Pursuant to the Forest Service Small Business Timber Sale Set-Aside Program, developed in cooperation with the Small Business Administration, Forest Service regulations at Title 36 of the Code of Federal Regulations, § 223.84 require that the Forest Service bid form used by potential timber sale

bidders include provisions for small business concerns. The data collected will be used by the agency to ensure that National Forest System timber will be sold at not less than appraised value, that bidders will meet specific criteria when submitting a bid, and that anti-trust violations will not occur during the bidding process.

The tax identification number of each bidder is entered into an automated bid monitoring system, which is used to determine if speculative bidding or unlawful bidding practices are occurring and is required to process electronic payments to the purchaser.

Respondents will be bidders on National Forest System timber sales. Forest Service sale officers will mail bid forms to potential bidders, and bidders will return the completed forms, dated and signed, to the Forest Service sale officer.

The data gathered in this information collection are not available from other sources.

Forms Associated With This Information Collection

FS-2400-42a—National Forest Timber and Forest Products for Sale (Advertisement and Short-Form Bid): This form will be used for soliciting and receiving bids on short-notice timber sales advertised for less than 30 days for less than \$10,000 in advertised value. Respondents are bidders on National Forest System timber sales.

FS-2400-14—Bid for Advertised Timber (3 form versions: FS-2400-14UR—Unit Rate Bidding; FS-2400-14WA—Weighted Average Bidding; FS-2400-14TV—Total Value Bidding): These forms implement the same statutes, policies, and regulations and collect similar information from the same applicants. Respondents are bidders on National Forest System timber and forest product sales.

FS-2400-14BV—Bid For Integrated Resource Contract (2 form versions:—FS-2400-14BV—Best Value, Total Value Bidding; FS-2400-14BVU—Best Value, Unit Rate Bidding): These forms will be used for soliciting and receiving bids on contracts advertised for 30 days or longer and on contracts greater than \$10,000 in advertised value.

Forms showing changes to the May 2006 versions currently in use can be viewed on the World Wide Web/Internet site at: <http://www.fs.fed.us/forestmanagement/infocenter> and in the Office of the Director, Forest Management, Third Floor, Southwest Wing, Yates Building, 201 14th Street, SW., Washington, DC. Visitors are encouraged to call ahead at 202-205-1496 to facilitate entry into the building.

Item	FS-2400-42a	FS 2400-14	FS-2400-14BV
Estimate of Annual Burden	3.0 hours	14.4 hours	34.4 hours.
Type of Respondents	Individuals, large and small businesses, and corporations bidding on National Forest timber sales and Integrated Resource Contracts.		
Estimated Annual Number of Respondents.	445	825	200.
Estimated Number of Responses per Respondent.	1.8	3.9	1.2.
Estimated Total Annual Burden on Respondents.	2,400 hours	46,332 hours	8,256 hours.

Comment Is Invited

Comment is invited on: (1) Whether the proposed collection of information is necessary for the stated purposes or the proper performance of the functions of the agency, including whether the information shall have practical or scientific utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including name and address when provided, will be summarized and included in the request for Office of Management and Budget approval. All comments also will become a matter of public record.

Dated: April 21, 2009.

Gloria Manning,

Associate Deputy Chief, National Forest System.

[FR Doc. E9-10010 Filed 4-30-09; 8:45 am]

BILLING CODE 3410-11-P

DEPARTMENT OF AGRICULTURE

Forest Service

Salmon River Ranger District; Idaho; Allison-Berg Allotment EIS

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The EIS will document changed conditions on the Allison-Berg allotment relative to effects on bighorn sheep and their habitat sufficient to support a determination whether continued grazing by domestic sheep

should be allowed or not, and if so, under what conditions.

DATES: Comments concerning the scope of the analysis must be received by June 15, 2009. The draft environmental impact statement is expected in September 2010, and the final environmental impact statement is expected by March 2011.

ADDRESSES: Send written comments to Darcy Pederson, Acting District Ranger, Salmon River Ranger District, 304 Slate Creek Road, White Bird, Idaho 83554. It is important that reviewers provide their comments at such times and in such a way that they are useful to the Agency's preparation of the EIS. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions. The submission of timely and specific comments can affect a reviewer's ability to participate in subsequent administrative review or judicial review.

Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered; however, anonymous comments will not provide the respondent with standing to participate in subsequent administrative review or judicial review.

FOR FURTHER INFORMATION CONTACT: Joanne Bonn, via phone at (208) 839-2211 or (208) 983-1950, or in person at 304 Slate Creek Road, between the hours of 8 a.m. and 4 p.m., PDT, Monday through Friday.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

In April 1996 the Nez Perce National Forest made the decision to authorize domestic sheep, horse/pack stock, and cattle grazing on the Allison-Berg allotment. This decision was accompanied by an Environmental Assessment which concluded that the action would have no significant impacts under the National Environmental Policy Act (NEPA) and is consistent with the National Forest Management Act (NFMA). Under this decision, the permittee has been issued ten-year term grazing permits. The latest ten-year term grazing permit, issued in April 2006, allows for both a spring/summer and a fall/winter domestic sheep grazing period. Incidental numbers of horses/pack stock and cattle are permitted to graze spring through fall.

In prior NEPA/NFMA decision documentation for this allotment, no specific concerns related to the bighorn sheep were noted. New information and changed conditions related to bighorn sheep result in a need for the U.S. Forest Service to revisit and update the environmental effects analysis for this allotment.

The Payette National Forest, which manages National Forest System lands south of this allotment, is finalizing an extensive analysis addressing bighorn sheep viability issues on that forest. In September, 2008 the Payette National Forest released the "Draft Supplement to the Final Environmental Impact Statement for the Southwest Idaho Ecogroup Land and Resource Management Plans." This draft Supplemental Environmental Impact Statement (SEIS) discusses the effects of grazing domestic sheep within or near the range of bighorn sheep for both the Hell's Canyon and Salmon River populations. Although no decision is being made in relation to the Allison-Berg allotment, the Payette National Forest is producing information that is directly pertinent to the update of the Nez Perce National Forest's effects

analysis for the Allison-Berg allotment, including bighorn sheep habitat modeling, bighorn sheep population modeling, geographic population range modeling, quantitative risk assessment modeling, disease spread modeling and cumulative effects analysis. Current maps produced by the Payette National Forest and included in their DSEIS show the Allison-Berg allotment is located within the geographic population range of bighorn sheep. The allotment contains a substantial amount of modeled bighorn sheep habitat. The expected date for completion of a final SEIS by the Payette National Forest is December 2009.

Bighorn sheep sightings since 2007 and telemetry and GPS data from radio-collared bighorn sheep in a cooperative study begun in 2008 with the Nez Perce Tribe have confirmed both collared and uncollared bighorn sheep presence on the Allison-Berg allotment during both the spring/summer and the fall/winter grazing periods.

On March 13, 2009 the Nez Perce National Forest prescribed non-use by domestic sheep on the Allison-Berg allotment for resource protection during the time needed to update the NFMA and NEPA analysis for the allotment. This decision to prescribe non-use was based on the following factors: (1) Continued sightings of bighorn sheep (including some that are now radio-collared) within and near the allotment, (2) the lack of identified and agreed to measures that would meet the objective of the State of Idaho Interim Strategy to ensure separation of bighorn sheep and domestic sheep, (3) data assembled to date on movement and distribution of radio-collared Salmon River bighorns has not provided the Forest with information that would enable development of BMPs to ensure separation, and (4) there is a need to obtain and utilize new information from the Payette NF analysis to update our decision documentation for the allotment.

This Notice of Intent to prepare an EIS initiates the process to update our decision documentation for the Allison-Berg allotment. The expected date for publication of our draft EIS allows time for proper review and consideration of the Payette National Forest's bighorn analysis as well as any additional GPS and telemetry data for the collared Salmon River bighorns.

Proposed Action and Possible Alternatives

The Salmon River Ranger District of the United States Forest Service proposes to authorize continued domestic sheep, horse/pack stock, and

cattle grazing within the Allison-Berg allotment. Alternatives that may be considered include (1) Authorization of grazing under conditions identified in the existing ten-year term permit; (2) modification of grazing consistent with the Strategy for Managing Separation between Bighorn Sheep and Domestic Sheep and Goats in the Salmon River Area (SRSS); (3) grazing with additional mitigation measures to ensure separation of bighorn sheep and domestic sheep; and (4) no grazing. The project is located 3 miles east of Riggins, Idaho in the Allison, Berg, and Kelly Creek drainages on the north side of the Salmon River.

Responsible Official

Salmon River District Ranger.

Nature of Decision To Be Made

To determine whether to authorize grazing of domestic sheep on the Allison-Berg Allotment, and if so, under what conditions.

Scoping Process

This notice of intent initiates the scoping process, which guides the development of the environmental impact statement.

It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the environmental impact statement. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions. The submission of timely and specific comments can affect a reviewer's ability to participate in subsequent administrative appeal or judicial review.

Dated: April 20, 2009.

Thomas K. Reilly,

Acting Forest Supervisor.

[FR Doc. E9-9500 Filed 4-30-09; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS-2009-0027]

National Animal Identification System; Public Meetings

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of public meetings.

SUMMARY: This is a notice to inform the public of seven upcoming meetings to discuss stakeholder concerns related to

the implementation of the National Animal Identification System. The meetings are being organized by the Animal and Plant Health Inspection Service.

DATES: The meetings will be held on May 14, 18, 20, 21, 22, and 27, and June 1, 2009, from 9 a.m. to 4 p.m. each day.

ADDRESSES: The public meetings will be held in Harrisburg, PA (May 14), Pasco, WA (May 18), Austin, TX (May 20), Birmingham, AL (May 21), Louisville, KY (May 22), Storrs, CT (May 27), and Greeley, CO (June 1).

FOR FURTHER INFORMATION CONTACT: Dr. Adam Grow, Director, Surveillance and Identification Programs, National Center for Animal Health Programs, VS, APHIS, 4700 River Road Unit 200, Riverdale, MD 20737; 301-734-3752.

SUPPLEMENTARY INFORMATION:

As part of its ongoing efforts to safeguard animal health, the U.S. Department of Agriculture (USDA) initiated implementation of a National Animal Identification System (NAIS) in 2004. The NAIS is a cooperative State-Federal-industry program administered by USDA's Animal and Plant Health Inspection Service (APHIS). The purpose of the NAIS is to provide a streamlined information system that will help producers and animal health officials respond quickly and effectively to animal disease events in the United States.

The ultimate long-term goal of the NAIS is to provide State and Federal officials with the capability to identify all animals and premises that have had direct contact with a disease of concern within 48 hours after discovery. Meeting that goal requires a comprehensive animal-disease traceability infrastructure. An NAIS User Guide and a Business Plan, both available on our Web site at http://animalid.aphis.usda.gov/nais/animal_id/index.shtml, provide detailed information about our plans for implementing the system.

Despite concerted efforts, APHIS has not been able to fully implement the NAIS. Many of the same issues that producers originally had with the system, such as the cost and impact on small farmers, privacy and confidentiality, and liability, continue to cause concern.

In order to provide individuals and organizations an opportunity to discuss their concerns regarding the NAIS and offer potential solutions, we plan to hold several public meetings and to solicit comments via our Web site. Our goal is to gather feedback and input from a wide range of stakeholders to assist us in making an informed

decision regarding both the future of the NAIS and the objectives and direction for animal identification and traceability. We would particularly welcome feedback on the following topics:

- *Cost.* What are your concerns about the cost of the NAIS? What steps would you suggest APHIS use to address cost?

- *Impact on small farmers.* What are your concerns about the effect of the NAIS on small farmers? What approaches would you suggest APHIS take to address the potential impact on small farmers?

- *Privacy and confidentiality.* What are your concerns regarding how the NAIS will affect your operation's privacy and/or the confidentiality of your operation? What steps or tactics would you suggest APHIS use to address privacy and confidentiality issues?

- *Liability.* What are your concerns about your operation's liability under the NAIS? What would you suggest APHIS consider to address liability concerns?

- *Premises registration.* Do you have any suggestions on how to make premises registration, or the identification of farm or ranch locations, easier for stakeholders? How should we address your concerns regarding premises registration?

- *Animal identification.* Do you have any suggestions on how to make animal identification practical and useful to stakeholders while simultaneously meeting the needs of animal health officials who must conduct disease tracebacks?

- *Animal tracing.* Do you have any suggestions on how to make the animal tracing component practical, in particular the reporting of animal movements to other premises, while meeting the needs of animal health officials who must conduct disease tracebacks?

The meeting schedule is tentative as of the date of this publication. Please check our Web site at <http://www.usda.gov/nais/feedback> for the most up-to-date meeting information. The list of discussion topics is also available on the Web site. On-site registration will begin at 8 a.m. on the day of each meeting. All persons attending must register prior to the meetings. Although preregistration is not required, participants are asked to preregister by sending APHIS an e-mail at NAISessions@aphis.usda.gov or calling 301-734-0799.

In the subject line of the e-mail, indicate your name (or organization name) and the location of the meeting you plan to attend. If you wish to

present public comments during one of the meetings, please include your name (or organization name) and address in the body of the message. Members of the public who are not able to attend may also submit and view comments via the Federal eRulemaking Portal at <http://www.regulations.gov/fdmspublic/component/>

main?main=DocketDetail&d=APHIS-2009-0027. Additional information regarding the meetings may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT.**

Done in Washington, DC, this 27th day of April 2009.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E9-10037 Filed 4-30-09; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Resource Advisory Committee Meeting

AGENCY: North Central Idaho Resource Advisory Committee, Grangeville, ID, USDA, Forest Service.

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 Nez Perce and Clearwater National Forests' North Central Idaho Resource Advisory Committee will meet Wednesday, May 27th, 2009 in Riggins, Idaho for a business meeting. The meeting is open to the public.

SUPPLEMENTARY INFORMATION: The business meeting on May 27th will be held at the Best Western Salmon Rapids Lodge in Riggins, Idaho, beginning at 10 a.m. (PST). Agenda topic will primarily be discussion and approval of potential projects. A public forum will begin at 3:15 p.m. (PST).

FOR FURTHER INFORMATION CONTACT: Laura A. Smith, Public Affairs Officer and Designated Federal Officer, at (208) 983-5143.

Dated: April 24, 2009.

Thomas K. Reilly,

Forest Supervisor.

[FR Doc. E9-10015 Filed 4-30-09; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Sheila E. Forbes, Office of AD/CVD Operations, Customs Unit, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482-4697.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended (the Act), may request, in accordance with section 351.213 (2007) of the Department of Commerce (the Department) Regulations, that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Respondent Selection

In the event the Department limits the number of respondents for individual examination for administrative reviews initiated pursuant to requests made for the orders identified below, the Department intends to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports during the period of review. We intend to release the CBP data under Administrative Protective Order (APO) to all parties having an APO within five days of publication of the initiation notice and to make our decision regarding respondent selection within 20 days of publication of the initiation **Federal Register** notice. Therefore, we encourage all parties interested in commenting on respondent selection to submit their APO applications on the date of publication of the initiation notice, or as soon thereafter as possible. The Department invites comments regarding the CBP data and respondent selection within 10 calendar days of publication of the **Federal Register** initiation notice.

Opportunity to Request a Review: Not later than the last day of May 2009,¹ interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in May for the following periods:

	Period of review
Antidumping Duty Proceedings	
Belgium: Stainless Steel Plate in Coils, A-423-808	5/1/08-4/30/09
Brazil: Iron Construction Castings, A-351-503	5/1/08-4/30/09
France: Antifriction Bearings, Ball, A-427-801	5/1/08-4/30/09
Germany: Antifriction Bearings, Ball, A-428-801	5/1/08-4/30/09
India:	
Silicomanganese, A-533-823	5/1/08-4/30/09
Welded Carbon Steel Pipes and Tubes, A-533-502	5/1/08-4/30/09
Italy:	
Antifriction Bearings, Ball, A-475-801	5/1/08-4/30/09
Stainless Steel Plate in Coils, A-475-822	5/1/08-4/30/09
Japan:	
Antifriction Bearings, Ball, A-588-804	5/1/08-4/30/09
Gray Portland Cement and Clinker, A-588-815	5/1/08-4/30/09
Kazakhstan: Silicomanganese, A-834-807	5/1/08-4/30/09
Republic of Korea:	
Polyester Staple Fiber, A-580-839	5/1/08-4/30/09
Stainless Steel Plate in Coils, A-580-831	5/1/08-4/30/09
South Africa: Stainless Steel Plate in Coils, A-791-805	5/1/08-4/30/09
Taiwan:	
Certain Circular Welded Carbon Steel Pipes & Tubes, A-583-008	5/1/08-4/30/09
Polyester Staple Fiber, A-583-833	5/1/08-4/30/09
Stainless Steel Plate in Coils, A-583-830	5/1/08-4/30/09
The People's Republic of China:	
Iron Construction Castings, A-570-502	5/1/08-4/30/09
Pure Magnesium, A-570-832	5/1/08-4/30/09
The United Kingdom: Antifriction Bearings, Ball, A-412-801	5/1/08-4/30/09
Turkey:	
Light-Walled Rectangular Pipe and Tube, A-489-815	1/30/08-4/30/09
Welded Carbon Steel Pipe and Tube, A-489-501	5/1/08-4/30/09
Venezuela: Silicomanganese, A-307-820	5/1/08-4/30/09
Countervailing Duty Proceedings	
Belgium: Stainless Steel Plate in Coils, C-423-809	1/1/08-12/31/08
Brazil: Iron Construction Castings, C-351-504	1/1/08-12/31/08
South Africa: Stainless Steel Plate in Coils, C-791-806	1/1/08-12/31/08

Suspension Agreements

None.

In accordance with 19 CFR 351.213(b), an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or exporters.² If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one

country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Please note that, for any party the Department was unable to locate in prior segments, the Department will not accept a request for an administrative review of that party absent new information as to the party's location. Moreover, if the interested party who files a request for review is unable to locate the producer or exporter for which it requested the review, the interested party must provide an explanation of the attempts it made to locate the producer or exporter at the same time it files its request for review, in order for the Secretary to determine if the interested party's attempts were reasonable, pursuant to 19 CFR 351.303(f)(3)(ii).

As explained in *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003), the Department has clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders. See also the Import Administration Web site at <http://ia.ita.doc.gov>.

Six copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping/

¹ Or the next business day, if the deadline falls on a weekend, federal holiday or any other day when the Department is closed.

² If the review request involves a non-market economy and the parties subject to the review request do not qualify for separate rates, all other exporters of subject merchandise from the non-

market economy country who do not have a separate rate will be covered by the review as part of the single entity of which the named firms are a part.

Countervailing Operations, Attention: Sheila Forbes, in room 3065 of the main Commerce Building. Further, in accordance with 19 CFR 351.303(f)(1)(i), a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of "Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation" for requests received by the last day of May 2009. If the Department does not receive, by the last day of May 2009, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct CBP to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute but is published as a service to the international trading community.

Dated: April 22, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9-10070 Filed 4-30-09; 8:45 am]

BILLING CODE 3510-DS-P

FOR FURTHER INFORMATION CONTACT: Dana Mermelstein, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Ave., NW., Washington, DC 20230; telephone (202) 482-1391.

Upcoming Sunset Reviews for June 2009

There are no Sunset Reviews scheduled for initiation in June 2009.

For information on the Department's procedures for the conduct of sunset reviews, *See* 19 CFR 351.218. This notice is not required by statute but is published as a service to the international trading community. Guidance on methodological or analytical issues relevant to the Department's conduct of Sunset Reviews is set forth in the Department's Policy Bulletin 98.3, "Policies Regarding the Conduct of Five-Year ('Sunset') Reviews of Antidumping and Countervailing Duty Orders;" Policy Bulletin, 63 FR 18871 (April 16, 1998) ("Sunset Policy Bulletin"). The Notice of Initiation of Five-Year ("Sunset") Reviews provides further information regarding what is required of all parties to participate in Sunset Reviews.

Dated: April 17, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9-10072 Filed 4-30-09; 8:45 am]

BILLING CODE 3510-DS-P

Background

On August 6, 2004, the Department of Commerce (the Department) published in the **Federal Register** an antidumping duty order on floor standing, metal-top ironing tables and parts thereof from the People's Republic of China (PRC). *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof From the People's Republic of China*, 69 FR 47868 (August 6, 2004). The Department received timely requests from Since Hardware (Guangzhou) Co., Ltd. (Since Hardware) and Foshan Shunde Yongjian Housewares and Hardware Co., Ltd (Foshan Shunde), in accordance with 19 CFR 351.213(b)(2), for an administrative review of the antidumping duty order on ironing tables and parts thereof from the PRC, which has an August annual anniversary month. Home Products International Inc., the petitioner, also requested, in accordance with 19 CFR 351.213(b)(1), an administrative review of the antidumping duty order on ironing tables and parts thereof from the PRC for Foshan Shunde and Since Hardware. On September 30, 2008, the Department initiated an administrative review with respect to Foshan Shunde and Since Hardware. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 73 FR 56795 (September 30, 2008). On October 29, 2008, pursuant to Since Hardware's September 2, 2008, request in accordance with 19 CFR 351.213(c), we deferred our initiation of the 2007-2008 review with respect to Since Hardware. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Deferral of Administrative Review*, 73 FR 64305 (October 29, 2008).

The deadline for completion of the preliminary results in the administrative review for Foshan Shunde is currently May 4, 2009.

Extension of Time Limits for Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), and section 351.213(h)(1) of the Department's regulations require the Department to issue the preliminary results of an administrative review within 245 days after the last day of the anniversary month of the order or suspension agreement for which the administrative review was requested, and the final results of the review within 120 days after the date on which the notice of the preliminary results was published in the **Federal Register**.

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Advance Notification of Sunset Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

Background

Every five years, pursuant to section 751(c) of the Tariff Act of 1930, as amended, the Department of Commerce ("the Department") and the International Trade Commission automatically initiate and conduct a review to determine whether revocation of a countervailing or antidumping duty order or termination of an investigation suspended under section 704 or 734 would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) and of material injury.

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-888]

Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof From the People's Republic of China: Extension of the Time Limit for the Preliminary Results of the Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* May 1, 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.

However, if the Department determines that it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Act and section 351.213(h)(2) of the Department's regulations allow the Department to extend the 245-day period to 365 days and the 120-day period to 180 days.

Pursuant to section 751(a)(3)(A) of the Act and section 351.213(h) of the Department's regulations, we determine that it is not practicable to complete this administrative review within the statutory time limit of 245 days. The Department requires additional time to analyze the production inputs that Foshan Shunde utilized to compile its Section D factors of production response. Additionally, the Department requires additional time to consider comments from interested parties concerning the proper valuation of Foshan Shunde's production inputs. Therefore, in accordance with section 751(a)(3)(A) of the Act and section 351.213(h)(2) of the Department's regulations, the Department is extending the time limit for the completion of these preliminary results by 120 days. The deadline for completion of the preliminary results is now September 1, 2009. The final results will continue to be due 120 days after the date of publication of the notice of preliminary results.

This notice is published in accordance with sections 751(a)(3)(A) and 777(i) of the Act.

Dated: April 24, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9-10074 Filed 4-30-09; 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 May 21, 2009. Address written comments to

Statutory Import Programs Staff, Room 3720, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. at the U.S. Department of Commerce in Room 3720.

Docket Number: 09-017. Applicant: University of Iowa, 85 EMRB/CMRF, Iowa City, IA 52242. Instrument: Electron Microscope. Manufacturer: JEOL, Japan. Intended Use: The instrument will be used for a number of research activities in the areas of chemistry, biochemistry, internal medicine and environmental engineering. These research activities require a telescope with energy dispersive spectroscopy and electron energy loss spectroscopy. Justification for Duty-Free Entry: No U.S.-made instruments of same general category. Application accepted by Commissioner of Customs: April 16, 2009.

Dated: April 27, 2009.

Christopher Cassel,

Acting Director, IA Subsidies Enforcement Office.

[FR Doc. E9-10064 Filed 4-30-09; 8:45 am]

BILLING CODE: S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XO97

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Notice of availability and request for comments.

SUMMARY: Notice is hereby given that NMFS has received an application from the Washington Department of Fish and Wildlife (WDFW) for a direct take permit pursuant to the Endangered Species Act of 1973, as amended (ESA). The duration of the proposed permit is ten years. This document serves to notify the public of the availability for comment of the permit application. All comments received will become part of the public record and will be available for review pursuant to the ESA.

DATES: Written comments on the application and draft EA must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Pacific time on June 1, 2009.

ADDRESSES: Written comments on the application should be sent to Nora Berwick, National Marine Fisheries

Services, Salmon Recovery Division, 1201 N.E. Lloyd Boulevard, Suite 1100, Portland, OR 97232. Comments may also be submitted by e-mail to: sunsetfalls.nwr@noaa.gov. Include in the subject line of the e-mail comment the following identifier: Comments on Sunset Falls fishway. Comments may also be sent via facsimile (fax) to (503) 872-2737. Requests for copies of the permit application should be directed to the National Marine Fisheries Services, Salmon Recovery Division, 1201 N.E. Lloyd Boulevard, Suite 1100, Portland, OR 97232. The documents are also available on the Internet at www.nwr.noaa.gov. Comments received will also be available for public inspection, by appointment, during normal business hours by calling (503) 736-4737.

FOR FURTHER INFORMATION CONTACT: Nora Berwick, Portland, OR, at phone number: (503) 231-6887, e-mail: nora.berwick@noaa.gov.

SUPPLEMENTARY INFORMATION: This notice is relevant to the following species and evolutionarily significant units (ESUs):

Chinook salmon (*Oncorhynchus tshawytscha*): threatened Puget Sound Steelhead (*Oncorhynchus mykiss*): threatened Puget Sound

Background

Section 9 of the ESA and Federal regulations prohibit the taking of a species listed as endangered or threatened. The term take is defined under the ESA to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. NMFS may issue permits to take listed species for any act otherwise prohibited by section 9 for scientific purposes or to enhance the propagation or survival of the affected species, under section 10(a)(1)(A) of the ESA. NMFS regulations governing permits for threatened and endangered species are promulgated at 50 CFR 222.307.

NMFS expects to take action on a ESA section 10(a)(1)(A) submittal received from the applicant. In an application received on February 27, 2009, WDFW applied to NMFS for an ESA section 10(a)(1)(A) permit for the direct take of ESA-listed threatened Puget Sound Chinook salmon and threatened Puget Sound steelhead from the South Fork Skykomish River in Washington state. The existing fishway at Sunset Falls will continue to be operated to trap Chinook salmon and steelhead arriving at the trap, and to haul trapped fish upstream for release into available habitat above three impassable waterfalls.

This notice is provided pursuant to section 10(c) of the ESA. NMFS will evaluate the application, associated documents, and comments submitted thereon to determine whether the application meets the requirements of section 10(a)(1)(A) of the ESA. If it is determined that the requirements are met, a permit will be issued to the WDFW for the purpose of carrying out the research and enhancement program. NMFS will publish a record of its final action in the **Federal Register**.

Dated: April 24, 2009.

Therese Conant,

*Acting Chief, Endangered Species Division,
Office of Protected Resources, National
Marine Fisheries Service.*

[FR Doc. E9-10054 Filed 4-30-09; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

**National Oceanic and Atmospheric
Administration**

RIN 0648-XO96

**Endangered and Threatened Species;
Take of Anadromous Fish**

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

ACTION: Issuance of a scientific research permit.

SUMMARY: Notice is hereby given that NMFS has issued Permit 1606 to Mr. Zachary Larson in Crescent City, California.

ADDRESSES: The application, permit, and related documents are available for review by appointment at: Protected Resources Division, NMFS, 1655 Heindon Road, Arcata, CA 95521 (ph: 707-825-5185, fax: 707-825-4840, e-mail at: diane.ashton@noaa.gov)

FOR FURTHER INFORMATION CONTACT: Diane Ashton at 707-825-5185, or e-mail: diane.ashton@noaa.gov.

SUPPLEMENTARY INFORMATION:

Authority

The issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531-1543) (ESA), is based on a finding that such permits/modifications: (1) are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Authority to take listed species is subject to conditions set forth in the

permits. Permits and modifications are issued in accordance with and are subject to the ESA and NMFS regulations (50 CFR parts 222-226) governing listed fish and wildlife permits.

Species Covered in This Notice

This notice is relevant to federally threatened Southern Oregon/Northern California Coast coho salmon (*Oncorhynchus kisutch*).

Permit Issued

A notice of the receipt of an application for a scientific research permit (1606) was published in the **Federal Register** on March 28, 2007 (72 FR 14526). Permit 1606 was issued to Mr. Zachary Larson on March 27, 2009.

Permit 1606 authorizes Mr. Zachary Larson to capture (by seining, baited minnow trap, fence trap, pipe trap, and infrequent electrofishing), measure, mark, and release juvenile Southern Oregon/Northern California Coast coho salmon.

Permit 1606 authorizes unintentional lethal take of juvenile Southern Oregon/Northern California Coast coho salmon, not to exceed 1.0 percent of fish captured.

Permit 1606 is for research to be conducted in the Smith River estuary, and Cedar Creek, a tributary to the Smith River, Del Norte County, California.

The purpose of the research is to address information needs identified by NMFS to monitor juvenile salmonid populations in the Smith River. Permit 1606 expires on December 31, 2014.

Dated: April 24, 2009.

Therese Conant,

*Acting Chief, Endangered Species Division,
Office of Protected Resources, National
Marine Fisheries Service.*

[FR Doc. E9-10055 Filed 4-30-09; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

**National Oceanic and Atmospheric
Administration**

RIN 0648-XO95

**Endangered and Threatened Species;
Take of Anadromous Fish**

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

ACTION: Applications for six new scientific research permits, 12 modifications, and one renewal.

SUMMARY: Notice is hereby given that NMFS has received 19 scientific

research permit application requests relating to Pacific salmon and green sturgeon. The proposed research is intended to increase knowledge of species listed under the Endangered Species Act (ESA) and to help guide management and conservation efforts. The applications may be viewed on the NMFS website at https://apps.nmfs.noaa.gov/preview/preview_open_for_comment.cfm.

DATES: Comments or requests for a public hearing on the applications must be received at the appropriate address or fax number (see ADDRESSES) no later than 5 p.m. Pacific standard time on June 1, 2009.

ADDRESSES: Written comments on the applications should be sent to the Protected Resources Division, NMFS, 1201 NE Lloyd Blvd., Suite 1100, Portland, OR 97232-1274. Comments may also be sent via fax to 503-230-5441 or by e-mail to resapps.nwr@NOAA.gov.

FOR FURTHER INFORMATION CONTACT: Garth Griffin, Portland, OR (ph.: 503-231-2005, Fax: 503-230-5441, e-mail: Garth.Griffin@noaa.gov). Permit application instructions are available from the address above.

SUPPLEMENTARY INFORMATION:

Species Covered in This Notice

The following listed species are covered in this notice:

Chinook salmon (*Oncorhynchus tshawytscha*): threatened lower Columbia River (LCR), threatened upper Willamette River (UWR), endangered upper Columbia River (UCR), threatened Snake River (SR) spring/summer, threatened SR fall, threatened Puget Sound (PS).

Chum salmon (*O. keta*): threatened Columbia River (CR), threatened Hood Canal (HC).

Steelhead (*O. mykiss*): threatened LCR, threatened UWR, threatened middle Columbia River (MCR), threatened Snake River (SN), endangered UCR, threatened PS.

Coho salmon (*O. kisutch*): threatened LCR, threatened Southern Oregon Northern California Coasts (SONCC), threatened Oregon coastal (OC).

Sockeye salmon (*O. nerka*): endangered SN.

Green Sturgeon (*Acipenser medirostris*)

Authority

Scientific research permits are issued in accordance with section 10(a)(1)(A) of the ESA (16 U.S.C. 1531 *et seq.*) and regulations governing listed fish and wildlife permits (50 CFR 222-226). NMFS issues permits based on findings

that such permits: (1) are applied for in good faith; (2) if granted and exercised, would not operate to the disadvantage of the listed species that are the subject of the permit; and (3) are consistent with the purposes and policy of section 2 of the ESA. The authority to take listed species is subject to conditions set forth in the permits.

Anyone requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). Such hearings are held at the discretion of the Assistant Administrator for Fisheries, NMFS.

Applications Received

Permit 1127 - 2R

The Shoshone-Bannock Tribe (SBT) is seeking to renew its permit to annually take listed salmon and steelhead while conducting research designed to (a) monitor adult and juvenile fish in key upper SR basin watersheds, (b) assess the utility of hatchery Chinook salmon in increasing natural populations in the Salmon and Clearwater Rivers, and (c) evaluate the genetic and ecological impacts of hatchery Chinook salmon on natural populations. The fish would primarily benefit from the research in two ways. First, the research would broadly be used to help guide restoration and recovery efforts throughout the SR basin. Second, and more specifically, the research would be used to determine how hatchery supplementation can be used as a tool for salmon recovery. The SBT would observe, capture, anesthetize, handle, and tag the listed fish. The SBT does not propose to kill any of the fish being captured but some may die as an unintended result of the research.

Permit 1336 - 5M

Port Blakely Farms (PBF) is seeking to modify their current research permit. The current permit authorizes the PBF to take juvenile natural origin and hatchery origin PS Chinook while conducting research designed to evaluate factors limiting fish distribution and water quality in streams owned by the PBF. The research would benefit listed salmonids by producing data to be used in conserving and restoring critical habitat. The modification would allow PBF to take juvenile, natural-origin PS steelhead. The PBF proposes to capture fish using backpack electrofishing and dipnetting, then handle, and release juvenile fish. The PBF does not propose to kill any of the fish being captured, but a small

percentage may die as an unintended result of the activities.

Permit 1345 - 5M

The Washington Department of Fish and Wildlife (WDFW) is seeking to modify Permit 1345 - 4R which currently authorizes them to annually take listed salmonids during the course of Washington State's annual warmwater fish stock assessment surveys. They wish to modify the permit by increasing (slightly) the number of fish they may take and by adding one study in the Cedar River, Washington, and another in the Middle Columbia River. The purpose of the warmwater surveys is to gather data on the State's fish species and thereby allow the WDFW to manage them in the best way possible. The research would benefit listed fish by giving managers more information on their abundance, distribution, and health. The surveys would be conducted using boat electrofishing equipment in the backwater sloughs, oxbow lakes, and ponds associated with major river systems throughout Washington State. The purpose of the Cedar River study is to monitor predation by trout and other species on listed Chinook in the Cedar River. The research would benefit listed fish by helping managers set fishing regulations in a manner that would reduce predators--and therefore predation--on the local PS Chinook populations. This study would employ boat electrofishing. The study in the Middle Columbia River-Priest Rapids complex would be similar to the Cedar River study the researchers would examine predation among juvenile UCR Chinook and sockeye. This study would use a combination of tangle nets and boat electrofishing.

Any juvenile listed salmonids captured during the research would be sampled for biological information and immediately released. If adult listed salmonids are seen, the electrofishing equipment would be turned off and the fish allowed to escape. The WDFW does not propose to kill any of the fish being captured, but a small percentage may die as an unintended result of the research activities.

Permit 1521 - 2M

Wyllie-Echeverria Associates (WEA) is requesting a modification to their current research permit. The current permit authorizes the WEA to take juvenile natural origin and hatchery origin PS Chinook while conducting research designed to determine which salmonid species and which Chinook salmon stocks use the nearshore marine habitats of Orcas and Waldron Islands,

Washington. The modification would allow them to take juvenile natural origin PS steelhead. The WEA proposes to capture fish using beach seines, toss nets, and surface tow nets. The fish would be handled, anesthetized, fin clipped, and released at selected sites in the nearshore marine habitats of the islands. The WEA does not propose to kill any of the fish being captured, but a small percentage may die as an unintended result of the activities.

Permit 1524 - 2M

The Northwest Fisheries Science Center (NWFSC) is seeking to modify their current research permit. The current permit authorizes the NWFSC to take juvenile natural origin PS Chinook while conducting research designed to study changes in population characteristics of wild Chinook and coho in response to estuarine habitat reconnection and restoration in the Skagit River and Puget Sound, Washington. The modification would allow them to take juvenile natural origin PS steelhead. The NWFSC proposes to capture fish using beach seines, mark fish and place them in enclosures. All captured steelhead would immediately be released. A portion of the juvenile Chinook captured would be sacrificed for diet and otolith analysis. All samples collected would be stored at the Northwest Fisheries Science Center. Aside from the few fish that may be sacrificed, the NWFSC does not propose to kill any listed fish, though a few may die as an unintended consequence of the research actions.

Permit 1562 - 3M

The Oregon Department of Environmental Quality (DEQ) Laboratory and Environmental Assessment Division is asking to modify Permit 1562. The Permit currently authorizes them to take adult and juvenile UWR Chinook and steelhead; adult and juvenile LCR Chinook, coho, and steelhead; adult and juvenile CR chum; adult and juvenile MCR steelhead; adult and juvenile SR steelhead, fall-run Chinook, spring/summer-run Chinook, and sockeye; adult and juvenile OC coho; and adult and juvenile SONCC coho during the course of monitoring to evaluate the status of all perennial streams (wadeable and non-wadeable) across the United States. The permit would be modified by adding several take locations in Oregon and the Columbia River (and thereby increasing slightly the number of listed fish they are allowed to take). The Modification would also allow them to take UCR steelhead and

Chinook. The monitoring would be conducted as part of the national Environmental Monitoring and Assessment Program (EMAP) which aims to advance the science of ecological monitoring and ecological risk assessment, guide national monitoring with improved scientific understanding of ecosystem integrity and dynamics, and demonstrate multi-agency monitoring through large regional projects. The monitoring would benefit listed salmonids by providing data and assessments of fish habitat condition and ecological resources to decision makers and the public.

The DEQ proposes to capture (using backpack and boat electrofishing), identify, measure, and release juvenile fish. Adult fish may be encountered but would not be captured. The DEQ does not propose to kill any of the fish being captured, but a few may die as an unintended result of the activities.

Permit 1564 - 2M

The University of Washington (UW) is seeking to modify their current research permit. The current permit authorizes the UW to take juvenile natural and hatchery origin PS Chinook while conducting research designed to monitor the success of habitat restoration projects within the Duwamish River estuary. The modification would allow them to add PS steelhead to the listed fish they are allowed to take. The goal of these projects is to understand changes in population characteristics among Chinook salmon in response to restoration of estuarine habitat. The habitat restoration work was conducted by the Port of Seattle and monitoring was a requirement of the permit issued by the Army Corps of Engineers. The habitat restoration projects were designed to improve habitats that are used by Chinook salmon for rearing and migration. Monitoring the restoration sites would help determine the effectiveness of the projects. The UW proposes to capture fish using enclosure nets and beach seines. Half of the juvenile Chinook salmon would be counted, checked for external marks and internal coded-wire tags, measured, and released. The other half of the captured juvenile Chinook would have their stomach contents sampled. The UW does not propose to kill any fish being captured but some may die as an unintended result of the activities.

Permit 1566 - 2M

The Northwest Fisheries Science Center (NWFSC) is seeking to modify their current research permit. The current permit authorizes the NWFSC to

take juvenile natural origin and hatchery origin PS Chinook while conducting research designed to monitor proposed restoration sites along the Puget Sound shoreline, from near the Hiram Chittenden Locks north to Everett. The researchers determine fish presence, assess individual fish health, and examine the fishes' degree of toxic chemical contamination. The goal is to establish a pre-restoration baseline of the conditions at each of the proposed restoration sites and to monitor conditions following restoration. Sediments would be collected for each site for chemical analysis. The modification would (1) add juvenile PS steelhead to the fish they are allowed to take, and (2) increase slightly the amounts of take and unintentional mortality among juvenile PS Chinook.

The NWFSC proposes to capture fish using beach seines, measure them, analyze individual condition factors and whole body lipid content, and release them. A portion of the juvenile Chinook captured would be sacrificed during the process. All samples collected would be consumed during the process of chemical and hormonal analysis of tissues.

Permit 1567 - 2M

Ridolfi, Incorporated is seeking to modify their current research permit. The current permit authorizes the Ridolfi to take juvenile natural origin and hatchery origin PS Chinook while conducting research designed to monitor habitat restoration sites in the Commencement Bay of the Puget Sound. The goals are to measure the success of restoration efforts, identify adaptive management approaches if projects are not achieving goals, address monitoring requirements specified by permitting agencies, and serve as an outreach tool for dissemination of project information to interested parties. Commencement Bay provides nearshore marine and estuarine habitat for adult and juvenile Chinook salmon as well as the resident "blackmouth" stock of Chinook salmon and PS steelhead. While Puget Sound steelhead are not targeted, they may be encountered during the project; thus the modification would allow them to add juvenile PS steelhead to the fish they are currently allowed to take.

Ridolfi, Inc., proposes to capture fish using block nets and beach seine nets at six restoration sites throughout Commencement Bay and its tributaries. Fish would be collected, identified by species, checked for marks or coded-wire tags, measured, and released. All fish would be sampled and released in a timely and appropriate manner in

order to minimize stress. Every effort would be made to minimize injury. Ridolfi, Inc., does not propose to kill any of the fish being captured but some may die as an unintentional result of the activities.

Permit 1568 - 2M

The NWFSC is seeking to modify their current research permit. The current permit authorizes the NWFSC to take juvenile natural origin and hatchery origin PS Chinook while conducting research designed to provide information on their basic life histories, ecology, and genetic compositions in the Snohomish River estuary in Washington State. The study is designed to (1) characterize the ecology of existing Chinook salmon populations and life history types in the Snohomish River estuary, and (2) evaluate how effectively habitat protection and restoration actions in the estuary help Chinook salmon populations in the Snohomish River basin. The information gathered by this research would benefit the fish by helping recovery planning in the Snohomish River estuary and other estuaries of the Puget Sound. The modification would allow the NWFSC to add juvenile PS steelhead to the fish they are currently permitted to take.

The NWFSC proposes to capture fish using fyke nets and beach seines. They would then be anesthetized, measured, and weighed. The fish would also be tissue-sampled and checked for external marks and coded-wire tags. A portion of the captured fish would be sacrificed for full necropsy and a few more may die as an unintended result of the research. Accidental mortalities would be used in place of any sacrificed fish wherever possible. Any fish killed during field operations would be labeled and placed on ice in a plastic bag, then brought to the NWFSC and immediately frozen. Specimens would be thawed, weighed and measured; body tissues and otoliths, scales, kidney, fin clip, stomach, and CWTs would be removed and preserved. Remaining body tissues would be archived.

Permit 1585 - 2M

The Washington State Department of Natural Resources (DNR) is seeking to modify their current research permit. The current permit authorizes the DNR to take juvenile natural origin PS Chinook and HC chum while conducting research designed to determine the presence and distribution of salmonids to help improve management decisions. The modification would allow them to add juvenile PS steelhead to the fish they are

currently permitted to take. The DNR proposes to capture (using backpack electrofishing equipment), handle, and release listed salmonids. The DNR does not propose to kill any of the fish being captured, but a small number may die as an unintended result of the activities.

Permit 1586 - 2M

The NWFSC is seeking to modify their current research permit. The current permit authorizes the NWFSC to take juvenile natural origin and hatchery origin PS Chinook and HC chum while conducting research designed to characterize how wild, juvenile PS Chinook salmon use nearshore habitats in the Whidbey Basin, Admiralty Inlet, the Strait of Juan de Fuca, and the San Juan Islands. Additional goals are to define what life history strategies are present in these areas, and identify their residence time, distribution, timing of movements, diet, health, age, and origin. This research would benefit the listed species by helping managers develop protection and restoration strategies and monitor the effects of recovery actions. The modification would (1) add PS steelhead to the listed fish they are allowed to take, and (2) increase slightly the unintentional mortality of juvenile natural origin HC chum. The NWFSC proposes to capture fish using beach seines, tow nets, purse seines, and lampera nets, temporarily hold fish in live-wells, mesh pens, aerated buckets (or in the bag of the net), anesthetize, measure, weigh, check for tags or marks, fin clip, allow fish to recover from anesthesia, and release the listed salmonids. A subsample of juvenile PS Chinook would be tagged with acoustic transmitters. A small portion of the captured juvenile PS Chinook would be killed for whole body analysis, but the great majority are not intended to be sacrificed. Any fish unintentionally killed during the research would be used in place of the sacrificed fish.

Permit 1605 - 2M

Windward Environmental, LLC (Windward) is seeking to modify their current research permit. The current permit authorizes Windward to take juvenile and adult natural origin PS Chinook during the course research intended to characterize concentrations in fish tissues following remediation of contaminated sediments in the Lower Duwamish Waterway (LDW) Superfund Site and East Waterway Operable Unit of the Harbor Island Superfund Site. The long-term goal is to provide information to help resource managers determine if remediation activities have successfully reduced the concentration of chemical contaminants in fish and

other animals. An additional goal is to further characterize the LDW environment and determine what risks contaminated sediments pose to the organisms living in it and to humans using it. The modification would allow Windward to intentionally kill a small number of both hatchery and natural origin juvenile Chinook. It would also allow them to take juvenile PS steelhead and adult PS Chinook. Continued fish tissue monitoring would be used to determine if cleanup activities are successfully reducing chemical contaminant concentrations in the superfund sites. If monitoring results show elevated risks, additional remedial actions may be considered.

Windward proposes to capture fish using trawl nets, beach seine, and traps. Most fish would be captured, handled, and released. Targeted juvenile Chinook would be sorted and placed in a bucket of ice, inspected for damage, and placed in Ziploc bags, and transported to coolers for processing and analysis.

Permit 13374

The Bonneville Power Administration (BPA) is seeking a 5-year permit to annually take juvenile, natural MCR steelhead during the course of research designed to assess the current distribution and health of the fish in Rock Creek, Washington. The research would benefit the fish by helping managers plan recovery actions in the area—particularly the Rock Creek Subbasin Recovery Planning Group. The researchers would use backpack electrofishing units to capture the fish. The fish would then be anesthetized, measured, and given passive integrated transponder (PIT) tags. Some of the fish would also receive fin clips for genetic sampling purposes. Another portion of the fish would be sacrificed to determine if any pathogens are present in the population. Any fish that die as an accidental result of the capturing and tagging activities would be used in place of fish that would have been lethally taken for the pathogen analysis.

Permit 13475

The United States Fish and Wildlife Service (FWS) is requesting a 5-year research permit to take juvenile and adult UCR Chinook salmon, SR spr/sum Chinook salmon, SR fall Chinook salmon, LCR Chinook salmon, UWR Chinook salmon, CR chum salmon, LCR coho salmon, SR sockeye salmon, UCR steelhead, SR steelhead, MCR steelhead, LCR steelhead, and UWR steelhead. The FWS manages five National Wildlife Refuges (NWRs) in the lower Columbia River basin (i.e., Lewis and Clark, Julia Butler Hansen, Ridgefield, Steigerwald,

Franz Lake, and Pierce NWRs). These NWRs provide important rearing and migration habitat for listed species of salmon and steelhead. The purpose of the FWS's research is to (1) inventory and characterize fish and aquatic resources and (2) monitor and assess habitat restoration and management actions in the NWRs and surrounding areas. The research would benefit listed salmonids by providing baseline information about the distribution and abundance of listed salmonids within the NWRs and helping managers monitor the effectiveness of habitat restoration projects. The FWS would capture fish using seines, nets, traps, and backpack and boat electrofishing equipment. Captured salmon and steelhead would be identified by species, measured, and released. Subsamples of the captured fish would be variously marked, sampled for scales, stomach contents, and fin tissue. Some fish may be collected and transported to new locations. The FWS does not propose to kill any of the fish being captured, but a small number may die as an unintended result of the activities.

Permit 14046

The King County Department of Natural Resources and Parks (KCDNRP) is requesting a research permit to take juvenile PS Chinook and steelhead during studies designed to (1) evaluate the effectiveness of restoration actions through biological monitoring, (2) understand the importance of agricultural drainage ditches and other off-channel habitats in providing habitat for listed species, and (3) assess salmonid habitat status and trends in small streams with varying degrees of land use. By conducting this research, the KCDNRP would be implementing actions identified in the NOAA-approved salmon recovery plan to benefit Chinook in the following four major watersheds: Snoqualmie, Cedar/Sammamish, Green/Duwamish, and Puyallup/White. This research would provide data to determine if restoration and recovery actions in the Plan are contributing to the recovery of Chinook salmon and steelhead, provide information on the extent of rearing by juvenile salmonids in agricultural watercourses, guide future projects so they may be more precisely designed to take advantage of the results from monitoring, provide information on habitat use by yearling fall Chinook, and contribute to our knowledge of Chinook life histories.

The KCDNRP proposes to monitor juvenile Chinook and steelhead by conducting snorkel surveys and capturing fish with seines, fyke nets,

minnow traps, and backpack electrofishing. Fish would be captured, removed from nets or traps quickly and temporarily retained in cool, aerated water. Time spent handling fish would be kept to a minimum to limit stress. After handling, all fish would be allowed to recover in cool, aerated water, and released. When necessary, fish would be anaesthetized. The KCDNRP does not propose to kill any listed fish but a small number may die as an unintended result of the activities.

Permit 14271

The Washington State Department of Ecology (ECY) is requesting a 2-year scientific research permit to take juvenile and adult PS Chinook salmon, PS steelhead, and HC chum salmon. The purpose of the project is to develop a sampling plan that reports on the status of watershed health and salmon recovery efforts at three spatial scales: Water Resource Inventory Area, Salmon Recovery Region, and statewide. The goal is to develop a quality assurance monitoring plan for statewide probability-based sampling of aquatic habitat conditions and species diversity and abundance. The ECY's research application is for the pilot project which would take place in the Puget Sound, Hood Canal, and Strait of Juan de Fuca. The information gathered by this research would benefit listed salmonids by helping resource managers evaluate the effectiveness of habitat restoration efforts and the status and trends of aquatic species. The applicant proposes to capture fish with backpack and boat electrofishing equipment in at least fifty sites within the Puget Sound, Hood Canal, and Strait of Juan de Fuca. Listed fish would be enumerated and immediately released. The applicant does not propose to kill any listed fish species, but a small number may die as an unintended result of the activities.

Permit 14283

Environmental Assessment Services (EAS) is requesting a scientific research permit sample fish in the Columbia River in support of the U.S. Department of Energy's Hanford Site Cleanup Mission and regulatory drivers under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). The research would take place in four areas the Columbia River waters extending from upstream of Wanapum Dam to McNary Dam. The researchers are targeting non-listed resident fish but may also capture UCR steelhead and Chinook, MCR steelhead, and SR fall Chinook, spr/sum Chinook, and Steelhead. The research would benefit listed fish by helping monitor

and reduce contamination from the Hanford Nuclear Reservation. The researchers would capture the fish using electrofishing, hook and line, and long-line techniques. Any captured listed fish would immediately be released. The researchers do not propose to kill any listed fish but a small number may die as an unintended result of the activities.

Permit 14290

The NWFSC is seeking a permit to examine fish behavior and develop criteria to be used in designing effective screening and bypass systems at dams on the Columbia River (and elsewhere). Researchers would videotape juvenile SR fall Chinook salmon to determine if their behavior is altered in regard to velocity gradient changes in a test flume at McNary Dam. The research would benefit the fish by helping managers design safer, more efficient bypass units for fish to use when moving past hydroelectric facilities.

The fish would be collected from orifice traps installed within the bypass channel at McNary Dam and transferred to the test flume. They would then be video-taped as they approach and either pass through or reject an orifice in the McNary flume. Different flow conditions would be created by changing the head on the orifice. The researchers would then overlay a flow profile of the test area on the videos and determine specific areas and movements for the test fish. After testing, the fish would be returned to the bypass channel. The researchers do not propose to kill any of the fish being tested, but a small number may die as an unintended result of the activities.

Permit 14457

The Columbia River Estuary Study Taskforce (CREST) is seeking to renew research previously done under Permit 13508, while increasing the numbers of locations and fish to be taken. Under the new permit they would annually capture, handle, and release juvenile SR sockeye salmon, SR fall Chinook salmon, SR spring/summer Chinook salmon, UCR Chinook salmon, LCR Chinook salmon, UWR Chinook salmon, SR steelhead, UCR steelhead, MCR steelhead, LCR steelhead, UWR steelhead, LCR Coho, CR chum salmon, OC coho salmon, and green sturgeon. The research would take place in Baker Bay, Grays Bay, Washington and Youngs Bay, Oregon in the Columbia River estuary, and Ecola Creek, just south of the Columbia River confluence. The purpose of the research is to evaluate estuarine habitat restoration efforts. Specific objectives are to (1) determine

species composition, relative abundance, and residence time of various listed fish by using pre-restored and restoration project habitats and adjacent reference sites; (2) determine prey utilization by juvenile salmon; and (3) determine prey availability. The research would benefit listed salmonids by determining how effectively currently altered habitats support salmonids and using that information to guide future habitat modifications.

The CREST would capture the fish using fyke nets, trap nets, and beach seines. Salmonids would be anesthetized, identified, counted, measured, weighed, checked for tags and hatchery marks, and released. Some of the fish may be tagged with passive integrated transponders, or injected with dye or visible implant elastomers. Fin or scale samples for genetic or age analysis would be taken from a portion of the captured juvenile Chinook salmon. Some of the captured juvenile salmonid would be sampled for stomach contents. The CREST does not propose to kill any of the fish being captured, but a small number may die as an unintended result of the activities.

This notice is provided pursuant to section 10(c) of the ESA. NMFS will evaluate the applications, associated documents, and comments submitted to determine whether the applications meet the requirements of section 10(a) of the ESA and Federal regulations. The final permit decisions will not be made until after the end of the 30-day comment period. NMFS will publish notice of its final action in the **Federal Register**.

Dated: April 28, 2009.

Susan Pultz,

*Acting Chief, Endangered Species Division,
Office of Protected Resources, National
Marine Fisheries Service.*

[FR Doc. E9-10057 Filed 4-30-09; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Five-Year ("Sunset") Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In accordance with section 751(c) of the Tariff Act of 1930, as amended ("the Act"), the Department of Commerce ("the Department") is automatically initiating a five-year review ("Sunset Review") of the antidumping duty orders listed below. The International Trade Commission

(“the Commission”) is publishing concurrently with this notice its notice of *Institution of Five-Year Review* which covers the same order.

DATES: *Effective Date:* May 1, 2009.

FOR FURTHER INFORMATION CONTACT: The Department official identified in the *Initiation of Review* section below at AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Ave., NW., Washington, DC 20230. For information from the Commission

contact Mary Messer, Office of Investigations, U.S. International Trade Commission at (202) 205-3193.

SUPPLEMENTARY INFORMATION:

Background

The Department’s procedures for the conduct of Sunset Reviews are set forth in its *Procedures for Conducting Five-Year (“Sunset”) Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) and 70 FR 62061 (October 28, 2005). Guidance on methodological or

analytical issues relevant to the Department’s conduct of Sunset Reviews is set forth in the Department’s Policy Bulletin 98.3—*Policies Regarding the Conduct of Five-Year (“Sunset”) Reviews of Antidumping and Countervailing Duty Orders: Policy Bulletin*, 63 FR 18871 (April 16, 1998).

Initiation of Review

In accordance with 19 CFR 351.218(c), we are initiating the Sunset Review of the following antidumping duty orders:

DOC case No.	ITC case No.	Country	Product	Department contact
A-475-059	AA1921-167	Italy	Pressure Sensitive Plastic Tape (3rd Review).	Brandon Farlander, (202) 482-0182.
A-570-884	731-TA-1034	PRC	Color Television Receivers	Hallie Zink, (202) 482-6907.

Filing Information

As a courtesy, we are making information related to Sunset proceedings, including copies of the pertinent statute and Department’s regulations, the Department schedule for Sunset Reviews, a listing of past revocations and continuations, and current service lists, available to the public on the Department’s sunset Internet Web site at the following address: “<http://ia.ita.doc.gov/sunset/>.” All submissions in these Sunset Reviews must be filed in accordance with the Department’s regulations regarding format, translation, service, and certification of documents. These rules can be found at 19 CFR 351.303.

Pursuant to 19 CFR 351.103(d), the Department will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact the Department in writing within 10 days of the publication of the Notice of Initiation.

Because deadlines in Sunset Reviews can be very short, we urge interested parties to apply for access to proprietary information under administrative protective order (“APO”) immediately following publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The Department’s regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304-306.

Information Required From Interested Parties

Domestic interested parties defined in section 771(9)(C), (D), (E), (F), and (G) of the Act and 19 CFR 351.102(b) wishing to participate in a Sunset Review must respond not later than 15 days after the date of publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with the Department’s regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, the Department will automatically revoke the order without further review. See 19 CFR 351.218(d)(1)(iii).

If we receive an order-specific notice of intent to participate from a domestic interested party, the Department’s regulations provide that all parties wishing to participate in the Sunset Review must file complete substantive responses not later than 30 days after the date of publication in the **Federal Register** of this notice of initiation. The required contents of a substantive response, on an order-specific basis, are set forth at 19 CFR 351.218(d)(3). Note that certain information requirements differ for respondent and domestic parties. Also, note that the Department’s information requirements are distinct from the Commission’s information requirements. Please consult the Department’s regulations for information regarding the Department’s conduct of Sunset Reviews.¹ Please

¹ In comments made on the interim final sunset regulations, a number of parties stated that the proposed five-day period for rebuttals to substantive responses to a notice of initiation was insufficient. This requirement was retained in the

consult the Department’s regulations at 19 CFR Part 351 for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at the Department.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218(c).

Dated: April 24, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9-10069 Filed 4-30-09; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Science Advisory Board

AGENCY: Office of Oceanic and Atmospheric Research (OAR), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of public meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the NOAA Science Advisory Board. The members will discuss and provide advice on issues outlined in the agenda below.

DATES: The meeting is scheduled for: Monday, May 18, 2009, 10:30-11:30 a.m. Eastern Daylight Time.

final sunset regulations at 19 CFR 351.218(d)(4). As provided in 19 CFR 351.302(b), however, the Department will consider individual requests to extend that five-day deadline based upon a showing of good cause.

ADDRESSES: Conference call. Public access is available at SSMC 3, Room 4527, 1315 East-West Highway, Silver Spring, MD.

FOR FURTHER INFORMATION CONTACT: Dr. Cynthia Decker, Executive Director, Science Advisory Board, NOAA, Rm. 11230, 1315 East-West Highway, Silver Spring, Maryland 20910. (Phone: 301-734-1156, Fax: 301-713-1459, E-mail: Cynthia.Decker@noaa.gov.)

SUPPLEMENTARY INFORMATION: The Science Advisory Board (SAB) was established by a Decision Memorandum dated September 25, 1997, and is the only Federal Advisory Committee with responsibility to advise the Under Secretary of Commerce for Oceans and Atmosphere on strategies for research, education, and application of science to operations and information services. SAB activities and advice provide necessary input to ensure that National Oceanic and Atmospheric Administration (NOAA) science programs are of the highest quality and provide optimal support to resource management.

Matters To Be Considered: The agenda for the meeting is as follows:

Date and Time: May 18, 2009, 10:30–11:30 a.m. EDT.

Agenda:

1. Discussion and consideration of the Draft Report Options for Developing a National Climate Service, submitted to the SAB by the Climate Working Group.

Dated: April 28, 2009.

Mark E. Brown,

Chief Financial Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. E9-10059 Filed 4-30-09; 8:45 am]

BILLING CODE 3510-KD-P

DEPARTMENT OF COMMERCE

International Trade Administration

Exporters' Textile Advisory Committee; Notice of Open Meeting

A meeting of the Exporters' Textile Advisory Committee will be held on Wednesday, June 3, 2009. The meeting will be from 1:00–4:30 p.m. Location: Training Room A, Trade Information Center, Ronald Reagan building, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20004.

The Committee provides advice and guidance to Department officials on the identification and surmounting of barriers to the expansion of textile exports, and on methods of encouraging textile firms to participate in export expansion.

The Committee functions solely as an advisory body in accordance with the provisions of the Federal Advisory Committee Act.

The meeting will be open to the public with a limited number of seats available. For further information contact Kim-Bang Nguyen at (202) 482-4805. Minutes of all ETAC meetings are posted at otexa.ita.doc.gov.

Dated: April 28, 2009.

Janet E. Heinzen,

Acting Deputy Assistant Secretary for Textiles and Apparel.

[FR Doc. E9-10073 Filed 4-30-09; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648-XP01

Council Coordination Committee; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The New England Fishery Management Council (NEFMC) will host a meeting of the Council Coordination Committee (CCC), consisting of the eight Regional Fishery Management Council chairs, vice chairs and executive directors on May 19–22, 2009. The intent of this meeting is to discuss issues of relevance to the Councils, including planning, programming and budgeting; implementation of provisions from the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act (MSRA); and ecosystem-based management; among others.

DATES: This meeting will be held on May 19, 2009 through May 22, 2009. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meeting will be held at the Marriott Long Wharf Hotel, 296 State Street, Boston, MA 02109; telephone: (617) 227-0800; fax: (617) 227-2867.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465-0492.

SUPPLEMENTARY INFORMATION: The meeting will begin at 8:30 a.m. on Tuesday, May 19, 2009 and recess at 5

p.m., or when business is complete; reconvene at 8:30 a.m. on Wednesday, May 20, 2009 and recess at 5 p.m., or when business is complete; reconvene at 8:30 a.m. on Thursday, May 21, 2009 and recess at 5 p.m., or when business is complete and, if needed, will reconvene on Friday, May 22, 2009, and adjourn by noon, or when business is complete.

The Magnuson-Stevens Fishery Conservation and Management Reauthorization act (MSRA) of 2006 established the Council Coordination Committee (CCC) by amending Section 302 (16 U.S.C. 1852) of the Magnuson-Stevens Act. The Committee consists of the chairs, vice chairs and executive directors of each of the Regional Fishery Management Councils authorized by the Magnuson-Stevens Act or other Council members or staff. The NEFMC will host this meeting and provide reports to the Committee for its information and discussion. The main topics of discussion will be budgets and planning, implementation of the provisions of the MSRA and related guidance and technical regulatory changes, among others.

Agenda

Tuesday, May 19, 2009

- Opening Remarks, Joint Council/NMFS Session
- Separate Council/NMFS Sessions

Wednesday, May 20, 2009

- Discussion of annual catch limits (ACLs) and accountability measures (AMs)
 - Ecosystem Based Management
 - Budgets
 - Limited Access Privilege Programs (LAPPs) Development and Implementation

Thursday, May 21, 2009

- Standardized Management Actions
- Scientific and Statistical Committee (SSC) Operating Procedures
- Enforcement and Safety
- Legislation and Regulation Updates

Friday, May 22, 2009

- Councils only session (if needed).
- The order in which the agenda items are addressed may change. The CCC will meet as late as necessary to complete scheduled business.

Although non-emergency issues not contained in this agenda may come before this group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during this meeting. Actions will be restricted to those issues specifically

identified in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard, Executive Director, at (978) 465-0492, at least 5 days prior to the meeting date.

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

Dated: April 28, 2009.

Tracey L. Thompson,

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

[FR Doc. E9-10016 Filed 4-30-09; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

International Trade Administration

Subsidy Programs Provided by Countries Exporting Softwood Lumber and Softwood Lumber Products to the United States; Request for Comment

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Department) seeks public comment on any subsidies, including stumpage subsidies, provided by certain countries exporting softwood lumber or softwood lumber products to the United States during the period July 1 through December 31, 2008.

DATES: Comments must be submitted within thirty days after publication of this notice.

ADDRESSES: Written comments (original and six copies) should be sent to the Secretary of Commerce, Attn: James Terpstra, Import Administration, APO/ Dockets Unit, Room 1870, U.S. Department of Commerce, 14th Street & Constitution Ave., NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: James Terpstra, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-3965.

SUPPLEMENTARY INFORMATION:

Background

On June 18, 2008, Section 805 of Title VIII of the Tariff Act of 1930 (the Softwood Lumber Act of 2008) was

enacted into law. Under this provision, the Secretary of Commerce is mandated to submit to the appropriate Congressional committees a report every 180 days on any subsidies provided by countries exporting softwood lumber or softwood lumber products to the United States, including stumpage subsidies. Commerce submitted its first subsidies report to Congress on December 15, 2008. As part of its report, Commerce intends to include a list of subsidy programs identified with sufficient clarity by the public in response to this notice.

Request for Comment

Given the large number of countries that export softwood lumber and softwood lumber products to the United States, we are soliciting public comment only on subsidies provided by countries whose exports accounted for at least one percent of total U.S. imports of softwood lumber by quantity, as classified under Harmonized Tariff Schedule code 4407.1001 (which accounts for the vast majority of imports), during the period July 1 through December 31, 2008. Official U.S. import data published by the United States International Trade Commission Tariff and Trade DataWeb indicate that exports of softwood lumber from Canada, Chile, and Germany each account for at least one percent of U.S. imports of softwood lumber products during that time period. We intend to rely on similar previous six-month periods to identify the countries subject to future reports on softwood lumber subsidies. For example, we will rely on U.S. imports of softwood lumber and softwood lumber products during the period January 1 through June 30, 2009, to select the countries subject to the next report.

Under U.S. trade law, a subsidy exists where a government authority: (i) Provides a financial contribution, (ii) provides any form of income or price support within the meaning of Article XVI of the GATT 1994, or (iii) makes a payment to a funding mechanism to provide a financial contribution to a person, or entrusts or directs a private entity to make a financial contribution, if providing the contribution would normally be vested in the government and the practice does not differ in substance from practices normally followed by governments, and a benefit is thereby conferred. *See* section 771(5)(B) of the of the Tariff Act of 1930.

Parties should include in their comments: (1) The country which provided the subsidy, (2) the name of the subsidy program, (3) a brief (3-4 sentence) description of the subsidy

program, and (4) the government body or authority that provided the subsidy.

Submission of Comment

Persons wishing to comment should file a signed original and six copies of each set of comments by the date specified above. The Department will not accept comments accompanied by a request that a part or all of the material be treated confidentially due to business proprietary concerns or for any other reason. The Department will return such comments and materials to the persons submitting the comments and will not include them in its report on softwood lumber subsidies. The Department also requests submission of comments in electronic form to accompany the required paper copies. Comments filed in electronic form should be submitted on CD-ROM with the paper copies or by e-mail to the Webmaster below.

Comments received in electronic form will be made available to the public in Portable Document Format (PDF) on the Import Administration Web site at the following address: <http://ia.ita.doc.gov>. Any questions concerning file formatting, document conversion, access on the Internet, or other electronic filing issues should be addressed to Andrew Lee Beller, Import Administration Webmaster, at (202) 482-0866, e-mail address: webmaster-support@ita.doc.gov.

All comments and submissions should be mailed to James Terpstra, Import Administration; Subject: Softwood Lumber Subsidies Bi-Annual Report: Request for Comment; Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC, 20230, by no later than 5 p.m., on the above-referenced deadline date.

Dated: April 27, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9-10066 Filed 4-30-09; 8:45 am]

BILLING CODE 3510-DS-P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete products previously furnished by such agencies.

Comments Must Be Received On or Before: 6/1/2009.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202-3259.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT: Patricia Briscoe, Telephone: (703) 603-7740, Fax: (703) 603-0655, or e-mail CMTEFedReg@AbilityOne.gov.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice for each product or service will be required to procure the products and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. If approved, the action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the products and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following products and services are proposed for addition to

Procurement List for production by the nonprofit agencies listed:

Products

Advanced Combat Shirt

- NSN: 8415-01-548-7187
- NSN: 8415-01-548-7201
- NSN: 8415-01-548-7206
- NSN: 8415-01-548-7209
- NSN: 8415-01-548-7215
- NSN: 8415-01-548-7232
- NSN: 8415-01-548-7236

NPA: Winston-Salem Industries for the Blind, Winston-Salem, NC.

NPA: San Antonio Lighthouse for the Blind, San Antonio, TX.

Contracting Activity: Dept. of the Army, XR W2DF RDECOM ACQ CTR NATICK.

Services

Service Type/Location: Custodial Services, Charlotte VA Clinic, 8601 University East Drive, Charlotte, NC.

NPA: OE Enterprises, Inc., Hillsborough, NC.

Contracting Activity: Department of Veterans Affairs.

Service Type/Location: Custodial Services, Military Entrance Processing Station-Camp Dodge, Building S-71, Johnston, IA.

NPA: Genesis Development, Jefferson, IA.

Contracting Activity: Dept. of the Army, XR W6BB ACA KNOX.

Deletions

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. If approved, the action may result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the products and services proposed for deletion from the Procurement List.

End of Certification

The following products are proposed for deletion from the Procurement List:

Products

Protective Worksuit, General Purpose

- NSN: 8410-00-NSH-0025
- NSN: 8410-00-NSH-0026
- NSN: 8410-00-NSH-0027
- NSN: 8410-00-NSH-0028
- NSN: 8410-00-NSH-0029
- NSN: 8410-00-NSH-0030
- NSN: 8410-00-NSH-0031
- NSN: 8410-00-NSH-0032
- NSN: 8410-00-NSH-0125
- NSN: 8410-00-NSH-0126

- NSN: 8410-00-NSH-0127
- NSN: 8410-00-NSH-0128
- NSN: 8410-00-NSH-0129
- NSN: 8410-00-NSH-0130
- NSN: 8410-00-NSH-0131
- NSN: 8410-00-NSH-0132
- NSN: 8410-00-NSH-0225
- NSN: 8410-00-NSH-0226
- NSN: 8410-00-NSH-0227
- NSN: 8410-00-NSH-0228
- NSN: 8410-00-NSH-0229
- NSN: 8410-00-NSH-0230
- NSN: 8410-00-NSH-0231
- NSN: 8410-00-NSH-0232
- NSN: 8410-00-NSH-0325
- NSN: 8410-00-NSH-0326
- NSN: 8410-00-NSH-0327
- NSN: 8410-00-NSH-0328
- NSN: 8410-00-NSH-0329
- NSN: 8410-00-NSH-0330
- NSN: 8410-00-NSH-0331
- NSN: 8410-00-NSH-0332
- NSN: 8410-00-NSH-0425
- NSN: 8410-00-NSH-0426
- NSN: 8410-00-NSH-0427
- NSN: 8410-00-NSH-0428
- NSN: 8410-00-NSH-0429
- NSN: 8410-00-NSH-0430
- NSN: 8410-00-NSH-0431
- NSN: 8410-00-NSH-0432
- NSN: 8410-00-NSH-0532
- NSN: 8410-00-NSH-0632
- NSN: 8410-00-NSH-0732
- NSN: 8410-00-NSH-0832
- NSN: 8410-00-NSH-0932
- NSN: 8410-00-NSH-1032
- NSN: 8410-00-NSH-1132
- NSN: 8410-00-NSH-1232
- NSN: 8410-00-NSH-1332
- NSN: 8410-00-NSH-1432
- NSN: 8410-00-NSH-1532
- NSN: 8410-00-NSH-1632
- NSN: 8410-00-NSH-1732
- NSN: 8410-00-NSH-1832
- NSN: 8410-00-NSH-1932
- NSN: 8410-00-NSH-2032
- NSN: 8410-00-NSH-2132
- NSN: 8410-00-NSH-2232
- NSN: 8410-00-NSH-2332
- NSN: 8410-00-NSH-2432
- NSN: 8410-00-NSH-2532
- NSN: 8410-00-NSH-2632
- NSN: 8410-00-NSH-2732
- NSN: 8410-00-NSH-2832
- NSN: 8410-00-NSH-2932
- NSN: 8410-00-NSH-3032
- NSN: 8410-00-NSH-3132
- NSN: 8410-00-NSH-3232
- NSN: 8410-00-NSH-3332
- NSN: 8410-00-NSH-3432
- NSN: 8410-00-NSH-3532
- NSN: 8410-00-NSH-3632
- NSN: 8410-00-NSH-3732
- NSN: 8410-00-NSH-3832
- NSN: 8410-00-NSH-3932
- NSN: 8410-00-NSH-4032
- NSN: 8410-00-NSH-4132
- NSN: 8410-00-NSH-4232
- NSN: 8410-00-NSH-4332
- NSN: 8410-00-NSH-4432
- NSN: 8410-00-NSH-4532
- NSN: 8410-00-NSH-4632
- NSN: 8410-00-NSH-4732
- NSN: 8410-00-NSH-4832
- NSN: 8410-00-NSH-4932
- NSN: 8410-00-NSH-5032

NSN: 8410-00-NSH-5132
 NSN: 8410-00-NSH-5232
 NSN: 8410-00-NSH-5332
 NSN: 8410-00-NSH-5432
 NSN: 8410-00-NSH-5532
 NSN: 8410-00-NSH-5632
 NSN: 8410-00-NSH-5732
 NSN: 8410-00-NSH-5832
 NSN: 8410-00-NSH-5932

NPA: Association for Retarded Citizens of Baldwin County, Inc., Loxley, AL.
 Contracting Activity: GSA/FAS Southwest Supply Center (QSDAC), Fort Worth, TX.

Barry S. Lineback,

Director, Business Operations.

[FR Doc. E9-10006 Filed 4-30-09; 8:45 am]

BILLING CODE 6353-01-P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 11 a.m., Wednesday May 6, 2009.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Rule Enforcement Review.

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202-418-5084.

Sauntia S. Warfield,

Assistant Secretary of the Commission.

[FR Doc. E9-10207 Filed 4-29-09; 4:15 pm]

BILLING CODE 6351-01-P

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Availability for the Draft Environmental Impact Statement (DEIS) for Stationing and Training of Increased Aviation Assets Within U.S. Army Alaska

AGENCY: Department of the Army, DOD.

ACTION: Notice of availability.

SUMMARY: The Department of the Army announces the availability of a DEIS for the implementation of the decisions to increase numbers and types of aviation assets and training at Fort Wainwright, Fort Richardson or other military installations in Alaska. The proposed aviation unit, an Aviation Task Force or Combat Aviation Brigade, would potentially consist of up to 62 medium and heavy lift helicopters, 30 combat scout helicopters, 24 attack helicopters, and between 1,200 to 2,850 personnel.

DATES: The public comment period ends 45 days following publication of a

Notice of Availability in the **Federal Register** by the U.S. Environmental Protection Agency.

ADDRESSES: Written comments should be forwarded to Ms. Carrie McEnteer, Directorate of Public Works, Attention: IMPA-FWA-PWE, 1060 Gaffney Road #4500, Fort Wainwright, AK 99703-4500, by fax at (907) 353-9867, or by e-mail at carrie.mcenteerus.army.mil.

FOR FURTHER INFORMATION CONTACT: Ms. Linda L. Douglass, Public Affairs Office, 1060 Gaffney Road #5900, Fort Wainwright, AK 99703-5900; telephone: (907) 353-6701 or (907) 384-2546, e-mail: linda.douglassusarmy.mil.

SUPPLEMENTARY INFORMATION: The Proposed Action and analysis in the EIS includes the reorganization of existing aviation assets (approximately 640 personnel and 30 medium and heavy lift helicopters) in U.S. Army Alaska (USARAK) to become a frontline aviation unit with an increased capacity that could range in size from an Aviation Task Force (approximately 1,200 personnel, 40 medium and heavy lift helicopters and 30 combat scout helicopters) to a Combat Aviation Brigade (approximately 2,850 personnel, 60 medium and heavy lift helicopters, 30 combat scout helicopters, and 24 attack aviation helicopters).

While USARAK has historically supported unit training activities within Alaska with rotary-winged aircraft (helicopters), the types and numbers of current assets are not sufficient to provide the full range of integrated tactical training required by the modern Brigade Combat Team. The proposed increase and reorganization of USARAK's aviation assets would resolve this shortcoming. The new aviation unit would provide key aviation assets for operational deployment abroad and would serve to enhance the training capability of USARAK's two Brigade Combat Teams by providing a local opportunity to conduct integrated training with multiple types of Army aviation assets.

In addition to consideration of a No Action Alternative (use of existing aviation assets and infrastructure to support USARAK Brigade Combat Team training with no increase to current integrated land-air training capability), two additional alternatives are proposed as possible scenarios for the reorganization of existing USARAK aviation assets. The alternatives vary by aviation unit size, aviation asset composition and stationing location. Alternatives include: (1) Expansion of Existing Aviation Units into an Aviation Task Force—convert existing USARAK aviation assets into an Aviation Task

Force (station approximately 1,200 personnel and 30 additional helicopters, build sufficient new infrastructure to support the new aviation inventory at Fort Wainwright and conduct increased aviation training on existing Alaska military training lands and ranges); and (2) Expansion of Existing Aviation Assets into a Combat Aviation Brigade with stationing of Soldiers and helicopters at Fort Wainwright, Fort Richardson and Eielson Air Force Base—convert existing USARAK aviation assets into a Combat Aviation Brigade (station approximately 2,850 personnel and an additional 84 helicopters at the three military installations, build sufficient new infrastructure only at Fort Wainwright to support the new aviation inventory and conduct increased aviation training on existing Alaska military training lands and ranges). After reviewing the alternatives presented in the DEIS, the Army has selected the Aviation Task Force alternative as its preferred alternative.

The DEIS is available for public review at local libraries and at the following Web site: http://www.usarak.army.mil/conservation/NEPA_home.htm. Comments from the public will be considered before any final decision is made.

Dated: April 20, 2009.

Addison D. Davis IV,

Deputy Assistant Secretary of the Army, Environment, Safety, and Occupational Health.

[FR Doc. E9-9916 Filed 4-30-09; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant a Partially Exclusive Patent License; Signal Laboratories, Inc.

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Signal Laboratories, Inc., a revocable, nonassignable, partially exclusive license to practice worldwide the Government-owned inventions described in U.S. Patent No. 5,627,521 issued on May 6, 1997, entitled "Personal Microwave and Radio Frequency Detector".

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than May 18, 2009.

ADDRESSES: Written objections are to be filed with the Office of Technology Transfer, Naval Medical Research Center, 503 Robert Grant Ave., Silver Spring, MD 20910-7500.

FOR FURTHER INFORMATION CONTACT: Dr. Charles Schlagel, Director, Office of Technology Transfer, Naval Medical Research Center, 503 Robert Grant Ave., Silver Spring, MD 20910-7500, telephone Number: 301-319-7428 or e-mail at charles.schlagel@med.navy.mil.

Dated: April 27, 2009.

A.M. Vallandingham,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. E9-10030 Filed 4-30-09; 8:45 am]

BILLING CODE 3810-FF-P

DEPARTMENT OF EDUCATION

[CFDA No. 84.069]

Federal Student Aid; Leveraging Educational Assistance Partnership and Special Leveraging Educational Assistance Partnership Programs

AGENCY: Department of Education.

ACTION: Notice of the deadline dates for receipt of State applications for Award Year 2009-2010 funds.

SUMMARY: This is a notice of deadline dates for receipt of State applications for Award Year 2009-2010 funds under the Leveraging Educational Assistance Partnership (LEAP) and Special Leveraging Educational Assistance Partnership (SLEAP) programs.

The LEAP and SLEAP programs, authorized under title IV, part A, subpart 4 of the Higher Education Act of 1965, as amended (HEA), assist States in providing aid to students with substantial financial need to help them pay for their postsecondary education costs through matching formula grants to States. Under section 415C(a) of the HEA, a State must submit an application to participate in the LEAP and SLEAP programs through the State agency that administered its LEAP Program as of July 1, 1985, unless the Governor of the State has subsequently designated, and the Department has approved, a different State agency to administer the LEAP Program.

DATES: To assure funding under the LEAP and SLEAP programs for Award Year 2009-2010, a State must meet the applicable deadline date. Applications submitted electronically must be received by 11:59 p.m. (Eastern time), May 29, 2009. Paper applications must be received by May 22, 2009.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Gerrans, LEAP Program Manager, Grants and Campus Based Programs Division, Business Operations, Federal Student Aid, U.S. Department of Education, 830 First Street, NE., Room 62E3, Washington, DC 20202. Telephone: (202) 377-3304.

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll-free, at 1-800-877-8339.

Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION: Only the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, American Samoa and the U.S. Virgin Islands may submit an application for funding under the LEAP and SLEAP programs.

State allotments for each award year are determined according to the statutorily mandated formula under section 415B of the HEA and are not negotiable. A State may also request its share of reallocation under section 415B, in addition to its basic allotment, which is contingent upon the availability of such additional funds.

In Award Year 2008-2009, 49 States, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands received funds under the LEAP Program. Additionally, 42 States, the District of Columbia, and the U.S. Virgin Islands received funds under the SLEAP Program.

Applications Submitted Electronically: States or territories may apply using the electronic form (Form 1288-E OMB 1845-0028) which can be obtained by contacting Mr. Greg Gerrans, LEAP Program Manager, at (202) 377-3304 or by e-mail: greg.gerrans@ed.gov. The form will be e-mailed to you. Applications submitted electronically must be e-mailed to greg.gerrans@ed.gov and received by 11:59 p.m. (Eastern Time), May 29, 2009.

Paper Applications Delivered by Mail: States or territories may request a paper version of the application (Form 1288 OMB 1845-0028) by contacting Mr. Greg Gerrans, LEAP Program Manager, at (202) 377-3304 or by e-mail: greg.gerrans@ed.gov. The form will be mailed to you.

A paper application sent by mail must be addressed to: Mr. Greg Gerrans, LEAP Program Manager, Grants and Campus

Based Programs Division, Business Operations, Federal Student Aid, U.S. Department of Education, 830 First Street, NE., Room 62E3, Washington, DC 20202.

The Department of Education encourages applicants that are completing a paper application to use certified or at least first-class mail when sending the application by mail to the Department. The Department must receive paper applications that are mailed no later than May 22, 2009.

Paper Applications Delivered by Hand: Paper applications that are hand-delivered must be delivered to Mr. Greg Gerrans, LEAP Program Manager, Grants and Campus Based Division, Business Operations, Federal Student Aid, U.S. Department of Education, 830 First Street, NE., Room 62E3, Washington, DC 20002. Hand-delivered applications will be accepted between 8 a.m. and 4:30 p.m. daily (Eastern time), except Saturdays, Sundays, and Federal holidays.

Paper applications that are hand-delivered must be received by 4:30 p.m. (Eastern time) on May 22, 2009.

Applicable Regulations: The following regulations are applicable to the LEAP and SLEAP programs:

- (1) The LEAP and SLEAP Program regulations in 34 CFR part 692.
- (2) The Student Assistance General Provisions in 34 CFR part 668.
- (3) The Regulations Governing Institutional Eligibility in 34 CFR part 600.
- (4) The Education Department General Administrative Regulations (EDGAR) in 34 CFR 75.60 through 75.62 (Ineligibility of Certain Individuals to Receive Assistance), part 76 (State-Administered Programs), part 77 (Definitions that Apply to Department Regulations), part 79 (Intergovernmental Review of Department of Education Programs and Activities), part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), part 82 (New Restrictions on Lobbying), part 84 (Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)), part 85 (Governmentwide Debarment and Suspension (Nonprocurement)), part 86 (Drug and Alcohol Abuse Prevention), and part 99 (Family Educational Rights and Privacy).

Electronic Access to This Document

You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet

at the following site: <http://www.ed.gov/news/fedregister>.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. 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>.

Program Authority: 20 U.S.C. 1070c *et seq.*

Dated: April 28, 2009.

James F. Manning,

Acting Chief Operating Officer, Federal Student Aid.

[FR Doc. E9-10090 Filed 4-30-09; 8:45 am]

BILLING CODE 4000-01-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OECA-2009-0288; FRL-8899-8]

Inquiry To Learn Whether Businesses Assert Business Confidentiality Claims

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for comment.

SUMMARY: The Environmental Protection Agency receives from time to time Freedom of Information Act (FOIA) requests for documentation received or issued by EPA or data contained in EPA database systems pertaining to the export and import of Resource Conservation and Recovery Act (RCRA) hazardous waste from/to the United States, the export of cathode ray tubes (CRTs) from the United States, and the export and import of RCRA universal waste from/to the United States. These documents and data may identify or reference multiple parties, and describe transactions involving the movement of specified materials in which the parties propose to participate or have participated. The purpose of this notice is to inform "affected businesses" about the documents or data sought by these types of FOIA requests in order to provide the businesses with the opportunity to assert claims that any of the information sought that pertains to them is entitled to treatment as confidential business information (CBI), and to send comments to EPA supporting their claims for such treatment. Certain businesses, however, do not meet the definition of "affected business," and are not covered by

today's notice. They consist of any business that actually submitted to EPA any document at issue pursuant to applicable RCRA regulatory requirements and did not assert a CBI claim as to information that pertains to that business in connection with the document at the time of its submission; they have waived their right to do so at a later time. Nevertheless, other businesses identified or referenced in the documents that were submitted to EPA by the submitting business may have a right to assert a CBI claim concerning information that pertains to them and may do so in response to this notice.

DATES: Comments must be received on or before June 1, 2009. The period for submission of comments may be extended if, before the comments are due, you make a request for an extension of the comment period and it is approved by the EPA legal office. Except in extraordinary circumstances, the EPA legal office will not approve such an extension without the consent of any person whose request for release of the information under the FOIA is pending.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OECA-2009-0288, by one of the following methods:

- <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.
- *E-mail:* kreisler.eva@epa.gov.
- *Address:* Eva Kreisler, International Compliance Assurance Division, Office of Federal Activities, Office of Enforcement and Compliance Assurance, Environmental Protection Agency, Mailcode: 2254A, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

Instructions: Direct your comments to Docket ID No. EPA-HQ-OECA-2009-0288. 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. Instructions about how to submit comments claimed as CBI are given later in this notice. 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. Please include your name and other contact information with any disk or CD-ROM you submit by mail. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

Docket: All documents in the docket are listed in the <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 HQ EPA Docket Center, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the docket for this notice is (202) 566-1752.

FOR FURTHER INFORMATION CONTACT: Eva Kreisler, International Compliance Assurance Division, Office of Federal Activities, Office of Enforcement and Compliance Assurance, Environmental Protection Agency, Mailcode: 2254A, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564-8186; e-mail address: kreisler.eva@epa.gov.

SUPPLEMENTARY INFORMATION: Today's notice relates to any documents or data in the following areas: (1) Export of Resource Conservation and Recovery Act (RCRA) hazardous waste under 40 CFR part 262, subparts E and H; (2) import of RCRA hazardous waste under 40 CFR part 262, subparts F and H; (3)

transit of RCRA hazardous waste under 40 CFR part 262, subpart H, through the United States and foreign countries; (4) export of cathode ray tubes under 40 CFR part 261, subpart E; (5) export and import of RCRA universal waste under 40 CFR part 273, subparts B, C, D, and F; and (6) submissions from transporters under 40 CFR part 263, or from treatment, storage or disposal facilities under 40 CFR parts 264 and 265, related to exports or imports of hazardous waste, including receiving facility notices under 40 CFR 264.12(a)(1) and 265.12(a)(1).

I. General Information

EPA has previously published a notice in the **Federal Register**, at 72 FR 21006, April 27, 2007, that addresses issues similar to those raised by today's notice. The Agency did not receive any comments on the 2007 notice. Since the publication of the 2007 notice, the Agency has continued to receive FOIA requests for documents and data contained in the EPA Waste International Tracking System ("WITSnet") database and other EPA databases related to hazardous waste exports and imports.

II. Issues Covered by This Notice

Specifically, EPA receives FOIA requests from time to time for documentation or data related to hazardous waste exports and imports that may identify or reference multiple parties, and that describe transactions involving the movement of specified materials in which the parties propose to participate or have participated. This notice informs "affected businesses,"¹ which could include, among others, "transporters"² and "consignees,"³ of the requests for information in EPA database systems and/or contained in one or more of the following documents: (1) Documents related to the export of Resource Conservation and Recovery Act (RCRA) hazardous waste under 40 CFR part 262, subparts E and H, including but not limited to the "notification of intent to export,"⁴ "manifests,"⁵ "annual reports,"⁶ "EPA acknowledgements of consent,"⁷

"exception reports,"⁸ "transit notifications,"⁹ and "renotifications;"¹⁰ (2) documents related to the import of hazardous waste under 40 CFR part 262, subparts F and H, including but not limited to notifications of intent to import hazardous waste into the U.S. from foreign countries; (3) documents related to the transit of hazardous waste under 40 CFR part 262, subpart H, including notifications from U.S. exporters of intent to transit through foreign countries, or notifications from foreign countries of intent to transit through the U.S.; (4) documents related to the export of cathode ray tubes (CRTs) under 40 CFR part 261, subpart E, including but not limited to notifications of intent to export CRTs; and (5) documents related to the export and import of RCRA "universal waste"¹¹ under 40 CFR part 273, subparts B, C, D, and F.

Certain businesses, however, do not meet the definition of "affected business," and are not covered by today's notice. They consist of any business that actually submitted information responsive to a FOIA request, under the authority of 40 CFR parts 260 through 266 and 268, and did not assert a claim of business confidentiality covering any of that information at the time of submission. As set forth in the RCRA regulations at 40 CFR 260.2(b), "if no such [business confidentiality] claim accompanies the information when it is received by EPA, it may be made available to the public without further notice to the person submitting it." Thus, for purposes of this notice and as a general matter under 40 CFR 260.2(b), a business that submitted to EPA the documents at issue, pursuant to applicable regulatory requirements, and that failed to assert a claim as to information that pertains to it at the time of submission, cannot later make a confidentiality claim.¹² Nevertheless, other businesses identified or referenced in the same documents that were submitted to EPA by the submitting business may have a right to assert a CBI claim concerning

information that pertains to them and may do so in response to this notice.

In addition, EPA may develop its own documents and organize into its database systems information that was originally contained in documents from submitting businesses relating to exports and imports of hazardous waste. If a submitting business fails to assert a CBI claim for the documents it submits to EPA at the time of submission, not only does it waive its right to claim CBI for those documents, but also waives its right to claim CBI for information in EPA's documents or databases that is based on or derived from the documents that were originally submitted by that business.¹³

In accordance with 40 CFR 2.204(c) and (e), this notice inquires whether any affected business asserts a claim that any of the requested information constitutes CBI, and affords such business an opportunity to comment to EPA on the issue. This notice also informs affected businesses that, if a claim is made, EPA would determine under 40 CFR part 2, subpart B, whether any of the requested information is entitled to confidential treatment.

1. Affected Businesses

EPA's FOIA regulations at 40 CFR 2.204(c)(1) require an EPA office that is responsible for responding to a FOIA request for the release of business information ("EPA office") "to determine which businesses, if any, are affected businesses * * *." "Affected business" is defined at 40 CFR 2.201(d) as, " * * * with reference to an item of business information, a business which has asserted (and not waived or withdrawn) a business confidentiality claim covering the information, or a business which could be expected to make such a claim if it were aware that disclosure of the information to the public was proposed."

2. The Purposes of This Notice

This notice encompasses two distinct steps in the process of communication with affected businesses prior to EPA's making a final determination concerning the confidentiality of the information at issue: The preliminary inquiry and the notice of opportunity to comment.

¹³ With the exception, noted above, of the submission of information relating to the export and import of RCRA universal waste.

¹ The term "affected business" is defined at 40 CFR 2.201(d), and is set forth in this notice, below.

² The term "transporter" is defined at 40 CFR 260.10.

³ The term "consignee" is defined, for different purposes, at 40 CFR 262.51 and 262.81(c).

⁴ The term "notification of intent to export" is described at 40 CFR 262.53.

⁵ The term "manifest" is defined at 40 CFR 260.10.

⁶ The term "annual reports" is described at 40 CFR 262.56.

⁷ The term "EPA acknowledgement of consent" is defined at 40 CFR 262.51.

⁸ The term "exception reports" is described at 40 CFR 262.55.

⁹ The term "transit notifications" is described at 40 CFR 262.53(e).

¹⁰ The term "renotifications" is described at 40 CFR 262.53(c).

¹¹ The term "universal waste" is defined at 40 CFR 273.9.

¹² However, businesses having submitted information to EPA relating to the export and import of RCRA universal waste are not subject to 40 CFR 260.2(b) since they submitted information in accordance with 40 CFR part 273, and not parts 260 through 266 and 268, as set forth in 40 CFR 260.2(b). They are therefore affected businesses that could make a claim of CBI at the time of submission or in response to this notice.

a. Inquiry To Learn Whether Affected Businesses (Other Than Those Businesses That Previously Asserted a CBI Claim) Assert Claims Covering Any of the Requested Information

Section 2.204(c)(2)(i) provides, in relevant part:

If the examination conducted under paragraph (c)(1) of this section discloses the existence of any business which, although it has not asserted a claim, might be expected to assert a claim if it knew EPA proposed to disclose the information, the EPA office shall contact a responsible official of each such business to learn whether the business asserts a claim covering the information.

b. Notice of Opportunity To Submit Comments

Sections 2.204(d)(1)(i) and 2.204(e)(1) of Title 40 of the Code of Federal Regulations require that written notice be provided to businesses that have made claims of business confidentiality for any of the information at issue, stating that EPA is determining under 40 CFR part 2, subpart B, whether the information is entitled to confidential treatment, and affording each business an opportunity to comment as to the reasons why it believes that the information deserves confidential treatment.

3. *The Use of Publication in the Federal Register*

Section 2.204(e)(1) of Title 40 of the Code of Federal Regulations requires that this type of notice be furnished by certified mail (return receipt requested), by personal delivery, or by other means which allows verification of the fact and date of receipt. EPA, however, has determined that in the present circumstances the use of a **Federal Register** notice is the only practical and efficient way to contact affected businesses and to furnish the notice of opportunity to submit comments. The Agency's decision to follow this course was made in recognition of the administrative difficulty and impracticality of directly contacting potentially thousands of individual businesses.

4. *Submission of Your Response in the English Language*

All responses to this notice must be in the English language.

5. *The Effect of Failure To Respond to This Notice*

In accordance with 40 CFR 2.204(e)(1) and 2.205(d)(1), EPA will construe your failure to furnish timely comments in response to this notice as a waiver of your business's claim(s) of

confidentiality for any information in the types of documents identified in this notice.

6. *What To Include in Your Comments*

If you believe that any of the information contained in the types of documents which are described in this notice and which are currently, or may become, subject to FOIA requests, is entitled to confidential treatment, please specify which portions of the information you consider confidential. Information not specifically identified as subject to a confidentiality claim may be disclosed to the requestor without further notice to you.

For each item or class of information that you identify as being subject to your claim, please answer the following questions, giving as much detail as possible:

1. For what period of time do you request that the information be maintained as confidential, e.g., until a certain date, until the occurrence of a specified event, or permanently? If the occurrence of a specific event will eliminate the need for confidentiality, please specify that event.

2. Information submitted to EPA becomes stale over time. Why should the information you claim as confidential be protected for the time period specified in your answer to question no. 1?

3. What measures have you taken to protect the information claimed as confidential? Have you disclosed the information to anyone other than a governmental body or someone who is bound by an agreement not to disclose the information further? If so, why should the information still be considered confidential?

4. Is the information contained in any publicly available material such as the Internet, publicly available data bases, promotional publications, annual reports, or articles? Is there any means by which a member of the public could obtain access to the information? Is the information of a kind that you would customarily not release to the public?

5. Has any governmental body made a determination as to the confidentiality of the information? If so, please attach a copy of the determination.

6. For each category of information claimed as confidential, explain with specificity why release of the information is likely to cause substantial harm to your competitive position. Explain the specific nature of those harmful effects, why they should be viewed as substantial, and the causal relationship between disclosure and such harmful effects. How could your

competitors make use of this information to your detriment?

7. Do you assert that the information is submitted on a voluntary or a mandatory basis? Please explain the reason for your assertion. If the business asserts that the information is voluntarily submitted information, please explain whether and why disclosure of the information would tend to lessen the availability to EPA of similar information in the future.

8. Any other issue you deem relevant.

Please note that you bear the burden of substantiating your confidentiality claim. Conclusory allegations will be given little or no weight in the determination. If you wish to claim any of the information in your response as confidential, you must mark the response "CONFIDENTIAL" or with a similar designation, and must bracket all text so claimed. Information so designated will be disclosed by EPA only to the extent allowed by, and by means of, the procedures set forth in, 40 CFR part 2, subpart B. If you fail to claim the information as confidential, it may be made available to the requestor without further notice to you.

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

1. Submitting CBI. Do not submit this information to EPA through <http://www.regulations.gov> or e-mail. Please submit this information by mail to the address identified in the **ADDRESSES** section of today's notice for inclusion in the non-public CBI docket. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. Information so marked will not be disclosed except in accordance with the procedures set forth in 40 CFR part 2, subpart B. In addition to the submission of one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket.

2. Tips for Preparing Your Comments. When submitting comments, remember to:

- Identify the notice by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

- Describe any assumptions and provide any technical information and/or data that you used.

- Provide specific examples to illustrate your concerns, and suggest alternatives.

- Make sure to submit your comments by the comment period deadline identified.

Dated: April 27, 2009.

Susan E. Bromm,

Director, Office of Federal Activities.

[FR Doc. E9-10076 Filed 4-30-09; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-8899-6]

Extension of Public Comment Period for the Draft National Pollutant Discharge Elimination System (NPDES) General Permit for Discharges From Horse, Cattle and Dairy Cows, Swine, Poultry, and Veal Calf Concentrated Animal Feeding Operations (CAFOs) in Oklahoma (Except Indian Country)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of the Public Comment Period on the draft NPDES general permit for CAFOs in Oklahoma (OKG010000).

SUMMARY: On March 25, 2009, EPA Region 6 proposed to issue a general permit to cover CAFOs in Oklahoma in the **Federal Register** at 74 FR 12849. In response to requests from the public, EPA is extending the end of the public comment period.

DATES: The end of the public comment period is now extended to May 26, 2009. Comments must be received or postmarked by that date.

Proposed Documents: The proposed general permit and fact sheet which sets forth principal facts and the significant factual, legal, and policy questions considered in the development of the proposed general permit may both be obtained via the Internet at <http://www.epa.gov/region6/water/npdes/cafo/index.htm>. To obtain hard copies of these documents or any other information in the administrative record, please contact Ms. Diane Smith using the contact information provided below.

Public Comment: Interested persons may submit written comments on the draft permit to the attention of Ms. Diane Smith at the address below. Comments of either support or concern which are directed at specific, cited

permit requirements are appreciated. After the expiration date of the Public Notice on May 26, 2009, EPA Region 6 will make a final determination with respect to issuance of the general permit.

Comment Submittals: Comments on the proposed General Permit should be sent to Ms. Diane Smith, Environmental Protection Agency, Water Quality Protection Division (6WQ-NP), 1445 Ross Ave., Suite 1200, Dallas, TX 75202; by e-mail to smith.diane@epa.gov; or by hand delivery during normal business hours to EPA Region 6, 7th Floor Reception Desk, 1445 Ross Ave., Suite 1200, Dallas, TX 75202.

Dated: April 24, 2009.

Ronald D. Crossland,

Acting Director, Water Quality Protection Division, EPA Region 6.

[FR Doc. E9-10065 Filed 4-30-09; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-8592-9]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at 202-564-7146. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 17, 2009 (74 FR 17860).

Draft EISs

EIS No. 20080418, ERP No. D-DOE-A06083-00, Programmatic—Global Nuclear Energy Partnership (GNEP) Program, To Support a Safe, Secure, and Sustainable Expansion of Nuclear Energy, both Domestically and Internationally, (DOE/EIS-0396).

Summary: EPA expressed environmental concerns about the potential for adverse impacts due to low-level waste disposal issues. Rating EC2.

EIS No. 20080542, ERP No. D-AFS-K65353-NV, Martin Basin Rangeland Project, Reauthorizing Grazing on Eight Existing Cattle and Horse Allotments: Bradshaw, Buffalo, Buttermilk, Granite Peak, Indian, Martin Basin, Rebel Creek, and West Side Flat Creek, Santa Rosa Ranger

District, Humboldt Toiyabe National Forest, NV.

Summary: EPA expressed environmental concerns about water quality effects and impacts on downstream users and requested additional information on Allotment Management Plans, private land purchases, and permitting numbers. Rating EC2.

EIS No. 20090023, ERP No. D-AFS-K65355-CA, Sequoia National Forest Motorized Travel Management Project, Prohibit Cross-Country Travel for Managing Motorized Travel, Kern River, Western Divide Ranger Districts, Sequoia National Forest, Tulare County, CA.

Summary: EPA expressed environmental concerns about impacts to watersheds that have significant soil and water resource impairment and to the Condor Roost Area. EPA requested additional information on seasonal closures, mitigation for impacts on fens, and monitoring and enforcement commitments. Rating EC2.

EIS No. 20090051, ERP No. D-IBR-K39117-CA, Los Vaqueros Reservoir Expansion Project, To Develop Water Supplies Environmental Water Management that Supports Fish Protection, Habitat Management, and other Environmental Water Needs in the Delta and Tributary River Systems, San Francisco Bay Area, Contra Costa County, CA.

Summary: EPA expressed environmental concerns about impacts to vernal pools, and climate change effects. Rating EC2.

Final EISs

EIS No. 20090077, ERP No. F-FRC-K05066-CA, Big Creek Hydro Project (FERC Nos. 67, 120, 2085, and 2175) Proposes to Relicenses, Big Creek Nos. 2 A,8 and Eastwood—FERC No. 67; Big Creek Nos. 1 and 2—FERC No. 2175; Mammoth Pool—FERC No. 2085 and Big Creek No. 3 FERC No. 120, Fresno and Madera Counties, CA.

Summary: EPA continues to have environmental concerns about the lack of a discussion of climate change effects on the project.

Dated: April 28, 2009.

Ken Mittelholtz,

Environmental Protection Specialist, Office of Federal Activities.

[FR Doc. E9-10077 Filed 4-30-09; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-8592-8]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564-1399 or <http://www.epa.gov/compliance/nepa/>.

Weekly receipt of Environmental Impact Statements.

Filed 04/20/2009 Through 04/24/2009. Pursuant to 40 CFR 1506.9.

EIS No. 20090126, Draft EIS, FHW, NC, Monroe Connector/Bypass Project, Construction from Near I-485 at US & 4 to US 74 between the Tons of Wingate and Marshville, Funding and US COE 404 Permit, North Carolina Turnpike Authority, Meckleburg and Union Counties, NC, *Comment Period Ends:* 06/15/2009, *Contact:* Jennifer Harris 919-571-3004.

EIS No. 20090127, Draft EIS, FHW, TN, Interstate 55 Interchange at E.H. Crump Boulevard and South Boulevard Project, To Provide a Balanced Solution for Safety and Capacity Issues at the I55 Interchange, City of Memphis, Shelby County, TN, *Comment Period Ends:* 06/30/2009, *Contact:* Charles J. O'Neill 615-781-5772.

EIS No. 20090128, Final EIS, AFS, CA, Gemmill Thin Project, Proposal to Reduce the Intensity and Size of Future Wildfires, and to Maintain/Improve Ecosystem Function and Wildlife Habitat, Chanchellula Late-Successional Reserve, Shasta-Trinity National Forest, Trinity County, CA, *Wait Period Ends:* 06/01/2009, *Contact:* Bobbie DiMonte 530-226-2425.

EIS No. 20090129, Final EIS, AFS, CA, Round Valley Fuels Reduction and Vegetation Management Project, Proposes to Reduce Fuel and Manage Vegetation, Funding, Goosenest Ranger District, Klamath National Forest, Siskiyou County, CA, *Wait Period Ends:* 06/01/2009, *Contact:* Wendy Dobrowski 530-398-4391.

EIS No. 20090130, Final EIS, NPS, TN, Great Smoky Mountains National Park General Management Plan Amendment, Implementation, Elkmont Historic District, Sevier County, TN, *Wait Period Ends:* 06/01/2009, *Contact:* Amu Wirching 404-507-5708.

EIS No. 20090131, Draft EIS, AFS, WI, Grub Hoe Vegetation and Transportation Management Project, Proposes to Implement Vegetation Management Activities, Eagle River

Florence Ranger District, Chequamegon-Nicolet National Forest, Florence County, WI, *Comment Period Ends:* 06/15/2009, *Contact:* Christine Brunner 715-479-2827.

EIS No. 20090132, Draft EIS, NPS, 00, Harpers Ferry National Historical Park, General Management Plan, Implementation, Harpers Ferry, Jefferson County, WV; Loudoun County, VA; and Washington County, MD, *Comment Period Ends:* 06/29/2009, *Contact:* Rebecca L. Harriett 304-535-6224.

EIS No. 20090133, Draft EIS, DOI, MD, Monocacy National Battlefield, General Management Plan, Implementation, Frederick County, MD, *Comment Period Ends:* 06/29/2009, *Contact:* Susan W. Trail 301-694-3147.

EIS No. 20090134, Draft EIS, COE, CA, Newhall Ranch Resource Management and Development Plan (RMDP) and the Spineflower Conservation Plan (SCP), Implementation, Portion of Santa Clara River Valley, Los Angeles County, CA, *Comment Period Ends:* 06/26/2009, *Contact:* Aaron O. Allen 805-585-2154.

EIS No. 20090135, Final EIS, BLM, NV, Lincoln County Land Act (LCLA) Groundwater Development and Utility Right-of-Way Project, Implementation, To Grant a Right-of-Way Permit for Groundwater Development and Utility Facilities, Lincoln County, NV, *Wait Period Ends:* 06/01/2009, *Contact:* Penny Woods 775-861-6466.

Amended Notices

EIS No. 20090069, Draft EIS, AFS, 00, Black Hills National Forest Travel Management Plan, Proposes to Designate Certain Roads and Trails Open to Motorized Travel, Custer, Fall River, Lawrence, Meade, Pennington Counties, SD and Crook and Weston Counties, WY, *Comment Period Ends:* 05/18/2009, *Contact:* Ed Fischer 605-673-9207. Revision to FR Notice Published 03/20/2009: Extending the Comment Period from 05/04/2009 to 05/18/2009.

EIS No. 20090115, Draft EIS, SFW, 00, Western Snowy Plover Habitat Conservation Plan, Proposed Issuance of an Incidental Take Permit, Oregon Parks and Recreation Department, Oregon Coast, OR, CA, WA, *Comment Period Ends:* 06/01/2009, *Contact:* Laura Todd 541-867-4558. Revision to FR Notice Published 04/17/2009: Change to Comment Period from 06/16/2009 to 06/01/2009.

Dated: April 28, 2009.

Ken Mittleholtz,

Environmental Protection Specialist, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. E9-10079 Filed 4-30-09; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-8899-9]

Science Advisory Board Staff Office; Notification of a Public Teleconference and Meeting of the Science Advisory Board Drinking Water Committee

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) Science Advisory Board (SAB) Staff Office announces two meetings of the SAB Drinking Water Committee (DWC): A public teleconference and a face-to-face meeting to review the Agency's draft supporting analysis for the proposed revised Total Coliform Rule.

DATES: The SAB will hold the public teleconference on May 20, 2009 that will begin at 1 p.m. and end at 4 p.m. (Eastern Time). A face-to-face meeting will be held on June 9, 2009 from 9 a.m. to 5 p.m. (Eastern Time) and will continue on June 10, 2009 from 9 a.m. to 4 p.m. (Eastern Time).

ADDRESSES: The telephone conference will be conducted by phone only. The June 9-10, 2009 face-to-face meeting will be held at the Ritz-Carlton Hotel, 1150 22nd Street, NW., Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing to obtain general information concerning this public teleconference or meeting should contact Dr. Sue Shallal, Designated Federal Officer (DFO), EPA Science Advisory Board (1400F), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; via telephone/voice mail: (202) 343-9977; fax: (202) 233-0643; or e-mail at shallal.suhair@epa.gov. General information concerning the EPA Science Advisory Board can be found on the SAB Web site at <http://www.epa.gov/sab>.

SUPPLEMENTARY INFORMATION: The SAB was established by 42 U.S.C. 4365 to provide independent scientific and technical advice to the Administrator on the technical basis for Agency positions and regulations. The SAB is a Federal

Advisory Committee chartered under the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C., App. The SAB will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies. Pursuant to the Federal Advisory Committee Act, Public Law 92-463, notice is hereby given that the EPA SAB Drinking Water Committee (DWC) augmented with other SAB members will hold a public teleconference and a face-to-face meeting to prepare for and review the Agency's draft supporting analysis for the proposed revised Total Coliform Rule.

Background: The EPA's Total Coliform Rule (TCR) is the basic regulation for assuring proper system operation and maintenance and microbial quality. The TCR assesses the adequacy of water treatment, the integrity of the distribution system, and the vulnerability of a system to fecal contamination. In July 2003, EPA published its final decision to revise the TCR as a result of its National Primary Drinking Water Regulation (NPDWR) Review determination.

In 2007, EPA established the Total Coliform Rule/Distribution System Advisory Committee (TCRDSAC) under the Federal Advisory Committee Act (FACA). The charge to the TCRDSAC was to develop an agreement in principle (AIP) regarding recommendations to EPA on revisions to the TCR and information about distribution systems needed to better understand and address possible public health impacts from potential degradation of drinking water quality in distribution systems. The TCRDSAC considered the TCR monitoring framework, sanitary survey provisions, definition of Maximum Contaminant Level (MCL) violations and potential follow-up corrective actions, and communication of public health significance of violations. The TCRDSAC considered both technical and policy issues in drafting an AIP that recommended revisions to the TCR (for additional information and documentation, refer to the following URL: <http://www.epa.gov/safewater/disinfection/tcr/regulation.html>.) EPA is planning to propose a revised rule that has the same substance and effect as the elements in the AIP.

EPA's Office of Water has requested that the SAB conduct a review of the Agency's draft analysis supporting the proposed revised Total Coliform Rule. The SAB review will focus on the information regarding (1) Data sources used to estimate baseline total coliform and *E. coli* occurrence, public water system profile, and sensitive

subpopulations in the United States, (2) the occurrence analysis used to inform benefits calculations, (3) the qualitative benefits analysis used to assess the reduction in risk due to implementation of the rule requirements and (4) analysis of the engineering costs and costs to States resulting from implementation of the revisions.

Availability of Meeting Materials: The meeting agendas and other materials, including a link to access the EPA's document(s) related to the proposed rule revisions, will be posted on the SAB Web site (<http://www.epa.gov/sab>) in advance of the meeting. For questions and information concerning the Agency's documents, please contact Crystal Rodgers-Jenkins at 202-564-5275 or rodgers-jenkins.crystal@epa.gov.

Procedures for Providing Public Input: Interested members of the public may submit relevant written or oral information for the SAB to consider on the topics included in this advisory activity and/or group conducting the activity. *Oral Statements:* In general, individuals or groups requesting an oral presentation at a public SAB teleconference will be limited to three minutes per speaker, with no more than a total of one-half hour for all speakers. At the face-to-face meeting, presentations will be limited to five minutes, with no more than a total of one hour for all speakers. To be placed on the public speaker list, interested parties should contact Dr. Sue Shallal, DFO, in writing (preferably via e-mail), by May 13, 2009 for the teleconference and by June 2, 2009 for the face-to-face meeting, at the contact information noted above. *Written Statements:* Written statements should be received in the SAB Staff Office by May 13, 2009, so that the information may be made available to the SAB for their consideration prior to the teleconference or by June 2, 2009 for their consideration prior to the face-to-face meeting. Written statements should be supplied to the DFO via e-mail to shallal.suhair@epa.gov (acceptable file format: Adobe Acrobat PDF, WordPerfect, MS Word, MS PowerPoint, or Rich Text files in IBM-PC/Windows 98/2000/XP format). Submitters are requested to provide two versions of each document submitted with and without signatures, because the SAB Staff Office does not publish documents with signatures on its Web sites.

Accessibility: For information on access or services for individuals with disabilities, please contact Dr. Sue Shallal at (202) 343-9977 or shallal.suhair@epa.gov. To request accommodation of a disability, please contact Dr. Shallal preferably at least ten

days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: April 24, 2009.

Anthony F. Maciorowski,
Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. E9-10068 Filed 4-30-09; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2009-0029; FRL-8404-9]

Pesticide Products; Registration Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing new active ingredients not included in any currently registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Comments must be received on or before June 1, 2009.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA-HQ-OPP-2009-0029, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.
- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305-5805.

Instructions: Direct your comments to docket ID number EPA-HQ-OPP-2009-0029. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business

Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends

that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at <http://www.regulations.gov>. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material,

is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305-5805.

FOR FURTHER INFORMATION CONTACT: The Regulatory Action Leader listed in the table in this unit.

Regulatory Action Leader	Telephone Number and E-mail Address	Mailing Address	File Symbol
John Bazuin	(703) 305-7381 bazuin.john@epa.gov	Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001	55050-G 55050-L 55050-U
Samantha Hulkower	(703) 603-0683 hulkower.samantha@epa.gov	Do.	8033-RNE 8033-RNG 8033-RNU
Autumn Metzger	(703) 305-5314 metzger.autumn@epa.gov	Do.	56228-UN

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult

the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. **Submitting CBI.** Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. **Tips for preparing your comments.** When submitting comments, remember to:

- i. Identify the document by docket ID number and other identifying

information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

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

iv. Describe any assumptions and provide any technical information and/or data that you used.

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

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

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

viii. Make sure to submit your comments by the comment period deadline identified.

II. Registration Applications

EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant

to the provision of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

1. *File Symbol:* 8033–RNE. *Applicant:* Nippon Soda Co., Ltd., c/o Nisso America Inc., 45 Broadway, Suite 2120, New York, NY 10006. *Product name:* Cyflufenamid Technical Fungicide. *Product type:* Fungicide. *Active ingredient:* Cyflufenamid at 98.9%. *PC Code:* 555550. *Proposed classification:* Cyflufenamid is a new mode-of-action fungicide and has not yet been classified with the Fungicide Resistance Action Committee (FRAC). *Use:* Manufacturing use only.

2. *File Symbol:* 8033–RNG. *Applicant:* Nippon Soda Co., Ltd., c/o Nisso America Inc., 45 Broadway, Suite 2120, New York, NY 10006. *Product name:* Miltrex 10 SC Fungicide. *Product type:* Fungicide. *Active ingredient:* Cyflufenamid at 10% suspension concentrate. *PC Code:* 555550. *Proposed classification:* Cyflufenamid is a new mode-of-action fungicide and has not yet been classified with FRAC. *Use:* For use on pome fruit (Crop Group 11), cucurbits (Crop Group 9), grapes (and other climbing vine small fruit except fuzzy kiwifruit, Crop Subgroup 13-07F), and strawberries (Crop Subgroup 13-07G).

3. *File Symbol:* 8033–RNU. *Applicant:* Nippon Soda Co., Ltd., c/o Nisso America Inc., 45 Broadway, Suite 2120, New York, NY 10006. *Product name:* Miltrex 10 SC Fungicide. *Product type:* Fungicide. *Active ingredient:* Cyflufenamid at 10% suspension concentrate. *PC Code:* 555550. *Proposed classification:* Cyflufenamid is a new mode-of-action fungicide and has not yet been classified with FRAC. *Use:* For use on outdoor nursery and outdoor landscape ornamentals.

4. *File Symbol:* 55050–G. *Applicant:* Arkema, Inc., 630 Freedom Business Center, Suite 402, King of Prussia, PA 19406. *Product name:* Accolade Technical. *Product type:* Fungicide. *Active ingredient:* Dimethyl disulfide at 99.8%. *Proposed classification/use:* Manufacturing use only.

5. *File Symbol:* 55050–L. *Applicant:* Arkema, Inc., 630 Freedom Business Center, Suite 402, King of Prussia, PA 19406. *Product name:* Accolade EC. *Product type:* Fungicide. *Active ingredient:* Dimethyl disulfide at 98.8%. *Proposed classification/use:* None. For use on vegetable crops, fruit crops, floral crops, and nursery/ornamental crops.

6. *File Symbol:* 55050–U. *Applicant:* Arkema, Inc., 630 Freedom Business Center, Suite 402, King of Prussia, PA 19406. *Product name:* Accolade. *Product type:* Fungicide. *Active*

ingredient: Dimethyl disulfide at 98.8%. *Proposed classification/use:* None. For use on vegetable crops, fruit crops, floral crops, nursery crops, and forest nursery crops.

7. *File Symbol:* 56228–UN. *Applicant:* U.S. Department of Agriculture, Animal and Plant Health Inspection Service (USDA APHIS), 4700 River Road, Unit 149, Riverdale, MD 20737. *Product name:* Gonacon Immunocontraceptive Vaccine. *Active Ingredient:* Mammalian Gonadotropin Releasing Hormone (GnRH). *PC Code:* 116800. *Use:* Gonacon will be used to control contraception in wild, white-tailed deer (*Odocoileus virginianus*). The product will be applied as a vaccination delivered by hand injection and will be a Restricted Use Product only to be administered by USDA APHIS Wildlife Services or state wildlife management agency personnel, or persons working under their authority. The proposed end-use product contains .03% GnRH.

List of Subjects

Environmental protection, Pesticides and pest.

Dated: April 3, 2009.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. E9–10093 Filed 4–30–09; 8:45 a.m.]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

April 28, 2009.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501–3520. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the

information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before June 30, 2009. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202–395–5167 or via Internet at Nicholas.A.Fraser@omb.eop.gov and to Judith-B.Herman@fcc.gov, Federal Communications Commission, or an e-mail to PRA@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information, contact Judith B. Herman at 202–418–0214 or via the Internet at Judith-B.Herman@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0168.

Title: Section 43.43, Report of Proposed Changes in Depreciation Rates.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 24 respondents; 24 responses.

Estimated Time per Response: 250 hours.

Frequency of Response: On occasion reporting requirement and recordkeeping requirement.

Obligation To Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 151, 152, 154, 161, 201–205, and 218–220.

Total Annual Burden: 6,000 hours.

Total Annual Cost: \$784,320.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: There is no need for confidentiality and respondents are not being asked to submit confidential information to the Commission. However, if the Commission requests respondents to submit information which they believe is confidential, respondents may request confidential treatment of such information under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: The Commission will submit this information collection to the Office of Management and Budget (OMB) after this 60 day comment period in order to obtain the full three year clearance from them. The Commission is requesting an extension (no change in the reporting and/or recordkeeping requirements) of this information collection. The Commission is reporting a significant decrease in the estimated number of respondents/responses since this was last submitted to OMB in 2006. In 2006, the Commission reported 10 respondents/responses with 6,000 total annual burden hours. For this submission to the OMB, the number of respondents/responses increased to 24 with an estimated annual burden of 6,000 total annual burden hours and an increase in annual costs. The annual costs are now estimated to be \$785,320 (no costs were estimated in 2006). The reasons for the change in burden are thus:

(1) The estimated time per response was changed from 6,000 hours to 250 hours;

(2) A re-estimate of the number of respondents/responses from 10 to 24 respondents; and

(3) The annual costs have been added to include a \$32,680 filing fee per 47 CFR 1.1105. Section 43.43 establishes the reporting requirements for depreciation prescription purposes. Communication common carriers with annual operating revenues of \$138 million or more that the Commission has found to be dominant must file information specified in Section 43.43 before making any change in the depreciation rates applicable to their operating plant. Section 220 also allows the Commission, in its discretion, to prescribe the form of any and all accounts, records, and memoranda to be kept by carriers subject to the Act, including the accounts, records and memoranda of the movement of traffic, as well as receipts and expenditures of moneys. Carriers are required to file four summary exhibits along with the underlying data used to generate them, and must provide the depreciation factors (*i.e.*, life, salvage, curve shape, depreciation reserve) required to verify the calculation of the carrier's depreciation expenses and rates. Mid-sized carriers are no longer required to file theoretical reserve studies. Certain price cap incumbent LECs in certain instances may request a waiver of the depreciation prescription process.

OMB Control Number: 3060-0441.

Title: Section 90.621(b)(4) and (b)(5), Selection and Assignment of Frequencies.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit; not-for-profit institutions and state, local or tribal government.

Number of Respondents: 20 respondents; 20 responses.

Estimated Time per Response: Respondents contracting out the on occasion reporting requirement will need an estimated .5 hours to comply with this requirement and respondents who will use in-house respondents will need an estimated 1.5 hours.

Frequency of Response: On occasion reporting requirement and recordkeeping requirement.

Obligation To Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 154(i) and 309(j).

Total Annual Burden: 30 hours.

Total Annual Cost: \$2,000.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: There is no need for confidentiality.

Needs and Uses: The Commission will submit this information collection to the Office of Management and Budget (OMB) after this 60 day comment period in order to obtain the full three year clearance from them. The Commission is requesting a revision which is due to the elimination of a reporting requirement for minor modification applicants filing pursuant to Short-Spacing Separation Table of under section 90.621(b)(4), which previously required that licensees file notifications of such minor modifications, as well as, the implementation of the 800 MHz re-banding *2nd Report and Order*. There are no additional recordkeeping or other compliance requirements imposed beyond those contained in the *800 MHz Report and Order*, 61 FR 41190 (July 31, 1997). The Commission has adjusted this collection to reflect the decrease in the total number of filings made pursuant to sections 90.621(b)(4) that do not involve compliance with the referenced short spacing table and 90.621(b)(5) since the time of the previous OMB submission. The Commission reported 1,000 responses in 2006 which we have reduced to 20; the burden hours have reduced from 1,500 hours to 30 hours; and the annual cost has reduced from \$100,000 to \$2,000.

The Commission will continue to use this information to determine whether to grant licenses to applicants making "minor modifications" to their systems which do not satisfy mileage separation requirements pursuant to the Short-Spacing Separation Table.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E9-10050 Filed 4-30-09; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget

April 28, 2009.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501-3520. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before June 1, 2009. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202-395-5167 or the Internet at Nicholas_A_Fraser@omb.eop.gov and to Judith-B.Herman@fcc.gov, Federal Communications Commission, or an e-mail to PRA@fcc.gov. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page <http://reginfo.gov/public/do/PRAMain>, (2) look for the section of the

Web page called "Currently Under Review", (3) click on the downward-pointing arrow in the "Select Agency" box below the "Currently Under Review" heading, (4) select "Federal Communications Commission" from the list of agencies presented in the "Select Agency" box, (5) click the "Submit" button to the right of the "Select Agency" box, and (6) when the list of FCC ICRs currently under review appears, look for the title of this ICR (or its OMB Control Number, if there is one) and then click on the ICR Reference Number to view detailed information about this ICR.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202-418-0214 or via the Internet at Judith-B.Herman@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060-0999.

Title: Hearing Aid Compatibility Status Report and section 20.19, Hearing Aid-Compatible Mobile Handsets (Hearing Aid-Compatible Act).

Form No.: FCC Form 655—electronic only.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 925 respondents; 925 responses.

Estimated Time per Response: 1–2.5 hours.

Frequency of Response: Annual and on occasion reporting requirement and third party disclosure requirement.

Obligation To Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 151, 154(i), 157, 201, 202, 208, 214, 301, 303, 308, 309(j) and 310.

Total Annual Burden: 12,063 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality:

Information in the reports may include confidential information. However, covered entities would be allowed to request that such materials submitted to the Commission be withheld from public inspection under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: The Commission will submit this information collection (IC) to the OMB as a revision during this comment period to obtain the full three-year clearance from them. There is a slight change in the number of respondents/responses. In 2008, we reported 950 respondents/responses. Therefore, the Commission has recalculated the estimates and the annual burden hours have decreased by 537 hours.

In the First Report and Order in WT Docket No. 07–250, FCC 08–68, which updated several of the performance benchmarks for manufacturers and service providers, and instituted new requirements for manufacturers to refresh their product lines and for service providers to offer hearing aid-compatible handset models with differing levels of functionality. The Commission also adopted a new version of the technical standard for measuring hearing aid compatibility, and addressed the application of the rules to phones that operate in multiple frequency bands or air interfaces. In order to avoid potential consumer confusion over technical capabilities, the Order also modified the product labeling requirements slightly.

The Commission is also revising this information collection to implement mandatory electronic filing using the newly created FCC Form 655. Many of these data elements have already been approved by OMB, however, the Commission decided to create this new electronic form to eliminate the paper-based annual reports and will require annual reports filed by manufacturers and service providers beginning on July 15, 2009. Use of the electronic FCC Form 655 will help filers ensure that their reports include all of the required information, will facilitate the Commission's compilation of data from the reports, and will decrease the paperwork burden on all respondents.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E9–10036 Filed 4–30–09; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL HOUSING FINANCE AGENCY

[No. 2009–N–04]

Federal Home Loan Bank Members Selected for Community Support Review

AGENCY: Federal Housing Finance Agency.

ACTION: Notice.

SUMMARY: The Federal Housing Finance Agency (FHFA) is announcing the Federal Home Loan Bank (Bank) members it has selected for the 2008–09 fifth quarter review cycle under the FHFA's community support requirements regulation. This notice also prescribes the deadline by which Bank members selected for review must submit Community Support Statements to FHFA.

DATES: Bank members selected for the review cycle under the FHFA's community support requirements regulation must submit completed Community Support Statements to FHFA on or before June 15, 2009.

ADDRESSES: Bank members selected for the 2008–09 fifth quarter review cycle under the FHFA's community support requirements regulation must submit completed Community Support Statements to FHFA either by hard-copy mail at the Federal Housing Finance Agency, Housing Mission and Goals, 1625 Eye Street, NW., Washington, DC 20006, or by electronic mail at LENORA.MORTON@FHFA.GOV.

FOR FURTHER INFORMATION CONTACT:

Lenora Morton, Administrative Specialist, Housing Mission and Goals, Federal Housing Finance Agency, by telephone at 202/408–2819, by

electronic mail at LENORA.MORTON@FHFA.GOV, or by hard-copy mail at the Federal Housing Finance Agency, 1625 Eye Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

I. Selection for Community Support Review

Section 10(g)(1) of the Federal Home Loan Bank Act (Bank Act) requires FHFA to promulgate regulations establishing standards of community investment or service Bank members must meet in order to maintain access to long-term advances. *See* 12 U.S.C. 1430(g)(1). The regulations promulgated by FHFA must take into account factors such as the Bank member's performance under the Community Reinvestment Act of 1977 (CRA), 12 U.S.C. 2901 *et seq.*, and record of lending to first-time homebuyers. *See* 12 U.S.C. 1430(g)(2). Pursuant to section 10(g) of the Bank Act, FHFA has promulgated a community support requirements regulation that establishes standards a Bank member must meet in order to maintain access to long-term advances, and review criteria FHFA must apply in evaluating a member's community support performance. *See* 12 CFR part 944. The regulation includes standards and criteria for the two statutory factors—CRA performance and record of lending to first-time homebuyers. 12 CFR 944.3. Only members subject to the CRA must meet the CRA standard. 12 CFR 944.3(b). All members, including those not subject to CRA, must meet the first-time homebuyer standard. 12 CFR 944.3(c).

Under the rule, FHFA selects approximately one-eighth of the members in each Bank district for community support review each

calendar quarter. 12 CFR 944.2(a). FHFA will not review an institution's community support performance until it has been a Bank member for at least one year. Selection for review is not, nor should it be construed as, any indication of either the financial condition or the community support performance of the member.

Each Bank member selected for review must complete a Community

Support Statement and submit it to FHFA by the June 15, 2009 deadline prescribed in this notice. 12 CFR 944.2(b)(1)(ii) and (c). On or before May 15, 2009, each Bank will notify the members in its district that have been selected for the 2008–09 fifth quarter community support review cycle that they must complete and submit to FHFA by the deadline a Community Support Statement. 12 CFR

944.2(b)(2)(i). The member's Bank will provide a blank Community Support Statement Form, which also is available on the FHFA's Web site: <http://www.fhfa.gov>. Upon request, the member's Bank also will provide assistance in completing the Community Support Statement.

FHFA has selected the following members for the 2008–09 fifth quarter community support review cycle:

FEDERAL HOME LOAN BANK OF BOSTON—DISTRICT 1

People's United Bank	Bridgeport	Connecticut.
Farmington Savings Bank	Farmington	Connecticut.
Patrons Mutual Insurance Company of Connecticut	Glastonbury	Connecticut.
Castle Bank & Trust Company	Meriden	Connecticut.
Liberty Bank	Middletown	Connecticut.
Naugatuck Savings Bank	Naugatuck	Connecticut.
Citizens National Bank	Putnam	Connecticut.
The Simsbury Bank and Trust Company, Inc.	Simsbury	Connecticut.
Windsor Federal Savings and Loan Association	Windsor	Connecticut.
Down East Credit Union	Baileyville	Maine.
Ocean Communities Federal Credit Union	Biddeford	Maine.
Peopleschoice Credit Union	Biddeford	Maine.
The First, N.A.	Damariscotta	Maine.
Savings Bank of Maine	Gardiner	Maine.
Machias Savings Bank	Machias	Maine.
Katahdin Federal Credit Union	Millinocket	Maine.
Tremont Credit Union	Braintree	Massachusetts.
HarborOne Credit Union	Brockton	Massachusetts.
Hanscom Federal Credit Union	Burlington	Massachusetts.
Everett Credit Union	Everett	Massachusetts.
Workers' Credit Union	Fitchburg	Massachusetts.
Framingham Co-operative Bank	Framingham	Massachusetts.
Dean Co-operative Bank	Franklin	Massachusetts.
Benjamin Franklin Bank	Franklin	Massachusetts.
Greenfield Savings Bank	Greenfield	Massachusetts.
UMass Five College Federal Credit Union	Hadley	Massachusetts.
Pentucket Five Cents Savings Bank	Haverhill	Massachusetts.
Economy Co-operative Bank	Merrimac	Massachusetts.
Mayflower Co-operative Bank	Middleboro	Massachusetts.
Millbury Federal Credit Union	Millbury	Massachusetts.
First Citizens' Federal Credit Union	New Bedford	Massachusetts.
North Shore Bank	Peabody	Massachusetts.
Berkshire Bank	Pittsfield	Massachusetts.
The Pittsfield Cooperative Bank	Pittsfield	Massachusetts.
Central Bank	Somerville	Massachusetts.
Savers Co-operative Bank	Southbridge	Massachusetts.
Stoneham Bank—A Co-operative Bank	Stoneham	Massachusetts.
Martha's Vineyard Savings Bank	Tisbury	Massachusetts.
Family First Bank	Ware	Massachusetts.
Westfield Bank	Westfield	Massachusetts.
Winthrop Federal Credit Union	Winthrop	Massachusetts.
Connecticut River Bank N.A.	Charlestown	New Hampshire.
Claremont Savings Bank	Claremont	New Hampshire.
Triangle Credit Union	Nashua	New Hampshire.
Sugar River Bank	Newport	New Hampshire.
Lake Sunapee Bank, FSB	Newport	New Hampshire.
Piscataqua Savings Bank	Portsmouth	New Hampshire.
Service Credit Union	Portsmouth	New Hampshire.
Washington Trust Company	Westerly	Rhode Island.
The Bank of Bennington	Bennington	Vermont.
Heritage Family Credit Union	Rutland	Vermont.
Passumpsic Savings Bank	St. Johnsbury	Vermont.

FEDERAL HOME LOAN BANK OF NEW YORK—DISTRICT 2

American Bank of New Jersey	Bloomfield	New Jersey.
Clifton Savings Bank, S.L.A.	Clifton	New Jersey.
The National Bank of Elmer	Elmer	New Jersey.
Sussex Bank	Franklin	New Jersey.
Ocwen Federal Bank FSB	Ft. Lee	New Jersey.

FEDERAL HOME LOAN BANK OF NEW YORK—DISTRICT 2—Continued

First Hope Bank, N.A	Hope	New Jersey.
Magyar Bank	New Brunswick	New Jersey.
Lusitania Savings Bank, FSB	Newark	New Jersey.
Roebling Bank	Roebling	New Jersey.
Parke Bank	Sewell	New Jersey.
Monroe Savings Bank, SLA	Williamstown	New Jersey.
Franklin Bank	Woodstown	New Jersey.
Community Capital Bank	Brooklyn	New York.
Fulton Savings Bank	Fulton	New York.
The Citizens National Bank of Hammond	Hammond	New York.
Bank of Holland	Holland	New York.
Astoria Federal Savings & Loan Association	Lake Success	New York.
Pittsford Federal Credit Union	Mendon	New York.
First Federal Savings of Middletown	Middletown	New York.
Amalgamated Bank	New York	New York.
United Orient Bank	New York	New York.
Ponce De Leon Federal Bank	New York	New York.
Banco Popular North America	New York	New York.
The Bank of Castile	Perry	New York.
Northfield Bank	Staten Island	New York.

FEDERAL HOME LOAN BANK OF PITTSBURGH—DISTRICT 3

Citicorp Trust Bank, FSB	Newark	Delaware.
Wilmington Savings Fund Society, FSB	Wilmington	Delaware.
C & G Savings Bank	Altoona	Pennsylvania.
Ambler Savings Bank	Ambler	Pennsylvania.
First Star Savings Bank	Bethlehem	Pennsylvania.
First FS&LA of Bucks County	Bristol	Pennsylvania.
Alliance Bank	Broomall	Pennsylvania.
Sharon Savings Bank	Darby	Pennsylvania.
ESB Bank	Ellwood City	Pennsylvania.
Ephrata National Bank	Ephrata	Pennsylvania.
County Savings Bank	Essington	Pennsylvania.
Fox Chase Bank	Hatboro	Pennsylvania.
Hatboro Federal Savings	Hatboro	Pennsylvania.
William Penn Bank, FSB	Levittown	Pennsylvania.
Lock Haven Area Federal Credit Union	Lock Haven	Pennsylvania.
First Keystone Bank	Media	Pennsylvania.
Nesquehoning Savings Bank	Nesquehoning	Pennsylvania.
Third Federal Savings Bank	Newtown	Pennsylvania.
Malvern Federal Savings Bank	Paoli	Pennsylvania.
First Savings Bank of Perkasie	Perkasie	Pennsylvania.
Washington Savings Association	Philadelphia	Pennsylvania.
Second FS&LA of Philadelphia	Philadelphia	Pennsylvania.
Pennsylvania Business Bank	Philadelphia	Pennsylvania.
Asian Bank	Philadelphia	Pennsylvania.
Progressive Home FS&LA	Pittsburgh	Pennsylvania.
QNB Bank	Quakertown	Pennsylvania.
Mercer County State Bank	Sandy Lake	Pennsylvania.
North Penn Bank	Scranton	Pennsylvania.
Penn Security Bank and Trust Company	Scranton	Pennsylvania.
Slovenian S&LA of Canonsburg, Pa	Strabane	Pennsylvania.
First National Bank of Chester County	West Chester	Pennsylvania.
Stonebridge Bank	West Chester	Pennsylvania.
First State Bank	Barboursville	West Virginia.
First Century Bank, N.A	Bluefield	West Virginia.
Pioneer Community Bank	Laeger	West Virginia.
Centra Bank, Inc	Morgantown	West Virginia.
Bank of Mount Hope, Inc	Mount Hope	West Virginia.
Community Bank of Parkersburg	Parkersburg	West Virginia.
First Central Bank, Inc	Philippi	West Virginia.
BCBank, Inc	Philippi	West Virginia.
First Neighborhood Bank, Inc	Spencer	West Virginia.
Pleasants County Bank	St. Marys	West Virginia.
Poca Valley Bank	Walton	West Virginia.
MCNB Bank & Trust	Welch	West Virginia.
WesBanco Bank Wheeling	Wheeling	West Virginia.
The First National Bank of Williamson	Williamson	West Virginia.

FEDERAL HOME LOAN BANK OF ATLANTA—DISTRICT 4

Alamerica Bank	Birmingham	Alabama.
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FEDERAL HOME LOAN BANK OF ATLANTA—DISTRICT 4—Continued

Legacy Community Federal Credit Union	Birmingham	Alabama.
First Bank	Wadley	Alabama.
Covington County Bank	Andalusia	Alabama.
United Bank	Atmore	Alabama.
Cullman Savings Bank	Cullman	Alabama.
The Citizens Bank	Enterprise	Alabama.
EvaBank	Eva	Alabama.
Alabama Teachers Credit Union	Gadsden	Alabama.
New South Federal Savings Bank	Irondale	Alabama.
Merchants Bank	Jackson	Alabama.
Farmers & Merchants Bank	Lafayette	Alabama.
Capstone Bank	McIntosh	Alabama.
Community Spirit Bank	Red Bay	Alabama.
Valley State Bank	Russellville	Alabama.
Sweet Water State Bank	Sweet Water	Alabama.
SouthFirst Bank	Sylacauga	Alabama.
The First National Bank of Talladega	Talladega	Alabama.
First United Security Bank	Thomasville	Alabama.
First State Bank of Bibb County	West Biocton	Alabama.
City First Bank of D.C., N.A	Washington	District of Columbia.
Bank of Bonifay	Bonifay	Florida.
Power Financial Credit Union	Hialeah	Florida.
Orlando National Bank	Longwood	Florida.
Space Coast Credit Union	Melbourn	Florida.
MidFlorida Federal Credit Union	Mulberry	Florida.
LandMark Bank of Florida	Sarasota	Florida.
First Home Bank	Seminole	Florida.
Gulfstream Business Bank	Stuart	Florida.
Priority One Credit Union of Florida	Sunrise	Florida.
Bay Cities Bank	Tampa	Florida.
First Citrus Bank	Tampa	Florida.
Citrus and Chemical Bank	Bartow	Florida.
Mackinac Savings Bank, FSB	Boynton Beach	Florida.
Flagship National Bank	Bradenton	Florida.
First Bank of Clewiston	Clewiston	Florida.
Olde Cypress Community Bank	Clewiston	Florida.
First National Bank of Crestview	Crestview	Florida.
Regent Bank	Davie	Florida.
Dunnellon State Bank	Dunnellon	Florida.
Landmark Bank, N.A	Fort Lauderdale	Florida.
Premier Community Bank of S.W. Florida	Fort Myers	Florida.
First City Bank of Florida	Fort Walton Beach	Florida.
Desjardins Bank, National Association	Hallandale	Florida.
Florida Community Bank	Immokalee	Florida.
The Bank of Inverness	Inverness	Florida.
Community First Credit Union of Florida	Jacksonville	Florida.
First Guaranty Bank and Trust Company	Jacksonville	Florida.
Community National Bank of Mid-Florida	Lake Mary	Florida.
Publix Employees Federal Credit Union	Lakeland	Florida.
Sterling Bank	Lantana	Florida.
First Federal Savings Bank of Florida	Live Oak	Florida.
Eastern National Bank	Miami	Florida.
Helm Bank	Miami	Florida.
Terrabank, N.A	Miami	Florida.
TotalBank	Miami	Florida.
Tropical Financial Credit Union	Miami	Florida.
Pelican National Bank	Naples	Florida.
Friends Bank	New Smyrna Beach	Florida.
American National Bank	Oakland Park	Florida.
Big Lake National Bank	Okeechobee	Florida.
Pinnacle Bank	Orange City	Florida.
CNL Bank	Orlando	Florida.
Peoples First Community Bank	Panama City	Florida.
Pen Air Federal Credit Union	Pensacola	Florida.
The Citizens Bank of Perry	Perry	Florida.
Century Bank, a Federal Savings Bank	Sarasota	Florida.
Sarasota Coastal Credit Union	Sarasota	Florida.
United Bank of the Gulf Coast	Sarasota	Florida.
Heartland National Bank	Sebring	Florida.
Highlands Independent Bank	Sebring	Florida.
Eastern Financial Florida Credit Union	South Florida	Florida.
Raymond James Bank, FSB	St. Petersburg	Florida.
Florida Commerce Credit Union	Tallahassee	Florida.
MacDill Federal Credit Union	Tampa	Florida.

FEDERAL HOME LOAN BANK OF ATLANTA—DISTRICT 4—Continued

First National Bank	Tarpon Springs	Florida.
United Southern Bank	Umatilla	Florida.
Marine Bank and Trust	Vero Beach	Florida.
Security Bank & Trust Company of Albany	Albany	Georgia.
Cherokee Bank, National Association	Canton	Georgia.
Security Bank of Jones County	Gray	Georgia.
Jasper Banking Company	Jasper	Georgia.
Southern Bank	Sardis	Georgia.
Citizens Bank of Effingham	Springfield	Georgia.
Sea Island Employees Credit Union	St. Simons Island	Georgia.
Montgomery Bank & Trust	Ailey	Georgia.
Citizens Trust Bank	Atlanta	Georgia.
Georgia Banking Company	Atlanta	Georgia.
Piedmont Bank of Georgia	Atlanta	Georgia.
First Bank of Georgia	Augusta	Georgia.
United Community Bank	Blairsville	Georgia.
First National Bank of Georgia	Buchanan	Georgia.
Cohutta Banking Company	Chatsworth	Georgia.
Bank of Chickamauga	Chickamauga	Georgia.
Citizens & Merchants State Bank	Douglasville	Georgia.
The Peoples Bank	Eatonton	Georgia.
Pinnacle Bank	Elberton	Georgia.
The Farmers Bank	Forsyth	Georgia.
Gainesville Bank and Trust	Gainesville	Georgia.
First Citizens Bank	Glennville	Georgia.
South Georgia Bank	Glennville	Georgia.
Delta Employees Credit Union	Hapeville	Georgia.
SunMark Community Bank	Hawkinsville	Georgia.
Community Trust Bank	Hiram	Georgia.
Community Bank of Pickens County	Jasper	Georgia.
Commercial Bank & Trust Co. of Troup County	LaGrange	Georgia.
Northeast Georgia Bank	Lavonia	Georgia.
Peoples Bank	Lithonia	Georgia.
The Community Bank	Loganville	Georgia.
Rivoli Bank & Trust	Macon	Georgia.
F&M Bank and Trust Company	Manchester	Georgia.
Lockheed Georgia Employees' FCU	Marietta	Georgia.
The Merchants and Citizens Bank	McRae	Georgia.
The National Bank of Walton County	Monroe	Georgia.
Newnan Coweta Bank	Newnan	Georgia.
Family Bank	Pelham	Georgia.
The Citizens National Bank of Quitman	Quitman	Georgia.
Wilcox County State Bank	Rochelle	Georgia.
Citizens First Bank	Rome	Georgia.
Farmers and Merchants Community Bank	Senoia	Georgia.
Community Bank of the South	Smyrna	Georgia.
Cumberland National Bank	St. Marys	Georgia.
Sea Island Bank	Statesboro	Georgia.
Quantum National Bank	Suwanee	Georgia.
First Community Bank of Tifton	Tifton	Georgia.
South Georgia Banking Company	Tifton	Georgia.
Citizens Bank & Trust	Trenton	Georgia.
Durden Banking Company, Inc	Twin City	Georgia.
First State Bank & Trust Company of Valdosta	Valdosta	Georgia.
Robins Federal Credit Union	Warner Robins	Georgia.
Farmers and Merchants Bank	Washington	Georgia.
First Piedmont Bank	Winder	Georgia.
Bay-Vanguard Federal Savings Bank	Baltimore	Maryland.
Hull Federal Savings Bank	Baltimore	Maryland.
Ideal Federal Savings Bank	Baltimore	Maryland.
State Employees Credit Union of Maryland	Baltimore	Maryland.
Vigilant Federal Savings Bank	Baltimore	Maryland.
TMB Federal Credit Union	Cabin John	Maryland.
Cecil Bank	Elkton	Maryland.
The Back and Middle River Federal	Essex	Maryland.
Susquehanna Bank	Hagerstown	Maryland.
FedChoice FCU	Lanham	Maryland.
North Arundel Savings Bank, FSB	Pasadena	Maryland.
Provident State Bank, Inc	Preston	Maryland.
Eagle Bank	Bethesda	Maryland.
Comstar Federal Credit Union	Clarksburg	Maryland.
United Bank & Trust—Washtenaw	Ann Arbor	Michigan.
Cornerstone Bank	Wilson	North Carolina
Randolph Bank & Trust Company	Asheboro	North Carolina.

FEDERAL HOME LOAN BANK OF ATLANTA—DISTRICT 4—Continued

Mechanics and Farmers Bank	Durham	North Carolina
Gateway Bank & Trust Company	Elizabeth City	North Carolina.
Macon Bank	Franklin	North Carolina.
Carolina Bank	Greensboro	North Carolina.
Hertford Savings Bank, SSB	Hertford	North Carolina.
The Little Bank, Inc	Kinston	North Carolina.
Industrial Federal Savings Bank	Lexington	North Carolina.
Lexington State Bank	Lexington	North Carolina.
First Savings and Loan Association	Mebane	North Carolina.
American Community Bank	Monroe	North Carolina.
Mount Gilead Savings and Loan Association	Mount Gilead	North Carolina.
State Employees' Credit Union	Raleigh	North Carolina.
Taylorsville Savings Bank, SSB	Taylorsville	North Carolina.
Anson Bank & Trust Company	Wadesboro	North Carolina.
Waccamaw Bank	Whiteville	North Carolina.
Cooperative Bank	Wilmington	North Carolina.
Emery Federal Credit Union	Cincinnati	Ohio.
Citizens Bank of Pennsylvania	Philadelphia	Pennsylvania.
First Reliance Bank	Florence	South Carolina.
Heritage Trust Federal Credit Union	North Charleston	South Carolina.
People's Community Bank of S.C	Aiken	South Carolina.
Home Federal Savings and Loan Association	Bamberg	South Carolina.
Florence National Bank	Florence	South Carolina.
Bank of Greeleyville	Greeleyville	South Carolina.
GrandSouth Bank	Greenville	South Carolina.
Countybank	Greenwood	South Carolina.
Greer State Bank	Greer	South Carolina.
First National Bank of South Carolina	Holly Hill	South Carolina.
Kingstree Federal Savings & Loan Association	Kingstree	South Carolina.
The Bank of Clarendon	Manning	South Carolina.
Southcoast Community Bank	Mt. Pleasant	South Carolina.
Anderson Brothers Bank	Mullins	South Carolina.
Pickens Savings & Loan Association, F.A	Pickens	South Carolina.
Bank of Travelers Rest	Travelers Rest	South Carolina.
Access National Bank	Chantilly	Virginia.
The Bank of Lancaster	Kilmarnock	Virginia.
Bank of the James	Lynchburg	Virginia.
The Farmers Bank	Windsor	Virginia.
Napus Federal Credit Union	Alexandria	Virginia.
The Blue Grass Valley Bank	Blue Grass	Virginia.
The Bank of Southside Virginia	Carson	Virginia.
Second Bank & Trust	Culpeper	Virginia.
Apple Federal Credit Union	Fairfax	Virginia.
Imperial Savings and Loan Association	Martinsville	Virginia.
Navy Federal Credit Union	Merrifield	Virginia.
Bank of the Commonwealth	Norfolk	Virginia.
Lee Bank and Trust Company	Pennington Gap	Virginia.
The Marathon Bank	Winchester	Virginia.
Nicolet National Bank	Green Bay	Wisconsin.

FEDERAL HOME LOAN BANK OF CINCINNATI—DISTRICT 5

Wilson & Muir Bank and Trust Company	Bardstown	Kentucky.
Town & Country Bank and Trust Company	Bardstown	Kentucky.
Bank of Cadiz and Trust Company	Cadiz	Kentucky.
Bank of Columbia	Columbia	Kentucky.
The Harrison Deposit Bank and Trust Company	Cynthiana	Kentucky.
Kentucky Neighborhood Bank	Elizabethtown	Kentucky.
The Peoples Bank of Kentucky	Flemingsburg	Kentucky.
Farmers Bank	Hardinsburg	Kentucky.
Hancock Bank and Trust Company	Hawesville	Kentucky.
Peoples Bank & Trust Company of Hazard	Hazard	Kentucky.
Heritage Bank	Hopkinsville	Kentucky.
Planters Bank, Inc	Hopkinsville	Kentucky.
Bank of Jamestown	Jamestown	Kentucky.
THE BANK—Oldham County, Inc	LaGrange	Kentucky.
Leitchfield Deposit Bank and Trust Company	Leitchfield	Kentucky.
Central Bank & Trust Company, Inc	Lexington	Kentucky.
L&N Federal Credit Union	Louisville	Kentucky.
Farmers Bank & Trust of Marion	Marion	Kentucky.
Monticello Banking Company	Monticello	Kentucky.
South Central Bank of Daviess County, Inc	Owensboro	Kentucky.
The Salt Lick Deposit Bank	Owingsville	Kentucky.

FEDERAL HOME LOAN BANK OF CINCINNATI—DISTRICT 5—Continued

Blue Grass Federal Savings and Loan Association	Paris	Kentucky.
First Commonwealth Bank of Prestonsburg, Inc	Prestonsburg	Kentucky.
Belpre Savings Bank	Belpre	Ohio.
The Farmers Citizens Bank	Bucyrus	Ohio.
First Federal Savings and Loan Assoc. of Centerburg	Centerburg	Ohio.
The Citizens NB of Chillicothe	Chillicothe	Ohio.
Eagle Savings Bank	Cincinnati	Ohio.
Union Savings Bank	Cincinnati	Ohio.
First Community Bank	Columbus	Ohio.
Conneaut Savings Bank	Conneaut	Ohio.
The Corn City State Bank	Deshler	Ohio.
CF Bank	Fairlawn	Ohio.
The Fort Jennings State Bank	Fort Jennings	Ohio.
The Hamler State Bank	Hamler	Ohio.
The Settlers Bank, Inc	Marietta	Ohio.
The Fahey Banking Company of Marion	Marion	Ohio.
Sun Federal Credit Union	Maumee	Ohio.
Vinton County National Bank	McArthur	Ohio.
Citizens National Bank of McConnelsville	McConnelsville	Ohio.
The American Savings Bank	Middletown	Ohio.
First National Bank	Orrville	Ohio.
The Republic Banking Company	Republic	Ohio.
Mutual Federal Savings Bank	Sidney	Ohio.
The Peoples Savings and Loan Company	West Liberty	Ohio.
The Union Banking Company	West Mansfield	Ohio.
Farmers State Bank	West Salem	Ohio.
The Wilmington Savings Bank	Wilmington	Ohio.
Brighton Bank	Brighton	Tennessee.
Community First Bank & Trust	Columbia	Tennessee.
Highland Federal Savings and Loan Association	Crossville	Tennessee.
Security Federal Bank	Elizabethton	Tennessee.
The Lauderdale County Bank	Halls	Tennessee.
Carroll Bank & Trust	Huntingdon	Tennessee.
The Farmers Bank of Lynchburg	Lynchburg	Tennessee.
Peoples Bank of East Tennessee	Madisonville	Tennessee.
First National Bank	Manchester	Tennessee.
The Coffee County Bank	Manchester	Tennessee.
Memphis Area Teachers' Credit Union	Memphis	Tennessee.
Johnson County Bank	Mountain City	Tennessee.
National Bank of Newport	Newport	Tennessee.
Home Banking Company	Selmer	Tennessee.

FEDERAL HOME LOAN BANK OF INDIANAPOLIS—DISTRICT 6

DeKalb Financial Credit Union	Auburn	Indiana.
Bedford Federal Savings Bank	Bedford	Indiana.
FCN Bank	Brookville	Indiana.
United Fidelity Bank, FSB	Evansville	Indiana.
Fowler State Bank	Fowler	Indiana.
Freedom Bank	Huntington	Indiana.
First Federal Savings Bank	Huntington	Indiana.
Campbell & Fetter Bank	Kendallville	Indiana.
United Community Bank	Lawrenceburg	Indiana.
Merchants Bank of Indiana	Lynn	Indiana.
River Valley Financial Bank	Madison	Indiana.
Markle Bank	Markle	Indiana.
First State Bank of Middlebury	Middlebury	Indiana.
Citizens Financial Bank	Munster	Indiana.
Your Community Bank	New Albany	Indiana.
Ameriana Bank, SB	New Castle	Indiana.
American Trust FSB	Peru	Indiana.
Spencer County Bank	Santa Claus	Indiana.
Jackson County Bank	Seymour	Indiana.
SCB Bank	Shelbyville	Indiana.
Terre Haute Savings Bank	Terre Haute	Indiana.
Homestead Savings Bank	Albion	Michigan.
Michigan Commerce Bank	Ann Arbor	Michigan.
Charlevoix State Bank	Charlevoix	Michigan.
Dearborn Federal Savings Bank	Dearborn	Michigan.
Detroit Commerce Bank	Detroit	Michigan.
Option 1 Credit Union	Grand Rapids	Michigan.
PAC Federal Credit Union	Hamtramck	Michigan.
Paragon Bank & Trust	Holland	Michigan.

FEDERAL HOME LOAN BANK OF INDIANAPOLIS—DISTRICT 6—Continued

Firstbank-Lakeview	Lakeview	Michigan.
Capital National Bank	Lansing	Michigan.
NuUnion Credit Union	Lansing	Michigan.
Independent Bank—South Michigan	Leslie	Michigan.
State Savings Bank	Manistique	Michigan.
Mason State Bank	Mason	Michigan.
Community Federal Members Credit Union	Plymouth	Michigan.
Team One Credit Union	Saginaw	Michigan.
Sidney State Bank	Sidney	Michigan.
Flagstar Bank, FSB	Troy	Michigan.
Firstbank—West Branch	West Branch	Michigan.

FEDERAL HOME LOAN BANK OF CHICAGO—DISTRICT 7

Andalusia Community Bank	Andalusia	Illinois.
Village Bank and Trust Arlington Heights	Arlington Heights	Illinois.
Heartland Bank & Trust Company	Bloomington	Illinois.
Peoples Bank of Kankakee County	Bourbonnais	Illinois.
Bridgeview Bank Group	Bridgeview	Illinois.
United Trust Bank	Bridgeview	Illinois.
First American Bank	Carpentersville	Illinois.
United Community Bank	Chatham	Illinois.
Austin Bank of Chicago	Chicago	Illinois.
Burling Bank	Chicago	Illinois.
Amalgamated Bank of Chicago	Chicago	Illinois.
Covenant Bank	Chicago	Illinois.
Foster Bank	Chicago	Illinois.
New Century Bank	Chicago	Illinois.
First National Bank of Chillicothe	Chillicothe	Illinois.
State Bank of Countryside	Countryside	Illinois.
First Savings Bank	Danville	Illinois.
Clover Leaf Bank	Edwardsville	Illinois.
Midland States Bank	Effingham	Illinois.
Washington Savings Bank	Effingham	Illinois.
Union Savings Bank	Freeport	Illinois.
Central Bank Illinois	Geneseo	Illinois.
Bank of Gibson City	Gibson City	Illinois.
Northside Community Bank	Gurnee	Illinois.
Parkway Bank & Trust Company	Harwood Heights	Illinois.
North Central Bank	Hennepin	Illinois.
State Bank of Herscher	Herscher	Illinois.
Independence State Bank	Independence	Illinois.
The Farmers State Bank and Trust Company	Jacksonville	Illinois.
Bank of Kampsville	Kampsville	Illinois.
Kent Bank	Kent	Illinois.
First FS&LA of Kewanee	Kewanee	Illinois.
Midland Community Bank	Kincaid	Illinois.
Kinderhook State Bank	Kinderhook	Illinois.
Hometown National Bank	La Salle	Illinois.
La Salle State Bank	La Salle	Illinois.
Community Bank of Lemont	Lemont	Illinois.
Farmers State Bank of Fulton County	Lewistown	Illinois.
Logan County Bank	Lincoln	Illinois.
The Bank of Marion	Marion	Illinois.
Twin Oaks Savings Bank	Marseilles	Illinois.
Citizens Community Bank	Mascoutah	Illinois.
Middletown State Bank	Middleton	Illinois.
Blackhawk State Bank	Milan	Illinois.
First Farmers State Bank	Minier	Illinois.
I. H. Mississippi Valley Credit Union	Moline	Illinois.
First State Bank of Monticello	Monticello	Illinois.
Allied First Bank, SB	Naperville	Illinois.
The Leaders Bank	Oak Brook	Illinois.
Oxford Bank and Trust	Oak Lawn	Illinois.
The First National Bank of Ogden	Ogden	Illinois.
The First National Bank of Okawville	Okawville	Illinois.
Federated Bank	Onarga	Illinois.
George Washington Savings Bank	Orland Park	Illinois.
First National Bank of Ottawa	Ottawa	Illinois.
The Edgar County Bank and Trust Company	Paris	Illinois.
The State Bank of Pearl City	Pearl City	Illinois.
First Federal Savings and Loan Assoc. of Pekin	Pekin	Illinois.
Pekin National Bank	Pekin	Illinois.

FEDERAL HOME LOAN BANK OF CHICAGO—DISTRICT 7—Continued

Peru Federal Savings Bank	Peru	Illinois.
First National Bank in Pinckneyville	Pinckneyville	Illinois.
Murphy-Wall State Bank and Trust Company	Pinckneyville	Illinois.
State Street Bank & Trust Company	Quincy	Illinois.
Mercantile Trust and Savings Bank	Quincy	Illinois.
Bank of Quincy	Quincy	Illinois.
North County Savings Bank	Red Bud	Illinois.
RIA Federal Credit Union	Rock Island	Illinois.
State Bank of Saunemin	Saunemin	Illinois.
First Savanna Savings Bank	Savanna	Illinois.
Heritage Bank of Schaumburg	Schaumburg	Illinois.
Freedom Bank	Seaton	Illinois.
Farmers' & Traders' State Bank	Shabbona	Illinois.
First State Bank of Shannon-Polo	Shannon	Illinois.
Bank of Shorewood	Shorewood	Illinois.
Longview State Bank	Sidney	Illinois.
The First National Bank of Sparta	Sparta	Illinois.
Security Bank	Springfield	Illinois.
Illinois National Bank	Springfield	Illinois.
Sauk Valley Bank & Trust Company	Sterling	Illinois.
Stillman BancCorp, N.A.	Stillman Valley	Illinois.
Centrue Bank	Streator	Illinois.
The National Bank & Trust Company of Sycamore	Sycamore	Illinois.
The American National Bank of DeKalb County	Sycamore	Illinois.
Citizens First State Bank	Walnut	Illinois.
The Hill Dodge Banking Company	Warsaw	Illinois.
State Bank of Waterloo	Waterloo	Illinois.
Edens Bank	Willmette	Illinois.
American Community Bank	Woodstock	Illinois.
First American Credit Union	Beloit	Wisconsin.
Jackson County Bank	Black River Falls	Wisconsin.
Dairyland State Bank	Bruce	Wisconsin.
State Bank of Cross Plains	Cross Plains	Wisconsin.
Pioneer Credit Union	Green Bay	Wisconsin.
AM Community Credit Union	Kenosha	Wisconsin.
Bank of Mauston	Mauston	Wisconsin.
Time Federal Savings Bank	Medford	Wisconsin.
M&I Marshall & Ilsley Bank	Milwaukee	Wisconsin.
National Bank of Commerce	Superior	Wisconsin.
Tomahawk Community Bank SSB	Tomahawk	Wisconsin.
Marine Bank	Wauwatosa	Wisconsin.
Bank of Wisconsin Dells	Wisconsin Dells	Wisconsin.

FEDERAL HOME LOAN BANK OF DES MOINES—DISTRICT 8

United Missouri Insurance Company	Phoenix	Arizona.
Security State Bank	Algona	Iowa.
Security State Bank	Anamosa	Iowa.
Walker State Bank	Bloomington	Iowa.
Farmers Trust and Savings Bank	Buffalo Center	Iowa.
Two Rivers Bank & Trust	Burlington	Iowa.
Iowa Community Credit Union	Cedar Falls	Iowa.
Linn Area Credit Union	Cedar Rapids	Iowa.
Cedar Rapids Bank and Trust Company	Cedar Rapids	Iowa.
United Security Savings Bank, F.S.B	Cedar Rapids	Iowa.
Bank Iowa	Clarinda	Iowa.
Clear Lake Bank and Trust Company	Clear Lake	Iowa.
Gateway State Bank	Clinton	Iowa.
Peoples Trust & Savings Bank	Clive	Iowa.
C US Bank	Cresco	Iowa.
Denver Savings Bank	Denver	Iowa.
DeWitt Bank & Trust Co	DeWitt	Iowa.
Premier Bank	Dubuque	Iowa.
Liberty Trust & Savings Bank	Durant	Iowa.
Farmers Trust & Savings Bank	Earling	Iowa.
Hardin County Savings Bank	Eldora	Iowa.
FreedomBank	Elkader	Iowa.
Bank Plus	Estherville	Iowa.
NorthStar Bank	Estherville	Iowa.
Libertyville Savings Bank	Fairfield	Iowa.
Fort Madison Bank & Trust Company	Fort Madison	Iowa.
Security Savings Bank	Gowrie	Iowa.
Midstates Bank, N.A.	Harlan	Iowa.

FEDERAL HOME LOAN BANK OF DES MOINES—DISTRICT 8—Continued

Hills Bank and Trust Company	Hills	Iowa.
First State Bank	Ida Grove	Iowa.
Peoples Savings Bank	Indianola	Iowa.
Iowa Falls State Bank	Iowa Falls	Iowa.
Charter Bank	Johnston	Iowa.
Farmers Savings Bank	Keota	Iowa.
Kingsley State Bank	Kingsley	Iowa.
Kerndt Brothers Savings Bank	Lansing	Iowa.
Laurens State Bank	Laurens	Iowa.
State Bank of Ledyard	Ledyard	Iowa.
First State Bank	Lynnville	Iowa.
First National Bank of Manning	Manning	Iowa.
Valley Bank & Trust	Mapleton	Iowa.
Maquoketa State Bank	Maquoketa	Iowa.
Farmers Savings Bank	Marshalltown	Iowa.
Maynard Savings Bank	Maynard	Iowa.
Moorhead State Bank	Moorhead	Iowa.
Wayland State Bank	Mount Pleasant	Iowa.
Mount Vernon Bank and Trust Company	Mount Vernon	Iowa.
Community Bank	Muscatine	Iowa.
Community Bank of Oelwein	Oelwein	Iowa.
First National Bank Midwest	Oskaloosa	Iowa.
Guthrie County State Bank	Panora	Iowa.
Pocahontas State Bank	Pocahontas	Iowa.
Tri-Valley Bank	Randolph	Iowa.
Houghton State Bank	Red Oak	Iowa.
Farmers Savings Bank	Remsen	Iowa.
First State Bank	Riceville	Iowa.
Peoples Bank	Rock Valley	Iowa.
Union State Bank	Rockwell City	Iowa.
Rolfe State Bank	Rolfe	Iowa.
First Community Bank	Sidney	Iowa.
Keokuk County State Bank	Sigourney	Iowa.
South Story Bank & Trust	Slater	Iowa.
Citizens Savings Bank	Spillville	Iowa.
St. Ansgar State Bank	St. Ansgar	Iowa.
Central State Bank	State Center	Iowa.
Security State Bank	Sutherland	Iowa.
Templeton Savings Bank	Templeton	Iowa.
Victor State Bank	Victor	Iowa.
Washington State Bank	Washington	Iowa.
Federation Bank	Washington	Iowa.
The Watkins Savings Bank	Watkins	Iowa.
Citizens State Bank	Waukon	Iowa.
West Iowa Bank	West Bend	Iowa.
Fidelity Bank	West Des Moines	Iowa.
State Savings Bank	West Des Moines	Iowa.
GuideOne Mutual Insurance Company	West Des Moines	Iowa.
Farmers State Bank	Yale	Iowa.
Neighborhood National Bank	Alexandria	Minnesota.
First Commercial Bank	Bloomington	Minnesota.
First Farmers & Merchants State Bank	Brownsdale	Minnesota.
White Rock Bank	Cannon Falls	Minnesota.
Access Bank	Champlin	Minnesota.
State Bank of Cokato	Cokato	Minnesota.
Currie State Bank	Currie	Minnesota.
State Bank of Danvers	Danvers	Minnesota.
State Bank of Delano	Delano	Minnesota.
North Shore Bank of Commerce	Duluth	Minnesota.
Park State Bank	Duluth	Minnesota.
The Pioneer National Bank of Duluth	Duluth	Minnesota.
Voyager Bank	Eden Prairie	Minnesota.
First SecurityBank—Evansville	Evansville	Minnesota.
First Farmers & Merchants National Bank	Fairmont	Minnesota.
1st United Bank	Faribault	Minnesota.
First Farmers and Merchants State Bank of Grand Meadow	Grand Meadow	Minnesota.
Border State Bank	Greenbush	Minnesota.
Citizens State Bank of Hayfield	Hayfield	Minnesota.
Farmers State Bank of Hoffman	Hoffman	Minnesota.
Security State Bank of Howard Lake	Howard Lake	Minnesota.
Key Community Bank	Inver Grove Heights	Minnesota.
Landmark Community Bank, N.A.	Isanti	Minnesota.
Kasson State Bank	Kasson	Minnesota.
First Security Bank—Lake Benton	Lake Benton	Minnesota.

FEDERAL HOME LOAN BANK OF DES MOINES—DISTRICT 8—Continued

Lake City Federal Bank	Lake City	Minnesota.
Lake Area Bank	Lindstrom	Minnesota.
Patriot Bank Minnesota	Lino Lakes	Minnesota.
Home State Bank	Litchfield	Minnesota.
Peoples State Bank of Madison Lake	Madison Lake	Minnesota.
Inter Savings Bank, fsb	Maple Grove	Minnesota.
Topline Federal Credit Union	Maple Grove	Minnesota.
EastBank	Minneapolis	Minnesota.
The Business Bank	Minnetonka	Minnesota.
First National Bank of Moose Lake	Moose Lake	Minnesota.
United Prairie Bank	Mountain Lake	Minnesota.
American Bank of the North	Nashwauk	Minnesota.
New Market Bank	New Market	Minnesota.
State Bank of New Prague	New Prague	Minnesota.
Community Security Bank	New Prague	Minnesota.
ProGrowth Bank	Nicollet	Minnesota.
Anchor Bank Heritage N.A	North St. Paul	Minnesota.
Lakes State Bank	Pequot Lakes	Minnesota.
Richfield-Bloomington Credit Union	Richfield	Minnesota.
Sterling State Bank	Rochester	Minnesota.
Premier Bank Rochester	Rochester	Minnesota.
Olmsted National Bank	Rochester	Minnesota.
BankWest	Rockford	Minnesota.
Citizens State Bank of Roseau	Roseau	Minnesota.
Rosemount National Bank	Rosemount	Minnesota.
BankVista	Sartell	Minnesota.
Jennings State Bank	Spring Grove	Minnesota.
Bremer Bank, N.A	St. Cloud	Minnesota.
Village Bank	St. Francis	Minnesota.
St. James Federal Savings and Loan Association	St. James	Minnesota.
First State Bank of St. Joseph	St. Joseph	Minnesota.
Great Northern Bank	St. Michael	Minnesota.
Affinity Plus Federal Credit Union	St. Paul	Minnesota.
City & County Credit Union	St. Paul	Minnesota.
The Nicollet County Bank of St. Peter	St. Peter	Minnesota.
The First National Bank of Starbuck	Starbuck	Minnesota.
Farmers State Bank of Trimont	Trimont	Minnesota.
The First National Bank of Walker	Walker	Minnesota.
Roundbank	Waseca	Minnesota.
Anchor Bank, National Association	Wayzata	Minnesota.
Welcome State Bank	Welcome	Minnesota.
Farmers State Bank of West Concord	West Concord	Minnesota.
Anchor Bank St. Paul, N.A	West St. Paul	Minnesota.
Ultima Bank Minnesota	Winger	Minnesota.
Flagship Bank Winsted	Winsted	Minnesota.
The RiverBank	Wyoming	Minnesota.
Citizens Bank of Amsterdam	Amsterdam	Missouri.
America's Community Bank	Blue Springs	Missouri.
Community State Bank of Missouri	Bowling Green	Missouri.
CBC Bank	Bowling Green	Missouri.
First Community Bank of the Ozarks	Branson	Missouri.
Cass Commercial Bank	Bridgeton	Missouri.
Hawthorn Bank	Clinton	Missouri.
The Citizens-Farmers Bank of Cole Camp	Cole Camp	Missouri.
First National Bank & Trust Company	Columbia	Missouri.
Meramec Valley Bank	Ellisville	Missouri.
New Era Bank	Fredericktown	Missouri.
Bank Star One	Fulton	Missouri.
The Central Trust Bank	Jefferson City	Missouri.
Exchange Bank of Northeast Missouri	Kahoka	Missouri.
Old American Insurance Company	Kansas City	Missouri.
Mazuma Credit Union	Kansas City	Missouri.
Town & Country Bank Midwest	La Belle	Missouri.
Pony Express Bank	Liberty	Missouri.
Macon-Atlanta State Bank	Macon	Missouri.
Bank of Mansfield	Mansfield	Missouri.
Regional Missouri Bank	Marceline	Missouri.
Nodaway Valley Bank	Maryville	Missouri.
Independent Farmers Bank	Maysville	Missouri.
City Bank & Trust Company of Moberly	Moberly	Missouri.
Heritage State Bank	Nevada	Missouri.
Bank of New Cambria	New Cambria	Missouri.
Bank of Old Monroe	Old Monroe	Missouri.
First Bank of the Lake	Osage Beach	Missouri.

FEDERAL HOME LOAN BANK OF DES MOINES—DISTRICT 8—Continued

The Bank of Otterville	Otterville	Missouri.
Southwest Community Bank	Ozark	Missouri.
Palmyra State Bank	Palmyra	Missouri.
Citizens Community Bank	Pilot Grove	Missouri.
Security Bank	Rich Hill	Missouri.
Community Bank of Missouri	Richmond	Missouri.
Legacy Bank & Trust Company	Rogersville	Missouri.
Citizens' Bank of Rogersville	Rogersville	Missouri.
Pulaski Bank	Saint Louis	Missouri.
Bank of Salem	Salem	Missouri.
The Merchants & Farmers Bank of Salisbury	Salisbury	Missouri.
Excel Bank	Sedalia	Missouri.
People's Bank of Seneca	Seneca	Missouri.
Empire Bank	Springfield	Missouri.
Liberty Bank	Springfield	Missouri.
Village Bank	Springfield	Missouri.
Royal Banks of Missouri	St. Louis	Missouri.
First Missouri Credit Union	St. Louis	Missouri.
Frontenac Bank	St. Louis	Missouri.
Safety National Casualty Corporation	St. Louis	Missouri.
First State Bank of St. Robert	St. Robert	Missouri.
Bank Star of the Bootheel	Steele	Missouri.
Community Bank of the Ozarks	Sunrise Beach	Missouri.
The Tipton Latham Bank, N.A.	Tipton	Missouri.
United Bank of Union	Union	Missouri.
Farmers Bank of Northern Missouri, N.A.	Unionville	Missouri.
First Central Bank	Warrensburg	Missouri.
Bank of Washington	Washington	Missouri.
Bank of Franklin County	Washington	Missouri.
West Plains Savings & Loan Association	West Plains	Missouri.
Great Plains National Bank	Belfield	North Dakota.
First Community Credit Union	Jamestown	North Dakota.
The First and Farmers Bank	Portland	North Dakota.
The Bank of Tioga	Tioga	North Dakota.
First International Bank & Trust	Watford City	North Dakota.
Peoples State Bank	De Smet	South Dakota.
Farmers State Bank	Marion	South Dakota.
Principal Mortgage Reinsurance Company	Sioux Falls	South Dakota.
Farmers State Bank	Stickney	South Dakota.

FEDERAL HOME LOAN BANK OF DALLAS—DISTRICT 9

South Bank	Huntsville	Alabama.
Bank of Gravett	Gravette	Arkansas.
Heber Springs State Bank	Heber Springs	Arkansas.
Capital Bank	Little Rock	Arkansas.
Bank of Eureka Springs	Eureka Springs	Arkansas.
First National Bank of Fort Smith	Fort Smith	Arkansas.
First National Bank	Hot Springs	Arkansas.
Hot Springs Bank & Trust	Hot Springs	Arkansas.
Bank of Lake Village	Lake Village	Arkansas.
Bank of the Ozarks	Little Rock	Arkansas.
First State Bank	Lonoke	Arkansas.
Arvest Bank	Lowell	Arkansas.
Union Bank of Mena	Mena	Arkansas.
Twin City Bank	North Little Rock	Arkansas.
Evolve Bank & Trust	Parkin	Arkansas.
Bank of Salem	Salem	Arkansas.
First Security Bank of Searcy	Searcy	Arkansas.
Simmons First Bank of Searcy	Searcy	Arkansas.
Bank of Truman	Truman	Arkansas.
Citizens Bank & Trust Company	Van Buren	Arkansas.
First Community Bank of Crawford County	Van Buren	Arkansas.
Fidelity National Bank	West Memphis	Arkansas.
Cameron State Bank	Lake Charles	Louisiana.
Fidelity Bank	Baton Rouge	Louisiana.
State Investors Bank	Metairie	Louisiana.
Globe Homestead Savings Bank	Metairie	Louisiana.
Home Federal Savings and Loan Association	Shreveport	Louisiana.
Citizens Bank and Trust Company of Vivian, LA, Inc	Vivian	Louisiana.
First Southern Bank	Columbia	Mississippi.
First Delta Federal Credit Union	Marks	Mississippi.
Bank of Jones County	Laurel	Mississippi.

FEDERAL HOME LOAN BANK OF DALLAS—DISTRICT 9—Continued

Pioneer Bank	Roswell	New Mexico.
First National Bank of Santa Fe	Santa Fe	New Mexico.
New Mexico Bank & Trust	Albuquerque	New Mexico.
International Bank of Commerce—Brownsville	Brownsville	Texas.
American Bank, N.A.	Corpus Christi	Texas.
Guaranty Bank	Dallas	Texas.
State Bank and Trust Company, Dallas	Dallas	Texas.
Park Cities Bank	Dallas	Texas.
The Bank & Trust	Del Rio	Texas.
Bank of the West	El Paso	Texas.
GECU	El Paso	Texas.
Falfurrias State Bank	Falfurrias	Texas.
Friona State Bank	Friona	Texas.
Amegy Bank of Texas, N.A.	Houston	Texas.
OmniBank, N.A.	Houston	Texas.
New Era Life Insurance Company	Houston	Texas.
The First National Bank of Hughes Springs	Hughes Springs	Texas.
International Bank of Commerce	Laredo	Texas.
Security State Bank	Littlefield	Texas.
Madisonville State Bank	Madisonville	Texas.
First State Bank	Maypearl	Texas.
McAllen National Bank	McAllen	Texas.
Rio National Bank	McAllen	Texas.
First National Bank	McGregor	Texas.
Independent Bank	McKinney	Texas.
Oglesby State Bank	Oglesby	Texas.
Interstate Bank, SSB	Perryton	Texas.
Cypress Bank, FSB	Pittsburg	Texas.
Benchmark Bank	Plano	Texas.
ViewPoint Bank	Plano	Texas.
Parkway Bank, N.A.	Plano	Texas.
First National Bank in Quanah	Quanah	Texas.
First National Bank of Quitman	Quitman	Texas.
United Funeral Director Benefit Life Insurance Company	Richardson	Texas.
Peoples State Bank	Rocksprings	Texas.
Crockett National Bank	San Angelo	Texas.
Frost National Bank	San Antonio	Texas.
American Bank of Texas	Sherman	Texas.
Citizens Bank	Slaton	Texas.
First National Bank of Sonora	Sonora	Texas.
First National Bank	Spearman	Texas.
City National Bank of Sulphur Springs	Sulphur Springs	Texas.
Sundown State Bank	Sundown	Texas.
Citizens National Bank	Teague	Texas.
Southside Bank	Tyler	Texas.
First Victoria National Bank	Victoria	Texas.
International Bank of Commerce—Zapata	Zapata	Texas.
Texas Champion Bank	Alice	Texas.
First State Bank	Avinger	Texas.
First National Bank of Bellville	Bellville	Texas.
ValueBank Texas	Corpus Christi	Texas.
Capital Savings Bank, SSB	El Paso	Texas.
First National Bank of Eldorado	Eldorado	Texas.
First Bank Farmersville	Farmersville	Texas.
Woodhaven National Bank	Fort Worth	Texas.
United Central Bank	Garland	Texas.
Texas Bank	Henderson	Texas.
First National Bank of Hereford	Hereford	Texas.
First Lockhart National Bank	Lockhart	Texas.
Lone Star State Bank	Lone Star	Texas.
Community Bank	Longview	Texas.
Texas Star Bank, SSB	Lott	Texas.
City Bank	Lubbock	Texas.
Citizens State Bank	Miles	Texas.
First National Bank of Moody	Moody	Texas.
First State Bank	Paint Rock	Texas.

FEDERAL HOME LOAN BANK OF TOPEKA—DISTRICT 10

First Bank of Avon	Avon	Colorado.
Canon National Bank	Canon City	Colorado.
Ent Federal Credit Union	Colorado Springs	Colorado.
Peoples National Bank Leadville	Leadville	Colorado.

FEDERAL HOME LOAN BANK OF TOPEKA—DISTRICT 10—Continued

The Citizens State Bank of Cortez	Cortez	Colorado.
Guaranty Bank and Trust Company	Denver	Colorado.
Colorado State Bank and Trust	Denver	Colorado.
Public Service Employees Credit Union	Denver	Colorado.
First Bank of Vail	Vail	Colorado.
Colorado Mountain Bank	Westcliffe	Colorado.
The Andover State Bank	Andover	Kansas.
Community State Bank	Coffeyville	Kansas.
The Condon NB of Coffeyville	Coffeyville	Kansas.
Conway Bank, N.A.	Conway Springs	Kansas.
The City State Bank	Fort Scott	Kansas.
The Liberty Savings Association, FSA	Fort Scott	Kansas.
Citizens State Bank	Grainfield	Kansas.
The Haviland State Bank	Haviland	Kansas.
First Federal S&L Independence	Independence	Kansas.
First National Bank	Independence	Kansas.
MidAmerican Bank & Trust Company	Leavenworth	Kansas.
The FNB of LeRoy	Leroy	Kansas.
Kansas State Bank of Manhattan	Manhattan	Kansas.
Stockgrowers State Bank	Maple Hill	Kansas.
The Marion National Bank	Marion	Kansas.
Citizens State Bank of Marysville	Marysville	Kansas.
The Citizens State Bank	Miltonvale	Kansas.
Montezuma State Bank	Montezuma	Kansas.
The Citizens State Bank	Morland	Kansas.
Farmers and Merchants Bank of Mound City	Mound City	Kansas.
Kansas State Bank	Overbrook	Kansas.
Solutions Bank	Overland Park	Kansas.
1st Financial Bank	Overland Park	Kansas.
Bank of Palmer	Palmer	Kansas.
Farmers State Bank	Phillipsburg	Kansas.
First National Bank in Pratt	Pratt	Kansas.
Prescott State Bank	Prescott	Kansas.
Rose Hill Bank	Rose Hill	Kansas.
The Bennington State Bank	Salina	Kansas.
Astra Bank	Scandia	Kansas.
Security State Bank	Scott City	Kansas.
First National Bank of Scott City	Scott City	Kansas.
Centera Bank	Sublette	Kansas.
First Federal Savings & Loan Association of WaKeeney	WaKeeney	Kansas.
First National Bank of Wamego	Wamego	Kansas.
Kaw Valley State Bank & Trust Company	Wamego	Kansas.
The State Bank of Whiting	Whiting	Kansas.
Fidelity Bank	Wichita	Kansas.
The First National Bank of Bancroft	Bancroft	Nebraska.
DeWitt State Bank	DeWitt	Nebraska.
First National Bank and Trust of Fullerton	Fullerton	Nebraska.
Geneva State Bank	Geneva	Nebraska.
Equitable Bank	Grand Island	Nebraska.
Home FS&LA of Grand Island, Nebraska	Grand Island	Nebraska.
Harvard State Bank	Harvard	Nebraska.
Hershey State Bank	Hershey	Nebraska.
Nebraska National Bank	Kearney	Nebraska.
Platte Valley State Bank and Trust Company, Inc	Kearney	Nebraska.
Bank of Keystone	Keystone	Nebraska.
Home FS&LA of Nebraska	Lexington	Nebraska.
Security Federal Savings	Lincoln	Nebraska.
Lincoln Federal Savings Bank of Nebraska	Lincoln	Nebraska.
American First Credit Union	Lindsay	Nebraska.
First State Bank	Loomis	Nebraska.
Sherman County Bank	Loup City	Nebraska.
First National Bank Northeast	Lyons	Nebraska.
Madison County Bank	Madison	Nebraska.
The Bank of Madison	Madison	Nebraska.
Corn Growers State Bank	Murdock	Nebraska.
Murray State Bank	Murray	Nebraska.
Bank of Newman Grove	Newman Grove	Nebraska.
BankFirst	Norfolk	Nebraska.
Elkhorn Valley Bank & Trust	Norfolk	Nebraska.
Nebraskaland National Bank	North Platte	Nebraska.
First National Bank	North Platte	Nebraska.
Pender State Bank	Pender	Nebraska.
Midwest Bank, N.A.	Pierce	Nebraska.
Town & Country Bank	Ravenna	Nebraska.

FEDERAL HOME LOAN BANK OF TOPEKA—DISTRICT 10—Continued

Commercial State Bank	Republican City	Nebraska.
Sidney Federal Savings & Loan Association	Sidney	Nebraska.
Dakota County State Bank	South Sioux City	Nebraska.
Springfield State Bank	Springfield	Nebraska.
Bank of Stapleton	Stapleton	Nebraska.
Tri Valley Bank	Talmage	Nebraska.
Tecumseh Federal Bank	Tecumseh	Nebraska.
First National Bank of Utica	Utica	Nebraska.
Oak Creek Valley Bank	Valparaiso	Nebraska.
Farmers State Bank	Wallace	Nebraska.
Commercial State Bank	Wausa	Nebraska.
Citizens National Bank	Wisner	Nebraska.
Cornerstone Bank, National Association	York	Nebraska.
First State Bank of Altus	Altus	Oklahoma.
66 Federal Credit Union	Bartlesville	Oklahoma.
AVB Bank	Broken Arrow	Oklahoma.
The Peoples National Bank of Checotah	Checotah	Oklahoma.
Cleo State Bank	Cleo Springs	Oklahoma.
Bank of Cordell	Cordell	Oklahoma.
Bank of Hydro	Hydro	Oklahoma.
The State Exchange Bank	Lamont	Oklahoma.
Armstrong Bank	Muskogee	Oklahoma.
First National Bank of Muskogee	Muskogee	Oklahoma.
Citizens State Bank	Okemah	Oklahoma.
First Enterprise Bank	Oklahoma. City	Oklahoma.
Union Bank	Oklahoma. City	Oklahoma.
Lakeside Bank of Salina	Salina	Oklahoma.
The Shattuck National Bank	Shattuck	Oklahoma.
The First National Bank of Texhoma	Texhoma	Oklahoma.
The Bank of the West	Thomas	Oklahoma.
Energy One Federal Credit Union	Tulsa	Oklahoma.
Grand Bank	Tulsa	Oklahoma.
NBC Oklahoma	Tulsa	Oklahoma.
First Bank & Trust Company	Wagoner	Oklahoma.
Canadian State Bank	Yukon	Oklahoma.

FEDERAL HOME LOAN BANK OF SAN FRANCISCO—DISTRICT 11

United Arizona Bank, N.A.	Cave Creek	Arizona.
BankUSA N.A.	Phoenix	Arizona.
Pacific Crest Bank	Agoura Hills	California.
Santa Lucia Bank, N.A.	Atascadero	California.
Fremont Investment & Loan	Brea	California.
Vista Federal Credit Union	Burbank	California.
Bank of Marin	Corte Madera	California.
La Jolla Bank, F.S.B.	Escondido	California.
Eastern International Bank	Los Angeles	California.
State Bank of India (California)	Los Angeles	California.
FAA First Federal Credit Union	Los Angeles	California.
InterBusiness Bank, N.A.	Los Angeles	California.
United Labor Bank, F.S.B.	Oakland	California.
Chevron Texaco Federal Credit Union	Oakland	California.
Wescom Central Credit Union	Pasadena	California.
1st United Service Credit Union	Pleasanton	California.
San Diego County Credit Union	San Diego	California.
California Bank & Trust	San Diego	California.
United Commercial Bank	San Francisco	California.
Citibank (West), FSB	San Francisco	California.
Luther Burbank Savings	Santa Rosa	California.
Community Banks of Northern California	Tracy	California.
NVB Business Bank	Woodland	California.
Redding Bank of Commerce	Yuba City	California.

FEDERAL HOME LOAN BANK OF SEATTLE—DISTRICT 12

First Bank	Ketchikan	Alaska.
Central Pacific Bank	Honolulu	Hawaii.
Territorial Savings Bank	Honolulu	Hawaii.
First Bank of Idaho	Ketchum	Idaho.
Home Federal Bank	Nampa	Idaho.
American Bank	Bozeman	Montana.
Valley Bank of Helena	Helena	Montana.

FEDERAL HOME LOAN BANK OF SEATTLE—DISTRICT 12—Continued

LibertyBank	Eugene	Oregon.
Chetco Federal Credit Union	Harbor	Oregon.
West Coast Bank	Lake Oswego	Oregon.
PremierWest Bank	Medford	Oregon.
Northwest Community Credit Union	Springfield	Oregon.
Gunnison Valley Bank	Gunnison	Utah.
Centennial Bank	Ogden	Utah.
SummitOne CU	Ogden	Utah.
Zions First National Bank	Salt Lake City	Utah.
Mountain America Federal Credit Union	West Jordan	Utah.
Kitsap Credit Union	Bremerton	Washington.
Summit Bank	Burlington	Washington.
Venture Bank	Lacey	Washington.
Spokane Teachers Credit Union	Liberty Lake	Washington.
Cowlitz Bank	Longview	Washington.
Heritage Bank	Olympia	Washington.
South Sound Bank	Olympia	Washington.
Viking Bank	Seattle	Washington.
Shoreline Bank	Shoreline	Washington.
Wheatland Bank	Spokane	Washington.
Sound Banking Company	Tacoma	Washington.
TAPCO Credit Union	Tacoma	Washington.
Central Valley Bank, N.A.	Toppenish	Washington.
Columbia Community Credit Union	Vancouver	Washington.
Banner Bank	Walla Walla	Washington.
Security First Bank	Cheyenne	Wyoming.
First National Bank & Trust	Powell	Wyoming.
Cowboy State Bank	Ranchester	Wyoming.
Bank of Wyoming	Thermopolis	Wyoming.

II. Public Comments

To encourage the submission of public comments on the community support performance of Bank members, on or before May 15, 2009, each Bank will notify its Advisory Council and nonprofit housing developers, community groups, and other interested parties in its district of the members selected for community support review in the 2008–09 fifth quarter review cycle. 12 CFR 944.2(b)(2)(ii). In reviewing a member for community support compliance, FHFA will consider any public comments it has received concerning the member. 12 CFR 944.2(d). To ensure consideration by FHFA, comments concerning the community support performance of members selected for the 2008–09 fifth quarter review cycle must be delivered to FHFA, either by hard-copy mail at the Federal Housing Finance Agency, Housing Mission and Goals, 1625 Eye Street, NW., Washington, DC 20006, or by electronic mail at LENORA.MORTON@FHFA.GOV on or before the June 15, 2009 deadline for submission of Community Support Statements.

Dated: April 27, 2009.

James B. Lockhart III,
 Director, Federal Housing Finance Agency.
 [FR Doc. E9–10011 Filed 4–30–09; 8:45 am]

BILLING CODE 8070–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Consultation Meeting of the Working Group on Strengthening the Biosecurity of the United States

AGENCY: Department of Health and Human Services, Office of the Secretary.

ACTION: Notice.

SUMMARY: The U.S. Department of Health and Human Services is hereby giving notice that the Working Group on Strengthening the Biosecurity of the United States will be holding a public consultation meeting. The meeting is open to the public.

DATES: The Working Group on Strengthening the Biosecurity of the United States will hold a public consultation meeting on May 13, 2009 from 8:30 a.m. to 5 p.m. EDT and May 14, 2009 from 8:30 a.m. to 3:15 p.m. EDT.

ADDRESSES: The Hyatt Regency-Bethesda, 7400 Wisconsin Ave., Bethesda, MD 20814. Phone (301) 657–1234.

FOR FURTHER INFORMATION CONTACT: Laura Kwinn, PhD, Office of Medicine, Science and Public Health, Office of the Assistant Secretary for Preparedness and Response, U.S. Department of Health and Human Services, 330 C Street, SW., Room 5123, Washington, DC 20201; *phone:* 202–260–0666; *fax:*

202–205–8508; *e-mail address:* biosecurity.workgroup@hhs.gov.

SUPPLEMENTARY INFORMATION: The Working Group on Strengthening the Biosecurity of the United States, was established by Executive Order (EO) 13486 on January 9, 2009, with the mission of reviewing, evaluating, analyzing and making recommendations to the President regarding the current laws, regulations, guidance, and practices of laboratories (including clinical and environmental facilities) that conduct research on, handle, store, or transport biological select agents and toxins in the United States. Within 180 days, the Working Group must issue a report to the President containing “recommendations for any new legislation, regulations, guidance, or practices for security and personnel assurance” and “options for establishing oversight mechanisms.” The report will also include a comparison of personnel security and reliability programs for access to biological select agents and toxins to similar programs in other fields and industries. Given the importance of biosecurity to protecting public health and agriculture, a public consultation meeting is being held to discuss biosecurity issues related to the Select Agent Regulations (The U.S. Department of Health and Human Services regulations for Select Agents and Toxins, 42 CFR Part 72, and the United States Department of Agriculture regulations for Possession, Use, and

Transfer of Select Agents and Toxins, 9 CFR Part 121). Topics will include the definition of select agents, transportation of select agents, physical and personnel security of select agent entities, oversight and inspections of laboratories, and fostering a culture of security and responsibility.

Procedures for Providing Public Input: Public participation in this meeting of the Working Group is encouraged. Interested members of the public may attend the meeting in person. Pre-registration is highly encouraged and is available at the website: <https://www.medicalcountermeasures.gov/StrengtheningBiosecurity2009>. Members of the public may also submit relevant written or oral information for the Working Group to consider. Oral and written information that is submitted may be made be available to the public; therefore, we request that statements do not include private or proprietary information. **Oral Statements:** Thirty minutes will be available each day of the meeting for public comment. In general, each speaker (or group of speakers) requesting an oral presentation will be limited to three minutes. To be placed on the public speaker list, interested parties should contact Dr. Laura Kwinn, in writing (preferably via e-mail to biosecurity.workgroup@hhs.gov), by May 8, 2009. **Written Statements:** In general, individuals or groups may file written comments with the Working Group. All written comments must be received prior to May 18, 2009 and should be sent to Dr. Laura Kwinn (preferably by e-mail with "Working Group Public Comment" as the subject line). Individuals needing special assistance should notify Dr. Laura Kwinn by May 8, 2009.

Dated: April 27, 2009.

RADM W. Craig Vanderwagen,

Assistant Secretary for Preparedness and Response, U.S. Department of Health and Human Services.

[FR Doc. E9-10008 Filed 4-30-09; 8:45 am]

BILLING CODE 4150-37-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS-10116]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment.

Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the Agency's function; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. Type of Information Collection Request: Extension of a currently approved collection; **Title of Information Collection:** Medicare Program; Conditions for Payment of Power Mobility Devices, including Power Wheelchairs and Power-Operated Vehicles; **Use:** CMS is renewing our request for approval for the collection requirements associated with the final rule, CMS-3017-F (71 FR 17021), which was published on April 5, 2006 and became effective on June 5, 2006. The regulation CMS-3017-F finalized provisions set forth in the interim final regulation (70 FR 50940) published on August 26, 2005. This final rule conforms our regulations to section 302(a)(2)(E)(iv) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003. This rule defines the term power mobility devices (PMDs) as power wheelchairs and power operated vehicles (POVs or scooters). It sets forth revised conditions for Medicare payment of PMDs and defines who may prescribe PMDs. This rule also requires a face-to-face examination of the beneficiary by the physician or treating practitioner, a written prescription, and receipt of pertinent parts of the medical record by the supplier within 45 days after the face-to-face examination that the durable medical equipment (DME) suppliers maintain in their records and make available to CMS and its agents upon request. Finally, this rule discusses CMS' policy on documentation that may be requested by CMS and its agents to support a Medicare claim for payment.

Since the implementation of regulation CMS-3017-F, there have been no new requirements that have

necessitated changes to any burden. The change in total burden is attributable to an estimate of claims for PMD that were higher than the estimate of claims calculated for this PRA package. For example, last time CMS calculated burden estimates associated with this regulation to be 243,000 claims. For this package, CMS estimates that 240,325 claims will be submitted for payment in 2009. This translates into 48,065 hours instead of 48,600 hours, resulting in a difference of 535 hours less burden than originally estimated.

Form Number: CMS-10116 (OMB #0938-0971); **Frequency:** Occasionally; **Affected Public:** Private Sector; **Number of Respondents:** 89,411; **Total Annual Responses:** 240,325; **Total Annual Hours:** 48,065. (For policy questions regarding this collection contact Maria Ciccanti at 410-786-3107. For all other issues call 410-786-1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web Site address at <http://www.cms.hhs.gov/PaperworkReductionActof1995>, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to Paperwork@cms.hhs.gov, or call the Reports Clearance Office on (410) 786-1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received by the OMB desk officer at the address below, no later than 5 p.m. on June 1, 2009.

OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395-6974, e-mail: OIRA_submission@omb.eop.gov.

Dated: April 23, 2009.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. E9-9957 Filed 4-30-09; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Project

Title: Evaluation of the Community Healthy Marriage Initiative—Impact Evaluation Wave 2.

OMB No.: 0970-0322.

Description: The Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS), is conducting a demonstration and evaluation called the Community Healthy Marriage Initiative (CHMI). Demonstration programs have been funded through Healthy Marriage and Responsible Fatherhood grants authorized under section 403(a)(2) of the Social Security Act to support healthy marriage directly and to encourage community changes that increase support for healthy marriages and improve child and family well-

being. The objective of the evaluation is to: (1) Assess the implementation of community interventions designed to provide marriage education by examining the way the projects operate and by examining child support outcomes among low-income families in the community; and (2) evaluate the community impacts of these interventions on marital stability and satisfaction, child well-being and child support outcomes among low-income families.

The purpose of this information collection is to conduct a follow-up

survey of respondents from Wave 1 who live in the communities where CHMI demonstrations are operating, and a survey of CR141 program participants. The impact evaluation will assess the effects of community healthy marriage initiatives by comparing family and child well-being outcomes in the CR141 communities with similar outcomes in comparison communities that are well matched to the demonstration project sites.

Respondents: Community members and program participants in CHMI treatment and comparison communities.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Average number of responses per respondents	Average burden hours per response	Total burden hours
Wave 2 Survey	4,120	1	.75	3,090

Estimated Total Annual Burden Hours: 3,090.

Additional Information: In compliance with the requirements of Section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: OPRE Reports Clearance Officer. E-mail address: OPREinfocollection@acf.hhs.gov. All requests should be identified by the title of the information collection. The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c)

the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: April 23, 2009.

Seth Chamberlain,

OPRE Reports Clearance Officer.

[FR Doc. E9-9900 Filed 4-29-09; 8:45 am]

BILLING CODE 4184-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Summary Data Component, National Child Abuse and Neglect Data System (NCANDS).

OMB No.: 0980-0229.

Description: The Child Abuse and Neglect Treatment Act (42 U.S.C. 5101 *et seq.*) as amended requires States to annually work with the Secretary to provide to the maximum extent practical, a report that includes 12 data items listed in the statute. The National Child Abuse and Neglect Data System (NCANDS), administered by the Children's Bureau, meets this reporting requirement. In addition, the amendments of 1988 require that the data system shall be universal and case specific and integrated with other case-based foster care and adoption data collected by the Secretary. There are two data components, the Detailed Case Data Component (DCDC), which includes the case-level data submitted through the Child File and some aggregated data submitted through the Agency File, and the Summary Data component (SC), which is used by States that cannot submit case-level data. No changes are being requested. The Summary Data Component will be phased out over the next few years as the number of States that can complete the Child File increases.

Respondents: State Child Welfare Agencies.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
DCDC (includes the Child File and the Agency File)	49	1	108.60	5,321.40
Summary Data Component	3	1	32	96

Estimated Total Annual Burden Hours: 5,417.40.

In compliance with the requirements of Section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *infocollection@acf.hhs.gov*. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: April 28, 2009.
Janean Chambers,
Reports Clearance Officer.
 [FR Doc. E9-10021 Filed 4-30-09; 8:45 am]
BILLING CODE 4184-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; Collection of Customer Service, Demographic, and Smoking/Tobacco Use Information From NCI Cancer Information Service (CIS) Clients (NCI)

SUMMARY: In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Cancer Institute (NCI), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection: *Title:* Collection of Customer Service, Demographic, and Smoking/Tobacco Use Information from NCI Cancer Information Service (CIS) Clients. *Type of Information Collection Request:* Revision of currently approved collection 0925-0208 (expiration 09/30/2009). *Need and Use of Information Collection:* The National Cancer Institute's Cancer Information Service (CIS) provides the latest information on

cancer, clinical trials, and tobacco cessation in English and Spanish. Clients are served by calling 1-800-4-CANCER for cancer information; 1-877-44U-QUIT for smoking cessation services; and using the NCI's LiveHelp, a Web-based chat service. CIS currently conducts a brief survey of a sample of telephone and LiveHelp clients at the end of usual service—a survey that includes three customer service and twelve demographic questions (age, sex, race, ethnicity, education, household income, number in household, and five questions about health care/coverage). Characterizing clients and how they found out about the CIS is essential to customer service, program planning, and promotion. The NCI also conducts a survey of individuals using the CIS's smoking cessation services—a survey that includes 20 smoking/tobacco use "intake" questions that serve as a needs assessment that addresses smoking history, previous quit attempts, and motivations to quit smoking. An additional question is used with callers who want to receive proactive call-back services. Responses to these questions enable Information Specialists to provide effective individualized counseling. *Frequency of Response:* Once. *Affected Public:* Individuals or households. *Type of Respondents:* People with cancer; their relatives and friends; and general public, including smokers/tobacco users. Annualized estimates for numbers of respondents and respondent burden are presented in Table 1.

TABLE 1—ESTIMATE OF ANNUAL BURDEN HOURS

Type of respondents	Survey instrument	Number of respondents	Frequency of responses	Average time per response (minutes/hour)	Annual burden hours
Telephone Clients: ¹	Customer Service	62,000	1	1/60	1,033.33
	Demographic Questions	22,000	1	2/60	733.33
Smoking Cessation "Quitline" Clients: ^{1,2}					
Reactive Service Clients	Smoking Cessation "Intake" Questions.	4,641	1	5/60	386.75
Proactive Callback Service Clients ³	Demographic Questions	1,300	1	2/60	43.33
	Follow-Up	928	4	1/60	61.87
LiveHelp Clients: ⁴	Demographic questions	7,014	1	2/60	233.80
Total		97,883			2524.00

¹ Approximately 36% of telephone and quitline clients will be sampled for the demographic questions, and 100% of telephone clients will be sampled for the customer service questions. Estimates based on 77.5% response rate.

² 100% of smoking cessation clients will be asked the smoking intake questions. Estimates for quitline callers answering demographic questions are based on 77.8% response rate.

³ 100% of smoking cessation clients participating in the proactive callback service (about 20% of all smoking callers) will be asked the smoking follow-up question (at up to 4 callbacks).

⁴ Approximately 50% of LiveHelp clients will be sampled for the demographic questions.

The annualized cost to the respondents is estimated at \$48,752.

There are no Capital Costs, Operating

Costs, and/or Maintenance Costs to report.

Request For Comments: Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Mary Anne Bright, Associate Director, Office of Public Information and Resource Management, Office of Communications and Education, National Cancer Institute, 6116 Executive Blvd., Room 3049, MSC 8322, Bethesda, MD 20892-8322 or call 301-594-9048 or e-mail your request, including your address, to: brightma@mail.nih.gov.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Dated: April 23, 2009.

Vivian Horovitch-Kelley,

NCI Project Clearance Liaison, National Institutes of Health.

[FR Doc. E9-10012 Filed 4-30-09; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS-10284 and CMS-2567]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Department of Health and Human Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the

Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* New Collection; *Title of Information Collection:* Children's Health Insurance Program Reauthorization Act (CHIPRA) of 2009, State Option Pre-print to Include Pregnant Women in Title XXI; *Use:* Section 111 of CHIPRA adds a new section 2112 to the Social Security Act which gives States the option of providing necessary prenatal, delivery and postpartum care to low-income uninsured pregnant women through an amendment to its State Child Health Plan (CHIP plan). The purpose of this draft State plan amendment template is to provide States with the format needed to enable a State to amend their CHIP plan to reflect the coverage of pregnant women. *Form Number:* CMS-10284 (OMB#: 0938-NEW); *Frequency:* Reporting—One-time and Occasionally; *Affected Public:* State, Local or Tribal Government; *Number of Respondents:* 40; *Total Annual Responses:* 40; *Total Annual Hours:* 3,200. (For policy questions regarding this collection contact Meredith Robertson at 410-786-6543. For all other issues call 410-786-1326.)

2. *Type of Information Collection Request:* Reinstatement without change of a previously approved collection; *Title of Information Collection:* Statement of Deficiencies and Plan of Correction; *Use:* The information from the CMS-2567 is used by the States and CMS regional offices to document and certify compliance. *Form Number:* CMS-2567 (OMB#: 0938-0391); *Frequency:* Reporting—Annually; *Affected Public:* State, Local or Tribal Government, Federal Government, Business or other for-profits and Not-for-profit Institutions; *Number of Respondents:* 60,000; *Total Annual Responses:* 60,000; *Total Annual Hours:* 120,000. (For policy questions regarding this collection contact Joanne Perry at

410-786-3336. For all other issues call 410-786-1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web Site at <http://www.cms.hhs.gov/PaperworkReductionActof1995>, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to Paperwork@cms.hhs.gov, or call the Reports Clearance Office on (410) 786-1326.

In commenting on the proposed information collections please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in one of the following ways by June 30, 2009:

1. *Electronically.* You may submit your comments electronically to <http://www.regulations.gov>. Follow the instructions for "Comment or Submission" or "More Search Options" to find the information collection document(s) accepting comments.

2. *By regular mail.* You may mail written comments to the following address:

CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number (CMS-10283), Room C4-26-05, 7500 Security Boulevard, Baltimore, Maryland 21244-1850.

Dated: April 23, 2009.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. E9-9959 Filed 4-30-09; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Evaluation of the Transitional Living Program (TLP).

OMB No.: New Collection.

Description: The Runaway and Homeless Youth Act (RHYA), as amended by Public Law 106-71 (42 U.S.C. 5701 *et seq.*), provides for the Transitional Living Program (TLP), a residential program lasting up to 18 months designed to prepare older homeless youth ages 16-21 for a healthy and self-sufficient adulthood. Section 119 of RHYA requires a study on the

long-term housing outcomes of youth after exiting the program. In addition to collecting information on housing outcomes, the study will also consider the living, employment, education, and family situation of the youth before and

after their time in the TLP. This information will be used to better understand the most effective practices in improving long-term outcomes of youth in an effort to guide program improvements.

Respondents: (1) Youth ages 16–21 participating in Transitional Living Programs and (2) the Executive Director and Program Manager representing TLP grantees.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Grantee Survey	70	1	1	70
Youth Baseline Survey	760	1	0.50	380
Youth Exit Survey	760	1	0.50	380
Youth 6-Month Follow Up	760	1	0.50	380
Youth 12-Month Follow Up	760	1	0.50	380
Service Log	760	1	0.25	190

Estimated Total Annual Burden Hours: 1,780.

Additional Information:

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: infocollection@acf.hhs.gov.

OMB Comment:

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Fax: 202–395–7245, Attn: Desk Officer for the Administration for Children and Families.

Dated: April 28, 2009.

Janean Chambers,

Reports Clearance Officer.

[FR Doc. E9–10020 Filed 4–30–09; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–D–0181]

Draft Guidance for Industry on Label Comprehension Studies for Nonprescription Drug Products; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled “Label Comprehension Studies for Nonprescription Drug Products.” The draft guidance provides recommendations on the design of label comprehension studies, which can be used to assess the extent to which consumers understand the information conveyed by proposed nonprescription drug product labeling and then apply that information when making hypothetical drug product use decisions.

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 written or electronic comments on the draft guidance by July 30, 2009.

ADDRESSES: 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. Send one self-addressed adhesive label to assist that office in processing your requests. 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 electronic comments to <http://www.regulations.gov>. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT:

Laura Shay, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, rm. 5466, Silver Spring, MD 20993–0002, 301–796–0994.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled “Label Comprehension Studies for Nonprescription Drug Products.” This draft guidance is intended for individuals or organizations involved in the development of label comprehension studies for nonprescription drug products. This draft guidance discusses general concepts to be considered in the design and conduct of a label comprehension study. This draft guidance also incorporates advice obtained from the September 25, 2006, meeting of the Nonprescription Drug Advisory Committee that considered issues related to the analysis and interpretation of consumer behavior studies conducted to support marketing of nonprescription drug products.

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 label comprehension studies for nonprescription drug products. 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. The Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR parts 312 and 314 have been approved under OMB Control Numbers 0910–0014 and 0910–0001, respectively.

III. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding 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.

IV. Electronic Access

Persons with access to the Internet may obtain the document at either <http://www.fda.gov/cder/guidance/index.htm> or <http://www.regulations.gov>.

Dated: April 22, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9–10005 Filed 4–30–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–2303–N]

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Establishment of the Children's Health Insurance Program Working Group and Request for Nominations for Members

AGENCIES: Centers for Medicare & Medicaid Services (CMS), HHS; Employee Benefits Security Administration (EBSA), DOL

ACTION: Notice.

SUMMARY: This notice announces the establishment of the Children's Health Insurance Program Working Group and discusses the group's purpose and charter. It also solicits nominations for members.

DATES: Nominations for membership will be considered if they are received by June 1, 2009.

ADDRESSES: Send nominations and written requests for copies of the Charter of the Children's Health Insurance Program Working Group to—Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Mail stop: S2–06–28, Attention: Stacey Green.

Web page: You may also review the charter online at: http://www.cms.hhs.gov/FACA/06_CHIPWorkingGroup.asp.

FOR FURTHER INFORMATION CONTACT: Stacey Green, Centers for Medicare & Medicaid Services, HHS at Stacey.Green@cms.hhs.gov or (410) 786–6102; or Amy Turner, Employee Benefits Security Administration, DOL at (202) 693–8335. Press inquiries are handled through the CMS Press Office at (202) 690–6145.

SUPPLEMENTARY INFORMATION:

I. Background

Section 311(b)(1)(C) of the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA) (Pub. L. 111–3) (Feb. 4, 2009), directs the Secretary of Health and Human Services and the Secretary of Labor to jointly establish a Medicaid, CHIP, and Employer-Sponsored Coverage Coordination Working Group (“the CHIP Working Group”). The CHIP Working Group, as chartered, under the legal authority of section 311(b)(1)(C) of CHIPRA (Pub. L. 111–3), is also governed by the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App.

II. Charter, General Responsibilities, and Composition of the Children's Health Insurance Program Working Group

A. Charter Information and General Responsibilities

On April 3, 2009 the Secretary of Health and Human Services and the Secretary of Labor signed the charter establishing the CHIP Working Group. This group will meet up to 3 times over the life of the Group and will terminate 17 months from the charter filing date. You may obtain a copy of the charter for the CHIP Working Group by mailing a

written request to the address specified in the **ADDRESSES** section of this notice. The purpose of the Working Group shall be to:

- Develop a model coverage coordination disclosure form for plan administrators of group health plans to complete for purposes of permitting a State to determine the availability and cost-effectiveness of coverage available under group health plans to employees who have family members who are eligible for premium assistance offered under a State plan under titles XIX or XXI of the Social Security Act (the Act) and to allow for coordination of coverage for enrollees of such plans. The form shall provide the following information in addition to other information as the Working Group determines appropriate: (1) A determination of whether the employee is eligible for coverage under the group health plan, (2) the name and contact information of the plan administrator of the group health plan, (3) the benefits offered under the plan, (4) the premiums and cost-sharing required under the plan, and (5) any other information relevant to the coverage under the plan.

- Identify the impediments to the effective coordination of coverage available to families that include employees of employers that maintain group health plans and members who are eligible for medical assistance under title XIX of the Act or child health assistance or other health benefits coverage under title XXI of the Act.

- Not later than August 5, 2010, submit to the Secretary of Labor and the Secretary of Health and Human Services the model disclosure form as stated above along with a report containing recommendations for appropriate measures for addressing the impediments (as stated above) to the effective coordination of coverage between group health plans and the State plans under titles XIX and XXI of the Act.

B. Composition of the CHIP Working Group

The Working Group shall consist of not more than 30 members, jointly appointed by the Secretary of Health and Human Services and the Secretary of Labor, including the chair(s), one of whom shall be appointed by the Secretary of Health and Human Services and one of whom shall be appointed by the Secretary of Labor. Members will serve without compensation but will receive reimbursement for travel costs.

The Working Group shall be composed of representatives of: The Department of Labor; the Department of

Health and Human Services; State directors of the Medicaid Program under title XIX of the Act; State directors of the State Children's Health Insurance Program under title XXI of the Act; employers, including owners of small businesses and their trade or industry representatives and certified human resource and payroll professionals; plan administrators and plan sponsors of group health plans as defined in section 607(1) of the Employee Retirement Income Security Act of 1974, as amended; health insurance issuers; and children and other beneficiaries of medical assistance under title XIX of the Act or child health assistance or other health benefits coverage under title XXI of the Act.

III. Submission of Nominations

The Department of Labor and the Department of Health and Human Services (the Departments) are requesting nominations for membership on the CHIP Working Group. The Departments will consider qualified individuals who are self-nominated or are nominated by organizations representing affected stakeholders when selecting those representatives. The Departments will make every effort to appoint members to serve on the advisory board from among those candidates determined to meet specific statutory categories and Departmental needs and in a manner to ensure an appropriate balance of membership. The Secretaries, however, reserve the discretion to appoint members to serve on the advisory board in response to this notice if necessary to meet specific statutory categories and Departmental needs in a manner to ensure an appropriate balance of membership.

Any interested person may nominate one or more qualified individuals (self-nominations will also be accepted) for each of the categories listed in section II.B of this notice. Each nomination must include the following information:

1. A letter of nomination that contains contact information for both the nominator and nominee (if not the same).
2. A statement from the nominee that he or she is willing to serve on the Working Group for its duration and an explanation of interest in serving on the advisory board. The nominee should also indicate which category or categories he or she is willing to represent and whether he or she would be willing to serve as the chair of the advisory board. (For self-nominations, this information may be included in the nomination letter.)
3. A curriculum vitae that indicates the nominee's educational and/or

experience with Medicaid, CHIP, or experience with employment-based health coverage.

4. Two letters of reference that support the nominee's qualifications for participation on the advisory board. (For nominations other than self-nominations, a nomination letter that includes information supporting the nominee's qualifications may be counted as one of the letters of reference.)

To ensure that a nomination is considered, the Departments must receive all of the nomination information specified in section III of this notice by June 1, 2009. Nominations should be mailed to the address specified in the **ADDRESSES** section of this notice.

Authority: Section 311(b)(1)(C) of the Children's Health Insurance Program Reauthorization Act of 2009 (Pub. L. 111-3) (Feb. 4, 2009). The Children's Health Insurance Program (CHIP) Working Group is governed by the provisions of the Federal Advisory Committee Act, (Pub. L. 92-463) (Oct. 6, 1972), as amended, 5 U.S.C. App.

Dated: April 10, 2009.

Charlene Frizzera,

Acting Administrator, Centers for Medicare & Medicaid Services, Department of Health and Human Services.

Dated: April 28, 2009.

Alan D. Lebowitz,

Deputy Assistant Secretary for Program Operations, Employee Benefits Security Administration, Department of Labor.
[FR Doc. E9-10083 Filed 4-30-09; 8:45 am]
BILLING CODE 4120-01-4510-29-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2008-D-0597]

Guidance for Industry: Small Entities Compliance Guide for Renderers—Substances Prohibited From Use in Animal Food or Feed; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry #195 entitled "Small Entities Compliance Guide for Renderers—Substances Prohibited From Use in Animal Food or Feed" This small entities compliance guide aids renderers in complying with the requirements of the final rule published in the **Federal Register** of April 25, 2008 (73 FR 22720). FDA's goal is to strengthen

existing safeguards to prevent the spread of bovine spongiform encephalopathy (BSE) in U.S. cattle and to reduce the risk of human exposure to the BSE agent.

DATES: Submit written or electronic comments on agency guidances at any time.

ADDRESSES: Submit written requests for single copies of the guidance to the Communications Staff (HFV-12), Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests.

Submit written comments on the guidance to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to <http://www.regulations.gov>. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Shannon Jordre, Center for Veterinary Medicine (HFV-230), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240-276-9229, Shannon.jordre@fda.hhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of November 26, 2008 (73 FR 72062), FDA published the notice of availability for a draft guidance entitled "Small Entities Compliance Guide for Renderers—Substances Prohibited From Use in Animal Food or Feed" giving interested persons until January 26, 2009, to comment on the draft guidance. FDA received several comments on the draft guidance and those comments were considered as the guidance was finalized. FDA received a number of comments that were outside the scope of the draft guidance, and thus those comments were not addressed in the final version.

The comments raised a number of questions including the following:

- Inquiries from an industry organization regarding the difference between cattle materials prohibited in animal feed (CMPAF) and specified risk materials (SRM);
- Industry requests for clarification on the provisions of the regulation concerning insoluble impurity standards for tallow and how to achieve compliance;
- Whether a certificate of analysis is necessary for each shipment of tallow;
- Whether edible tallow must meet the 0.15 percent insoluble impurities

standard for use in ruminant feed, and if so whether this requirement is consistent with FDA's requirement that tallow for human food and cosmetics be free of prohibited material or contain less than 0.15 percent insoluble impurities;

- Whether the impurity standard applies to blended fats and oils;
- Whether a renderer can be held responsible for the impurity level in tallow after it is delivered to a customer's storage tanks;

- Whether the new regulation applies to cattle material fed to mink; and finally,

- A request to use the word "effective" in the guidance when referring to the removal of brains and spinal cords of cattle.

FDA has responded to these comments and concerns in the question and answer portion of the final guidance. The guidance announced in this notice finalizes the draft guidance dated November 25, 2008.

II. Significance of Guidance

This level 1 guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on the 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.

III. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR 589.2001 have been approved under OMB control number 0910–0627.

IV. Comments

Submit written requests for single copies of the guidance to the Communications Staff (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests.

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding 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.

V. Electronic Access

Persons with access to the Internet may obtain the guidance at either <http://www.fda.gov/cvm> or <http://www.regulations.gov>.

Dated: April 27, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9–10034 Filed 4–30–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee to the Director, Centers for Disease Control and Prevention (ACD, CDC)

Notice of Cancellation: This notice was published in the **Federal Register** on April 13, 2009, Volume 74, Number 69, page 16877. The meeting previously scheduled to convene on April 30, 2009 has been cancelled.

Contact Person for More Information: Brad Perkins, M.D., M.B.A., ACD, CDC, 1600 Clifton Road, NE., Mail Stop D–14, Atlanta, GA 30303; Telephone: (404) 639–7000.

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: April 27, 2009.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E9–10051 Filed 4–30–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Center for Injury Prevention and Control, Initial Review Group (NCIPC, IRG)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act

(Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), announces the following meeting of the aforementioned review group:

Times and Date:

12:30 p.m.–1 p.m., May 20, 2009 (Open).

1 p.m.–3 p.m., May 20, 2009 (Closed).

Place: Teleconference, Toll Free: 888–793–2154, Participant Passcode: 4424802.

Status: Portions of the meetings 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 Section 10(d) of Public Law 92–463.

Purpose: This group is charged with providing advice and guidance to the Secretary, Department of Health and Human Services, and the Director, CDC, concerning the scientific and technical merit of grant and cooperative agreement applications received from academic institutions and other public and private profit and nonprofit organizations, including State and local government agencies, to conduct specific injury research that focuses on prevention and control.

Matters To Be Discussed: The meeting will include the review, discussion, and evaluation of individual research cooperative agreement applications submitted in response to Fiscal Year 2009 Requests for Applications related to the following individual research announcement: RFA–EH–09–002 "Program to Expand State Public Health Laboratory Capacity for Newborn Bloodspot Screening (U01)".

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Jane Suen, Dr.P.H., M.S., NCIPC, CDC, 4770 Buford Highway, NE., Mailstop F–62, Atlanta, Georgia 30341, Telephone: (770) 488–4281.

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: April 24, 2009.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E9–10031 Filed 4–30–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, May 18, 2009, 8 a.m. to May 18, 2009, 5 p.m., St. Gregory Hotel, 2033 M Street, NW.,

Washington, DC 20036 which was published in the **Federal Register** on April 21, 2009, 74 FR 18242–18243.

The meeting will be held May 19, 2009. The meeting time and location remain the same. The meeting is closed to the public.

Dated: April 24, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–10019 Filed 4–30–09; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Clinical and Integrative Gastrointestinal Pathobiology Study Section, May 29, 2009, 8 a.m. to May 29, 2009, 5 p.m., Avenue Hotel Chicago, 160 E. Huron Street, Chicago, IL, 60611 which was published in the **Federal Register** on April 23, 2009, 74 FR 18583–18584.

The meeting will be held May 28, 2009, 6 p.m. to May 29, 2009, 5 p.m.. The meeting location remains the same. The meeting is closed to the public.

Dated: April 24, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–10018 Filed 4–30–09; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, May 19, 2009, 8 a.m. to May 19, 2009, 5 p.m., St. Gregory Hotel, 2033 M Street, NW., Washington, DC, 20036 which was published in the **Federal Register** on April 21, 2009, 74 FR 18242–18243.

The meeting will be held May 18, 2009. The meeting time and location remain the same. The meeting is closed to the public.

Dated: April 24, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–10017 Filed 4–30–09; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group; Subcommittee G—Education.

Date: June 9, 2009.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: Jeannette F. Korczak, PhD, Scientific Review Officer, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Blvd., Room 8115, Bethesda, MD 20892, 301–496–9767, korczakj@mail.nih.gov.

Name of Committee: National Cancer Institute Initial Review Group, Subcommittee I—Career Development.

Date: June 23–24, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Washington DC, 1515 Rhode Island Ave., NW., Washington, DC 20005.

Contact Person: Sonya Roberson, PhD, Scientific Review Officer, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Blvd., Room 8109, Bethesda, MD 20892. 301–594–1182. robersons@mail.nih.gov.

Name of Committee: National Cancer Institute Special Emphasis Panel, TCGA Centers.

Date: June 30–July 1, 2009.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Thomas M. Vollberg, PhD, Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Boulevard, Room 7142, Bethesda, MD 20892. 301–594–9582. vollbert@mail.nih.gov.

Name of Committee: National Cancer Institute Special Emphasis Panel, Tumor Biology and Microenvironment.

Date: July 8–9, 2009.

Time: 8 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Savvas C. Makrides, PhD, Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Blvd., Rm 8050a, Bethesda, MD 20892. 301–496–7421. makridess@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: April 24, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–10013 Filed 4–30–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Center for Injury Prevention and Control, Initial Review Group (NCIPC, IRG)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), announces the following meeting of the aforementioned review group:

Times and Date: 10 a.m.–11:30 a.m., May 21, 2009 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in sections 552b(c)(4) and (6), Title 5, U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to section 10(d) of Public Law 92–463.

Purpose: This group is charged with providing advice and guidance to the

Secretary, Department of Health and Human Services, and the Director, CDC, concerning the scientific and technical merit of grant and cooperative agreement applications received from academic institutions and other public and private profit and nonprofit organizations, including State and local government agencies, to conduct specific injury research that focuses on prevention and control.

Matters To Be Discussed: The meeting will include the reporting and voting of the peer reviews conducted in response to Fiscal Year 2009 Requests for Applications related to the following individual research announcements: (1) RFA-CE-09-005, Research Priorities in Acute Injury Care (RO1), (2) RFA-CE-09-007 Research Grants for Preventing Violence and Violence-Related Injury (RO1), (3) RFA-CE09-004, Unintentional Poisoning from Prescription Drug Overdoses in Adults (R21), (4) RFA-CE-09-002, Adaptations of Evidence-Based Parenting Programs to Engage Fathers in Maltreatment Prevention (UO1), (5) RFA-CE-09-008, Identifying Neighborhood Level Protective and Promotive Factors for Youth Violence (UO1), (6) RFA-CE-09-009, Youth Violence Prevention through Economic, Environmental, and Policy Change (UO1), (7) RFA-CE-09-003, Preventing Sexual Violence Perpetration: Targeting Modifiable Risk Factors (UO1), (8) RFA-TS-09-002, Disease Progression in Persons Exposed to Asbestos Contaminated Vermiculite Ore in Marysville, Ohio (RO1), (9) RFA-TS-09-001, Libby, Montana Amphibole Epidemiology Research Program (RO1), (10) RFA-EH-09-002, "Program to Expand State Public Health Laboratory Capacity for Newborn Bloodspot Screening (UO1), (11) RFA-EH-09-003, Program to Enhance State Public Health Laboratory Capacity for Newborn Bloodspot Screening (UO1).

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Rick Waxweiler, PhD, Director, Extramural Research Program Office, National Center for Injury Prevention & Control and Executive Secretary, NCIPC IRG, CDC, 4770 Buford Highway, NE., M/S F-62, Atlanta, Georgia 30341, telephone 770-488-4850.

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: April 24, 2009.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E9-10028 Filed 4-30-09; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA-1830-DR; Docket ID FEMA-2008-0018]

Minnesota; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Minnesota (FEMA-1830-DR), dated April 9, 2009, and related determinations.

DATES: *Effective Date:* April 22, 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: The notice of a major disaster declaration for the State of Minnesota is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of April 9, 2009.

Becker, Beltrami, Chippewa, Clearwater, Douglas, Hubbard, Lac Qui Parle, Lake of the Woods, Pope, Stevens, Swift, and Yellow Medicine Counties, and the White Earth Tribal Nation for Public Assistance.

The following Catalog of Federal Domestic Assistance (CFDA) Numbers 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.

Nancy Ward,

Acting Administrator, Federal Emergency Management Agency.

[FR Doc. E9-10082 Filed 4-30-09; 8:45 am]

BILLING CODE 9111-23-P

DEPARTMENT OF HOMELAND SECURITY

Fee for Services To Support FEMA's Offsite Radiological Emergency Preparedness Program

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) has established a fiscal year (FY) 2009 hourly rate of \$49.13 for assessing and collecting fees from Nuclear Regulatory Commission (NRC) licensees for services provided by FEMA personnel for FEMA's Radiological Emergency Preparedness (REP) Program.

DATES: This user fee hourly rate is effective for FY 2009 (October 1, 2008, to September 30, 2009).

FOR FURTHER INFORMATION CONTACT:

James Kish, Director, Technological Hazards Division, Department of Homeland Security/FEMA, 1800 S. Bell Street-CC845, Mail Stop 3025, Arlington, VA 20598-3025; (202) 212-2205 (phone), or (e-mail) james.kish@dhs.gov.

SUPPLEMENTARY INFORMATION: As authorized in 42 U.S.C. 5196e, FEMA will be charging an hourly user fee rate of \$49.13 to NRC licensees of commercial nuclear power plants for all REP Program site-specific related services provided by FEMA personnel as described in 44 CFR part 354. FEMA will deposit these funds in the REP Program Fund to offset the actual costs by FEMA for its REP Program.

FEMA established the hourly rate based upon methodology set forth in 44 CFR 354.4(b), "Determination of site-specific biennial exercise related component for FEMA personnel," and will use the rate to assess and collect fees for site-specific biennial exercise related services rendered by FEMA personnel. This hourly rate only addresses charges to NRC licensees for services that FEMA personnel provide under the site-specific component, not charges for services FEMA personnel provide under the flat fee component referenced at 44 CFR 354.4(d), nor for services that FEMA contractors provide. We will charge for FEMA contractors' services in accordance with 44 CFR 354.4(c) and (d) for the recovery of appropriated funds obligated for the Emergency Management Planning and Assistance (EMPA) portion of FEMA's REP Program budget.

Dated: April 23, 2009.

Nancy Ward,

Acting Administrator, Federal Emergency Management Agency.

[FR Doc. E9-10084 Filed 4-30-09; 8:45 am]

BILLING CODE 9110-21-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA-1830-DR; Docket ID FEMA-2008-0018]

Minnesota; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Minnesota (FEMA-1830-DR), dated April 9, 2009, and related determinations.

DATES: *Effective Date:* April 14, 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: The notice of a major disaster declaration for the State of Minnesota is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of April 9, 2009.

Grant, Lake, Mahnomen, Otter Tail, Pennington, Red Lake, Roseau, and Wadena Counties for Public Assistance.

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.

Nancy Ward,

Acting Administrator, Federal Emergency Management Agency.

[FR Doc. E9-10080 Filed 4-30-09; 8:45 am]

BILLING CODE 9111-23-P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA-1825-DR; Docket ID FEMA-2008-0018]

Washington; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Washington (FEMA-1825-DR), dated March 2, 2009, and related determinations.

DATES: *Effective Date:* April 16, 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: The notice of a major disaster declaration for the State of Washington is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of March 2, 2009.

Ferry County for Public Assistance.

Stevens County for emergency protective measures [Category B], including snow removal assistance, under the Public Assistance program for any continuous 48-hour period during or proximate to the incident period (already designated for Public Assistance [Categories A-G]).

Whitman County for Public Assistance [Categories A-G] (already designated for emergency protective measures [Category B], including snow removal assistance, under the Public Assistance program for any 48-hour period during or proximate to the incident period).

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.

Nancy Ward,

Acting Administrator, Federal Emergency Management Agency.

[FR Doc. E9-10086 Filed 4-30-09; 8:45 am]

BILLING CODE 9111-23-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5280-N-16]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

DATES: *Effective Date:* May 1, 2009.

FOR FURTHER INFORMATION CONTACT:

Kathy Ezzell, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7262, Washington, DC 20410; telephone (202) 708-1234; TTY number for the hearing- and speech-impaired (202) 708-2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800-927-7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless v. Veterans Administration*, No. 88-2503-OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: April 23, 2009.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

[FR Doc. E9-9678 Filed 4-30-09; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF THE INTERIOR**Minerals Management Service****[Docket No. MMS-2009-OMM-0003]****MMS Information Collection Activity: 1010-NEW Alaska Subsistence Study; Notice of a New Collection; Comment Request****AGENCY:** Minerals Management Service (MMS), Interior.**ACTION:** Notice of an information collection (1010-NEW).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), MMS is inviting comments on a new collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) pertains to conducting a study, Alaska Subsistence Study.

DATES: Submit written comments by June 30, 2009.

FOR FURTHER INFORMATION CONTACT: Cheryl Blundon, Regulations and Standards Branch at (703) 787-1607, to obtain a copy, at no cost, of the study that requires the subject collection of information. For more information on the study itself, contact Chris Campbell in the MMS Alaska Regional Office at (907) 334-5264.

ADDRESSES: You may submit comments by either of the following methods listed below.

- Electronically: Go to <http://www.regulations.gov>. Under the tab More Search Options, click Advanced Docket Search, then select Minerals Management Service from the agency drop-down menu, then click submit. In the Docket ID column, select MMS-2009-OMM-0003 to submit public comments and to view supporting and related materials available for this rulemaking. Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's User Tips link. The MMS will post all comments.

- Mail or hand-carry comments to the Department of the Interior; Minerals Management Service; Attention: Cheryl Blundon; 381 Elden Street, MS-4024; Herndon, Virginia 20170-4817. Please reference "Information Collection 1010-NEW" in your subject line and mark your message for return receipt. Include your name and return address in your message text.

SUPPLEMENTARY INFORMATION:

Title: Alaska Subsistence Study.
OMB Control Number: 1010-NEW.

Abstract: The United States Congress, through the 1953 Outer Continental Shelf (OCS) Lands Act (OCSLA) [Pub. L. 95-372, Section 20] and its subsequent amendments, requires the Secretary of the Department of the Interior to monitor and assess the impacts of resource development activities in Federal waters on human, marine, and coastal environments. The OCSLA amendments authorize the Secretary of the Interior to conduct studies in areas or regions of sales to ascertain the "environmental impacts on the human, marine, and coastal environments of the outer Continental Shelf and the coastal areas which may be affected by oil and gas or other mineral development" (43 U.S.C. 1346).

The National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321-4347) requires that all Federal Agencies use a systematic, interdisciplinary approach to ensure the integrated use of the natural and social sciences in any planning and decision making that may have an effect on the human environment. The Council on Environmental Quality's Regulations for Implementing Procedural Provisions of NEPA (40 CFR 1500-1508) state that the "human environment" is to be "interpreted comprehensively" to include "the natural and physical environment and the relationship of people with that environment" (40 CFR 1508.14). An action's "aesthetic, historic, cultural, economic, social or health" effects must be assessed, "whether direct, indirect, or cumulative" (40 CFR 1508.8).

The U.S. Department of the Interior/Minerals Management Service (DOI/MMS) is the Federal administrative agency created both to conduct OCS lease sales and to monitor and mitigate adverse impacts that might be associated with offshore resource development. Within the MMS, the Environmental Studies Program functions to implement and manage the responsibilities of research. This study will facilitate the meeting of DOI/MMS information needs on subsistence food harvest and sharing activities in coastal Alaska.

Planning areas in Alaska can include up to and more than 50,000 square miles—a large geographic area with diverse, abundant, and environmentally sensitive resources. Within these areas, the DOI's Proposed OCS Oil and Gas Leasing Program considers that there will be an oil and gas lease sale in the future. The proposed sale area or adjacent areas support major productive commercial and subsistence fisheries, provide habitat to numerous marine mammals, and are a significant

migration and staging area for internationally important waterfowl. Numerous communities in the State of Alaska rely heavily on subsistence or commercial fisheries.

This information collection (IC) request involves a study that will assess the vulnerabilities of several coastal communities in Alaska, during various times, to the potential effects of offshore oil and gas development on subsistence food harvest and sharing activities. It will investigate the resilience of local sharing networks that structure contemporary subsistence-cash economies using research methods that involve residents of these communities most proximate to future sale area(s).

The MMS will use the information collected to gain knowledge about local social systems that will help shape development leasing strategies and serve as an interim baseline for impact monitoring to compare against future research in these areas. Without this data, MMS will not have sufficient information to make informed leasing and development decisions for these areas.

Study Instrument: The research will be collected from a study, administered to each head of household in the communities to collect information about the subsistence (harvest data) and sharing networks of the communities. The information under this proposed collection will be obtained through personal interviews that are voluntary.

Interview methods: The interviews for each study will be done face to face in a setting that is most comfortable for the respondents. This personal method is more expensive and time consuming for the researchers, but these drawbacks are outweighed by improvements in the quality of information obtained and the rapport established between the person asking the questions and the person interviewed. Telephone interviews have not been successful in rural Alaska. Each respondent will be paid an honorarium for taking part in the study.

No items of a sensitive nature are collected. Responses are voluntary.

Frequency: One-time event for each study.

Estimated Number and Description of Respondents: Approximately 128 respondents from Alaska coastal communities.

Estimated Reporting and Recordkeeping "Hour" Burden: The MMS estimates the total annual burden hours to be 192 (128 respondents × 1.5 hours for each study = 192 total burden hours).

Estimated Reporting and Recordkeeping "Non-Hour Cost"

Burden: We have identified no non-hour cost burdens for this collection.

Protections of Respondent

Confidentiality: The study is voluntary. The questionnaires will be administered under the guidelines of 45 CFR part 46. The introduction that will be covered with each participant stresses that participation is voluntary and confidentiality will be maintained. No names will appear on the study form, no photographs will be taken of any informant, and no videotaping will be conducted. Minor children will not be interviewed. Procedures designed to protect the confidentiality of the information provided will include the use of coded selection and identification number to protect the identities of respondents.

This study will ask five potentially sensitive but routine questions on annual household income, unemployment, subsistence expenses, and household finances. One of these questions asks the views of the respondent about future potential oil and gas development. Questions such as these have been used in past studies in rural Alaska with few, if any, complaints. During the interviews, the respondents will be warned that sensitive questions are coming up and that they may refuse to answer any query they object to. Respondents will also be reminded that they are assured anonymity through the study design and process.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) requires each agency “* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *”. Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency’s estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Agencies must also estimate the “non-hour cost” burdens to respondents or recordkeepers resulting from the collection of information. Therefore, if you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information, monitoring, and record storage facilities. You should not include estimates for equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our submission for OMB approval. As a result of your comments, we will make any necessary adjustments to the burden in our submission to OMB.

Public Comment Procedures: 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.

MMS Information Collection Clearance Officer: Arlene Bajusz (202) 208-7744.

Dated: April 27, 2009.

E.P. Danenberger,
Chief, Office of Offshore Regulatory Programs.
[FR Doc. E9-10088 Filed 4-30-09; 8:45 am]

BILLING CODE 4310-MR-P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

[Docket No. MMS-2008-OMM-0042]

MMS Information Collection Activity: 1010-0128, Subpart O, Well Control and Production Safety Training, Extension of a Collection; Comment Request; Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension of an information collection (1010-0128).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), MMS is inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) concerns the paperwork requirements in the regulations under 30 CFR 250, Subpart O, “Well Control and Production Safety Training.”

DATES: Submit written comments by June 30, 2009.

ADDRESSES: You may submit comments by either of the following methods listed below.

- Electronically: go to <http://www.regulations.gov>. Under the tab More Search Options, click Advanced Docket Search, then select Minerals Management Service from the agency drop-down menu, then click submit. In the Docket ID column, select MMS-2008-OMM-0042 to submit public comments and to view supporting and related materials available for this collection. Information on using [Regulations.gov](http://www.regulations.gov), including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site’s User Tips link. The MMS will post all comments.

- Mail or hand-carry comments to the Department of the Interior; Minerals Management Service; Attention: Cheryl Blundon; 381 Elden Street, MS-4024; Herndon, Virginia 20170-4817. Please reference “Information Collection 1010-0128” in your subject line and mark your message for return receipt. Include your name and return address in your message text.

FOR FURTHER INFORMATION CONTACT: Cheryl Blundon, Regulations and Standards Branch at (703) 787-1607. You may also contact Cheryl Blundon to obtain a copy, at no cost, of the regulation that requires the subject collection of information.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR Part 250, Subpart O, Well Control and Production Safety Training.

OMB Control Number: 1010-0128.

Abstract: The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior (Secretary) to prescribe rules and regulations to administer leasing of the OCS. Such rules and regulations will apply to all operations conducted under a lease. Operations on the OCS must preserve, protect, and develop oil and natural gas resources in a manner that is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition.

Section 1332(6) of the OCS Lands Act (43 U.S.C. 1332) requires that "operations in the [O]uter Continental Shelf should be conducted in a safe

manner by well trained personnel using technology, precautions, and other techniques sufficient to prevent or minimize the likelihood of blowouts, loss of well control, fires, spillages, physical obstructions to other users of the waters or subsoil and seabed, or other occurrences which may cause damage to the environment or to property or endanger life or health." This authority and responsibility are among those delegated to the Minerals Management Service (MMS). To carry out these responsibilities, MMS issues regulations governing oil and gas or sulphur operations in the OCS.

Regulations at 30 CFR part 250, subpart O, implement these safe operation requirements. The MMS uses the information collected under subpart O to ensure that workers in the OCS are properly trained with the necessary skills to perform their jobs in a safe and pollution-free manner. In some instances, MMS will conduct oral interviews of offshore employees to evaluate the effectiveness of a company's training program. The information collected is necessary to

verify personnel training compliance with the requirements.

We will protect information from respondents considered proprietary under the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR part 2) and under regulations at 30 CFR parts 250, 251, and 252. No items of a sensitive nature are collected. Responses are mandatory or are required to obtain or retain a benefit.

Frequency: Primarily on occasion or annual.

Estimated Number and Description of Respondents: Approximately 130 Federal oil and gas OCS lessees.

Estimated Reporting and Recordkeeping Hour Burden: The currently approved annual reporting burden for this collection is 2,106 hours. The following chart details the individual components and respective hour burden estimates of this ICR. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

Citation 30 CFR 250 Subpart O	Reporting & recordkeeping requirement	Hour burden
1503(b), (c)	Develop training plans	60.
1503(c)	Maintain copies of training plan and employee training documentation for 5 years	plan = 15 min.; employee record = 5 min.
1503(c)	Upon request, provide MMS copies of employee training documentation or provide copy of training plan.	5.
1507(b)	Employee oral interview conducted by MMS	10 min.
1507(c), (d); 1508; 1509.	Written testing conducted by MMS or authorized representative. [Not considered IC under 5 CFR 1320.3(h)(7)].	
1510(b)	Revise training plan and submit to MMS	4.
1500-1510	General departure or alternative compliance requests not specifically covered elsewhere in subpart O.	2.

Estimated Reporting and Recordkeeping "Non-Hour Cost" Burden:

We have identified no non-hour cost burdens for this collection.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) requires each agency " * * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * * ". Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is

necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Agencies must also estimate the "non-hour cost" burdens to respondents or recordkeepers resulting from the collection of information. Therefore, if you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You

should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information, monitoring, and record storage facilities. You should not include estimates for equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our

submission for OMB approval. As a result of your comments, we will make any necessary adjustments to the burden in our submission to OMB.

Public Comment Procedures: 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.

MMS Information Collection Clearance Officer: Arlene Bajusz (202) 208-7744.

Dated: November 6, 2008.

E.P. Danenberger,
Chief, Office of Offshore Regulatory Programs.

Editorial Note: This document was received in the Office of the Federal Register on April 28, 2009.

[FR Doc. E9-10091 Filed 4-30-09; 8:45 am]

BILLING CODE 4310-MR-P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

[Docket No. MMS-2009-OMM-0006]

MMS Information Collection Activities: 1010-0091, Facilities Located Seaward of the Coast Line; Proposed Collection; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension of an information collection (1010-0091).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), MMS is inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) concerns the paperwork requirements in the regulations under 30 CFR 254, Oil-Spill Response Requirements for Facilities Located Seaward of the Coast Line.

DATES: Submit written comments by June 30, 2009.

FOR FURTHER INFORMATION CONTACT: Cheryl Blundon, Regulations and

Standards Branch at (703) 787-1607. You may also contact Cheryl Blundon to obtain a copy, at no cost, of the regulation that requires the subject collection of information.

ADDRESSES: You may submit comments by either of the following methods listed below.

- Electronically: go to <http://www.regulations.gov>. Under the tab More Search Options, click Advanced Docket Search, then select Minerals Management Service from the agency drop-down menu, then click submit. In the Docket ID column, select MMS-2009-OMM-0006 to submit public comments and to view supporting and related materials available. Information on using [Regulations.gov](http://www.regulations.gov), including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's User Tips link. The MMS will post all comments.

- Mail or hand-carry comments to the Department of the Interior; Minerals Management Service; Attention: Cheryl Blundon; 381 Elden Street, MS-4024; Herndon, Virginia 20170-4817. Please reference Information Collection 1010-0091 in your subject line and mark your message for return receipt. Include your name and return address in your message text.

FOR FURTHER INFORMATION CONTACT: Cheryl Blundon, Regulations and Standards Branch at (703) 787-1607. You may also contact Cheryl Blundon to obtain a copy, at no cost, of the regulations that require the subject collection of information.

SUPPLEMENTARY INFORMATION:
Title: 30 CFR Part 254, Oil-Spill Response Requirements for Facilities Located Seaward of the Coast Line.

OMB Control Number: 1010-0091.
Abstract: The Federal Water Pollution Control Act, as amended by the Oil Pollution Act of 1990 (OPA), requires that a spill-response plan be submitted for offshore facilities prior to February 18, 1993. The OPA specifies that after that date, an offshore facility may not handle, store, or transport oil unless a plan has been submitted. This authority and responsibility have been delegated to the Minerals Management Service (MMS). Regulations at 30 CFR 254 establish requirements for spill-response plans for oil-handling facilities seaward

of the coast line, including associated pipelines.

The MMS uses the information collected under 30 CFR part 254 to determine compliance with OPA by owners/operators. Specifically, MMS needs the information to:

- Determine effectiveness of the spill-response capability of owners/operators;
- Review plans prepared under the regulations of a State and submitted to MMS to satisfy our requirements that they meet minimum requirements of OPA;
- Verify that personnel involved in oil-spill response are properly trained and familiar with the requirements of the spill-response plans and to witness spill-response exercises;
- Assess the sufficiency and availability of contractor equipment and materials;
- Verify that sufficient quantities of equipment are available and in working order;
- Oversee spill-response efforts and maintain official records of pollution events; and
- Assess the efforts of owners/operators to prevent oil spills or prevent substantial threats of such discharges.

We will protect information from respondents considered proprietary under the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR part 2) and under regulations at 30 CFR part 251. Responses are mandatory or are required to obtain or retain a benefit.

Frequency: Varies, but mostly on occasion.

Estimated Number and Description of Respondents: Approximately 197 owners or operators of facilities and/or oil-spill response companies located in both State and Federal waters seaward of the coast line.

Estimated Reporting and Recordkeeping Hour Burden: The currently approved annual reporting burden for this collection is 35,070 hours. The following chart details the individual components and respective hour burden estimates of this ICR. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

Citation 30 CFR 254 and related NTLs	Reporting and/or requirement	Hour burden
1(a) thru (d); 2(a); 3 thru 5; 7; 20 thru 29; 44(b).	Submit spill response plan for OCS facilities and related documents	120
1(e)	Request MMS jurisdiction over facility landward of coast line (no recent request received).	0.5

Citation 30 CFR 254 and related NTLs	Reporting and/or requirement	Hour burden
2(b)	Submit certification of capability to respond to worst case discharge or substantial threat of such.	15
2(c); 30	Submit revised spill response plan for OCS facilities at least every 2 years; notify MMS of no change.	36 (revision) 1 (no change)
2(c)	Request deadline extension for submission of revised plan	4
8	Appeal MMS orders or decisions (exempt under 5 CFR 1320.4)	0
40	Make records of all OSRO-provided services, equipment, personnel available to MMS.	5
41	Conduct annual training; retain training records for 2 years	25
42(a) thru (e)	Conduct triennial response plan exercise; retain exercise records for 3 years	110
42(f)	Inform MMS of the date of any exercise (triennial)	1
43	Inspect response equipment monthly; retain inspection & maintenance records for 2 years.	3.5
46(a)	Notify NRC of all oil spills from owner/operator facility (burden would be included in NRC inventory).	0
46(b) NTL	Notify MMS of oil spills of one barrel or more from owner/operator facility; submit follow-up report.	2
46(c) NTL	Notify MMS & responsible party of oil spills from operations at another facility	2
50; 51	Submit response plan for facility in State waters by modifying existing OCS plan	42
50; 52	Submit response plan for facility in State waters following format for OCS plan	100
50; 53	Submit response plan for facility in State waters developed under State requirements.	89
54	Submit description of oil-spill prevention procedures	5

Estimated Reporting and Recordkeeping Non-Hour Cost Burden: We have identified no non-hour paperwork cost burdens for this collection.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) requires each agency “* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *”. Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency’s estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Agencies must also estimate the non-hour paperwork cost burdens to respondents or recordkeepers resulting from the collection of information. Therefore, if you have costs to generate, maintain, and disclose this information, you should comment and provide your

total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information, monitoring, and record storage facilities. You should not include estimates for equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our submission for OMB approval. As a result of your comments, we will make any necessary adjustments to the burden in our submission to OMB.

Public Comment Procedures: 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.

MMS Information Collection Clearance Officer: Arlene Bajusz (202) 208-7744.

Dated: April 27, 2009.

E.P. Danenberger,
Chief, Office of Offshore Regulatory Programs.
[FR Doc. E9-10087 Filed 4-30-09; 8:45 am]

BILLING CODE 4310-MR-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R4-R-2009-N0030; 40136-1265-0000-S3]

Cross Creeks National Wildlife Refuge, Stewart County, TN

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability: draft comprehensive conservation plan and environmental assessment; request for comments.

SUMMARY: We, the Fish and Wildlife Service (Service), announce the availability of a draft comprehensive conservation plan and environmental assessment (Draft CCP/EA) for Cross Creeks National Wildlife Refuge (NWR) for public review and comment. In this Draft CCP/EA, we describe the alternative we propose to use to manage this refuge for the 15 years following approval of the Final CCP.

DATES: To ensure consideration, we must receive your written comments by June 1, 2009.

ADDRESSES: Send comments, questions, and requests for information to: John T. Taylor, Refuge Manager, Tennessee NWR, 3006 Dinkins Lane, Paris, TN 38242. The Draft CCP/EA may be accessed and downloaded from the Service's Internet Site: <http://southeast.fws.gov/planning>.

FOR FURTHER INFORMATION CONTACT: John T. Taylor; telephone: 731/642-2091; fax: 731/644-3351; e-mail: john_taylor@fws.gov.

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we continue the CCP process for Cross Creeks NWR. We started the process through a notice in the **Federal Register** on January 3, 2007 (72 FR 143).

Background

The CCP Process

The National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd-668ee) (Improvement Act), which amended the National Wildlife Refuge System Administration Act of 1966, requires us to develop a CCP for each national wildlife refuge. The purpose for developing a CCP is to provide refuge managers with a 15-year plan for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Improvement Act.

CCP Alternatives, Including Our Proposed Alternative

We developed four alternatives for managing the refuge and chose Alternative D as the proposed alternative. A full description of each alternative is in the Draft CCP/EA. We summarize each alternative below.

Alternative A—Current Management (No Action)

In general, Alternative A would maintain current management direction, that is, the refuge's habitats and wildlife

populations would continue to be managed as they have in recent years. Public use patterns would remain relatively unchanged from those that exist at present.

We would continue to provide adequate foraging habitats to meet the needs of 33,100 ducks for 110 days and other habitats that are needed for loafing, resting, roosting, molting, and other needs. We would also continue to provide adequate foraging habitats to meet the needs of 15,400 migratory Canada geese for 90 days, and continue to provide sanctuary for wintering waterfowl and other migratory birds from November 15 to March 15.

We would work with volunteers to provide a minimum of 20 nesting boxes in accordance with the 2003 Regional Wood Duck Management Guidelines. We would continue to work with partners to conduct the Christmas bird count and the North American migration count (in conjunction with International Migratory Bird Day).

We would continue to protect all Federally listed species under the Endangered Species Act. Under this alternative, there would be no active management of marsh birds, shorebirds, colonial nesting waterbirds, and non-game species. The control of problem beavers would continue under this alternative on a limited basis.

The staff, working with volunteers, would continue to passively manage about 150 acres as moist soil, with limited water management and control of invasive species. We would continue to provide other habitats, such as mudflats, native submerged and emergent aquatic vegetation, flooded woodlands, beaver ponds, and open water, that provide food resources. We would continue cooperative farming of corn, milo, millet, soybeans, and wheat on 1,200–1,300 acres to benefit waterfowl and other species. We would also continue limited annual spraying of aquatic plants (e.g., alligatorweed, spatterdock, and parrot feather), as well as conduct mowing and disking as needed of certain upland plants.

Under Alternative A, there would continue to be no active management of the refuge's forests, scrub/shrub habitat, and warm season grasses. There would be a reduced ability to manage water because of clogged structures due to beavers or aquatic plants, neglected units (restricted by probable sedimentation in channels), and the timing of the operations' schedule for Lake Barkley.

We would continue to provide visitor services under the existing Public Use Plan, which was approved in 1985. We would continue to allow managed,

limited hunting of deer, turkey, squirrel, and resident Canada goose. We would also continue to provide quality fishing and compatible water-related recreation programs on 3,260 acres. We would continue to offer opportunities for wildlife observation and wildlife photography throughout the refuge, accessible along the refuge road system from March 16 to November 14. This alternative would add a wildlife observation deck next to the visitor center. We would continue to provide environmental education services to the public, including limited visits to schools, environmental education workshops, and on- and off-refuge environmental education programs. We would continue to maintain the kiosk outside the visitor center and exhibits in the visitor center and on the Woodpecker Interpretive Trail.

We would maintain a staff size of four full-time positions, including the refuge manager, office assistant, maintenance mechanic, and equipment operator. We would maintain existing facilities, including headquarters, visitor center, maintenance building and yard, roads, gates, and equipment (e.g., road grader, tractors, dozers, and backhoe).

Alternative B—Public Use Emphasis

Alternative B would emphasize enhanced public use on the refuge. Additional efforts and expenditures would be made to expand the public use program, visitor facilities, and overall level of public use opportunities. Special emphasis would be placed on promoting the public uses identified in the Improvement Act (e.g., hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation).

We would continue to provide adequate foraging habitats to meet the needs of 33,100 ducks for 110 days, and other habitats that are needed for loafing, resting, roosting, molting, and other needs. We would also continue to provide adequate foraging habitats to meet the needs of 15,400 migratory Canada geese for 90 days. We would work with volunteers to provide a minimum of 20 nesting boxes in accordance with the 2003 Regional Wood Duck Management Guidelines.

Under this alternative, there would be no active management of marsh birds. We would develop additional partnerships with non-governmental organizations and the public in efforts to inventory in certain habitats for shorebirds, colonial nesting waterbirds, landbirds, and non-game species.

We would continue to protect all federally listed species under the Endangered Species Act. We would use

partners and volunteers to help determine the distribution and abundance of select listed species. The control of problem beavers would continue on a limited basis. In addition, we would control feral hogs and snakehead fish if these species appeared.

We would continue to provide other habitats, such as mudflats, native submerged and emergent aquatic vegetation, flooded woodlands, beaver ponds, and open water, that provide food resources, as well as habitats for loafing, resting, roosting, and molting. Under Alternative B, there would continue to be no active management of the refuge's forests, scrub/shrub habitat, and warm season grasses. We would continue cooperative farming of corn, milo, millet, soybeans, and wheat on 1,200–1,300 acres to benefit waterfowl and other species.

We would manage water to focus on providing sport fishing opportunities within the impoundments. Further, we would reduce moist-soil management efforts on 150 acres of impoundments, allowing for higher water levels to realize optimal fishing opportunities.

We would continue limited annual spraying of aquatic plants (e.g., alligatorweed, spatterdock, parrot feather, and Eurasian water milfoil), as well as conduct mowing and disking as needed of certain upland plants. We would develop additional partnerships with other agencies, non-governmental organizations, and the public in control efforts.

Within 5 years of CCP approval, we would draft, approve, and begin to implement a Visitor Services Plan. Alternative B would open portions of the refuge to additional hunting and/or increase quota limits for deer, turkey, squirrel, and Canada goose. Additionally, hunts for dove, rabbit, and raccoon would be added. We would provide quality fishing and compatible water-related recreation programs on 3,260 acres. This would be accomplished by adding adequate launching facilities and bank fishing areas and based on available resources, at least one pier would be added to accommodate anglers of all abilities.

We would continue to offer opportunities for wildlife observation and wildlife photography throughout the refuge, accessible along the refuge road system from March 16 to November 14. This alternative would add a wildlife observation deck next to the visitor center. During winter months, Alternative B would reopen the 1-mile auto tour route in the vicinity of the visitor center. Under Alternative B, we would continue to provide

environmental education services to the public, including Earth Camp, visits to schools, environmental education workshops, and on- and off-site environmental education programs. We would expand the refuge's role as an outdoor classroom for both students and the general public. Within 5 years of CCP approval, the number of wildlife signs along the Woodpecker Interpretive Trail would be increased, and an interpretive kiosk would be developed for Elk Reservoir.

We would maintain a staff of seven full-time positions, including the refuge manager, refuge ranger, office assistant, maintenance mechanic, law enforcement officer, tractor operator, and equipment operator. Alternative B would replace the now separate visitor center and headquarters with one common building. We would maintain the existing equipment fleet and replace obsolete equipment as needed. There would be three additional portable toilets positioned along the road system.

Alternative C—Wildlife Management Emphasis

Alternative C would intensify and expand wildlife and habitat management on the refuge. This would increase benefits for wildlife species and fulfill the refuge purposes and goals. Public use opportunities would remain approximately as they are now.

We would provide foraging habitats to meet the needs of 44,400 ducks (25 percent more than Alternative A) for 110 days and other habitats that are needed for loafing, resting, roosting, molting, and other needs. We would also continue to provide adequate foraging habitats to meet the needs of 15,400 migratory Canada geese for 90 days, but would evaluate the need for foraging habitat every 5 years and adjust accordingly. We would continue to provide sanctuary, as in Alternative A, backed up by increased enforcement to reduce illegal disturbance and trespass.

We would determine the status of priority marsh bird species on the refuge. We would implement active shorebird management on at least one impoundment during fall migration. We would develop a baseline colonial waterbird inventory through systematic surveys. Similarly, we would conduct a baseline inventory of relative abundance, species richness, and distribution of landbirds. Within 10 years of CCP approval, we would develop and implement baseline inventories for non-game mammals, reptiles, amphibians, and invertebrates. We would continue to protect all Federally listed species under the Endangered Species Act, and would

determine the distribution and abundance of all listed species.

Over the 15-year life of the CCP, we would manage game populations to maximize quality hunting opportunities, while maintaining habitat for Federal trust species. Working with volunteers, we would provide 50 properly located and maintained nesting boxes, brood rearing habitat, and feeding areas throughout the refuge. When necessary, control of invasive animal species, using approved techniques to help achieve refuge conservation goals and objectives, would occur.

Water management within the impoundments would be focused on migratory birds by providing adequate and reliable flooded habitat throughout the refuge, and assuring that water management capability could distribute water in a timely manner. This alternative would call for improving the moist-soil management program on at least 300 acres by expanding the invasive plant control program, water management capabilities, and the use of management techniques that set back plant succession. Increasing the acreage of other habitats, such as mudflats, native submerged and emergent aquatic vegetation, flooded woodlands, beaver ponds, and open water that provide food resources, as well as habitats for loafing, resting, roosting, and molting would occur under this alternative. We would obtain control of invasive species through active methods of removal, which would assist in reducing the infestation and eliminating populations whenever feasible.

Within 5 years of CCP approval, we would develop and begin to implement a Forest Management Plan that would aim to benefit nesting and migrating birds. Over the 15-year life of the CCP, we would explore the possibilities of managing for scrub/shrub habitat to benefit certain birds in suitable locations on the refuge. We would explore the potential benefits of planting and managing native warm season grasses on formerly farmed fields (up to 75 percent of existing cultivated acreage). Over the lifetime of the CCP, we would gradually phase out cooperative farming in favor of force-account or contract farming of wheat, corn, milo, and millet on 600 acres to meet wildlife foraging objectives.

We would continue to provide visitor services under the existing Public Use Plan, which was approved in 1985. Over the 15-year life of the CCP, we would manage game populations to maximize quality hunting opportunities, while maintaining habitat for Federal trust species. We would continue to provide quality fishing and compatible water-

related recreation programs on 3,260 acres of the refuge. We would continue to offer opportunities for wildlife observation and wildlife photography throughout the refuge, accessible along the refuge road system from March 16 to November 14, but with the addition of a wildlife observation deck next to the visitor center. We would reduce refuge-facilitated environmental education activities for the public, both on- and off-refuge. We would continue to maintain the kiosk outside the visitor center and exhibits in the visitor center and on the Woodpecker Interpretive Trail.

We would maintain a staff of eight full-time positions, including refuge manager, office assistant, maintenance mechanic, assistant refuge manager, biologist, law enforcement officer, tractor operator, and equipment operator. We would maintain existing facilities, including headquarters, visitor center, maintenance building and yard, roads, gates, and equipment (e.g., road grader, tractors, dozers, and backhoe). We would install one pump and add farm and fire management equipment, such as corn planter, all-terrain vehicles, and pumper truck.

Alternative D—Enhanced Wildlife Management and Public Use Program (Proposed Management Action)

Alternative D would balance an enhanced wildlife management program with increased opportunities for public use. Wildlife and habitat management, as well as public use activities, would increase under this alternative.

We would provide foraging habitats to meet the needs of 33,100 to 44,400 ducks (25 percent more than Alternative A) for 110 days and other habitats that are needed for loafing, resting, roosting, molting, and other needs. We would also provide adequate foraging habitat to meet the needs of 15,400 migratory Canada geese for 90 days, but evaluate need for foraging habitat every 5 years and adjust accordingly. We would continue to provide sanctuary, as in Alternative A, backed up by increased enforcement to reduce illegal disturbance and trespass. In addition, within 5 years of CCP approval, we would seek opportunities for limited wildlife observation within the sanctuary. Working with volunteers, we would provide 20 to 50 properly located and maintained nesting boxes, brood rearing habitat, and feeding areas throughout the refuge.

We would determine the status of priority marsh bird species on the refuge. We would determine the status of shorebirds on the refuge and would implement active shorebird

management on at least one impoundment during fall migration. We would also develop additional partnerships with other agencies, non-governmental organizations, and the public in an effort to inventory shorebirds in certain habitat management activities.

We would develop a baseline colonial waterbird inventory through systematic surveys. We would also develop additional partnerships as stated above in efforts to inventory colonial nesting waterbirds, landbirds, and non-game species.

Over the 15-year life of the CCP, we would manage game populations to maximize quality hunting opportunities, while maintaining habitat for Federal trust species. We would continue to protect all Federally listed species under the Endangered Species Act and would use partners and volunteers (when necessary) to determine the distribution and abundance of all listed species. When necessary, control of invasive animal species, using approved techniques to help achieve refuge conservation goals and objectives, would occur.

Alternative D would focus water management within the impoundments on migratory birds. This would be accomplished by providing adequate and reliable flooded habitat throughout the refuge and by assuring that water management capability could distribute water in a timely manner. We would also make a concerted effort to accommodate sport fishing opportunities where and when circumstances allow.

We would increase efforts to improve the moist-soil management program on at least 300 acres by expanding the invasive plant control program and water management capabilities. We would use management techniques that set back plant succession, but would also make a concerted effort to accommodate sport fishing opportunities. Increasing the acreage of other habitats, such as mudflats, native submerged and emergent aquatic vegetation, flooded woodlands, beaver ponds, and open water that provide food resources, as well as habitats for loafing, resting, roosting, and molting would occur.

Within 5 years of CCP approval, we would develop and begin to implement a Forest Management Plan that would aim to benefit nesting and migrating birds. Over the 15-year life of the CCP, we would explore the possibilities of managing for scrub/shrub habitat to benefit certain birds in suitable locations on the refuge. We would explore potential benefits of planting

and managing native warm season grasses on formerly farmed fields (up to 75 percent of existing cultivated acreage). We would gradually phase out cooperative farming in favor of force-account or contract farming of wheat, corn, milo, and millet on 600 acres to meet wildlife foraging objectives.

We would obtain control of invasive species through active methods of removal. These methods would work towards reducing the infestation and eliminating populations whenever feasible. We would develop partnerships with other agencies, non-governmental organizations, and the public in efforts to control Eurasian water milfoil.

Within 5 years of CCP approval, we would draft, approve, and begin to implement a new Visitor Services Plan. We would also provide quality fishing and compatible water-related recreation programs on 3,260 acres of the refuge by furnishing adequate launching facilities, bank fishing areas, and contingent on funding, at least one pier to accommodate anglers of all abilities.

We would manage game populations to maximize quality hunting opportunities, while maintaining habitat for Federal trust species. We would continue to provide environmental education services to the public, including visits to schools, environmental education workshops, and on- and off-refuge environmental education programs. We would also expand the refuge's role as an outdoor classroom for students and the general public.

We would continue to offer opportunities for wildlife observation and wildlife photography throughout the refuge, accessible along the refuge road system from March 16 to November 14, but with the addition of a wildlife observation deck next to visitor center. Within 5 years of CCP approval, we would explore the feasibility of building a wildlife observation tower near Pool 1. Also within 5 years of CCP approval, we would increase the number of wayside signs, and would add wildlife signs along the Woodpecker Interpretive Trail, as well as develop an interpretive kiosk for Elk Reservoir.

We would maintain a staff of nine full-time positions, including the refuge manager, assistant refuge manager, refuge ranger (public use), office assistant, maintenance mechanic, biologist, law enforcement officer, tractor operator, and equipment operator. Under Alternative D, we would replace the now separate visitor center and headquarters with one common building. We would maintain

the existing equipment fleet, replacing obsolete equipment as needed. There would be three additional portable toilets positioned along the road system. Finally, we would install three pumps and would add farm and fire management equipment, such as a corn planter, all-terrain vehicles, and a pumper truck.

Next Step

After the comment period ends, we will analyze the comments and address them.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997, Public Law 105-57.

Dated: March 16, 2009.

Cynthia K. Dohner,

Acting Regional Director.

[FR Doc. E9-10033 Filed 4-30-09; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R8-ES-2009-N0088; 80221-1113-0000-F5]

Endangered Species Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comment.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species. With some exceptions, the Endangered Species Act (Act) prohibits activities with endangered and threatened species unless a Federal permit allows such activity. The Act also requires that we invite public comment before issuing these permits.

DATES: Comments on these permit applications must be received on or before June 1, 2009.

ADDRESSES: Written data or comments should be submitted to the U.S. Fish and Wildlife Service, Endangered Species Program Manager, Region 8, 2800 Cottage Way, Room W-2606, Sacramento, CA 95825 (*telephone:* 916-414-6464; *fax:* 916-414-6486). Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Daniel Marquez, Fish and Wildlife Biologist; *see ADDRESSES* (*telephone:* 760-431-9440; *fax:* 760-431-9624).

SUPPLEMENTARY INFORMATION: The following applicants have applied for scientific research permits to conduct certain activities with endangered species under section 10(a)(1)(A) of the Act (16 U.S.C. 1531 *et seq.*). We seek review and comment from local, State, and Federal agencies and the public on the following permit requests. 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.

Permit No. TE-208907

Applicant: Thomas Juhasz, Pasadena, California.

The applicant requests a permit to take (capture, collect, and kill) the Conservancy fairy shrimp (*Branchinecta conservatio*), the longhorn fairy shrimp (*Branchinecta longiantenna*), the Riverside fairy shrimp (*Streptocephalus wootoni*), the San Diego fairy shrimp (*Branchinecta sandiegonensis*), and the vernal pool tadpole shrimp (*Lepidurus packardii*) in conjunction with surveys throughout the range of each species in California for the purpose of enhancing their survival.

Permit No. TE-147553

Applicant: Jeffrey J. Mitchell, San Francisco, California.

The applicant requests an amendment to an existing permit (April 9, 2007, 72 FR 17576) to take (capture, collect, and kill) the Conservancy fairy shrimp (*Branchinecta conservatio*), the longhorn fairy shrimp (*Branchinecta longiantenna*), the Riverside fairy shrimp (*Streptocephalus wootoni*), the

San Diego fairy shrimp (*Branchinecta sandiegonensis*), and the vernal pool tadpole shrimp (*Lepidurus packardii*) in conjunction with surveys throughout the range of each species in California for the purpose of enhancing their survival.

Permit No. TE-210233

Applicant: Leslie L. Koenig, Livermore, California.

The permittee requests a permit to take (harass by survey, capture, handle, and release) the California tiger salamander (*Ambystoma californiense*) in conjunction with surveys throughout the range of the species in California for the purpose of enhancing its survival.

Permit No. TE-210229

Applicant: Katherine J. Pettigrew, Santee, California.

The applicant requests a permit to take (harass by survey) the southwestern willow flycatcher (*Empidonax traillii extimus*), and take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with surveys throughout the range of each species within the jurisdiction of the Carlsbad Fish and Wildlife Office, in California, for the purpose of enhancing its survival.

Permit No. TE-210235

Applicant: Matthew McDonald, Idylwild, California.

The applicant requests a permit to take (harass by survey) the southwestern willow flycatcher (*Empidonax traillii extimus*) in conjunction with surveys throughout the range of the species within the jurisdiction of the San Jacinto Ranger District of the San Bernardino National Forest, Riverside County, California, for the purpose of enhancing its survival.

Permit No. TE-807078

Applicant: Point Reyes Bird Observatory, Petaluma, California.

The permittee requests an amendment to an existing permit (January 5, 2001, 66 FR 1150), in order to extend the geographic area and take (survey, locate, monitor nests, capture, measure, band, and release) the California least tern (*Sterna antillarum browni*) in conjunction with monitoring throughout the range of the species in Ventura, Los Angeles, Orange, and San Diego Counties, California, and to extend the geographic area and take (capture, measure, band and release) the northern spotted owl (*Strix occidentalis caurina*) in conjunction with monitoring throughout the range of the species in Sonoma, Mendocino, and Lake

Counties, California, for the purpose of enhancing their survival.

Permit No. TE-146039

Applicant: Hildegard N. Spautz, El Ceritto, California.

The applicant requests an amendment to an existing permit (April 9, 2007, 72 FR 17576) to take (harass by survey, capture, handle and release) the California tiger salamander (*Ambystoma californiense*) in conjunction with surveys throughout the range of the species in California for the purpose of enhancing its survival.

Permit No. TE-211099

Applicant: Kenneth A. Glass, Oakhurst, California.

The applicant requests a permit to take (capture, collect, and kill) the Conservancy fairy shrimp (*Branchinecta conservatio*), the longhorn fairy shrimp (*Branchinecta longiantenna*), the Riverside fairy shrimp (*Streptocephalus wootoni*), the San Diego fairy shrimp (*Branchinecta sandiegonensis*), and the vernal pool tadpole shrimp (*Lepidurus packardii*) in conjunction with surveys throughout the range of each species in California for the purpose of enhancing their survival.

Permit No. TE-212445

Applicant: Robert A. Schell, San Rafael, California.

The applicant requests a permit to take (harass by survey, capture, handle and release) the California tiger salamander (*Ambystoma californiense*); and take (capture, collect, and kill) the Conservancy fairy shrimp (*Branchinecta conservatio*), the longhorn fairy shrimp (*Branchinecta longiantenna*), the Riverside fairy shrimp (*Streptocephalus wootoni*), the San Diego fairy shrimp (*Branchinecta sandiegonensis*), and the vernal pool tadpole shrimp (*Lepidurus packardii*) in conjunction with surveys throughout the range of the species in California for the purpose of enhancing its survival.

We invite public review and comment on each of these recovery permit applications. Comments and materials we receive will be available for public inspection, by appointment, during normal business hours at the address listed in the **ADDRESSES** section of this notice.

Dated: April 22, 2009.

Diane Elam,

Acting Regional Director, Region 8, Sacramento, California.

[FR Doc. E9-9723 Filed 4-30-09; 8:45 am]

BILLING CODE 4310-55-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNVL00000.L51010000.ER0000.
LVRWF8520000; N-79734; 9-08807; TAS:
14x5017]

Notice of Availability of the Final Environmental Impact Statement for the Lincoln County Land Act Groundwater Development and Utility Right-of-Way Project, Nevada

AGENCY: Bureau of Land Management, Interior; Cooperating Agencies—U.S. Fish and Wildlife Service, Interior; State of Nevada Department of Wildlife.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, the Bureau of Land Management (BLM) has prepared a Final Environmental Impact Statement (FEIS) that analyzes proposed rights-of-way for groundwater development, conveyance, and utility facilities in Lincoln County, Nevada. This notice announces its availability.

DATES: The BLM will not issue a final decision on the Lincoln County Land Act (LCLA) Groundwater Development and Utility Right-of-Way Project for a minimum of 30 days following the date the Environmental Protection Agency publishes its Notice of Availability in the **Federal Register**.

ADDRESSES: Copies of the FEIS will be mailed to individuals, agencies, organizations, or companies who previously requested copies or who responded to the BLM on the Draft EIS. Copies of the FEIS are available on request from the BLM Nevada State Office, 1340 Financial Blvd., P.O. Box 12000, Reno, NV 89520, phone 775-861-6681 or e-mail to: nvgwprojects@blm.gov. You may request a hard copy or a compact disc (CD). The document will be available electronically at: <http://www.blm.gov/nv/>. Copies of the FEIS will be available for review at the following locations in Nevada:

- BLM Nevada State Office, 1340 Financial Blvd., Reno, NV 89502.
- BLM Ely Field Office, 702 North Industrial Way, Ely, NV 89301.
- Public Library, Caliente, NV 89008.
- Public Library, 93 Main Street, Pioche, NV 89043.
- Public Library, 121 W. First North Street, Mesquite, NV 89027.

FOR FURTHER INFORMATION CONTACT: Penny Woods, BLM Project Manager, P.O. Box 12000, Reno, NV 89520, telephone 775-861-6466, or e-mail: nvgwprojects@blm.gov with "Lincoln

County Land Act Information Request" in the subject line.

SUPPLEMENTARY INFORMATION: The FEIS describes and analyzes a proposal for groundwater development and utility rights-of-way in the Clover Valley and Tule Desert hydrographic basins as submitted by the Lincoln County Water District (LCWD). The FEIS addresses the proposal as submitted by LCWD; an alternative alignment of pipelines, power lines and facilities; and a no action alternative. Under the proposed action, BLM would issue rights-of-way to LCWD for facilities to develop and convey groundwater in Tule Desert and Clover Valley hydrographic basins to private land for community development on the Lincoln County Land Act tract (identified as the Toquop Planning Area in the Lincoln County Master Plan) north of Mesquite, Nevada. The volume of water to be transported through the proposed facilities could be up to 24,000 acre-feet per year, as authorized by the State of Nevada Water Engineer for appropriation and use by LCWD.

LCWD has applied to the BLM for rights-of-way in accordance with the Lincoln County Conservation, Recreation, and Development Act of 2004, Title V of the Federal Land Policy and Management Act of 1976 and 43 CFR Part 2800 for the following features: the proposed project would be located in unincorporated portions of southeastern Lincoln County, Nevada, and consist of approximately 47 miles of a main transmission pipeline; approximately 54 miles of lateral pipelines; up to 30 production wells; water storage tanks, booster stations, and access roads; 138 kV, 22.8 kV, and 4.16 kV power lines and a power substation; a natural gas pipeline; underground telephone lines; and a telemetry system utilizing a fiber optic line.

On May 23, 2008, the BLM published the Notice of Availability for the Draft EIS for this project in the **Federal Register**. Nineteen comments were received from individuals, organizations, agencies, and a Native American tribe. Specific comment responses are provided in the FEIS, and issues and concerns raised during the review are addressed in the FEIS.

Authority: 43 CFR Part 2800.

John F. Ruhs,

Ely District Manager.

[FR Doc. E9-9924 Filed 4-30-09; 8:45 am]

BILLING CODE 4310-HC-P

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****[FWS-R9-IA-2009-N0087; 96300-1671-0000-P5]****Receipt of Applications for Permit****AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Notice of receipt of applications for permit.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species or marine mammals. Both the Endangered Species Act and the Marine Mammal Protection Act require that we invite public comment on these permit applications.

DATES: Written data, comments or requests must be received by June 1, 2009.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 212, Arlington, Virginia 22203; fax 703/358-2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358-2104.

SUPPLEMENTARY INFORMATION:**Endangered Species**

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: Dr. Richard A. Miller, University of Michigan, Ann Arbor, MI, PRT-207590

The applicant requests a permit to acquire from Coriell Cell Repositories, Camden, NJ, in interstate commerce fibroblast tissue culture cells from cottontop tamarin (*Saguinus oedipus*), bonobo (*Pan paniscus*), gorilla (*Gorilla gorilla*), Lar gibbon (*Hylobates lar*), and orangutan (*Pongo pygmaeus*) for the purpose of scientific research.

Applicant: Texas Tech University, Department of Biological Sciences, Lubbock, TX, PRT-206910

The applicant requests a permit to import biological specimens of dwarf crocodiles (*Osteolaemus tetraspis osborni* and *Osteolaemus tetraspis tetraspis*) from the National Museum of Natural History Naturalis, Leiden, The Netherlands, for the purpose of scientific research.

Applicant: Virginia Zoological Park, Norfolk, VA, PRT-209661

The applicant requests a permit to import one male captive born Malayan tapir (*Tapirus indicus*) from the Singapore Zoo, Singapore, for the purpose of enhancement of the survival of the species.

Applicant: Lionshare Farm Zoological, Greenwich, CT, PRT-210329

The applicant requests a permit to import three live, captive-born cheetahs (*Acinonyx jubatus*) – two males and one female – from South Africa for the purpose of enhancement of the survival of the species.

Applicant: Samia E. Carillo-Percastegui, Tucson, AZ, PRT-206262

The applicant requests a permit to import opportunistically collected biological samples of jaguar (*Panthera onca*) taken from the wild on study sites in Peru for the purpose of scientific research.

Applicant: Institute for the Conservation of Tropical Environments, Stony Brook, NY, PRT-206677

The applicant requests a permit to import biological samples of brown mouse lemur (*Microcebus rufus*), Milne-Edwards Sifaka (*Propithecus edwardsi*), and black and white ruffed lemur (*Varicia variegata*) collected from the wild in Madagascar for the purpose of scientific research.

Applicant: Point Defiance Zoo, Tacoma, WA, PRT-210142

The applicant requests a permit to import four live, captive-born clouded leopards (*Neofelis nebulosa*) – two males and two females – from Khao Kheow Open Zoo, Chonburi, Thailand, for the purpose of enhancement of the species through captive breeding.

The following applicants request a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Colorado Buck, Duncan, OK, PRT-212475

Applicant: Karl F. Kurz, Houston, TX, PRT-209996

Applicant: David J. Hemmings, Grand Rapids, MI, PRT-209672

Applicant: Bruce P. Ford, Savannah, GA, PRT-210876

Applicant: Jerry W. Ford, Hartsville, TN, PRT-211165

Applicant: Luis F. Carlo Mendoza, Mayaguez, PR, PRT-212582

Applicant: Anthony J. Kiburis, Pinckney, MI, PRT-211151

Applicant: Michael A. Bindon, Howell, MI, PRT-211149

Applicant: Stephen G. Bindon, Howell, MI, PRT-211150

Marine Mammals

The public is invited to comment on the following application for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing marine mammals (50 CFR Part 18). Written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Applicant: U.S. Geological Survey, Alaska Science Center, Anchorage, AK, PRT-801652

The applicant requests an amendment to an existing permit to take additional walrus (*Odobenus rosmarus*) for radio tagging and incidental harassment for the purpose of scientific research. This notification covers activities to be conducted by the applicant over the remainder of their 5-year permit.

Concurrent with the publication of this notice in the **Federal Register**, the Division of Management Authority is forwarding a copy of the above application to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Dated: **April 17, 2009.**

Lisa Lierheimer,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. E9-10056 Filed 4-30-09; 8:45 am]

BILLING CODE 4310-55-S

INTERNATIONAL TRADE COMMISSION

[Investigation No. AA1921-167 (Third Review)]

Pressure Sensitive Plastic Tape From Italy

AGENCY: United States International Trade Commission.

ACTION: Institution of a five-year review concerning the antidumping duty finding on pressure sensitive plastic tape from Italy.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty finding on pressure sensitive plastic tape from Italy would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission;¹ to be assured of consideration, the deadline for responses is June 1, 2009. Comments on the adequacy of responses may be filed with the Commission by July 14, 2009. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207), as most recently amended at 74 FR 2847 (January 16, 2009).

DATES: *Effective Date:* May 1, 2009.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202-205-3193), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server (<http://www.usitc.gov>).

¹ No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117-0016/USITC No. 09-5-194, expiration date June 30, 2011. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

www.usitc.gov). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION:

Background. On October 21, 1977, the Department of the Treasury issued an antidumping finding on imports of pressure sensitive plastic tape from Italy (42 FR 56110). Following first five-year reviews by Commerce and the Commission, effective February 17, 1999, Commerce issued a continuation of the antidumping duty finding on imports of pressure sensitive plastic tape from Italy (64 FR 51515, September 23, 1999). Following second five-year reviews by Commerce and the Commission, effective June 25, 2004, Commerce issued a second continuation of the antidumping duty finding on imports of pressure sensitive plastic tape from Italy (69 FR 35584). The Commission is now conducting a third review to determine whether revocation of the finding would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions. The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The *Subject Country* in this review is Italy.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise*. The Commission did not make a like product determination *per se* in its original determination; however, the Commission considered the U.S. industry to consist of all domestic facilities that were devoted to the production of pressure sensitive plastic tape. In its expedited first and second five-year review determinations, the Commission found that the appropriate definition of the *Domestic Like Product* was the same as Commerce's scope: Pressure sensitive plastic tape measuring over 1-3/8 inches in width and not exceeding 4 mils in thickness.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic*

Like Product, or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determination and its expedited first and second five-year review determinations, the Commission defined the *Domestic Industry* as all producers of pressure sensitive plastic tape.

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the review and public service list. Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation. The Commission's designated agency ethics official recently has advised that a five-year review is no longer considered the "same particular matter" as the corresponding underlying original investigation for purposes of 18 U.S.C. 207, the post employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 73 FR 24609 (May 5, 2008). This advice was developed in consultation with the Office of Government Ethics. Consequently, former employees are no longer required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202-205-3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list. Pursuant to section 207.7(a) of the Commission's

rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification. Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions. Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is June 1, 2009. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is July 14, 2009. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you

are not a party to the review you do not need to serve your response).

Inability to provide requested information. Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

Information to be Provided In Response to this Notice of Institution: As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Product*, a U.S. union or worker group, a U.S. importer of the *Subject Merchandise*, a foreign producer or exporter of the *Subject Merchandise*, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty finding on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry*.

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product*. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2003.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and E-mail address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product*, provide the following information on your firm's operations on that product during calendar year 2008, except as noted (report quantity data in square yards and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (i.e., the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) The quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s); and

(d) The quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s).

(e) The value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country*, provide the following information on your firm's(s') operations on that product during calendar year 2008 (report quantity data in square yards and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) The quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country*; and

(c) The quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country*.

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country*, provide the following information on your firm's(s') operations on that product during calendar year 2008 (report quantity data in square yards and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production; and

(b) Capacity (quantity) of your firm to produce the *Subject Merchandise* in the *Subject Country* (i.e., the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) The quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject*

Merchandise from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* after 2003, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country*, and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry*; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.
Marilyn R. Abbott,
Secretary to the Commission.

Issued: April 24, 2009.
William R. Bishop,
Acting Secretary to the Commission.
[FR Doc. E9-9769 Filed 4-30-09; 8:45 am]

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INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-1034 (Review)]

Certain Color Television Receivers From China

AGENCY: United States International Trade Commission.

ACTION: Institution of a five-year review concerning the antidumping duty order on certain color television receivers from China.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on certain color television receivers from China would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission;¹ to be assured of consideration, the deadline for responses is June 1, 2009. Comments on the adequacy of responses may be filed with the Commission by July 14, 2009. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207), as most recently amended at 74 FR 2847 (January 16, 2009).

DATES: *Effective Date:* May 1, 2009.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202-205-3193), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000. General information concerning the Commission may also be obtained by accessing its internet server (<http://www.usitc.gov>). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION:

Background. On June 3, 2004, the Department of Commerce issued an antidumping duty order on imports of certain color television receivers from China (69 FR 31347), as amended (69 FR 35583, June 25, 2004). The Commission is conducting a review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the

¹ No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117-0016/USITC No. 09-5-193, expiration date June 30, 2011. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions. The following definitions apply to this review:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The *Subject Country* in this review is China.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise*. In its original determination, the Commission defined a single *Domestic Like Product* encompassing domestically produced color television receivers of the type described in Commerce's scope definition.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product*, or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determination, the Commission defined a single *Domestic Industry* as all U.S. producers of color television receivers.

(5) The *Order Date* is the date that the antidumping duty order under review became effective. In this review, the Order Date is June 3, 2004.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the review and public service list. Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation. The Commission's designated agency ethics official recently has advised that a five-year review is no longer considered the "same particular matter" as the corresponding underlying original investigation for purposes of 18 U.S.C. 207, the post employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 73 FR 24609 (May 5, 2008). This advice was developed in consultation with the Office of Government Ethics.

Consequently, former employees are no longer required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Carol McCue Verratti, Deputy Agency Ethics Official, at 202-205-3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list. Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification. Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions. Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is June 1, 2009. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is July 14, 2009. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

Inability to provide requested information. Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

Information to be Provided in Response to this Notice of Institution: As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Product*, a U.S. union or worker group, a U.S. importer of the *Subject Merchandise*, a foreign producer or exporter of the *Subject Merchandise*, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on the Domestic Industry in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry*.

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product*. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries since the *Order Date*.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and E-mail address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product*, provide the following information on your firm's operations on that product during calendar year 2008, except as noted (report quantity data in units and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (i.e., the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) The quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) The quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country*, provide the following information on your firm's(s') operations on that product during calendar year 2008 (report quantity data in units and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) The quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country*; and

(c) The quantity and value (f.o.b. U.S. port, including antidumping duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country*.

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject*

Merchandise in the *Subject Country*, provide the following information on your firm's(s') operations on that product during calendar year 2008 (report quantity data in units and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Subject Merchandise* in the *Subject Country* (i.e., the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) The quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* since the *Order Date*, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country*, and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above

definitions of the *Domestic Like Product* and *Domestic Industry*; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.
Marilyn R. Abbott,
Secretary to the Commission.

Issued: April 24, 2009.

William R. Bishop,

Acting Secretary to the Commission.

[FR Doc. E9-9770 Filed 4-30-09; 8:45 am]

BILLING CODE: P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-632]

In the Matter of Certain Refrigerators and Components Thereof; Notice of Commission Decision To Review in Its Entirety; A Final Initial Determination Finding No Violation of Section 337

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review the presiding administrative law judge's ("ALJ") final initial determination ("ID") finding no violation of Section 337 of the Tariff Act of 1930 in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Jean Jackson Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205-3104. Copies of the ALJ's IDs and all other non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <http://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: On February 21, 2008, the Commission voted to institute this investigation, based on a complaint filed by Whirlpool Patents Company of St. Joseph, Michigan; Whirlpool Manufacturing Corporation of St. Joseph, Michigan; Whirlpool Corporation of Benton Harbor, Michigan, and Maytag Corporation of Benton Harbor, Michigan (collectively, "Whirlpool"). The complaint, as supplemented, alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain refrigerators and components thereof that infringe certain claims of U.S. Patent Nos. 6,082,130 ("the '130 patent"); 6,810,680 ("the '680 patent"); 6,915,644 ("the '644 patent"); 6,971,730; and 7,240,980. Whirlpool named LG Electronics, Inc.; LG Electronics, USA, Inc.; and LG Electronics Monterrey Mexico, S.A., De, CV (collectively, "LG") as respondents. The complaint, as supplemented, further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337 and requested that the Commission issue an exclusion order and cease and desist orders.

On September 11, 2008, Whirlpool and LG filed a joint motion seeking termination of this investigation with respect to the '680 patent and the '644 patent on the basis of a settlement agreement. On September 25, 2008, the ALJ issued an ID, Order No. 10, terminating the investigation, in part, as to the '680 and '644 patents. No petitions for review were filed. On October 27, 2008, the Commission determined not to review Order No. 10.

On October 17, 2008, Whirlpool filed a motion for summary determination that it had satisfied the importation requirement. On November 20, 2008, the ALJ issued the subject ID, Order No. 14, granting complainant's motion for summary determination of importation. No petitions for review were filed. On December 15, 2008, the Commission issued notice that it had determined not to review Order No. 14.

On July 24, 2008, Whirlpool filed a motion seeking leave to amend the complaint and notice of investigation to (1) remove references to patents that had been withdrawn from this investigation; (2) add a reference to a non-exclusive license that relates to two patents at issue; and (3) update the current state of the domestic industry. On November 25, 2008, the ALJ issued Order No. 15, in which he granted Whirlpool's motion as to (1) and (3) above and denied it with respect to (2). No petitions for review were filed. The Commission determined

not to review the subject ID on December 15, 2008.

On February 26, 2009, the ALJ issued a final ID, in which he found no violation of Section 337. On March 11, 2009, Whirlpool filed a petition for review, and LG filed a contingent petition for review. Whirlpool, LG and OUII filed responses. The Commission has determined to review the final ID and requests briefing by the parties to the investigation on the issue of claim construction. In particular, the Commission would like the parties to address:

1. Do the ordinary and customary meanings of the following terms differ from the meanings ascribed to them by the inventors' testimony: "freezer compartment," "disposed within," "mounted on," "having an access opening and a closure member for closing the access opening," and "ice storage bin having a bottom opening." Please discuss with reference to dictionary definitions and expert testimony.

2. Are the phrases "mounted on" and "disposed within" mutually exclusive in the context of claim 1 of the '130 patent? Are either or both of these terms synonymous with "installed"?

3. How does the prosecution history inform the claim construction, in terms of disclaimer and interpretation?

4. Would one of ordinary skill in the art understand a space defined by a cabinet having an access opening but not having a closure member to mean a "freezer compartment," given that temperatures within such a compartment cannot be reduced to freezing?

5. In construing claim 1, the parties dispute whether the "closure member" is part of the freezer compartment. What conclusions can be drawn from the term "freezer compartment closure member" appearing in dependent claim 9? What conclusions, if any, can be drawn from a comparison of claim 1 and independent claim 10, the latter clearly identifying the closure member as part of the refrigerator.

6. To what extent should the Commission consider inventor testimony when construing the claims? See *Hoechst Celanese Corp. v. BP Chems. Ltd.*, 78 F.3d 1575, 1580 ("Markman requires us to give no deference to the testimony of the inventor about the meaning of the claims.").

7. For parties proposing additional or different meanings on claim construction, do these point to a different result for infringement, validity, or domestic industry? Please explain with regard to each relevant

refrigerator model. Responses should rely on evidence of record.

8. Specifically, with respect to infringement, respond to the following: Does the closure member have to be the closure member to the access to the freezer compartment? If so, can a self-contained ice maker within a fresh-food compartment qualify as a freezer for which there is a closure member within the meaning of claim 1? Does it matter if both the ice maker and the storage unit are in the closure member?

Opening submissions must be filed no later than close of business on May 8, 2009. Reply submissions must be filed no later than the close of business on May 15, 2009. No further submissions on any of these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document and 12 true copies thereof on or before the deadlines stated above with the Office of the Secretary. Any person desiring to submit a document to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See 19 CFR 210.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. All non-confidential written submissions will be available for public inspection at the Office of the Secretary.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.42–46 of the Commission's Rules of Practice and Procedure (19 CFR 210.42–46).

By order of the Commission.

Marilyn R. Abbott,
Secretary to the Commission.

Issued: April 27, 2009.

William R. Bishop,
Acting Secretary to the Commission.

[FR Doc. E9–9997 Filed 4–30–09; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 09–15]

Roy Chi Lung, M.D.; Revocation of Registration

On October 22, 2008, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to Roy C. Lung, M.D. (Respondent), of Fountain Valley, California. The Show Cause Order proposed the revocation of Respondent's DEA Certificate of Registration, BL4971051, as a practitioner, and the denial of any pending applications to renew or modify his registration, on the grounds that Respondent is "not authorized to handle controlled substances in the state of California," and that he falsified his most recent application for renewal of his DEA registration. Show Cause Order at 1.

More specifically, the Show Cause Order alleged that effective January 30, 2008, the Medical Board of California suspended Respondent's license to practice medicine. *Id.* The Show Cause Order thus alleged that Respondent is "currently without authority to handle controlled substances in the State of California, the State in which" Respondent is registered with DEA. *Id.* The Show Cause Order also alleged that on April 1, 2008, Respondent falsified his application for renewal of his DEA registration when he answered "no" to the question of whether he had ever had a state license suspended. *Id.* at 2.

Respondent requested a hearing on the allegations, and the matter was assigned to an Administrative Law Judge (ALJ), who proceeded to conduct pre-hearing procedures. Thereafter, the Government moved for summary disposition on the ground that under the terms of an order of the Medical Board of California, Respondent's state medical license was suspended. Gov. Mot. at 1. The motion noted that the Medical Board's Order of Interim Suspension not only suspended Respondent's license, it expressly "prohibited Respondent from handling controlled substances and ordered Respondent to deliver to the Board his DEA registration." *Id.* at 3. The Government argued that there was no dispute that Respondent's license had been suspended in California, the State in which he maintains his DEA registration, and that under Federal Law, DEA "cannot register a practitioner to handle controlled substances who is without authority to handle controlled

substances in the State in which he practices." *Id.* at 2 (citing 21 U.S.C. 823(f)). *Id.* at 2.

In support of its motion, the Government attached a copy of the Order of Interim Suspension. The Order specifically stated that Respondent "shall not * * * [p]ractice or attempt to practice any aspect of medicine in the State of California * * * [n]or [p]ossess, order, purchase, receive, prescribe, furnish, administer, or otherwise distribute controlled substances or dangerous drugs as defined by federal or state law." *Johnston, Ex. Dir., v. Chi Wing Lung, M.D.*, OAH No. L2008010755, Order on Ex Parte Petition for Order of Interim Suspension, January 30, 2008, at 7. The Order also required that Respondent "immediately deliver to the Division of Medical Quality * * * all Drug Enforcement Administration forms, and all Drug Enforcement Administration permits." *Id.*

The ALJ ordered the Respondent to respond to the Government's motion by December 9, 2008; Respondent filed his response on December 5, 2008. Respondent requested that the ALJ "delay ruling on the Government's motion until April 1, 2009," as Respondent anticipated that the State Board would issue a final decision regarding his medical license by then. R. Resp. at 1–2.

On December 12, 2008, the ALJ issued her Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision. The ALJ noted that "Respondent himself states that his 'Medical license was suspended on an interim basis pending the recommendation of a California Administrative Law Judge.'" ALJ at 3. The ALJ thus concluded that "[t]hrough the Respondent's own admission, * * * Respondent lacks the authority to practice medicine in the State of California," and "[c]onsequently, * * * lacks the ability to prescribe controlled substances in that State." *Id.*

Because no material fact was in dispute, the ALJ determined that there was no need for a "plenary, administrative hearing." *Id.* at 5. Applying the Agency's settled rule that it lacks authority under the Controlled Substances Act to maintain a registration if the registrant is without state authority to handle controlled substances in the State in which he practices medicine, the ALJ concluded that "the DEA lacks authority to continue the Respondent's DEA registration." *Id.* at 5; see 21 U.S.C. 823(f), 824(a)(3). The ALJ thus granted the Government's motion for summary disposition and recommended that the

Respondent's DEA Certificate of Registration be revoked and that any pending renewal applications be denied. ALJ at 5–6. The ALJ then forwarded the record to me for final agency action.

Having considered the record as a whole, I adopt the ALJ's decision in its entirety. I find that Respondent holds a current registration which does not expire until March 31, 2011. I also take official notice of the records of the Medical Board of California. See 5 U.S.C. 556(e). According to those records, effective March 30, 2009, the Medical Board of California adopted the Proposed Decision of a state ALJ to revoke Respondent's medical license. Thus, since the issuance of the State's Order of Interim Suspension, Respondent has lacked authority to handle controlled substances in California, the State in which he practices his profession. Respondent is therefore not entitled to maintain his DEA registration.¹ See 21 U.S.C. 823(f), 802(21), and 824(a)(3). See also *Michael Chait*, 73 FR 40382, 40383 (2008); *Dominick A. Ricci*, 58 FR 51104 (1993). Accordingly, Respondent's registration will be revoked.

Order

Pursuant to the authority vested in me by 21 U.S.C. 823(f) & 824(a), as well as by 28 CFR 0.100(b) & 0.104, I hereby order that DEA Certificate of Registration, BL4971051, issued to Roy Chi Lung, M.D., be, and it hereby is, revoked. I further order that any pending application of Roy Chi Lung, M.D., for renewal or modification of his registration be, and it hereby is, denied. This order is effective June 1, 2009.

Dated: April 24, 2009.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. E9–10029 Filed 4–30–09; 8:45 am]

BILLING CODE 4410–09–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Arts Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that 20 meetings of the Arts Advisory Panel to the National Council on the Arts will be held by teleconference from the Nancy Hanks

¹ I note there is no evidence presented whether Respondent complied with the Order of Immediate Suspension and did in fact deliver his DEA registration to the California Board.

Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506. These are closed meetings to review applications for funding under the American Recovery and Reinvestment Act of 2009 as follows (ending times are approximate):

Local Arts Agencies (direct grants): May 18, 2009, from 3 p.m. to 4:30 p.m.

Literature: May 19, 2009, from 4 p.m. to 4:45 p.m.

Literature: May 19, 2009, from 4:45 p.m. to 5:30 p.m.

Visual Arts: May 19, 2009, from 1 p.m. to 2 p.m.

Visual Arts: May 19, 2009, from 3 p.m. to 4 p.m.

Design: May 20, 2009, from 1 p.m. to 2 p.m.

Folk and Traditional Arts: May 20, 2009, from 1 p.m. to 1:45 p.m.

Folk and Traditional Arts: May 20, 2009, from 1:45 p.m. to 2:30 p.m.

Museums: May 20, 2009, from 1 p.m. to 2 p.m.

Museums: May 20, 2009, from 3 p.m. to 4 p.m.

Musical Theater: May 20, 2009, from 1 p.m. to 2 p.m.

Dance: May 20, 2009, from 3 p.m. to 4 p.m.

Dance: May 20, 2009, from 4 p.m. to 5 p.m.

Media Arts: May 21, 2009, from 11 a.m. to 12 p.m.

Media Arts: May 21, 2009, from 2 p.m. to 3 p.m.

Presenting/Artist Communities: May 21, 2009, from 4 p.m. to 5 p.m.

Theater: May 21, 2009, from 2 p.m. to 3 p.m.

Theater: May 22, 2009, from 2 p.m. to 3 p.m.

Arts Education: May 22, 2009, from 2 p.m. to 4:20 p.m.

Presenting/Artist Communities: May 27, 2009, from 4 p.m. to 5 p.m.

Additionally, one meeting will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, as follows (ending time is approximate):

Local Arts Agencies (subgranting): May 19–20, 2009. This meeting, from 9 a.m. to 5:30 p.m. on May 19th and from 9 a.m. to 3 p.m. on May 20th, will be closed.

The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of February 28, 2008, these sessions will be closed to the public pursuant to

subsection (c)(6) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels that are open to the public, and if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman. If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202–682–5532, TDY–TDD 202–682–5496, at least seven (7) days prior to the meeting.

Further information with reference to these meetings can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call 202–682–5691.

Dated: April 28, 2009.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. E9–10067 Filed 4–30–09; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Chemistry; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463 as amended), the National Science Foundation announces the following meeting:

Name: Proposal Review Panel for Chemistry, NMFCL CHE Site Visit, #1191.

Dates: May 26, 2009, 7 a.m.–5:30 p.m.; May 27, 2009, 7:30 a.m.–10 a.m.

Place: National High Magnetic Field Laboratory, Tallahassee, FL, 1800 E. Paul Dirac Drive, Tallahassee, FL.

Type of Meeting: Partly open.

Contact Person: Dr. Colby A. Foss, Jr., Program Director, Division of Chemistry, Chemical Instrumentation Program, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230, (703) 292–8404.

Dr. Guebre X. Tessema, Program Director, Division of Materials Research, National Facilities Program National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230, (703) 292–4935.

Purpose of Meeting: To provide advice and recommendations regarding a proposal to develop and construct an advanced high magnetic field mass spectrometer.

Agenda:

Tuesday May 26, 2009

7 a.m.–9 a.m. Closed—Working Breakfast and Executive Session.

9 a.m.–12:30 p.m. Open—NMFCL Overview and Presentations, Tour of Facilities.

12:30 p.m.–1:30 p.m. Open—Lunch with graduate students.

1:30 p.m.–5:30 p.m. Closed—Executive Session.

Wednesday May 27, 2009

7:30 a.m.–10 a.m. Closed—Executive Session.

Reason for Closing: The work being reviewed may include information of a proprietary or confidential nature, including technical information; financial data such as salaries and personal information concerning individuals associated with the proposal. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: April 28, 2009.

Susanne Bolton,

Committee Management Officer.

[FR Doc. E9–10023 Filed 4–30–09; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Business and Operations Advisory Committee; Notice of Meeting

In accordance with Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Business and Operations Advisory Committee (9556).

Date/Time: May 19, 2009; 1 p.m. to 5:30 p.m. (EST); May 20, 2009; 8 a.m. to 12 p.m. (EST).

Place: National Science Foundation, 4201 Wilson Boulevard, Stafford I, Room 1235.

Type of Meeting: Open.

Contact Person: Joan Miller, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, (703) 292–8200.

Purpose of Meeting: To provide advice concerning issues related to the oversight, integrity, development and enhancement of NSF's business operations.

Agenda:

May 19, 2009

Welcome/Introductions; OIRM/CIO/BFA Updates; The American Recovery Act and Reinvestment Act; Research.gov.

May 20, 2009

Future NSF–2013 Lease Expiration; Committee discussion; Prepare for Meeting with NSF Deputy Director; Discussion with Deputy Director; Closing Committee Discussion/Wrap-Up.

Dated: April 28, 2009.

Susanne Bolton,

Committee Management Officer.

[FR Doc. E9–10026 Filed 4–30–09; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Social, Behavioral, and Economic Sciences; Notice of Meeting

In accordance with Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Social, Behavioral, and Economic Sciences (#1171).

Date/Time: May 21, 2009; 8:30 a.m. to 5:30 p.m.; May 22, 2009; 8:30 a.m. to 1 a.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Stafford II, Room 555, Arlington, VA 22230.

Type of Meeting: Open.

Contact Person: Ms. Lisa Jones, Office of the Assistant Director, Directorate for Social, Behavioral, and Economic Sciences, National Science Foundation, 4201 Wilson Boulevard, Room 905, Arlington, Virginia 22230, 703–292–8700.

Summary of Minutes: May be obtained from contact person listed above.

Purpose of Meeting: To provide advice and recommendation to the National Science Foundation on major goals and policies pertaining to Social, Behavioral and Economic Sciences Directorate programs and activities.

Agenda:

Thursday

Updates and discussions on continuing activities:

- Budget process and status: FY 2009, ARRA, FY 2010.

- NSTC Report on SBE Sciences: From research to policy.

- Science of Broadening Participation.
- Reports from SBE liaisons with other Advisory Committees and possibilities for future cooperation: CEOSE, CISE, CI, ERE, GPA.

Discussion with the NSF Director.

Friday

Updates and discussion on continuing activities:

- SBE Infrastructure.

- SBE/CISE joint AC subcommittee on portfolio analysis.

Committees of Visitors: Discussion and Acceptance of Reports:

- Science of Learning Centers Program.
- Division of Behavioral and Cognitive Sciences.

- Division of Science Resource Statistics. Planning for FY 2010 and Beyond.

Dated: April 28, 2009.

Susanne Bolton,

Committee Management Officer.

[FR Doc. E9–10027 Filed 4–30–09; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Materials Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463 as amended), the National Science Foundation announces the following meeting:

Name: Site Visit review of the Materials Research Science and Engineering Center (MRSEC) at Northwestern University, Evanston, IL (DMR) #1203.

Dates & Times: Wednesday, June 10, 2009; 5:30 p.m.–9 p.m.; Thursday, June 11, 2009; 8 a.m.–9p.m.; Friday, June 12, 2009; 7:30 a.m.–3:30 p.m.

Place: Northwestern University, Evanston, IL.

Type of Meeting: Part-open.

Contact Person: Dr. Rama Bansil Program Director, Materials Research Science and Engineering Centers Program, Division of Materials Research, Room 1065, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone (703) 292–8562.

Purpose of Meeting: To provide advice and recommendations concerning further support of the MRSEC @ Northwestern University, Evanston, IL.

Agenda:

Wednesday, June 10, 2009

5:30 p.m.–6:30 p.m.—Closed—Executive Session; 6:30 p.m.–9 p.m.—Open—Review of MRSEC at Northwestern University

Thursday, June 11, 2009

8 a.m.–5 p.m. Open—Review of the MRSEC at Northwestern University; 5 p.m.–6:45 p.m. Closed—Executive Session; 6:45 p.m.–9 p.m. Open—Dinner.

Friday, June 12, 2009

7:30 a.m.–3:30 p.m. Closed—Executive Session, Draft and Review Report.

Reason for Closing: The work being reviewed may include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552 b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: April 28 2009.

Susanne Bolton,

Committee Management Officer.

[FR Doc. E9–10025 Filed 4–30–09; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION**Advisory Committee for GPRA
Performance Assessment; Notice of
Meeting**

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended) the National Science Foundation announces the following meeting.

Name: Advisory Committee for GPRA Performance Assessment (AC/GPA)–(13853).

Date and Time: June 18, 2009, 8 a.m.–5 p.m.; June 19, 2009, 8 a.m.–3 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Room 555II.

If you are attending the meeting and need access to the NSF building, please contact Joyce Grainger (jgrainge@nsf.gov) for a visitor's badge.

Contact: Ms. Joyce Grainger, BFA/BD, National Science Foundation, jgrainge@nsf.gov. Telephone: 703-292-4481.

Type of Meeting: Open.

Purpose of Meeting: To provide advice and recommendations to the National Science Foundation (NSF) Director regarding the Foundation's performance as it relates to the Government Performance and Results Act of 1993 (GPRA).

Agenda: Presentations and discussion of topics regarding the assessment of accomplishments of NSF awards as they relate to three strategic outcome goals stated in the National Science Foundation's 2006–2011 Strategic Plan: Discovery, Learning, and Research Infrastructure.

Thursday, June 18, 2009

Welcome and Introductions; Charge to the Committee; and overview presentations on Foundation-wide issues in the context of performance assessment. The Committee, in subgroups, will analyze and assess accomplishments under the Discovery, Learning, and Research Infrastructure strategic outcome goals.

Friday, June 19, 2009

The NSF Director and/or Deputy Director will meet with the Committee. The Committee reconvenes as a Committee of the Whole to hear progress reports from the strategic goals' subgroups, discuss findings and conclusions, make recommendations, and complete preparation of the final report to NSF.

Dated: April 28, 2009.

Susanne Bolton,

Committee Management Officer.

[FR Doc. E9-10024 Filed 4-30-09; 8:45 am]

BILLING CODE 7555-01-P

NATIONAL SCIENCE FOUNDATION**Notice of Permit Applications Received
Under the Antarctic Conservation Act
of 1978 (Pub. L. 95-541)**

AGENCY: National Science Foundation.

ACTION: Notice of permit applications received under the Antarctic Conservation Act of 1978, Public Law 95-541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by June 1, 2009. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy at the above address or (703) 292-7405.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95-541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas a requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

The applications received are as follows:

Permit Application No. 2010-002

1. *Applicant* Stacy Kim, 8272 Moss Landing Road, Moss Landing, CA 95039.

Activity for Which Permit is Requested: Enter Antarctic Specially Protected Area. The applicant plans to enter Northwest White Island (ASPA #137) to drill through the naturally thin ice at the northwest end of the island to launch the remotely operated vehicle SCINI under the Ross Ice Shelf. All attempts will be made to avoid seals in the area. Should seals take up residence near the camp, the camp will be moved.

Location: Northwest White Island (ASPA #137)

Dates: November 1, 2009 to December 31, 2009.

Nadene G. Kennedy,

Permit Officer, Office of Polar Programs.

[FR Doc. E9-10032 Filed 4-30-09; 8:45 am]

BILLING CODE 7555-01-P

**NUCLEAR REGULATORY
COMMISSION**

[Docket No. NRC-2008-0565]

**Agency Information Collection
Activities: Submission for the Office of
Management and Budget (OMB)
Review; Comment Request**

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The NRC published a **Federal Register** Notice with a 60-day comment period on this information collection on February 9, 2009.

1. *Type of Submission, New, Revision, or Extension:* Extension.

2. *The Title of the Information Collection:* 10 CFR part 62—"Criteria and Procedures for Emergency Access to Non-Federal and Regional Low-Level Waste Disposal Facilities."

3. *Current OMB Approval Number:* 3150-0143.

4. *The Form Number if Applicable:* N/A.

5. *How Often the Collection is Required:* The collection would only be required upon application for an exemption when access to a non-Federal low-level waste disposal facility is denied, which results in a public health and safety and/or common defense and security concern.

6. *Who Will Be Required or Asked to Report:* Generators of low-level radioactive waste who are denied access to a non-Federal low-level radioactive waste and who wish to request emergency access for disposal at a non-Federal LLRW disposal facility pursuant to 10 CFR part 62.

7. *An Estimate of the Number of Annual Responses:* 1.

8. *The Estimated Number of Annual Respondents:* 1.

9. *An Estimate of the Total Number of Hours Needed Annually to Complete the Requirement or Request:* 233.

10. *Abstract:* 10 CFR part 62 sets out the information which must be provided to the NRC by any low-level waste generator seeking emergency access to an operating low-level waste disposal facility. The information is required to allow NRC to determine if denial of disposal constitutes a serious and immediate threat to public health and safety or common defense and security. 10 CFR part 62 also provides that the Commission may grant an exemption from the requirements in this Part upon application of an interested person or upon its own initiative.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O-1 F21, Rockville, Maryland 20852. OMB clearance requests are available at the NRC worldwide Web site: <http://www.nrc.gov/public-involve/doc-comment/omb/index.html>. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by June 1, 2009. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date. NRC Desk Officer, Office of Information and Regulatory Affairs (3150-0143), NEOB-10202, Office of Management and Budget, Washington, DC 20503.

The NRC Clearance Officer is Gregory Trussell, (301) 415-6445.

Dated at Rockville, Maryland, this 23rd day of April 2009.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

Acting NRC Clearance Officer, Office of Information Services.

[FR Doc. E9-10040 Filed 4-30-09; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-391; NRC-2008-0369]

Tennessee Valley Authority; Notice of Receipt of Update to Application for Facility Operating License and Notice of Opportunity for Hearing for the Watts Bar Nuclear Plant, Unit 2 and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information and Safeguards Information for Contention Preparation

In accordance with the Commission's direction in its Staff Requirements Memorandum SECY-07-0096, "Staff Requirements—Possible Reactivation of Construction and Licensing Activities for the Watts Bar Nuclear Plant Unit 2," dated July 25, 2007, and pursuant to the Atomic Energy Act of 1954 (the Act), as amended, and the regulations in Title 10 of the *Federal Regulations* (10 CFR) Part 2, "Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders," and 10 CFR Part 50, "Domestic Licensing of production and Utilization Facilities," notice is hereby given that, on March 4, 2009, the U.S. Nuclear Regulatory Commission (NRC, the Commission) has received an update to the application for a facility operating license (OL) from the Tennessee Valley Authority (TVA or the applicant) that would authorize TVA to possess, use, and operate a second light-water nuclear reactor (the facility), Watts Bar Nuclear Plant (WBN) Unit 2, located on the applicant's site in Rhea County, Tennessee. The unit would operate at a steady-state power level of 3411 megawatts thermal. The original application dated June 30, 1976, was found acceptable for docketing on September 15, 1976, and "Notice of Receipt of Application for Facility Operating Licenses; Notice of Consideration of Issuance of Facility Operating Licenses; and Notice of Opportunity for Hearing" for WBN Units 1 and 2 was published in the **Federal Register** on December 27, 1976 (41 FR 56244). On February 7, 1996, the NRC issued a full-power OL to TVA to operate WBN Unit 1 at this site. However, TVA has not completed construction of WBN Unit 2. Construction of the facility was authorized by Construction Permit No. CPPR-92, issued by the Commission on January 23, 1973. TVA has stated that it expects to complete construction prior to April 1, 2012.

Pursuant to the National Environmental Policy Act, as amended, and the Commission's regulations in 10 CFR Part 51, on February 15, 2008, TVA

submitted to the NRC "Watts Bar Nuclear Plant (WBN)—Unit 2—Final Supplemental Environmental Impact Statement [FSEIS] for the Completion and Operation of Unit 2," to the NRC in support of its OL application for WBN Unit 2. By letter dated January 27, 2009, TVA submitted its "Final Supplemental Environmental Impact Statement—Severe Accident Management Alternatives [SAMA]," to supplement its FSEIS. After the staff has completed its review of TVA's FSEIS, the NRC will prepare a draft supplement to environmental impact statement related to the operation of WBN Unit 2 (SEIS-OL). Upon preparation of the draft SEIS-OL, the Commission will, among other things, cause to be published in the **Federal Register**, a notice of availability of the draft supplement, requesting comments from interested persons on the draft SEIS-OL. The notice will also contain a statement to the effect that any comments of Federal agencies and State and local officials will be made available when received. The draft SEIS-OL will focus on matters that differ from those previously discussed in the final environmental statement prepared in connection with the issuance of the construction permits and the WBN Unit 1 OL. Upon consideration of comments submitted with respect to the draft SEIS-OL, the Commission's staff will prepare a final SEIS-OL, the availability of which will be published in the **Federal Register**.

The NRC staff will complete a detailed technical review of the application and will document its findings in Supplements to NUREG-0847, "Safety Evaluation Report Related to the Operation of Watts Bar Nuclear Plant, Unit 2."

The Commission will consider the issuance of the facility OL to TVA, which would authorize the applicant to possess, use and operate the WBN Unit 2 in accordance with the provisions of the license and the technical specifications appended thereto, upon: (1) The completion of a favorable safety evaluation of the application by the Commission's staff; (2) the completion of the environmental review required by the Commission's regulations in 10 CFR Part 51; (3) the receipt of a report on the applicants application for the facility OL by the Advisory Committee on Reactor Safeguards; and (4) a finding by the Commission that the application for the facility licenses, as amended, complies with the requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations in 10 CFR Chapter I.

The OL will not be issued until the Commission has made the findings

reflecting its review of the application under the Act, which will be set forth in the proposed license, and has concluded that the issuance of the license will not be inimical to the common defense and security or to the health and safety of the public.

Within 60 days after the date of initial publication of this notice in the **Federal Register**, any person(s) whose interest may be affected by this action and who desires to participate as a party to this action may file a written request for a hearing and a petition to intervene with respect to whether an OL should be issued. 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, "Hearing Requests, Petitions To Intervene, Requirements for Standing, and Contentions," which is available at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O-1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, <http://www.nrc.gov/reading-rm/doc-collections/cfr/>. Although the notice of the application will be published once each week for 4 consecutive weeks in the **Federal Register**, the 60-day period will only begin upon the date of the first publication of the notice.

If a request for a hearing or petition for leave to intervene is filed within 60 days of the date of the initial notice, 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 or request for hearing shall set forth with particularity the interest of the petitioner/requestor 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 identify 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 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 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 licensing action under consideration. The scope of the hearing and intervention request is limited to TVA's application for an OL. 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 shall 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.

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 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

a waiver in accordance with the procedures described below.

To comply with the procedural requirements associated with E-Filing, at least 10 days prior to the filing deadline, the 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 identification (ID) certificate that allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any NRC proceeding in which it is participating or (2) the creation of an electronic docket for the proceeding (even in instances when the requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE) viewer, which is 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 how to apply for a digital ID certificate is also 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, he or she can then submit a request for a hearing through EIE. 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 the document through EIE. To be timely, electronic filings 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 document 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 is filed so that they may 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 (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 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 (1) by 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) by 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 the 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 or the presiding officer of the Atomic Safety and Licensing Board that the petition and/or request 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). To be timely, filings must be submitted no later than 11:59 p.m. eastern time on the due date.

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 they are excluded under an order of the Commission, the 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 telephone numbers in their filings. 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 pertinent to the matters under consideration, see the application for the facility OL dated June 30, 1975, as supplemented on September 27, 1976, and as updated on March 4, 2009, which are available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically through the ADAMS Public Electronic Reading Room link on the internet at the NRC Web site <http://www.nrc.gov/reading-rm/adams.html>. Certain documents included in the OL application contain sensitive unclassified non-safeguards information and safeguards information. Persons who do not have access to ADAMS or who encounter problems in accessing documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1-800-4209, 301-415-4737, or by e-mail to pdr.resources@nrc.gov. The OL application and its supplement and update are available at <http://www.nrc.gov/reactors/plant-specific-items/watts-bar.html>. The ADAMS accession numbers for the OL application cover letter and supplement cover letter are ML073400595 and ML073381112, respectively. The ADAMS accession number for the update to the application is ML090700378. The ADAMS accession number for Supplement 21 to NUREG-0847 is ML090570741. The ADAMS accession number for the final safety analysis report, as redacted under 10 CFR 2.390(d)(1), is ML090980525. The redactions were made in compliance with the NRC's criteria on sensitive information, as specified in SECY-04-0191, "Withholding Sensitive Unclassified Information Concerning Nuclear Power Reactors from Public Disclosure," dated October 19, 2004 (ADAMS accession number ML042310663), as modified by the NRC Commission Staff Requirements Memorandum SECY-04-0191, dated November 9, 2004 (ADAMS accession number ML043140175). To search for other related documents in ADAMS using the Watts Bar Nuclear Plant Unit 2 OL application docket number, 50-391, enter the term "05000391" in the "Docket Number" field when using either the Web-based search (advanced search) engine or the ADAMS find tool in Citrix.

Attorney for the applicant: Maureen H. Dunn, Executive Vice President and General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, Knoxville, TN 37902.

Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information (SUNSI) and Safeguards Information (SGI) for Contention Preparation, Tennessee Valley Authority; Watts Bar Nuclear Plant, Unit 2, Located in Rhea County, Tennessee

1. This order contains instructions regarding how potential parties to the proceedings listed above may request access to documents containing sensitive unclassified non-safeguards information and safeguards information (SUNSI and SGI).

2. Within ten (10) days after publication of this notice of opportunity for hearing, any potential party as defined in 10 CFR 2.4 who believes access to SUNSI or SGI is necessary for a response to the notice may request access to SUNSI or SGI. A "potential party" is any person who intends or may intend to participate as a party by demonstrating standing and the filing of an admissible contention under 10 CFR 2.309. Requests submitted later than ten (10) days will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

3. The requester shall submit a letter requesting permission to access SUNSI and/or SGI 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, MD 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.resource@nrc.gov, respectively.¹ The request must include the following information:

a. A description of the licensing action with a citation to this **Federal Register** notice of opportunity for hearing;

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 and/or SGI under these procedures should be submitted as described in this paragraph.

b. 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 (a);

c. If the request is for SUNSI, the identity of the individual requesting access to SUNSI and the requester's need for the information in order to meaningfully participate in this adjudicatory proceeding, particularly why publicly available versions of the application would not be sufficient to provide the basis and specificity for a proffered contention;

d. If the request is for SGI, the identity of the individual requesting access to SGI and the identity of any expert, consultant or assistant who will aid the requester in evaluating the SGI, and information that shows:

(i) Why the information is indispensable to meaningful participation in this licensing proceeding; and

(ii) The technical competence (demonstrable knowledge, skill, experience, training or education) of the requester to understand and use (or evaluate) the requested information to provide the basis and specificity for a proffered contention. The technical competence of a potential party or its counsel may be shown by reliance on a qualified expert, consultant or assistant who demonstrates technical competence as well as trustworthiness and reliability, and who agrees to sign a non-disclosure affidavit and be bound by the terms of a protective order; and

e. If the request is for SGI, Form SF-85, "Questionnaire for Non-Sensitive Positions," Form FD-258 (fingerprint card), and a credit check release form completed by the individual who seeks access to SGI and each individual who will aid the requester in evaluating the SGI. For security reasons, Form SF-85 can only be submitted electronically, through a restricted-access database. To obtain online access to the form, the requester should contact the NRC's Office of Administration at 301-492-3524.² The other completed forms must be signed in original ink, accompanied by a check or money order payable in the amount of \$200.00 to the U.S. Nuclear Regulatory Commission for each individual, and mailed to the: Office of Administration, Security Processing Unit, Mail Stop TWB-05 B32M, U.S. Nuclear Regulatory

Commission, Washington, DC 20555-0012.

These forms will be used to initiate the background check, which includes fingerprinting as part of a criminal history records check. **Note:** copies of these forms do not need to be included with the request letter to the Office of the Secretary, but the request letter should state that the forms and fees have been submitted as described above.

4. To avoid delays in processing requests for access to SGI, all forms should be reviewed for completeness and accuracy (including legibility) before submitting them to the NRC. Incomplete packages will be returned to the sender and will not be processed.

5. Based on an evaluation of the information submitted under items 2 and 3.a through 3.d, above, the NRC staff will determine within ten days of receipt of the written access 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) there is a legitimate need for access to SUNSI or need to know the SGI requested. For SGI, the need to know determination is made based on whether the information requested is necessary (*i.e.*, indispensable) for the proposed recipient to proffer and litigate a specific contention in this NRC proceeding³ and whether the proposed recipient has the technical competence (demonstrable knowledge, skill, training, education, or experience) to evaluate and use the specific SGI requested in this proceeding.

6. If standing and need to know SGI are shown, the NRC staff will further determine based upon completion of the background check whether the proposed recipient is trustworthy and reliable. The NRC staff will conduct (as necessary) an inspection to confirm that the recipient's information protection systems are sufficient to protect SGI from inadvertent release or disclosure. Recipients may opt to view SGI at the NRC's facility rather than establish their own SGI protection program to meet SGI protection requirements.

7. A request for access to SUNSI or SGI will be granted if:

a. The request has demonstrated that there is a reasonable basis to believe that a potential party is likely to establish

standing to intervene or to otherwise participate as a party in this proceeding;

b. The proposed recipient of the information has demonstrated a need for SUNSI or a need to know for SGI, and that the proposed recipient of SGI is trustworthy and reliable;

c. The proposed recipient of the information has executed a Non-Disclosure Agreement or Affidavit and agrees to be bound by the terms of a Protective Order setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI and/or SGI; and

d. The presiding officer has issued a protective order concerning the information or documents requested.⁴ Any protective order issued shall provide that the petitioner must file SUNSI or SGI contentions 25 days after receipt of (or access to) that information. 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 or SGI contentions by that later deadline.

8. If the request for access to SUNSI or SGI is granted, the terms and conditions for access to sensitive unclassified information will be set forth in a draft protective order and affidavit of non-disclosure appended to a joint motion by the NRC staff, any other affected parties to this proceeding,⁵ and the petitioner(s). If the diligent efforts by the relevant parties or petitioner(s) fail to result in an agreement on the terms and conditions for a draft protective order or non-disclosure affidavit, the relevant parties to the proceeding or the petitioner(s) should notify the presiding officer within ten (10) days, describing the obstacles to the agreement.

9. If the request for access to SUNSI is denied by the NRC staff or a request for access to SGI is denied by NRC staff either after a determination on standing and need to know or, later, after a determination on trustworthiness and reliability, the NRC staff shall briefly state the reasons for the denial. Before the Office of Administration makes an adverse determination regarding access,

⁴ If a presiding officer has not yet been designated, the Chief Administrative Judge will issue such orders, or will appoint a presiding officer to do so.

⁵ Parties/persons other than the requester and the NRC staff will be notified by the NRC staff of a favorable access determination (and may participate in the development of such a motion and protective order) if it concerns SUNSI and if the party/person's interest independent of the proceeding would be harmed by the release of the information (*e.g.*, as with proprietary information).

² The requester will be asked to provide his or her full name, social security number, date and place of birth, telephone number, and email address. After providing this information, the requester usually should be able to obtain access to the online form within one business day.

³ Broad SGI requests under these procedures are thus highly unlikely to meet the standard for need to know; furthermore, staff redaction of information from requested documents before their release may be appropriate to comport with this requirement. These procedures do not authorize unrestricted disclosure or less scrutiny of a requester's need to know than ordinarily would be applied in connection with an already-admitted contention.

the proposed recipient must be provided an opportunity to correct or explain information. The requester may challenge the NRC staff's adverse determination with respect to access to SUNSI or with respect to standing or need to know for SGI by filing a challenge within ten (10) 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. In the same manner, an SGI requester may challenge an adverse determination on trustworthiness and reliability by filing

a challenge within fifteen (15) days of receipt of that determination.

In the same manner, 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 within ten (10) days of the notification by the NRC staff of its grant of such a request.

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 2.311.⁶

10. 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/or SGI, 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.

Dated at Rockville, Maryland, this 27th day of April 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 (SUNSI) and Safeguards Information (SGI) in This Proceeding

Day	Event/activity
0	Publication of notice of receipt of update to application for facility operating license and notice of opportunity for hearing, including order with instructions for access requests.
10	Deadline for submitting requests for access to SUNSI and/or SGI 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; demonstrating that access should be granted (e.g., showing technical competence for access to SGI); and, for SGI, including application fee for fingerprint/background check.
60	Deadline for submitting petition for intervention containing: (i) Demonstration of standing; (ii) all contentions whose formulation does not require access to SUNSI and/or SGI (+25 Answers to petition for intervention; +7 petitioner/requestor reply).
20	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 (1) need for SUNSI or (2) need to know for SGI. (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). If NRC staff makes the finding of need to know for SGI and likelihood of standing, NRC staff begins background check (including fingerprinting for a criminal history records check), information processing (preparation of redactions or review of redacted documents), and readiness inspections.
25	If NRC staff finds no "need," "need to know," or 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.
190	(Receipt +180) If NRC staff finds standing, need to know for SGI, and trustworthiness and reliability, deadline for NRC staff to file motion for Protective Order and draft Non-disclosure Affidavit (or to make a determination that the proposed recipient of SGI is not trustworthy or reliable). Note: Before the Office of Administration makes an adverse determination regarding access, the proposed recipient must be provided an opportunity to correct or explain information.
205	Deadline for petitioner to seek reversal of a final adverse NRC staff determination either before the presiding officer or another designated officer.
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 and/or SGI consistent with decision issuing the protective order.
A + 28	Deadline for submission of contentions whose development depends upon access to SUNSI and/or SGI. 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 or SGI contentions by that later deadline.
A + 53	(Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI and/or SGI.
A + 60	(Answer receipt +7) Petitioner/Intervenor reply to answers.

⁶ As of October 15, 2007, the NRC's final "E-Filing Rule" became effective. See Use of Electronic Submissions in Agency Hearings (72 FR 49139; Aug. 28, 2007). Requesters should note that the

filing requirements of that rule 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/SGI

requests submitted to the NRC staff under these procedures.

Day	Event/activity
B	Decision on contention admission.

[FR Doc. E9-10043 Filed 4-30-09; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

[Docket No. 52-037-COL; ASLBP No. 09-884-07-COL-BD01]

AmerenUE, Inc.; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28,710 (1972), and the Commission's regulations, *see* 10 CFR 2.104, 2.300, 2.303, 2.309, 2.311, 2.318, and 2.321, notice is hereby given that an Atomic Safety and Licensing Board (Board) is being established to preside over the following proceeding:

AmerenUE, Inc. (Callaway Plant Unit 2)

This proceeding concerns petitions to intervene and requests for hearing from petitioners Missouri Coalition for the Environment and Missourians for Safe Energy and from petitioner Missourians Against Higher Utility Rates, as well as requests to be granted discretionary intervention filed by the Public Service Commission of the State of Missouri (PSCM) and the Missouri Office of the Public Counsel, with the PSCM also seeking leave to participate as an interested governmental entity in accordance with 10 CFR 2.315(c). These intervention requests were submitted in response to a February 4, 2009 Notice of Hearing and Opportunity To Petition for Leave To Intervene and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation on a Combined License for the Callaway Plant Unit 2 (74 FR 6064). Petitioners challenge the application filed by AmerenUE pursuant to Subpart C of 10 CFR part 52 for a combined license for Callaway Plant Unit 2, which would be located in Callaway County, Missouri.

The Board is comprised of the following administrative judges:

G. Paul Bollwerk, III, Chair, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

Richard F. Cole, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

Jeffrey D. E. Jeffries, Atomic Safety and Licensing Board Panel, U.S. Nuclear

Regulatory Commission, Washington, DC 20555-0001.

All correspondence, documents, and other materials shall be filed in accordance with the NRC E-Filing rule, which the NRC promulgated in August 2007 (72 FR 49,139).

Issued at Rockville, Maryland, this 27th day of April 2009.

E. Roy Hawkens,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. E9-10049 Filed 4-30-09; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS) Meeting of the ACRS Subcommittee on US-APWR; Notice of Meeting

The ACRS Subcommittee on the US-APWR (U.S. Advanced Pressurized Water Reactor) will hold a meeting on May 21-22, 2009, in Room T-2B3, 11545 Rockville Pike, Rockville, Maryland.

Portions of the meeting will be open to public attendance. Some sessions will be closed to discuss proprietary documents.

The agenda for the subject meeting shall be as follows:

Thursday, May 21, 2009—8:30 a.m.–4:30 p.m.

Friday, May 22, 2009—8:30 a.m.–12 p.m.

The Subcommittee will review two reports associated with the US-APWR design. These include an NRC staff Safety Evaluation Report related to the topical report Defense in Depth and Diversity, and a technical report on gas turbine generator systems. The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff and other interested persons regarding this matter. 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, Mr. Neil Coleman, (Telephone: 301-415-7656) five days prior to the meeting, if possible, so that appropriate arrangements can be made.

Electronic recordings will be permitted. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 6, 2008 (73 FR 58268-58269).

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 8 a.m. and 4:15 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: April 27, 2009.

Antonio Dias,

Chief, Reactor Safety Branch B, Advisory Committee on Reactor Safeguards.

[FR Doc. E9-10044 Filed 4-30-09; 8:45 am]

BILLING CODE 7590-01-P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549-0213.

Extension:

Rule 11a-2; SEC File No. 270-267; OMB Control No. 3235-0272.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the "Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 11a-2 (17 CFR 270.11a-2) under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*) permits certain registered insurance company separate accounts, subject to certain conditions, to make exchange offers without prior approval by the Commission of the terms of those offers. Rule 11a-2 requires disclosure, in certain registration statements filed pursuant to the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) of any administrative fee or sales load imposed in connection with an exchange offer.

There are currently 743 registrants governed by Rule 11a-2. The Commission includes the estimated burden of complying with the information collection required by Rule 11a-2 in the total number of burden hours estimated for completing the relevant registration statements and reports the burden of Rule 11a-2 in the separate PRA submissions for those registration statements (see the separate PRA submissions for Form N-3 (17 CFR 274.11b), Form N-4 (17 CFR 274.11c) and Form N-6 (17 CFR 274.11d)). The Commission is requesting a burden of one hour for Rule 11a-2 for administrative purposes.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules or forms. With regard to Rule 11a-2, the Commission includes the estimate of burden hours in the total number of burden hours estimated for completing the relevant registration statements and reported on the separate PRA submissions for those statements (see the separate PRA submissions for Form N-3, Form N-4 and Form N-6). The information collection requirements imposed by Rule 11a-2 are mandatory. Responses to the collection of information will not be kept confidential.

Written comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Charles Boucher, Director/CIO, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: PRA_Mailbox@sec.gov.

Dated: April 23, 2009.

Florence E. Harmon,
Deputy Secretary.

[FR Doc. E9-10014 Filed 4-30-09; 8:45 am]

BILLING CODE 8010-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11694 and #11695]

North Dakota Disaster Number ND-00015

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of North Dakota (FEMA—1829—DR), dated 03/24/2009.

Incident: Severe Storms and Flooding.
Incident Period: 03/13/2009 and continuing.

Effective Date: 04/23/2009.

Physical Loan Application Deadline Date: 05/26/2009.

Economic Injury (EIDL) Loan Application Deadline Date: 12/24/2009.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of North Dakota, dated 03/24/2009, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties:

Bottineau, Bowman, Eddy, Griggs, Mchenry, Mountrail, Pierce, Steele, Towner, Traill, Ward, Wells, and the Sisseton-Wahpeton Oyate of the Lake Traverse Reservation.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E9-10060 Filed 4-30-09; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11707 and #11708]

North Dakota Disaster Number ND-00016

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of North Dakota (FEMA—1829—DR), dated 04/10/2009.

Incident: Severe storms and flooding.
Incident Period: 03/13/2009 and continuing.

Effective Date: 04/23/2009.

Physical Loan Application Deadline Date: 06/09/2009.

EIDL Loan Application Deadline Date: 01/11/2010.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of NORTH DAKOTA, dated 04/10/2009 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans):

Grant, McHenry, Oliver, Pierce, Stark, Ward, Walsh, and the Spirit Lake and Standing Rock Indian Reservations.

Contiguous Counties: (Economic Injury Loans Only):

North Dakota: Bottineau, Pembina, Renville.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E9-10061 Filed 4-30-09; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11718 and #11719]

Tennessee Disaster #TN-00026

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Tennessee dated 04/23/2009.

Incident: Tornadoes.

Incident Period: 04/10/2009.

DATES: Effective Date: 04/23/2009.

Physical Loan Application Deadline Date: 06/22/2009.

Economic Injury (EIDL) Loan Application Deadline Date: 01/25/2010.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Rutherford

Contiguous Counties: Tennessee:

Bedford, Cannon, Coffee, Davidson, Marshall, Williamson, Wilson

The Interest Rates are:

	Percent
Homeowners With Credit Available Elsewhere	4.375
Homeowners Without Credit Available Elsewhere	2.187
Businesses With Credit Available Elsewhere	6.000
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Other (Including Non-Profit Organizations) With Credit Available Elsewhere	4.500
Businesses And Non-Profit Organizations Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 11718 C and for economic injury is 11719 0.

The State which received an EIDL Declaration # is Tennessee.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008).

Dated: April 23, 2009.

Karen G. Mills,
Administrator.

[FR Doc. E9-10007 Filed 4-30-09; 8:45 am]

BILLING CODE 8025-01-P

DEPARTMENT OF STATE

[Public Notice: 6603]

60-Day Notice of Proposed Information Collection: DS-3077, Request for Entry Into Children's Passport Issuance Alert Program, OMB 1405-0169

ACTION: Notice of request for public comments.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Request for Entry into Children's Passport Issuance Alert Program.
- *OMB Control Number:* 1405-0169.
- *Type of Request:* Revision.
- *Originating Office:* CA/OCS/PRI.
- *Form Number:* DS-3077.
- *Respondents:* Concerned parents or their agents, institutions, or courts.
- *Estimated Number of Respondents:* 4,420.
- *Estimated Number of Responses:* 4,420.
- *Average Hours per Response:* 30 minutes.
- *Total Estimated Burden:* 2,210 hrs.
- *Frequency:* On occasion.
- *Obligation to Respond:* Voluntary.

DATES: The Department will accept comments from the public up to 60 days from May 1, 2009.

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

- *E-mail:* ASKPRI@state.gov.
- *Mail (Paper, Disk, or CD-ROM Submissions):* U.S. Department of State, CA/OCS/PRI, SA-29, 4th Floor, Washington, DC 20520.
- *Fax:* 202-736-9111.

You must include the DS form number (if applicable), information collection title, and OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed information collection should be made to Derek A Rivers, Bureau of Consular Affairs, Overseas Citizens Services (CA/OCS/PRI), U.S. Department of State, SA-29, 4th Floor, Washington, DC 20520, who may be reached on (202) 736-9082 or ASKPRI@state.gov.

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper performance of our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

Abstract of Proposed Collection

The information requested will be used to support entry of a minor's (an unmarried person under 18) name into the Children's Passport Issuance Alert Program (CPIAP). CPIAP provides a mechanism for parents or other persons with legal custody of a minor to obtain information regarding whether the Department has received a passport application for the minor. This program was developed as a means to prevent international abduction of a minor or to help prevent other travel of a minor without the consent of a parent or legal guardian. If a minor's name and other identifying information has been entered into the CPIAP, when the Department receives an application for a new, replacement, or renewed passport for the minor, the application will be placed on hold for up to 60 days and the Office of Children's Issues will attempt to notify the requestor of receipt of the application. Form DS-3077 will be primarily submitted by a parent or legal guardian of a minor.

Methodology

The completed form DS-3077 may be submitted to the Office of Children's Issues by mail, by fax, or electronically through <http://www.travel.state.gov>.

Dated: April 19, 2009.

Mary Ellen Hickey,
Managing Director, Bureau of Consular Affairs, Department of State.

[FR Doc. E9-10062 Filed 4-30-09; 8:45 am]

BILLING CODE 4710-06-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice, Gainesville Regional Airport, Gainesville, FL

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the Noise Exposure Maps submitted by the Gainesville Alachua County Regional Airport Authority for Gainesville Regional Airport under the provisions of 49 U.S.C. 47501 *et seq.* (Aviation Safety and Noise Abatement Act) and 14 CFR part 150 are in compliance with applicable requirements.

DATES: *Effective Date:* The effective date of the FAA's determination on the noise exposure maps is April 20, 2009.

FOR FURTHER INFORMATION CONTACT: Ms. Lindy McDowell, Federal Aviation Administration, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, Florida 32822, 407-812-6331 X130.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the Noise Exposure Maps submitted for Gainesville Regional Airport are in compliance with applicable requirements of Title 14 Code of Federal Regulations (CFR) Part 150, effective April 20, 2009. Under 49 U.S.C. section 47503 of the Aviation Safety and Noise Abatement Act (the Act), an airport operator may submit to the FAA Noise Exposure Maps which meet applicable regulations and which depict non-compatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport. An airport operator who has submitted Noise Exposure Maps that are found by FAA to be in compliance with the requirements of 14 CFR part 150, promulgated pursuant to the Act, may submit a Noise Compatibility Program for FAA approval which sets forth the measures the airport operator has taken or proposes to take to reduce existing non-compatible uses and prevent the introduction of additional non-compatible uses.

The FAA has completed its review of the Noise Exposure Maps and accompanying documentation submitted by Gainesville Alachua County Regional Airport Authority. The documentation that constitutes the "Noise Exposure Maps" as defined in § 150.7 of 14 CFR part 150 includes: Figure 7-1(A), Existing (2007) Noise Contour Map; Figure 7-2(A), Future (2012) Noise Contour Map; Table 5-1, 2007 Operations; Table 5-2, 2007 Itinerant Operations and Fleet Mix; Table 5-3, 2007 Local Operations and

Fleet Mix, Table 5-4, 2012 Operations; Table 5-5, 2012 Itinerant Operations and Fleet Mix; Table 5-6, 2012 Local Operations and Fleet Mix; Figure 5-1, East Flow Corridors 2007, 2012 & 2027; Figure 5-2, West Flow Corridors 2007, 2012 & 2027; Figure 5-3, Helicopter Corridors 2007, 2012 & 2027; Composite Corridors 2007, 2012 & 2027; Table 5-9, Itinerant Departure Track Use Percentages; Table 5-11, Local Track Use Percentages; Table 5-12, Rotorcraft Arrival Track Use Percentages; Table 5-13, Rotorcraft Arrival Track Use Percentages; Table 6-1; 2007 Noise Contour Surface Areas; Table 6-2, 2012 Noise Contour Surface Areas; Figure 6-1, 2007 Noise Contour Map; Figure 6-2, 2012 Noise Contour Map; Table 7-3, 2007 Noise Exposure Contour Population Summary; and Table 7-4, 2012 Noise Exposure Contour Population Summary. The FAA has determined that these Noise Exposure Maps and accompanying documentation are in compliance with applicable requirements. This determination is effective on April 20, 2009.

FAA's determination on the airport operator's Noise Exposure Maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of 14 CFR part 150. Such determination does not constitute approval of the airport operator's data, information or plans, or a commitment to approve a Noise Compatibility Program or to fund the implementation of that Program. If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a Noise Exposure Map submitted under Section 47503 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise exposure contours, or in interpreting the Noise Exposure Maps to resolve questions concerning, for example, which properties should be covered by the provisions of Section 47506 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under 14 CFR part 150 or through FAA's review of Noise Exposure Maps.

Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator that submitted those maps, or with those public agencies and planning agencies with which consultation is required under Section 47503 of the

Act. The FAA has relied on the certification by the airport operator, under § 150.21 of 14 CFR part 150, that the statutorily required consultation has been accomplished.

Copies of the full Noise Exposure Maps documentation and of the FAA's evaluation of the maps are available for examination at the following locations: Federal Aviation Administration, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, Florida 32822.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT**.

Issued in Orlando, Florida, on April 20, 2009.

Julian C. Brown,

Acting Manager, Orlando Airports District Office.

[FR Doc. E9-9954 Filed 4-30-09; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice for Syracuse Hancock International Airport, Syracuse, NY

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the City of Syracuse, for Syracuse Hancock International Airport, under the provisions of 49 U.S.C. 47501 *et seq.* (Aviation Safety and Noise Abatement Act) and 14 CFR Part 150 are in compliance with applicable requirements.

DATES: *Effective Date:* The effective date of the FAA's determination on the noise exposure maps is April 21, 2009.

FOR FURTHER INFORMATION CONTACT: Ms. Suki Gill, Environmental Protection Specialist, Federal Aviation Administration, New York Airports District Office, 600 Old Country Road, Suite 446, Garden City, NY 11530, Telephone (516) 227-3815.

SUPPLEMENTARY INFORMATION: This notice announces that the FM finds that the noise exposure maps submitted for Syracuse Hancock International Airport are in compliance with applicable requirements of 14 Code of Federal Regulations (CFR) Part 150 (hereinafter referred to as "Part 150"), effective April 21, 2009. Under 49 U.S.C. 47503 of the Aviation Safety and Noise Abatement Act (hereinafter referred to as "the

Act”), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport. An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Part 150, promulgated pursuant to the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes to take to reduce existing non-compatible uses and prevent the introduction of additional noncompatible uses.

The FAA has completed its review of the noise exposure maps and accompanying documentation submitted by the City of Syracuse. The documentation that constitutes the “Noise Exposure Maps” as defined in § 150.7 of Part 150 includes: Figures “2007 Noise Exposure Map” and Figure 6 “2012 Noise Exposure Map”. The FAA has determined that these noise exposure maps and accompanying documentation are in compliance with applicable requirements. This

determination is effective on April 10, 2009.

FAA’s determination on an airport operator’s noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of Part 150. Such determination does not constitute approval of the applicant’s data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program. If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 47503 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 47506 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA’s review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests

exclusively with the airport operator that submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 47503 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of Part 150, that the statutorily required consultation has been accomplished.

Copies of the full noise exposure map documentation and of the FAA’s evaluation of the maps are available for examination at the following locations:

Federal Aviation Administration,
New York Airports District Office, 600
Old Country Road, Suite 446, Garden
City, NY 11530, Monday–Friday—9
a.m.–4 p.m.;

City of Syracuse, Department of
Aviation, Syracuse Hancock
International Airport, 1000 Colonel
Eileen Collins Boulevard, Syracuse, NY
13212, (315) 454–3263, Available upon
request.

Questions may be directed to the
individual named above under the
heading **FOR FURTHER INFORMATION
CONTACT**.

Issued in Garden City, New York, April 21,
2009.

Steven Urlass,

*Manager, New York Airports District Office,
AEA-630, Eastern Region.*

[FR Doc. E9–9953 Filed 4–30–09; 8:45 am]

BILLING CODE 4910–13–M



Federal Register

**Friday,
May 1, 2009**

Part II

Department of Health and Human Services

Centers for Medicare & Medicaid Services

**Medicare Program; Inpatient Psychiatric
Facilities Prospective Payment System
Payment Update for Rate Year Beginning
July 1, 2009 (RY 2010); Notice**

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS-1495-NC]

RIN 0938-AP50

Medicare Program; Inpatient Psychiatric Facilities Prospective Payment System Payment Update for Rate Year Beginning July 1, 2009 (RY 2010)

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice; request for comments.

SUMMARY: This notice updates the payment rates for the Medicare prospective payment system (PPS) for inpatient psychiatric hospital services provided by inpatient psychiatric facilities (IPFs). These changes are applicable to IPF discharges occurring during the rate year beginning July 1, 2009 through June 30, 2010. We are also requesting comments on the IPF PPS teaching adjustment and the market basket.

DATES:

Effective Date: The updated IPF prospective payment rates are effective for discharges occurring on or after July 1, 2009 through June 30, 2010.

Comment Date: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on June 30, 2009.

ADDRESSES: In commenting, please refer to file code CMS-1495-NC. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on specific issues in this regulation to <http://www.regulations.gov>. Follow the instructions for "Comment or Submission" and enter the file code to find the document accepting comments.

2. *By regular mail.* You may mail written comments (one original and two copies) to the following address only: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS-1495-NC, P.O. Box 8010, Baltimore, MD 21244-1850.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments (one

original and two copies) to the following address only: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS-1495-NC, Mail Stop C4-26-05, 7500 Security Boulevard, Baltimore, MD 21244-1850.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) before the close of the comment period to either of the following addresses.

a. Room 445-G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

(Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. 7500 Security Boulevard, Baltimore, MD 21244-1850.

If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786-9994 in advance to schedule your arrival with one of our staff members.

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Dorothy Myrick or Jana Lindquist, (410) 786-4533 (for general information).

Bridget Dickensheets, (410) 786-8670 (for information regarding the market basket and labor-related share).

Theresa Bean, (410) 786-2287 (for information regarding the regulatory impact analysis).

SUPPLEMENTARY INFORMATION: *Inspection of Public Comments:* All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: <http://www.regulations.gov>. Follow the search instructions on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning

approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1-800-743-3951.

Table of Contents

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Acronyms

Because of the many terms to which we refer by acronym in this notice, we are listing the acronyms used and their corresponding terms in alphabetical order below:

BBRA Medicare, Medicaid and SCHIP [State Children's Health Insurance Program] Balanced Budget Refinement Act of 1999, (Pub. L. 106–113)
 CBSA Core-Based Statistical Area
 CCR Cost-to-charge ratio
 DSM–IV–TR Diagnostic and Statistical Manual of Mental Disorders Fourth Edition—Text Revision
 DRGs Diagnosis-related groups
 FY Federal fiscal year
 ICD–9–CM International Classification of Diseases, 9th Revision, Clinical Modification
 IPFs Inpatient psychiatric facilities
 IRFs Inpatient rehabilitation facilities
 LTCHs Long-term care hospitals
 MedPAR Medicare provider analysis and review file
 RY Rate Year
 TEFRA Tax Equity and Fiscal Responsibility Act of 1982, (Pub. L. 97–248)

I. Background

A. Annual Requirements for Updating the IPF PPS

In November 2004, we implemented the inpatient psychiatric facilities (IPF) prospective payment system (PPS) in a final rule that appeared in the November 15, 2004 **Federal Register** (69 FR 66922). In developing the IPF PPS, in order to ensure that the IPF PPS is able to account adequately for each IPF's case-mix, we performed an extensive regression analysis of the relationship between the per diem costs and certain patient and facility characteristics to determine those characteristics associated with statistically significant cost differences on a per diem basis. For characteristics with statistically significant cost differences, we used the regression coefficients of those variables to determine the size of the corresponding payment adjustments.

In that final rule, we explained that we believe it is important to delay updating the adjustment factors derived from the regression analysis until we have IPF PPS data that includes as much information as possible regarding the patient-level characteristics of the population that each IPF serves. Therefore, we indicated that we did not intend to update the regression analysis and recalculate the Federal per diem base rate and the patient- and facility-

level adjustments until we complete that analysis. Until that analysis is complete, we stated our intention to publish a notice in the **Federal Register** each spring to update the IPF PPS (71 FR 27041).

Updates to the IPF PPS as specified in 42 CFR 412.428 include the following:

- A description of the methodology and data used to calculate the updated Federal per diem base payment amount.
- The rate of increase factor as described in § 412.424(a)(2)(iii), which is based on the excluded hospital with capital market basket under the update methodology of section 1886(b)(3)(B)(ii) of the Social Security Act (the Act) for each year (effective from the implementation period until June 30, 2006).
- For discharges occurring on or after July 1, 2006, the rate of increase factor for the Federal portion of the IPF's payment, which is based on the rehabilitation, psychiatric, and long-term care (RPL) market basket.
- The best available hospital wage index and information regarding whether an adjustment to the Federal per diem base rate is needed to maintain budget neutrality.

- Updates to the fixed dollar loss threshold amount in order to maintain the appropriate outlier percentage.
- Description of the International Classification of Diseases, 9th Revision, Clinical Modification (ICD–9–CM) coding and diagnosis-related groups (DRGs) classification changes discussed in the annual update to the hospital inpatient prospective payment system (IPPS) regulations.
- Update to the electroconvulsive therapy (ECT) payment by a factor specified by CMS.
- Update to the national urban and rural cost-to-charge ratio medians and ceilings.

- Update to the cost of living adjustment factors for IPFs located in Alaska and Hawaii, if appropriate.

Our most recent annual update occurred in the May 2008 IPF PPS notice (73 FR 25709) that set forth updates to the IPF PPS payment rates for RY 2009. This notice updates the IPF per diem payment rates that were published in the May 2008 IPF PPS notice in accordance with our established policies.

B. Overview of the Legislative Requirements for the IPF PPS

Section 124 of the Medicare, Medicaid, and SCHIP (State Children's Health Insurance Program) Balanced Budget Refinement Act of 1999, (Pub. L. 106–113) (BBRA) required implementation of the IPF PPS.

Specifically, section 124 of the BBRA mandated that the Secretary develop a per diem PPS for inpatient hospital services furnished in psychiatric hospitals and psychiatric units that includes an adequate patient classification system that reflects the differences in patient resource use and costs among psychiatric hospitals and psychiatric units.

Section 405(g)(2) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173) extended the IPF PPS to distinct part psychiatric units of critical access hospitals (CAHs).

To implement these provisions, we published various proposed and final rules in the **Federal Register**. For more information regarding these rules, see the CMS Web sites <http://www.cms.hhs.gov/InpatientPsychFacilPPS/> and http://www.cms.hhs.gov/InpatientpsychfacilPPS/02_regulations.asp.

C. IPF PPS—General Overview

The November 2004 IPF PPS final rule (69 FR 66922) established the IPF PPS, as authorized under section 124 of the BBRA and codified at subpart N of part 412 of the Medicare regulations. The November 2004 IPF PPS final rule set forth the per diem Federal rates for the implementation year (the 18-month period from January 1, 2005 through June 30, 2006), and it provided payment for the inpatient operating and capital costs to IPFs for covered psychiatric services they furnish (that is, routine, ancillary, and capital costs, but not costs of approved educational activities, bad debts, and other services or items that are outside the scope of the IPF PPS). Covered psychiatric services include services for which benefits are provided under the fee-for-service Part A (Hospital Insurance Program) Medicare program.

The IPF PPS established the Federal per diem base rate for each patient day in an IPF derived from the national average daily routine operating, ancillary, and capital costs in IPFs in FY 2002. The average per diem cost was updated to the midpoint of the first year under the IPF PPS, standardized to account for the overall positive effects of the IPF PPS payment adjustments, and adjusted for budget neutrality.

The Federal per diem payment under the IPF PPS is comprised of the Federal per diem base rate described above and certain patient- and facility-level payment adjustments that were found in the regression analysis to be associated with statistically significant per diem cost differences.

The patient-level adjustments include age, DRG assignment, comorbidities, and variable per diem adjustments to reflect higher per diem costs in the early days of an IPF stay. Facility-level adjustments include adjustments for the IPF's wage index, rural location, teaching status, a cost of living adjustment for IPFs located in Alaska and Hawaii, and presence of a qualifying emergency department (ED).

The IPF PPS provides additional payment policies for: Outlier cases; stop-loss protection (which was applicable only during the IPF PPS transition period); interrupted stays; and a per treatment adjustment for patients who undergo ECT.

A complete discussion of the regression analysis appears in the November 2004 IPF PPS final rule (69 FR 66933 through 66936).

Section 124 of BBRA does not specify an annual update rate strategy for the IPF PPS and is broadly written to give the Secretary discretion in establishing an update methodology. Therefore, in the November 2004 IPF PPS final rule, we implemented the IPF PPS using the following update strategy:

- Calculate the final Federal per diem base rate to be budget neutral for the 18-month period of January 1, 2005 through June 30, 2006.
- Use a July 1 through June 30 annual update cycle.
- Allow the IPF PPS first update to be effective for discharges on or after July 1, 2006 through June 30, 2007.

II. Transition Period for Implementation of the IPF PPS

In the November 2004 IPF PPS final rule, we provided for a 3-year transition period. During this 3-year transition period, an IPF's total payment under the PPS was based on an increasing percentage of the Federal rate with a corresponding decreasing percentage of the IPF PPS payment that is based on reasonable cost concepts. However, effective for cost reporting periods beginning on or after January 1, 2008, IPF PPS payments are based on 100 percent of the Federal rate.

III. Updates to the IPF PPS for RY Beginning July 1, 2009

The IPF PPS is based on a standardized Federal per diem base rate calculated from IPF average per diem costs and adjusted for budget-neutrality in the implementation year. The Federal per diem base rate is used as the standard payment per day under the IPF PPS and is adjusted by the applicable wage index factor and the patient-and facility-level adjustments that are applicable to the IPF stay. A detailed

explanation of how we calculated the average per diem cost appears in the November 2004 IPF PPS final rule (69 FR 66926).

A. Determining the Standardized Budget-Neutral Federal Per Diem Base Rate

Section 124(a)(1) of the BBRA requires that we implement the IPF PPS in a budget neutral manner. In other words, the amount of total payments under the IPF PPS, including any payment adjustments, must be projected to be equal to the amount of total payments that would have been made if the IPF PPS were not implemented. Therefore, we calculated the budget-neutrality factor by setting the total estimated IPF PPS payments to be equal to the total estimated payments that would have been made under the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) (Pub. L. 97-248) methodology had the IPF PPS not been implemented.

Under the IPF PPS methodology, we calculated the final Federal per diem base rate to be budget neutral during the IPF PPS implementation period (that is, the 18-month period from January 1, 2005 through June 30, 2006) using a July 1 update cycle. We updated the average cost per day to the midpoint of the IPF PPS implementation period (that is, October 1, 2005), and this amount was used in the payment model to establish the budget-neutrality adjustment.

A step-by-step description of the methodology used to estimate payments under the TEFRA payment system appears in the November 2004 IPF PPS final rule (69 FR 66926).

1. Standardization of the Federal Per Diem Base Rate and Electroconvulsive Therapy (ECT) Rate

In the November 2004 IPF PPS final rule, we describe how we standardized the IPF PPS Federal per diem base rate in order to account for the overall positive effects of the IPF PPS payment adjustment factors. To standardize the IPF PPS payments, we compared the IPF PPS payment amounts calculated from the FY 2002 Medicare Provider Analysis and Review (MedPAR) file to the projected TEFRA payments from the FY 2002 cost report file updated to the midpoint of the IPF PPS implementation period (that is, October 2005). The standardization factor was calculated by dividing total estimated payments under the TEFRA payment system by estimated payments under the IPF PPS. The standardization factor was calculated to be 0.8367.

As described in detail in the May 2006 IPF PPS final rule (71 FR 27045),

in reviewing the methodology used to simulate the IPF PPS payments used for the November 2004 IPF PPS final rule, we discovered that due to a computer code error, total IPF PPS payments were underestimated by about 1.36 percent. Since the IPF PPS payment total should have been larger than the estimated figure, the standardization factor should have been smaller (0.8254 vs. 0.8367). In turn, the Federal per diem base rate and the ECT rate should have been reduced by 0.8254 instead of 0.8367.

To resolve this issue, in RY 2007, we amended the Federal per diem base rate and the ECT payment rate prospectively. Using the standardization factor of 0.8254, the average cost per day was effectively reduced by 17.46 percent (100 percent minus 82.54 percent = 17.46 percent).

2. Calculation of the Budget Neutrality Adjustment

To compute the budget neutrality adjustment for the IPF PPS, we separately identified each component of the adjustment, that is, the outlier adjustment, stop-loss adjustment, and behavioral offset.

A complete discussion of how we calculate each component of the budget neutrality adjustment appears in the November 2004 IPF PPS final rule (69 FR 66932 through 66933) and in the May 2006 IPF PPS final rule (71 FR 27044 through 27046).

a. Outlier Adjustment

Since the IPF PPS payment amount for each IPF includes applicable outlier amounts, we reduced the standardized Federal per diem base rate to account for aggregate IPF PPS payments estimated to be made as outlier payments. The outlier adjustment was calculated to be 2 percent. As a result, the standardized Federal per diem base rate was reduced by 2 percent to account for projected outlier payments.

b. Stop-Loss Provision Adjustment

As explained in the November 2004 IPF PPS final rule, we provided a stop-loss payment during the transition from cost-based reimbursement to the per diem payment system to ensure that an IPF's total PPS payments were no less than a minimum percentage of their TEFRA payment, had the IPF PPS not been implemented. We reduced the standardized Federal per diem base rate by the percentage of aggregate IPF PPS payments estimated to be made for stop-loss payments. As a result, the standardized Federal per diem base rate was reduced by 0.39 percent to account for stop-loss payments. Since the transition was completed in RY 2009,

the stop-loss provision is no longer applicable, and for cost reporting periods beginning on or after January 1, 2008, IPFs were paid 100 percent PPS.

c. Behavioral Offset

As explained in the November 2004 IPF PPS final rule, implementation of the IPF PPS may result in certain changes in IPF practices, especially with respect to coding for comorbid medical conditions. As a result, Medicare may make higher payments than assumed in our calculations. Accounting for these effects through an adjustment is commonly known as a behavioral offset.

Based on accepted actuarial practices and consistent with the assumptions made in other PPSs, we assumed in determining the behavioral offset that IPFs would regain 15 percent of potential “losses” and augment payment increases by 5 percent. We applied this actuarial assumption, which is based on our historical experience with new payment systems, to the estimated “losses” and “gains” among the IPFs. The behavioral offset for the IPF PPS was calculated to be 2.66 percent. As a result, we reduced the standardized Federal per diem base rate by 2.66 percent to account for behavioral changes. As indicated in the November 2004 IPF PPS final rule, we do not plan to change adjustment factors or projections until we analyze IPF PPS data.

If we find that an adjustment is warranted, the percent difference may be applied prospectively to the established PPS rates to ensure the rates accurately reflect the payment level intended by the statute. In conducting this analysis, we will be interested in the extent to which improved coding of patients’ principal and other diagnoses, which may not reflect real increases in underlying resource demands, has occurred under the PPS.

B. Update of the Federal Per Diem Base Rate and Electroconvulsive Therapy Rate

1. Market Basket for IPFs Reimbursed Under the IPF PPS

As described in the November 2004 IPF PPS final rule (69 FR 66931), the

average per diem cost was updated to the midpoint of the implementation year. This updated average per diem cost of \$724.43 was reduced by 17.46 percent to account for standardization to projected TEFRA payments for the implementation period, by 2 percent to account for outlier payments, by 0.39 percent to account for stop-loss payments, and by 2.66 percent to account for the behavioral offset. The Federal per diem base rate in the implementation year was \$575.95. The increase in the per diem base rate for RY 2009 included the 0.39 percent increase due to the removal of the stop-loss provision. We indicated in the November 2004 IPF PPS final rule (69 FR 66932) that we would remove this 0.39 percent reduction to the Federal per diem base rate after the transition. For RY 2009 and beyond, the stop-loss provision has ended and is therefore no longer a part of budget neutrality.

Applying the market basket increase of 2.1 percent and the wage index budget neutrality factor of 1.0009 to the RY 2009 Federal per diem base rate of \$637.78 yields a Federal per diem base rate of \$651.76 for RY 2010. Similarly, applying the market basket increase and wage index budget neutrality factor to the RY 2009 ECT rate yields an ECT rate of \$280.60 for RY 2010.

a. Market Basket Index for the IPF PPS

The market basket index that was used to develop the IPF PPS was the excluded hospital with capital market basket. This market basket was based on 1997 Medicare cost report data and included data for Medicare-participating IPFs, inpatient rehabilitation facilities (IRFs), long-term care hospitals (LTCHs), cancer, and children’s hospitals.

Beginning with the May 2006 IPF PPS final rule (71 FR 27046 through 27054), IPF PPS payments were updated using a 2002-based market basket reflecting the operating and capital cost structures for IRFs, IPFs, and LTCHs (hereafter referred to as the rehabilitation, psychiatric, long-term care (RPL) market basket).

We excluded cancer and children’s hospitals from the RPL market basket because their payments are based

entirely on reasonable costs subject to rate-of-increase limits established under the authority of section 1886(b) of the Act, which are implemented in regulations at § 413.40. They are not reimbursed through a PPS. Also, the FY 2002 cost structures for cancer and children’s hospitals are noticeably different than the cost structures of the IRFs, IPFs, and LTCHs. A complete discussion of the RPL market basket appears in the May 2006 IPF PPS final rule (71 FR 27046 through 27054).

We seek comments below on the possibility of creating a stand-alone IPF market basket.

b. Overview of the RPL Market Basket

The RPL market basket is a fixed weight, Laspeyres-type price index. A market basket is described as a fixed-weight index because it answers the question of how much it would cost, at another time, to purchase the same mix (quantity and intensity) of goods and services needed to provide hospital services in a base period. The effects on total expenditures resulting from changes in the mix of goods and services purchased subsequent to the base period are not measured. In this manner, the market basket measures pure price change only. Only when the index is rebased would changes in the quantity and intensity be captured in the cost weights. Therefore, we rebase the market basket periodically so that cost weights reflect recent changes in the mix of goods and services that hospitals purchase to furnish patient care between base periods.

The terms “rebasings” and “revising,” while often used interchangeably, actually denote different activities. Rebasings means moving the base year for the structure of costs of an input price index (for example, shifting the base year cost structure from FY 1997 to FY 2002). Revising means changing data sources, methodology, or price proxies used in the input price index. In 2006, we rebased and revised the market basket used to update the IPF PPS.

Table 1 below sets forth the completed FY 2002-based RPL market basket including the cost categories, weights, and price proxies.

TABLE 1—FY 2002-BASED RPL MARKET BASKET COST CATEGORIES, WEIGHTS, AND PRICE PROXIES

Cost categories	FY 2002-based RPL market basket cost weight	FY 2002-based RPL market basket price proxies
Total	100.000	
Compensation	65.877	
Wages and Salaries*	52.895	ECI—Wages and Salaries, Civilian Hospital Workers.
Employee Benefits*	12.982	ECI—Benefits, Civilian Hospital Workers.
Professional Fees, Non-Medical*	2.892	ECI—Compensation for Professional & Related occupations.

TABLE 1—FY 2002-BASED RPL MARKET BASKET COST CATEGORIES, WEIGHTS, AND PRICE PROXIES—Continued

Cost categories	FY 2002-based RPL market basket cost weight	FY 2002-based RPL market basket price proxies
Utilities	0.656	
Electricity	0.351	PPI—Commercial Electric Power.
Fuel Oil, Coal, etc.	0.108	PPI—Commercial Natural Gas.
Water and Sewage	0.197	CPI—U—Water & Sewage Maintenance.
Professional Liability Insurance	1.161	CMS Professional Liability Premium Index.
All Other Products and Services	19.265	
All Other Products	13.323	
Pharmaceuticals	5.103	PPI Prescription Drugs.
Food: Direct Purchase	0.873	PPI Processed Foods & Feeds.
Food: Contract Service	0.620	CPI—U Food Away From Home.
Chemicals	1.100	PPI Industrial Chemicals.
Medical Instruments	1.014	PPI Medical Instruments & Equipment.
Photographic Supplies	0.096	PPI Photographic Supplies.
Rubber and Plastics	1.052	PPI Rubber & Plastic Products.
Paper Products	1.000	PPI Converted Paper & Paperboard Products.
Apparel	0.207	PPI Apparel.
Machinery and Equipment	0.297	PPI Machinery & Equipment
Miscellaneous Products**	1.963	PPI Finished Goods less Food & Energy.
All Other Services	5.942	
Telephone	0.240	CPI—U Telephone Services.
Postage	0.682	CPI—U Postage.
All Other: Labor Intensive*	2.219	ECI—Compensation for Private Service Occupations.
All Other: Non-labor Intensive	2.800	CPI—U All Items.
Capital-Related Costs***	10.149	
Depreciation	6.186	
Fixed Assets	4.250	Boeckh Institutional Construction 23-year useful life.
Movable Equipment	1.937	WPI Machinery & Equipment 11-year useful life.
Interest Costs	2.775	
Nonprofit	2.081	Average yield on domestic municipal bonds (Bond Buyer 20 bonds) vintage-weighted (23 years).
For Profit	0.694	Average yield on Moody's Aaa bond vintage-weighted (23 years).
Other Capital-Related Costs	1.187	CPI—U Residential Rent.

* Labor-related.

** Blood and blood-related products is included in miscellaneous products.

*** A portion of capital costs (0.46) are labor-related.

Note: Due to rounding, weights may not sum to total.

We evaluated the price proxies using the criteria of reliability, timeliness, availability, and relevance. *Reliability* indicates that the index is based on valid statistical methods and has low sampling variability. *Timeliness* implies that the proxy is published regularly (preferably at least once a quarter). *Availability* means that the proxy is publicly available. Finally, *relevance* means that the proxy is applicable and representative of the cost category weight to which it is applied. The Consumer Price Indexes (CPIs), Producer Price Indexes (PPIs), and Employment Cost Indexes (ECIs) used as proxies in this market basket meet these criteria.

We note that the proxies are the same as those used for the FY 1997-based excluded hospital with capital market basket. Because these proxies meet our criteria of reliability, timeliness, availability, and relevance, we believe they continue to be the best measure of price changes for the cost categories. For further discussion on the FY 1997-based

excluded hospital with capital market basket, see the August 1, 2002 hospital inpatient prospective payment system (IPPS) final rule (67 FR at 50042).

The RY 2010 (that is, beginning July 1, 2009) update for the IPF PPS using the FY 2002-based RPL market basket and Information Handling Services (IHS) Global Insight's 1st quarter 2009 forecast for the market basket components is 2.1 percent. This includes increases in both the operating section and the capital section for the 12-month RY period (that is, July 1, 2009 through June 30, 2010). IHS Global Insight, Inc. is a nationally recognized economic and financial forecasting firm that contracts with CMS to forecast the components of the market baskets.

2. Labor-Related Share

Due to the variations in costs and geographic wage levels, we believe that payment rates under the IPF PPS should continue to be adjusted by a geographic wage index. This wage index applies to the labor-related portion of the Federal

per diem base rate, hereafter referred to as the labor-related share.

The labor-related share is determined by identifying the national average proportion of operating costs that are related to, influenced by, or vary with the local labor market. Using our current definition of labor-related, the labor-related share is the sum of the relative importance of wages and salaries, fringe benefits, professional fees, labor-intensive services, and a portion of the capital share from an appropriate market basket. We used the FY 2002-based RPL market basket cost weights relative importance to determine the labor-related share for the IPF PPS.

The labor-related share for RY 2010 is the sum of the RY 2010 relative importance of each labor-related cost category, and reflects the different rates of price change for these cost categories between the base year (FY 2002) and RY 2010. The sum of the relative importance for the RY 2010 operating costs (wages and salaries, employee benefits, professional fees, and labor-

intensive services) is 71.935, as shown in below. The portion of capital that is influenced by the local labor market is estimated to be 46 percent, which is the same percentage used in the FY 1997-based IRF and IPF payment systems.

Since the relative importance for capital is 8.596 percent of the FY 2002-based RPL market basket in RY 2010, we are taking 46 percent of 8.596 percent to

determine the labor-related share of capital for RY 2010. The result is 3.954 percent, which we added to 71.935 percent for the operating cost amount to determine the total labor-related share for RY 2010. Thus, the labor-related share that we are using for IPF PPS in RY 2010 is 75.889 percent. Table 2 below shows the RY 2010 labor-related share using the FY 2002-based RPL

market basket. We note that this labor-related share is determined by using the same methodology as employed in calculating all previous IPF labor-related shares.

A complete discussion of the IPF labor-related share methodology appears in the November 2004 IPF PPS final rule (69 FR 66952 through 66954).

TABLE 2—TOTAL LABOR-RELATED SHARE—RELATIVE IMPORTANCE FOR RY 2010

Cost category	FY 2002-based RPL market basket labor-related share relative importance (percent) RY 2009*	FY 2002-based RPL market basket labor-related share relative importance (percent) RY 2010**
Wages and salaries	52.645	53.062
Employee benefits	14.004	13.852
Professional fees	2.895	2.895
All other labor-intensive services	2.137	2.126
Subtotal	71.681	71.935
Labor-related share of capital costs (0.46)	3.950	3.954
Total	75.631	75.889

* Based on 2008 1st Quarter forecast.

** Based on 2009 1st Quarter forecast.

3. One-time Prospective Adjustment to the Standard Federal Rate

As we discussed in the November 2004 IPF PPS final rule, consistent with the statutory requirement for budget neutrality in section 124 of the BBRA, we estimated aggregate payments under the IPF PPS for the IPF PPS implementation year (that is, the 18-month period from January 1, 2005 through June 30, 2006) to be equal to the estimated aggregate payments that would be made if the IPF PPS had not been implemented. Our methodology for estimating payments for purposes of the budget neutrality calculations used the best available data at the time and necessarily reflected several assumptions (for example, costs, inflation factors and intensity of services provided).

We indicated from the inception of the IPF PPS that it was possible for the aggregate amount of actual payments in the implementation year to be significantly higher or lower than the estimates on which the budget neutrality calculations were based to the extent that later, more complete data differ significantly from the data that were available at the time of the original calculations.

Section 124 of the BBRA provides broad authority to the Secretary in developing the IPF PPS, including the authority for establishing appropriate adjustments. Under this broad authority to make appropriate adjustments, we

provided in § 412.424(c)(3)(ii) for the possibility of making a one-time prospective adjustment to the IPF PPS rates, so that the effect of any significant difference between actual payments and estimated payments for the first year of the IPF PPS would not be perpetuated in the IPF PPS rates for future years.

The November 2004 IPF PPS final rule implementing the IPF PPS (69 FR 66922), was based upon the broad authority granted to the Secretary under section 124 of the BBRA. In that same final rule, we discussed our authority to make a one-time prospective adjustment to the IPF PPS rates, which was reflected in § 412.424(c)(3)(ii).

Evaluating the appropriateness of the possible one-time prospective adjustment under § 412.424(c)(3)(ii) requires a thorough review of the relevant IPF data. When we established the IPF PPS Federal per diem base rate in a budget neutral manner, we used the most recent IPF cost report data available at that time (that is, FY 2002 data), and trended that data forward to estimate what CMS would have paid to IPFs in the implementation year under the TEFRA payment system if the PPS were not implemented (69 FR 66927). We have since conducted a review of the relevant data. From the cost reports, we have TEFRA and PPS payment data for January 1, 2005 through June 30, 2006, the 18-month period for the implementation of the IPF PPS. These data are drawn from reports with cost reporting periods beginning in FY 2005

and FY 2006. More than 70 percent of the cost reports from FY 2005 were settled. However, only approximately 33 percent of the cost reports from FY 2006 have been settled. The remaining 67 percent from FY 2006 are either as-submitted or have been reopened. Therefore, because we lack a complete set of final cost report data from the IPF PPS 18-month implementation period, we are not making a one-time adjustment to the IPF PPS rates for RY 2010.

We plan to revisit the possibility of making a one-time prospective adjustment to the IPF PPS rates as more cost report data becomes available.

IV. Update of the IPF PPS Adjustment Factors

A. Overview of the IPF PPS Adjustment Factors

The IPF PPS payment adjustments were derived from a regression analysis of 100 percent of the FY 2002 MedPAR data file, which contained 483,038 cases. For this notice, we used the same results of the regression analysis used to implement the November 2004 IPF PPS final rule. For a more detailed description of the data file used for the regression analysis, see the November 2004 IPF PPS final rule (69 FR 66935 through 66936). While we have since used more recent claims data to set the fixed dollar loss threshold amount, we use the same results of this regression

analysis to update the IPF PPS for RY 2009 as well as RY 2010.

As previously stated, we do not plan to update the regression analysis until we are able to analyze IPF PPS claims and cost report data. However, we continue to monitor claims and payment data independently from cost report data to assess issues, to determine whether changes in case-mix or payment shifts have occurred among freestanding governmental, non-profit and private psychiatric hospitals, and psychiatric units of general hospitals, and CAHs and other issues of importance to IPFs.

B. Patient-Level Adjustments

In the May 2008 IPF PPS notice (73 FR 25709), we provided payment adjustments for the following patient-level characteristics: Medicare Severity diagnosis related groups (MS-DRGs) assignment of the patient's principal diagnosis, selected comorbidities, patient age, and the variable per diem adjustments.

1. Adjustment for MS-DRG Assignment

The IPF PPS includes payment adjustments for the psychiatric DRG assigned to the claim based on each patient's principal diagnosis. The IPF PPS recognizes the MS-DRGs. The DRG adjustment factors were expressed relative to the most frequently reported psychiatric DRG in FY 2002, that is, DRG 430 (psychoses). The coefficient values and adjustment factors were derived from the regression analysis.

In accordance with § 412.27(a), payment under the IPF PPS is conditioned on IPFs admitting "only patients whose admission to the unit is required for active treatment, of an intensity that can be provided appropriately only in an inpatient hospital setting, of a psychiatric principal diagnosis that is listed in Chapter Five ("Mental Disorders") of the International Classification of Diseases, Ninth Revision, Clinical Modification (ICD-9-CM)" or in the Fourth Edition, Text Revision of the American Psychiatric Association's Diagnostic and Statistical Manual, (DSM-IV-TR). IPF claims with a principal diagnosis included in Chapter Five of the ICD-9-CM or the DSM-IV-TR are paid the Federal per diem base rate under the IPF PPS and all other applicable adjustments, including any applicable DRG adjustment. Psychiatric principal diagnoses that do not group to one of the designated DRGs still receive the Federal per diem base rate and all other applicable adjustments, but the payment would not include a DRG adjustment.

The Standards for Electronic Transaction final rule published in the **Federal Register** on August 17, 2000 (65 FR 50312), adopted the ICD-9-CM as the designated code set for reporting diseases, injuries, impairments, other health related problems, their manifestations, and causes of injury, disease, impairment, or other health related problems. Therefore, we use the ICD-9-CM as the designated code set for the IPF PPS.

We believe that it is important to maintain the same diagnostic coding and DRG classification for IPFs that are used under the IPPS for providing the psychiatric care. Therefore, when the IPF PPS was implemented for cost reporting periods beginning on or after January 1, 2005, we adopted the same diagnostic code set and DRG patient classification system (that is, the CMS DRGs) that were utilized at the time under the hospital inpatient prospective payment system (IPPS). Since the inception of the IPF PPS, the DRGs used as the patient classification system under the IPF PPS have corresponded exactly with the CMS DRGs applicable under the IPPS for acute care hospitals.

Every year, changes to the ICD-9-CM coding system are addressed in the IPPS proposed and final rules. The changes to the codes are effective October 1 of each year and must be used by acute care hospitals as well as other providers to report diagnostic and procedure information. The IPF PPS has always incorporated ICD-9-CM coding changes made in the annual IPPS update. We publish coding changes in a Transmittal/Change Request, similar to how coding changes are announced by the IPPS and LTCH PPS. Those ICD-9-CM coding changes are also published in the following IPF PPS RY update, in either the IPF PPS proposed and final rules, or in an IPF PPS update notice.

In the May 2008 IPF PPS notice (73 FR 25714), we discussed CMS' effort to better recognize resource use and the severity of illness among patients. CMS adopted the new MS-DRGs for the IPPS in the FY 2008 IPPS final rule with comment period (72 FR 47130). We believe by better accounting for patients' severity of illness in Medicare payment rates, the MS-DRGs encourage hospitals to improve their coding and documentation of patient diagnoses. The MS-DRGs, which are based on the CMS DRGs, represent a significant increase in the number of DRGs (from 538 to 745, an increase of 207). For a full description of the development and implementation of the MS-DRGs, see the FY 2008 IPPS final rule with comment period (72 FR 47141 through 47175).

All of the ICD-9-CM coding changes are reflected in the FY 2009 GROUPER, Version 26.0, effective for IPPS discharges occurring on or after October 1, 2008 through September 30, 2009. The GROUPER Version 26.0 software package assigns each case to an MS-DRG on the basis of the diagnosis and procedure codes and demographic information (that is, age, sex, and discharge status). The Medicare Code Editor (MCE) 25.0 uses the new ICD-9-CM codes to validate coding for IPPS discharges on or after October 1, 2008. For additional information on the GROUPER Version 26.0 and MCE 25.0, see Transmittal 1610 (Change Request 6189), dated October 3, 2008. The IPF PPS has always used the same GROUPER and Code Editor as the IPPS. Therefore, the ICD-9-CM changes, which were reflected in the GROUPER Version 26.0 and MCE 25.0 on October 1, 2008, also became effective for the IPF PPS for discharges occurring on or after October 1, 2008.

The impact of the new MS-DRGs on the IPF PPS was negligible. Mapping to the MS-DRGs resulted in the current 17 MS-DRGs, instead of the original 15, for which the IPF PPS provides an adjustment. Although the code set is updated, the same associated adjustment factors apply now that have been in place since implementation of the IPF PPS, with one exception that is unrelated to the update to the codes. When DRGs 521 and 522 were consolidated into MS-DRG 895, we carried over the adjustment factor of 1.02 from DRG 521 to the newly consolidated MS-DRG. This was done to reflect the higher claims volume under DRG 521, with more than eight times the number of claims than billed under DRG 522. The updates are reflected in Table 5. For a detailed description of the mapping changes from the original DRG adjustment categories to the current MS-DRG adjustment categories we refer readers to the May 2008 IPF PPS notice (73 FR 25714).

The official version of the ICD-9-CM is available on CD-ROM from the U.S. Government Printing Office. The FY 2009 version can be ordered by contacting the Superintendent of Documents, U.S. Government Printing Office, Department 50, Washington, DC 20402-9329, telephone number (202) 512-1800. Questions concerning the ICD-9-CM should be directed to Patricia E. Brooks, Co-Chairperson, ICD-9-CM Coordination and Maintenance Committee, CMS, Center for Medicare Management, Hospital and Ambulatory Policy Group, Division of Acute Care, Mailstop C4-08-06, 7500 Security

Boulevard, Baltimore, Maryland 21244–1850.

Further information concerning the official version of the ICD–9–CM can be found in the IPPS final rule with comment period, “Changes to Hospital Inpatient Prospective Payment System and Fiscal Year 2009 Rates” in the

August 19, 2008 **Federal Register** (73 FR 48434) and at <http://www.cms.hhs.gov/AcuteInpatientPPS/IPPS/list.asp#TopOfPage>.

Tables 3 and 4 below list the FY 2009 new and invalid ICD–9–CM diagnosis codes that group to one of the 17 MS–DRGs for which the IPF PPS provides an

adjustment. These tables are only a listing of FY 2009 changes and do not reflect all of the currently valid and applicable ICD–9–CM codes classified in the MS–DRGs. When coded as a principal code or diagnosis, these codes receive the correlating MS–DRG adjustment.

TABLE 3—FY 2009 NEW DIAGNOSIS CODES

Diagnosis code	Description	MS–DRG
046.11	Variante Creutzfeldt-Jakob disease	056, 057
046.19	Other and unspecified Creutzfeldt-Jakob disease	056, 057
046.71	Gerstmann-Sträussler-Scheinker syndrome	056, 057
046.72	Fatal familial insomnia	056, 057
046.79	Other and unspecified prion disease of central nervous system	056, 057

TABLE 4—FY 2009 INVALID DIAGNOSIS CODES

Diagnosis code	Description	MS–DRG
046.1	Jakob-Creutzfeldt	056, 057

We do not plan to update the regression analysis until we are able to

analyze IPF PPS data. The MS–DRG adjustment factors (as shown in Table 5)

will continue to be paid for discharges occurring in RY 2010.

TABLE 5—RY 2010 CURRENT MS–DRGs APPLICABLE FOR THE PRINCIPAL DIAGNOSIS ADJUSTMENT

MS–DRG	MS–DRG descriptions	Adjustment factor
056	Degenerative nervous system disorders w MCC	1.05
057	Degenerative nervous system disorders w/o MCC	1.05
080	Nontraumatic stupor & coma w MCC	1.07
081	Nontraumatic stupor & coma w/o MCC	1.07
876	O.R. procedure w principal diagnoses of mental illness	1.22
880	Acute adjustment reaction & psychosocial dysfunction	1.05
881	Depressive neuroses	0.99
882	Neuroses except depressive	1.02
883	Disorders of personality & impulse control	1.02
884	Organic disturbances & mental retardation	1.03
885	Psychoses	1.00
886	Behavioral & developmental disorders	0.99
887	Other mental disorder diagnoses	0.92
894	Alcohol/drug abuse or dependence, left AMA	0.97
895	Alcohol/drug abuse or dependence w rehabilitation therapy	1.02
896	Alcohol/drug abuse or dependence w/o rehabilitation therapy w MCC	0.88
897	Alcohol/drug abuse or dependence w/o rehabilitation therapy w/o MCC	0.88

2. Payment for Comorbid Conditions

The intent of the comorbidity adjustments is to recognize the increased costs associated with comorbid conditions by providing additional payments for certain concurrent medical or psychiatric conditions that are expensive to treat. In the May 2008 IPF PPS notice (73 FR 25716), we explained that the IPF PPS includes 17 comorbidity categories and identified the new, revised, and deleted ICD–9–CM diagnosis codes that generate a comorbid condition payment adjustment under the IPF PPS for RY 2009 (73 FR 25718).

Comorbidities are specific patient conditions that are secondary to the patient’s principal diagnosis and that require treatment during the stay. Diagnoses that relate to an earlier episode of care and have no bearing on the current hospital stay are excluded and must not be reported on IPF claims. Comorbid conditions must exist at the time of admission or develop subsequently, and affect the treatment received, length of stay (LOS), or both treatment and LOS.

For each claim, an IPF may receive only one comorbidity adjustment per comorbidity category, but it may receive an adjustment for more than one

comorbidity category. Billing instructions require that IPFs must enter the full ICD–9–CM codes for up to 8 additional diagnoses if they co-exist at the time of admission or develop subsequently and impact the treatment provided.

The comorbidity adjustments were determined based on the regression analysis using the diagnoses reported by IPFs in FY 2002. The principal diagnoses were used to establish the DRG adjustments and were not accounted for in establishing the comorbidity category adjustments, except where ICD–9–CM “code first” instructions apply. As we explained in

the May 2008 IPF PPS notice (73 FR 25716), the code first rule applies when a condition has both an underlying etiology and a manifestation due to the underlying etiology. For these conditions, the ICD-9-CM has a coding convention that requires the underlying conditions to be sequenced first followed by the manifestation.

Whenever a combination exists, there is a “use additional code” note at the etiology code and a code first note at the manifestation code.

As discussed in the MS-DRG section, it is our policy to maintain the same diagnostic coding set for IPFs that is used under the IPPS for providing the same psychiatric care. Although the

ICD-9-CM code set has been updated, the same adjustment factors have been in place since the implementation of the IPF PPS. Table 6 below lists the FY 2009 new ICD diagnosis codes that impact the comorbidity adjustments under the IPF PPS. Table 6 is not a list of all currently valid ICD codes applicable for the IPF PPS comorbidity adjustments.

TABLE 6—FY 2009 NEW ICD CODES APPLICABLE FOR THE COMORBIDITY ADJUSTMENT

Diagnosis code	Description	Comorbidity category
038.12	Methicillin resistant Staphylococcus aureus septicemia	Infectious Disease.
046.11	Variant Creutzfeldt-Jakob disease	Infectious Disease.
046.19	Other and unspecified Creutzfeldt-Jakob disease	Infectious Disease.
046.71	Gerstmann-Sträussler-Scheinker syndrome	Infectious Disease.
046.72	Fatal familial insomnia	Infectious Disease.
046.79	Other and unspecified prion disease of central nervous system	Infectious Disease.
051.01	Cowpox	Infectious Disease.
051.02	Vaccinia not from vaccination	Infectious Disease.
059.00	Orthopoxvirus infection, unspecified	Infectious Disease.
059.01	Monkeypox	Infectious Disease.
059.09	Other orthopoxvirus infections	Infectious Disease.
059.10	Parapoxvirus infection, unspecified	Infectious Disease.
059.11	Bovine stomatitis	Infectious Disease.
059.12	Sealpox	Infectious Disease.
059.19	Other parapoxvirus infections	Infectious Disease.
059.20	Yatapoxvirus infection, unspecified	Infectious Disease.
059.21	Tanapox	Infectious Disease.
059.22	Yaba monkey tumor virus	Infectious Disease.
059.8	Other poxvirus infections	Infectious Disease.
059.9	Poxvirus infections, unspecified	Infectious Disease.
199.2	Malignant neoplasm associated with transplant organ	Oncology Treatment.
203.02	Multiple myeloma, in relapse	Oncology Treatment.
203.12	Plasma cell leukemia, in relapse	Oncology Treatment.
203.82	Other immunoproliferative neoplasms, in relapse	Oncology Treatment.
204.02	Acute lymphoid leukemia, in relapse	Oncology Treatment.
204.12	Chronic lymphoid leukemia, in relapse	Oncology Treatment.
204.22	Subacute lymphoid leukemia, in relapse	Oncology Treatment.
204.82	Other lymphoid leukemia, in relapse	Oncology Treatment.
204.92	Unspecified lymphoid leukemia, in relapse	Oncology Treatment.
205.02	Acute myeloid leukemia, in relapse	Oncology Treatment.
205.12	Chronic myeloid leukemia, in relapse	Oncology Treatment.
205.22	Subacute myeloid leukemia, in relapse	Oncology Treatment.
205.32	Myeloid sarcoma, in relapse	Oncology Treatment.
205.82	Other myeloid leukemia, in relapse	Oncology Treatment.
205.92	Unspecified myeloid leukemia, in relapse	Oncology Treatment.
206.02	Acute monocytic leukemia, in relapse	Oncology Treatment.
206.12	Chronic monocytic leukemia, in relapse	Oncology Treatment.
206.22	Subacute monocytic leukemia, in relapse	Oncology Treatment.
206.82	Other monocytic leukemia, in relapse	Oncology Treatment.
206.92	Unspecified monocytic leukemia, in relapse	Oncology Treatment.
207.02	Acute erythremia and erythroleukemia, in relapse	Oncology Treatment.
207.12	Chronic erythremia, in relapse	Oncology Treatment.
207.22	Megakaryocytic leukemia, in relapse	Oncology Treatment.
207.82	Other specified leukemia, in relapse	Oncology Treatment.
208.02	Acute leukemia of unspecified cell type, in relapse	Oncology Treatment.
208.12	Chronic leukemia of unspecified cell type, in relapse	Oncology Treatment.
208.22	Subacute leukemia of unspecified cell type, in relapse	Oncology Treatment.
208.82	Other leukemia of unspecified cell type, in relapse	Oncology Treatment.
208.92	Unspecified leukemia, in relapse	Oncology Treatment.
209.00	Malignant carcinoid tumor of the small intestine, unspecified portion	Oncology Treatment.
209.01	Malignant carcinoid tumor of the duodenum	Oncology Treatment.
209.02	Malignant carcinoid tumor of the jejunum	Oncology Treatment.
209.03	Malignant carcinoid tumor of the ileum	Oncology Treatment.
209.10	Malignant carcinoid tumor of the large intestine, unspecified portion	Oncology Treatment.
209.11	Malignant carcinoid tumor of the appendix	Oncology Treatment.
209.12	Malignant carcinoid tumor of the cecum	Oncology Treatment.
209.13	Malignant carcinoid tumor of the ascending colon	Oncology Treatment.
209.14	Malignant carcinoid tumor of the transverse colon	Oncology Treatment.
209.15	Malignant carcinoid tumor of the descending colon	Oncology Treatment.
209.16	Malignant carcinoid tumor of the sigmoid colon	Oncology Treatment.
209.17	Malignant carcinoid tumor of the rectum	Oncology Treatment.

TABLE 6—FY 2009 NEW ICD CODES APPLICABLE FOR THE COMORBIDITY ADJUSTMENT—Continued

Diagnosis code	Description	Comorbidity category
209.20	Malignant carcinoid tumor of unknown primary site	Oncology Treatment.
209.21	Malignant carcinoid tumor of the bronchus and lung	Oncology Treatment.
209.22	Malignant carcinoid tumor of the thymus	Oncology Treatment.
209.23	Malignant carcinoid tumor of the stomach	Oncology Treatment.
209.24	Malignant carcinoid tumor of the kidney	Oncology Treatment.
209.25	Malignant carcinoid tumor of foregut, not otherwise specified	Oncology Treatment.
209.26	Malignant carcinoid tumor of midgut, not otherwise specified	Oncology Treatment.
209.27	Malignant carcinoid tumor of hindgut, not otherwise specified	Oncology Treatment.
209.29	Malignant carcinoid tumor of other sites	Oncology Treatment.
209.30	Malignant poorly differentiated neuroendocrine carcinoma, any site	Oncology Treatment.
209.40	Benign carcinoid tumor of the small intestine, unspecified portion	Oncology Treatment.
209.41	Benign carcinoid tumor of the duodenum	Oncology Treatment.
209.42	Benign carcinoid tumor of the jejunum	Oncology Treatment.
209.43	Benign carcinoid tumor of the ileum	Oncology Treatment.
209.50	Benign carcinoid tumor of the large intestine, unspecified portion	Oncology Treatment.
209.51	Benign carcinoid tumor of the appendix	Oncology Treatment.
209.52	Benign carcinoid tumor of the cecum	Oncology Treatment.
209.53	Benign carcinoid tumor of the ascending colon	Oncology Treatment.
209.54	Benign carcinoid tumor of the transverse colon	Oncology Treatment.
209.55	Benign carcinoid tumor of the descending colon	Oncology Treatment.
209.56	Benign carcinoid tumor of the sigmoid colon	Oncology Treatment.
209.57	Benign carcinoid tumor of the rectum	Oncology Treatment.
209.60	Benign carcinoid tumor of unknown primary site	Oncology Treatment.
209.61	Benign carcinoid tumor of the bronchus and lung	Oncology Treatment.
209.62	Benign carcinoid tumor of the thymus	Oncology Treatment.
209.63	Benign carcinoid tumor of the stomach	Oncology Treatment.
209.64	Benign carcinoid tumor of the kidney	Oncology Treatment.
209.65	Benign carcinoid tumor of foregut, not otherwise specified	Oncology Treatment.
209.66	Benign carcinoid tumor of midgut, not otherwise specified	Oncology Treatment.
209.67	Benign carcinoid tumor of hindgut, not otherwise specified	Oncology Treatment.
209.69	Benign carcinoid tumor of other sites	Oncology Treatment.
238.77	Post-transplant lymphoproliferative disorder (PTLD)	Oncology Treatment.
V45.11	Renal dialysis status	Chronic Renal Failure.
V45.12	Noncompliance with renal dialysis	Chronic Renal Failure.

Table 7 lists the FY 2009 revised ICD diagnosis codes that are applicable for the comorbidity adjustment.

TABLE 7—FY 2009 REVISED ICD CODES APPLICABLE FOR THE COMORBIDITY ADJUSTMENT

Diagnosis code	Description	Comorbidity category
038.11	Methicillin susceptible Staphylococcus aureus septicemia	Infectious Disease.
203.00	Multiple myeloma, without mention of having achieved remission	Oncology Treatment.
203.10	Plasma cell leukemia, without mention of having achieved remission	Oncology Treatment.
203.80	Other immunoproliferative neoplasms, without mention of having achieved remission.	Oncology Treatment.
204.00	Acute lymphoid leukemia, without mention of having achieved remission	Oncology Treatment.
204.10	Chronic lymphoid leukemia, without mention of having achieved remission	Oncology Treatment.
204.20	Subacute lymphoid leukemia, without mention of having achieved remission	Oncology Treatment.
204.80	Other lymphoid leukemia, without mention of having achieved remission	Oncology Treatment.
204.90	Unspecified lymphoid leukemia, without mention of having achieved remission	Oncology Treatment.
205.00	Acute myeloid leukemia, without mention of having achieved remission	Oncology Treatment.
205.10	Chronic myeloid leukemia, without mention of having achieved remission	Oncology Treatment.
205.20	Subacute myeloid leukemia, without mention of having achieved remission	Oncology Treatment.
205.30	Myeloid sarcoma, without mention of having achieved remission	Oncology Treatment.
205.80	Other myeloid leukemia, without mention of having achieved remission	Oncology Treatment.
205.90	Unspecified myeloid leukemia, without mention of having achieved remission	Oncology Treatment.
206.00	Acute monocytic leukemia, without mention of having achieved remission	Oncology Treatment.
206.10	Chronic monocytic leukemia, without mention of having achieved remission	Oncology Treatment.
206.20	Subacute monocytic leukemia, without mention of having achieved remission	Oncology Treatment.
206.80	Other monocytic leukemia, without mention of having achieved remission	Oncology Treatment.
206.90	Unspecified monocytic leukemia, without mention of having achieved remission	Oncology Treatment.
207.00	Acute erythremia and erythroleukemia, without mention of having achieved remission.	Oncology Treatment.
207.10	Chronic erythremia, without mention of having achieved remission	Oncology Treatment.

TABLE 7—FY 2009 REVISED ICD CODES APPLICABLE FOR THE COMORBIDITY ADJUSTMENT—Continued

Diagnosis code	Description	Comorbidity category
207.20	Megakaryocytic leukemia, without mention of having achieved remission	Oncology Treatment.
207.80	Other specified leukemia, without mention of having achieved remission	Oncology Treatment.
208.00	Acute leukemia of unspecified cell type, without mention of having achieved remission.	Oncology Treatment.
208.10	Chronic leukemia of unspecified cell type, without mention of having achieved remission.	Oncology Treatment.
208.20	Subacute leukemia of unspecified cell type, without mention of having achieved remission.	Oncology Treatment.
208.80	Other leukemia of unspecified cell type, without mention of having achieved remission.	Oncology Treatment.
208.90	Unspecified leukemia, without mention of having achieved remission	Oncology Treatment.

Table 8 lists the invalid FY 2009 ICD-9-CM codes no longer applicable for the comorbidity adjustment.

TABLE 8—FY 2009 INVALID ICD CODES NO LONGER APPLICABLE FOR THE COMORBIDITY ADJUSTMENT

Diagnosis Code	Description	Comorbidity category
046.1	Jakob-Creutzfeldt disease	Infectious Disease.
051.0	Cowpox	Infectious Disease.
V45.1	Renal dialysis status	Chronic Renal Failure.

For RY 2010, we are applying the seventeen comorbidity categories for which we are providing an adjustment,

their respective codes, including the new FY 2009 ICD-9-CM codes, and

their respective adjustment factors in Table 9 below.

TABLE 9—RY 2010 DIAGNOSIS CODES AND ADJUSTMENT FACTORS FOR COMORBIDITY CATEGORIES

Description of comorbidity	ICD-9CM Code	Adjustment factor
Developmental Disabilities	317, 3180, 3181, 3182, and 319	1.04
Coagulation Factor Deficits	2860 through 2864	1.13
Tracheostomy	51900 through 51909 and V440	1.06
Renal Failure, Acute	5845 through 5849, 63630, 63631, 63632, 63730, 63731, 63732, 6383, 6393, 66932, 66934, 9585.	1.11
Renal Failure, Chronic	40301, 40311, 40391, 40402, 40412, 40413, 40492, 40493, 5853, 5854, 5855, 5856, 5859, 586, V451, V560, V561, and V562.	1.11
Oncology Treatment	1400 through 2399 with a radiation therapy code 92.21-92.29 or chemotherapy code 99.25.	1.07
Uncontrolled Diabetes-Mellitus with or without complications.	25002, 25003, 25012, 25013, 25022, 25023, 25032, 25033, 25042, 25043, 25052, 25053, 25062, 25063, 25072, 25073, 25082, 25083, 25092, and 25093.	1.05
Severe Protein Calorie Malnutrition	260 through 262	1.13
Eating and Conduct Disorders	3071, 30750, 31203, 31233, and 31234	1.12
Infectious Disease	01000 through 04110, 042, 04500 through 05319, 05440 through 05449, 0550 through 0770, 0782 through 07889, and 07950 through 07959.	1.07
Drug and/or Alcohol Induced Mental Disorders.	2910, 2920, 29212, 2922, 30300, and 30400	1.03
Cardiac Conditions	3910, 3911, 3912, 40201, 40403, 4160, 4210, 4211, and 4219	1.11
Gangrene	44024 and 7854	1.10
Chronic Obstructive Pulmonary Disease	49121, 4941, 5100, 51883, 51884, V4611 and V4612, V4613 and V4614	1.12
Artificial Openings—Digestive and Urinary	56960 through 56969, 9975, and V441 through V446	1.08
Severe Musculoskeletal and Connective Tissue Diseases.	6960, 7100, 73000 through 73009, 73010 through 73019, and 73020 through 73029	1.09
Poisoning	96500 through 96509, 9654, 9670 through 9699, 9770, 9800 through 9809, 9830 through 9839, 986, 9890 through 9897.	1.11

3. Patient Age Adjustments

As explained in the November 2004 IPF PPS final rule (69 FR 66922), we analyzed the impact of age on per diem cost by examining the age variable (that

is, the range of ages) for payment adjustments.

In general, we found that the cost per day increases with age. The older age groups are more costly than the under

45 age group, the differences in per diem cost increase for each successive age group, and the differences are statistically significant.

For RY 2010, we are continuing to use the patient age adjustments currently in effect as shown in Table 10 below.

TABLE 10—AGE GROUPINGS AND ADJUSTMENT FACTORS

Age	Adjustment factor
Under 45	1.00
45 and under 50	1.01
50 and under 55	1.02
55 and under 60	1.04
60 and under 65	1.07
65 and under 70	1.10
70 and under 75	1.13
75 and under 80	1.15
80 and over	1.17

4. Variable Per Diem Adjustments

We explained in the November 2004 IPF PPS final rule (69 FR 66946) that the regression analysis indicated that per diem cost declines as the LOS increases. The variable per diem adjustments to the Federal per diem base rate account for ancillary and administrative costs that occur disproportionately in the first days after admission to an IPF.

We used a regression analysis to estimate the average differences in per diem cost among stays of different lengths. As a result of this analysis, we established variable per diem adjustments that begin on day 1 and decline gradually until day 21 of a patient's stay. For day 22 and thereafter, the variable per diem adjustment remains the same each day for the remainder of the stay. However, the adjustment applied to day 1 depends upon whether the IPF has a qualifying ED. If an IPF has a qualifying ED, it receives a 1.31 adjustment factor for day 1 of each stay. If an IPF does not have a qualifying ED, it receives a 1.19 adjustment factor for day 1 of the stay. The ED adjustment is explained in more detail in section IV.C.5 of this notice.

For RY 2010, we are continuing to use the variable per diem adjustment factors currently in effect as shown in Table 11 below. A complete discussion of the variable per diem adjustments appears in the November 2004 IPF PPS final rule (69 FR 66946).

TABLE 11—VARIABLE PER DIEM ADJUSTMENTS

Day-of-Stay	Adjustment factor
Day 1—IPF Without a Qualifying ED	1.19
Day 1—IPF With a Qualifying ED	1.31
Day 2	1.12
Day 3	1.08

TABLE 11—VARIABLE PER DIEM ADJUSTMENTS—Continued

Day-of-Stay	Adjustment factor
Day 4	1.05
Day 5	1.04
Day 6	1.02
Day 7	1.01
Day 8	1.01
Day 9	1.00
Day 10	1.00
Day 11	0.99
Day 12	0.99
Day 13	0.99
Day 14	0.99
Day 15	0.98
Day 16	0.97
Day 17	0.97
Day 18	0.96
Day 19	0.95
Day 20	0.95
Day 21	0.95
After Day 21	0.92

C. Facility-Level Adjustments

The IPF PPS includes facility-level adjustments for the wage index, IPFs located in rural areas, teaching IPFs, cost of living adjustments for IPFs located in Alaska and Hawaii, and IPFs with a qualifying ED.

1. Wage Index Adjustment

a. Background

As discussed in the May 2006 IPF PPS final rule and in the May 2007 and May 2008 update notices, in providing an adjustment for geographic wage levels, the labor-related portion of an IPF's payment is adjusted using an appropriate wage index. Currently, an IPF's geographic wage index value is determined based on the actual location of the IPF in an urban or rural area as defined in § 412.64(b)(1)(ii)(A) through § 412.64(C).

b. Wage Index for RY 2010

Since the inception of the IPF PPS, we have used hospital wage data in developing a wage index to be applied to IPFs. We are continuing that practice for RY 2010. We apply the wage index adjustment to the labor-related portion of the Federal rate, which is 75.889 percent. This percentage reflects the labor-related relative importance of the RPL market basket for RY 2010 (see section III.B.2 of this notice). The IPF PPS uses the pre-floor, pre-reclassified hospital wage index. Changes to the wage index are made in a budget neutral manner so that updates do not increase expenditures.

For RY 2010, we are applying the most recent hospital wage index (that is, the FY 2009 pre-floor, pre-reclassified hospital wage index because this is the

most appropriate index as it best reflects the variation in local labor costs of IPFs in the various geographic areas) using the most recent hospital wage data (that is, data from FY 2005 hospital cost reports), and applying an adjustment in accordance with our budget neutrality policy. This policy requires us to estimate the total amount of IPF PPS payments in RY 2009 using the applicable wage index value divided by the total estimated IPF PPS payments in RY 2010 using the most recent wage index. The estimated payments are based on FY 2007 IPF claims, inflated to the appropriate RY. This quotient is the wage index budget neutrality factor, and it is applied in the update of the Federal per diem base rate for RY 2010 in addition to the market basket described in section III.B.1 of this notice. The wage index budget neutrality factor for RY 2010 is 1.0009.

The wage index applicable for RY 2010 appears in Table 1 and Table 2 in Addendum B of this notice. As explained in the May 2006 IPF PPS final rule for RY 2007 (71 FR 27061), the IPF PPS applies the hospital wage index without a hold-harmless policy, and without an out-commuting adjustment or out-migration adjustment because the statutory authority for these policies applies only to the IPPS.

Also in the May 2006 IPF PPS final rule for RY 2007 (71 FR 27061), we adopted the changes discussed in the Office of Management and Budget (OMB) Bulletin No. 03-04 (June 6, 2003), which announced revised definitions for Metropolitan Statistical Areas (MSAs), and the creation of Micropolitan Statistical Areas and Combined Statistical Areas. In adopting the OMB Core-Based Statistical Area (CBSA) geographic designations, since the IPF PPS was already in a transition period from TEFRA payments to PPS payments, we did not provide a separate transition for the CBSA-based wage index.

As was the case in RY 2009, for RY 2010 we will continue to use the CBSA-based wage index values as presented in Tables 1 and 2 in Addendum B of this notice. A complete discussion of the CBSA labor market definitions appears in the May 2006 IPF PPS final rule (71 FR 27061 through 27067).

c. OMB Bulletins

The Office of Management and Budget (OMB) publishes bulletins regarding CBSA changes, including changes to CBSA numbers and titles. In the May 2008 IPF PPS notice, we incorporated the CBSA nomenclature changes published in the most recent OMB bulletin that applies to the hospital

wage data used to determine the current IPF PPS wage index (73 FR 25721). We will continue to do the same for all such OMB CBSA nomenclature changes in future IPF PPS rules and notices, as necessary. The OMB bulletins may be accessed Online at <http://www.whitehouse.gov/omb/bulletins/index.html>.

In summary, for RY 2010 we will use the FY 2009 wage index data (collected from cost reports submitted by hospitals for cost reporting periods beginning during FY 2005) to adjust IPF PPS payments beginning July 1, 2009.

2. Adjustment for Rural Location

In the November 2004 IPF PPS final rule, we provided a 17 percent payment adjustment for IPFs located in a rural area. This adjustment was based on the regression analysis, which indicated that the per diem cost of rural facilities was 17 percent higher than that of urban facilities after accounting for the influence of the other variables included in the regression. For RY 2010, we are applying a 17 percent payment adjustment for IPFs located in a rural area as defined at § 412.64(b)(1)(ii)(C). As stated in the November 2004 IPF PPS final rule, we do not intend to update the adjustment factors derived from the regression analysis until we are able to analyze IPF PPS data. A complete discussion of the adjustment for rural locations appears in the November 2004 IPF PPS final rule (69 FR 66954).

3. Teaching Adjustment

In the November 2004 IPF PPS final rule, we implemented regulations at § 412.424(d)(1)(iii) to establish a facility-level adjustment for IPFs that are, or are part of, teaching institutions. The teaching adjustment accounts for the higher indirect operating costs experienced by facilities that participate in graduate medical education (GME) programs. The payment adjustments are made based on the number of full-time equivalent (FTE) interns and residents training in the IPF and the IPF's average daily census.

Medicare makes direct GME payments (for direct costs such as resident and teaching physician salaries, and other direct teaching costs) to all teaching hospitals including those paid under the IPPS, and those that were once paid under the TEFRA rate-of-increase limits but are now paid under other PPSs. These direct GME payments are made separately from payments for hospital operating costs and are not part of the PPSs. The direct GME payments do not address the estimated higher indirect operating costs teaching hospitals may face.

For teaching hospitals paid under the TEFRA rate-of-increase limits, Medicare did not make separate medical education payments because payments to these hospitals were based on the hospitals' reasonable costs. Since payments under TEFRA were based on hospitals' reasonable costs, the higher indirect costs that may be associated with teaching programs were factored automatically into the TEFRA payments.

The results of the regression analysis of FY 2002 IPF data established the basis for the payment adjustments included in the November 2004 IPF PPS final rule. The results showed that the indirect teaching cost variable is significant in explaining the higher costs of IPFs that have teaching programs. We calculated the teaching adjustment based on the IPF's "teaching variable," which is one plus the ratio of the number of FTE residents training in the IPF (subject to limitations described below) to the IPF's average daily census (ADC).

We established the teaching adjustment in a manner that limited the incentives for IPFs to add FTE residents for the purpose of increasing their teaching adjustment. We imposed a cap on the number of FTE residents that may be counted for purposes of calculating the teaching adjustment. We emphasize that the cap limits the number of FTE residents that teaching IPFs may count for the purposes of calculating the IPF PPS teaching adjustment, not the number of residents teaching institutions can hire or train. We calculated the number of FTE residents that trained in the IPF during a "base year" and used that FTE resident number as the cap. An IPF's FTE resident cap is ultimately determined based on the final settlement of the IPF's most recent cost report filed before November 15, 2004 (that is, the publication date of the IPF PPS final rule).

In the regression analysis, the logarithm of the teaching variable had a coefficient value of 0.5150. We converted this cost effect to a teaching payment adjustment by treating the regression coefficient as an exponent and raising the teaching variable to a power equal to the coefficient value. We note that the coefficient value of 0.5150 was based on the regression analysis holding all other components of the payment system constant.

As with other adjustment factors derived through the regression analysis, we do not plan to rerun the regression analysis until we analyze IPF PPS data. Therefore, for RY 2010, we are retaining the coefficient value of 0.5150 for the

teaching adjustment to the Federal per diem base rate.

A complete discussion of how the teaching adjustment was calculated appears in the November 2004 IPF PPS final rule (69 FR 66954 through 66957) and the May 2008 IPF PPS notice (73 FR 25721). Below, in the "Request for Comments" section of this notice, we are seeking public input on the FTE Intern and Resident Cap Adjustment.

4. Cost of Living Adjustment for IPFs Located in Alaska and Hawaii

The IPF PPS includes a payment adjustment for IPFs located in Alaska and Hawaii based upon the county in which the IPF is located. As we explained in the November 2004 IPF PPS final rule, the FY 2002 data demonstrated that IPFs in Alaska and Hawaii had per diem costs that were disproportionately higher than other IPFs. Other Medicare PPSs (for example, the IPPS and LTCH PPS) have adopted a cost of living adjustment (COLA) to account for the cost differential of care furnished in Alaska and Hawaii.

We analyzed the effect of applying a COLA to payments for IPFs located in Alaska and Hawaii. The results of our analysis demonstrated that a COLA for IPFs located in Alaska and Hawaii would improve payment equity for these facilities. As a result of this analysis, we provided a COLA in the November 2004 IPF PPS final rule.

A COLA adjustment for IPFs located in Alaska and Hawaii is made by multiplying the non-labor share of the Federal per diem base rate by the applicable COLA factor based on the COLA area in which the IPF is located.

As previously stated in the November 2004 IPF PPS final rule, we will update the COLA factors according to updates established by the U.S. Office of Personnel Management (OPM), which issued a final rule, May 28, 2008 to change COLA rates.

The COLA factors are published on the OPM Web site at (<http://www.opm.gov/oca/cola/rates.asp>).

We note that the COLA areas for Alaska are not defined by county as are the COLA areas for Hawaii. In 5 CFR 591.207, the OPM established the following COLA areas:

- (a) City of Anchorage, and 80-kilometer (50-mile) radius by road, as measured from the Federal courthouse;
- (b) City of Fairbanks, and 80-kilometer (50-mile) radius by road, as measured from the Federal courthouse;
- (c) City of Juneau, and 80-kilometer (50-mile) radius by road, as measured from the Federal courthouse;
- (d) Rest of the State of Alaska.

For RY 2010, IPFs located in Alaska and Hawaii will continue to receive the updated COLA factors based on the COLA area in which the IPF is located as shown in Table 12 below.

TABLE 12—COLA FACTORS FOR ALASKA AND HAWAII IPFS

	Location	COLA
Alaska	Anchorage	1.23
	Fairbanks	1.23
	Juneau	1.23
	Rest of Alaska	1.25
Hawaii	Honolulu County	1.25
	Hawaii County	1.18
	Kauai County	1.25
	Mauai County	1.25
	Kalawao County	1.25

5. Adjustment for IPFs With a Qualifying Emergency Department (ED)

Currently, the IPF PPS includes a facility-level adjustment for IPFs with qualifying EDs. We provide an adjustment to the Federal per diem base rate to account for the costs associated with maintaining a full-service ED. The adjustment is intended to account for ED costs incurred by a freestanding psychiatric hospital with a qualifying ED or a distinct part psychiatric unit of an acute hospital or a CAH for preadmission services otherwise payable under the Medicare Outpatient Prospective Payment System (OPPS) furnished to a beneficiary during the day immediately preceding the date of admission to the IPF (see § 413.40(c)(2)) and the overhead cost of maintaining the ED. This payment is a facility-level adjustment that applies to all IPF admissions (with one exception described below), regardless of whether a particular patient receives preadmission services in the hospital's ED.

The ED adjustment is incorporated into the variable per diem adjustment for the first day of each stay for IPFs with a qualifying ED. That is, IPFs with a qualifying ED receive an adjustment factor of 1.31 as the variable per diem adjustment for day 1 of each stay. If an IPF does not have a qualifying ED, it receives an adjustment factor of 1.19 as the variable per diem adjustment for day 1 of each patient stay.

The ED adjustment is made on every qualifying claim except as described below. As specified in § 412.424(d)(1)(v)(B), the ED adjustment is not made where a patient is discharged from an acute care hospital or critical access hospital (CAH) and admitted to the same hospital's or CAH's psychiatric unit. An ED adjustment is not made in this case

because the costs associated with ED services are reflected in the DRG payment to the acute care hospital or through the reasonable cost payment made to the CAH. If we provided the ED adjustment in these cases, the hospital would be paid twice for the overhead costs of the ED, as stated in the November 2004 IPF PPS final rule (69 FR 66960).

Therefore, when patients are discharged from an acute care hospital or CAH and admitted to the same hospital's or CAH's psychiatric unit, the IPF receives the 1.19 adjustment factor as the variable per diem adjustment for the first day of the patient's stay in the IPF.

For RY 2010, we are retaining the 1.31 adjustment factor for IPFs with qualifying EDs. A complete discussion of the steps involved in the calculation of the ED adjustment factor appears in the November 2004 IPF PPS final rule (69 FR 66959 through 66960) and the May 2006 IPF PPS final rule (71 FR 27070 through 27072).

D. Other Payment Adjustments and Policies

For RY 2010, the IPF PPS includes: An outlier adjustment to promote access to IPF care for those patients who require expensive care and to limit the financial risk of IPFs treating unusually costly patients. In this section, we also explain the reason for ending the stop-loss provision that was applicable during the transition period.

1. Outlier Payments

In the November 2004 IPF PPS final rule, we implemented regulations at § 412.424(d)(3)(i) to provide a per-case payment for IPF stays that are extraordinarily costly. Providing additional payments to IPFs for extremely costly cases strongly improves the accuracy of the IPF PPS in determining resource costs at the patient and facility level. These additional payments reduce the financial losses that would otherwise be incurred in treating patients who require more costly care and, therefore, reduce the incentives for IPFs to under-serve these patients.

We make outlier payments for discharges in which an IPF's estimated total cost for a case exceeds a fixed dollar loss threshold amount (multiplied by the IPF's facility-level adjustments) plus the Federal per diem payment amount for the case.

In instances when the case qualifies for an outlier payment, we pay 80 percent of the difference between the estimated cost for the case and the adjusted threshold amount for days 1

through 9 of the stay (consistent with the median LOS for IPFs in FY 2002), and 60 percent of the difference for day 10 and thereafter. We established the 80 percent and 60 percent loss sharing ratios because we were concerned that a single ratio established at 80 percent (like other Medicare PPSs) might provide an incentive under the IPF per diem payment system to increase LOS in order to receive additional payments. After establishing the loss sharing ratios, we determined the current fixed dollar loss threshold amount of \$6,113 through payment simulations designed to compute a dollar loss beyond which payments are estimated to meet the 2 percent outlier spending target.

a. Update to the Outlier Fixed Dollar Loss Threshold Amount:

In accordance with the update methodology described in § 412.428(d), we are updating the fixed dollar loss threshold amount used under the IPF PPS outlier policy. Based on the regression analysis and payment simulations used to develop the IPF PPS, we established a 2 percent outlier policy which strikes an appropriate balance between protecting IPFs from extraordinarily costly cases while ensuring the adequacy of the Federal per diem base rate for all other cases that are not outlier cases.

We believe it is necessary to update the fixed dollar loss threshold amount because analysis of the latest available data (that is, FY 2007 IPF claims) and rate increases indicates adjusting the fixed dollar loss amount is necessary in order to maintain an outlier percentage that equals 2 percent of total estimated IPF PPS payments.

In the May 2006 IPF PPS final rule (71 FR 27072), we describe the process by which we calculate the outlier fixed dollar loss threshold amount. We continue to use this process for RY 2010. We begin by simulating aggregate payments with and without an outlier policy, and applying an iterative process to a fixed dollar loss amount that will result in outlier payments being equal to 2 percent of total estimated payments under the simulation. Based on this process, for RY 2010, the IPF PPS will use \$6,565 as the fixed dollar loss threshold amount in the outlier calculation in order to maintain the 2 percent outlier policy.

b. Statistical Accuracy of Cost-to-Charge Ratios

As previously stated, under the IPF PPS, an outlier payment is made if an IPF's cost for a stay exceeds a fixed dollar loss threshold amount. In order to establish an IPF's cost for a particular case, we multiply the IPF's reported

charges on the discharge bill by its overall cost-to-charge ratio (CCR). This approach to determining an IPF's cost is consistent with the approach used under the IPPS and other PPSs. In FY 2004, we implemented changes to the IPPS outlier policy used to determine CCRs for acute care hospitals because we became aware that payment vulnerabilities resulted in inappropriate outlier payments. Under the IPPS, we established a statistical measure of accuracy for CCRs in order to ensure that aberrant CCR data did not result in inappropriate outlier payments.

As we indicated in the November 2004 IPF PPS final rule, because we believe that the IPF outlier policy is susceptible to the same payment vulnerabilities as the IPPS, we adopted an approach to ensure the statistical accuracy of CCRs under the IPF PPS (69 FR 66961). Therefore, we adopted the following procedure in the November 2004 IPF PPS final rule:

- We calculated two national ceilings, one for IPFs located in rural areas and one for IPFs located in urban areas. We computed the ceilings by first calculating the national average and the standard deviation of the CCR for both urban and rural IPFs.

To determine the rural and urban ceilings, we multiplied each of the standard deviations by 3 and added the result to the appropriate national CCR average (either rural or urban). The upper threshold CCR for IPFs in RY 2010 is 1.7381 for rural IPFs, and 1.7647 for urban IPFs, based on CBSA-based geographic designations. If an IPF's CCR is above the applicable ceiling, the ratio is considered statistically inaccurate and we assign the appropriate national (either rural or urban) median CCR to the IPF.

We are applying the national CCRs to the following situations:

- ++ New IPFs that have not yet submitted their first Medicare cost report.

- ++ IPFs whose overall CCR is in excess of 3 standard deviations above the corresponding national geometric mean (that is, above the ceiling).

- ++ Other IPFs for which the Medicare contractor obtains inaccurate or incomplete data with which to calculate a CCR.

For new IPFs, we are using these national CCRs until the facility's actual CCR can be computed using the first tentatively or final settled cost report.

We are not making any changes to the procedures for ensuring the statistical accuracy of CCRs in RY 2010. However, we are updating the national urban and rural CCRs (ceilings and medians) for IPFs for RY 2010 based on the CCRs

entered in the latest available IPF PPS Provider Specific File.

The national CCRs for RY 2010 are 0.6515 for rural IPFs and 0.5300 for urban IPFs and will be used in each of the three situations listed above. These calculations are based on the IPF's location (either urban or rural) using the CBSA-based geographic designations.

A complete discussion regarding the national median CCRs appears in the November 2004 IPF PPS final rule (69 FR 66961 through 66964).

2. Expiration of the Stop-Loss Provision

In the November 2004 IPF PPS final rule, we implemented a stop-loss policy that reduced financial risk to IPFs projected to experience substantial reductions in Medicare payments during the period of transition to the IPF PPS. This stop-loss policy guaranteed that each facility received total IPF PPS payments that were no less than 70 percent of its TEFRA payments had the IPF PPS not been implemented. This policy was applied to the IPF PPS portion of Medicare payments during the 3-year transition.

In the implementation year, the 70 percent of TEFRA payment stop-loss policy required a reduction in the standardized Federal per diem and ECT base rates of 0.39 percent in order to make the stop-loss payments budget neutral. As described in the May 2008 IPF PPS notice for RY 2009, we increased the Federal per diem base rate and ECT rate by 0.39 percent because these rates were reduced by 0.39 percent in the implementation year to ensure stop-loss payments were budget neutral.

The stop-loss provision ended during RY 2009 (that is for discharges occurring on or after July 1, 2008 through June 30, 2009). The stop-loss policy is no longer applicable under the IPF PPS.

V. Request for Comments

A. Market Basket Index for the IPF PPS; Costs and Cost Structures of IPF Providers

We are interested in exploring the possibility of creating a stand-alone IPF market basket that reflects the cost structures of only IPF providers. The intent would be to join the Medicare cost report data from freestanding IPF providers (presently incorporated into the RPL market basket) with data from hospital-based IPF providers.

An examination of the Medicare cost report data comparing freestanding and hospital-based IPFs reveals considerable differences in both cost levels and cost structure. We have reviewed several explanatory variables such as geographic variation, case mix

(including DRG, comorbidity, and age), urban or rural status, length of stay, teaching status, and presence of a qualifying emergency department; however, we are currently unable to fully understand the differences between these two types of IPF providers. As a result, we feel that further research is required. Having examined the relevant data that is internal to CMS, we welcome any help from the public in the form of additional information, data, or suggested data sources that may help us to better understand the underlying reasons for the variations in cost structures between freestanding and hospital-based IPFs.

B. FTE Intern and Resident Cap Adjustment

As previously mentioned, the IPF PPS imposed a cap on the number of full-time equivalent (FTE) residents that may be used to calculate the teaching status adjustment. The cap is based on the number of FTE residents reported in the IPF's most recent cost report filed before November 15, 2004.

CMS has been asked to reconsider its position under the IPF PPS regulations regarding application of the FTE resident cap when residents in a psychiatry residency program must be relocated from one IPF to another. Specifically, we have been asked to reconsider our current policy and permit an increase in the FTE resident cap when the IPF increases the number of FTE residents it trains due to the acceptance of relocated residents when another IPF closes or closes its psychiatry residency program.

Currently, if an IPF with a psychiatry residency training program agrees to accept residents relocated from another IPF after November 2004, the IPF's FTE resident count would continue to be capped at the number of FTE residents included in the cost report filed before November 15, 2004. Furthermore, according to § 412.424(d)(1)(iii)(D), an adjustment to the FTE resident cap can only be made for those IPFs that begin training residents in a new approved psychiatric residency program after November 15, 2004. For a new program adjustment, the IPF's FTE cap would be revised beginning with the fourth year of the new training program. We included these policies because we believe it is important to limit the total pool of FTE resident cap positions within the IPF community and avoid incentives for IPFs to add FTE residents in order to increase their payments.

We are now assessing how many IPFs have been, or expect to be, adversely affected by their inability to adjust their caps under § 412.424(d)(1) in situations

where residents from a hospital that closed or from a program that closed at a hospital are moved to another hospital to complete their training. To help us access this situation, we specifically request public comment from IPFs to help us understand the impact of this issue on IPFs. At a minimum, we need to know the following information:

1. How many IPFs currently training additional residents from a closed residency program have exceeded their caps because of those residents?
2. How many IPFs have been asked to train additional residents from a closed residency program but have not currently agreed because these additional residents would cause them to exceed the caps?

We will take all comments into consideration as we assess the IPF PPS regulations with respect to the FTE resident cap and the relocation of FTE residents from one IPF to another due to closure of an IPF or an IPF's psychiatry residency training program.

VI. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a rule take effect. We can waive this procedure, however, if we find good cause that notice and comment procedures are impracticable, unnecessary, or contrary to the public interest and we incorporate a statement of finding and its reasons in the notice. We find it is unnecessary to undertake notice and comment rulemaking for the update in this notice because the update does not make any substantive changes in policy, but merely reflects the application of previously established methodologies. Therefore, under 5 U.S.C. 553(b)(3)(B), for good cause, we waive notice and comment procedures.

VII. Collection of Information Requirement

This document does not impose any information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 35).

VIII. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed

with a subsequent document, we will respond to the comments in the preamble to that document.

IX. Regulatory Impact Analysis

A. Overall Impact

We have examined the impacts of this notice as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the September 19, 1980 Regulatory Flexibility Act (RFA) (Pub. L. 96-354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), Executive Order 13132 on Federalism, and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects (\$100 million or more in any 1 year). Although this notice does not meet the \$100 million threshold established by Executive Order 12866, we are considering this notice to be "economically significant" because the redistributive effects are estimated to be close to constituting a shift of \$100 million. For purposes of Title 5, United States Code, section 804(2), we estimate that this rulemaking is "economically significant", and is also a major rule under the Congressional Review Act. Accordingly, we have prepared a Regulatory Impact Analysis that to the best of our ability presents the costs and benefits of the rulemaking on the 1,706 IPFs.

The updates to the IPF labor-related share and wage indices are made in a budget neutral manner and thus have no effect on estimated costs to the Medicare program. Therefore, the estimated increased cost to the Medicare program is due to the updated IPF payment rates, which results in an approximate \$91 million increase in payments, and the increase to the outlier fixed dollar loss threshold amount, which results in about a \$4 million decrease in payments. The distribution of these impacts is summarized in Table 13. The net effect of the updates described in this notice results in an overall estimated \$87 million increase in payments from RY 2009 to RY 2010.

The RFA requires agencies to analyze options for regulatory relief of small businesses, if a rule has a significant impact on a substantial number of small

entities. For purposes of the RFA, we estimate that the great majority of IPFs are small entities as that term is used in the RFA (include small businesses, nonprofit organizations, and small governmental jurisdictions). The majority of hospitals and most other health care providers and suppliers are small entities, either by being nonprofit organizations or by meeting the SBA definition of a small business (having revenues of \$7 million to \$34.5 million in any 1 year). (For details, see the Small Business Administration's Interim final rule that set forth size standards at 70 FR 72577, December 6, 2005.) Because we lack data on individual hospital receipts, we cannot determine the number of small proprietary IPFs or the proportion of IPFs' revenue that is derived from Medicare payments. Therefore, we assume that all IPFs are considered small entities. The Department of Health and Human Services generally uses a revenue impact of 3 to 5 percent as a significance threshold under the RFA. As shown in Table 13, we estimate that the net revenue impact of this notice on all IPFs is to increase payments by about 2.0 percent. Since the estimated impact of this notice is a net increase in revenue across all categories of IPFs, we believe that this notice would not impose a significant burden on small entities. Medicare contractors are not considered to be small entities. Individuals and States are not included in the definition of a small entity.

Although section 1102(b) of the Act applies to regulations for which a proposed rule is published, the HHS policy is to prepare an analysis of the impact on small rural hospitals for any regulation published. As a result, we are voluntarily determining whether this notice will have a significant impact on the operations of a substantial number of small rural hospitals. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 100 beds that is located outside of an MSA. As discussed in detail below, the rates and policies set forth in this notice will not have an adverse impact on the rural hospitals based on the data of the 317 rural units and 68 rural hospitals in our database of 1,706 IPFs for which data were available.

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of \$100 million in 1995 dollars, updated annually for inflation. In 2009, that threshold is approximately \$133

million. This notice will not impose spending costs on State, local, or tribal governments in the aggregate, or by the private sector, of \$133 million.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have reviewed this notice under the criteria set forth in Executive Order 13132 and have determined that the notice will not have any substantial direct impact on State, or local governments, preempt States, or otherwise have a Federalism implication.

B. Anticipated Effects

We discuss below the historical background of the IPF PPS and the impact of this notice on the Federal Medicare budget and on IPFs.

1. Budgetary Impact

As discussed in the November 2004 and May 2006 IPF PPS final rules, we applied a budget neutrality factor to the Federal per diem and ECT base rates to ensure that total estimated payments under the IPF PPS in the implementation period would equal the amount that would have been paid if the IPF PPS had not been implemented. The budget neutrality factor includes the following components: Outlier adjustment, stop-loss adjustment, and the behavioral offset. As discussed in the May 2008 IPF PPS notice (73 FR 25711), the stop-loss adjustment is no longer applicable under the IPF PPS.

In accordance with § 412.424(c)(3)(ii), we indicated that we would evaluate the accuracy of the budget neutrality adjustment within the first 5 years after implementation of the payment system. We may make a one-time prospective adjustment to the Federal per diem and ECT base rates to account for differences between the historical data on cost-based TEFRA payments (the basis of the budget neutrality adjustment) and estimates of TEFRA payments based on actual data from the first year of the IPF PPS. As part of that process, we will reassess the accuracy of all of the factors impacting budget neutrality.

In addition, as discussed in section III.B.2 of this notice, we are using the wage index and labor market share in a budget neutral manner by applying a wage index budget neutrality factor to the Federal per diem and ECT base rates. Thus, the budgetary impact to the Medicare program by the update of the IPF PPS will be due to the market basket update (see section III.B.2.a of this notice) and the increase in the fixed dollar loss threshold amount.

2. Impacts on Providers

To understand the impact of the changes to the IPF PPS on providers, discussed in this notice, it is necessary to compare estimated payments under the IPF PPS rates and factors for RY 2010 versus those under RY 2009. The estimated payments for RY 2009 and RY 2010 will be 100 percent of the IPF PPS payment, since the transition period has ended and stop-loss payments are no longer paid. We determined the percent change of estimated RY 2010 IPF PPS payments to estimated RY 2009 IPF PPS

payments for each category of IPFs. In addition, for each category of IPFs, we have included the estimated percent change in payments resulting from the increase to the fixed dollar loss threshold amount, the wage index changes for the RY 2010 IPF PPS, and the market basket update to IPF PPS payments.

To illustrate the impacts of the final RY 2010 changes in this notice, our analysis begins with a RY 2009 baseline simulation model based on FY 2007 IPF payments inflated to the midpoint of RY 2009 using IHS Global Insight's most recent forecast of the market basket update (see section III.2.b of this notice); the estimated outlier payments in RY 2009; the CBSA designations for IPFs based on OMB's MSA definitions after June 2003; the FY 2008 pre-floor, pre-reclassified hospital wage index; the RY 2009 labor-market share; and the RY 2009 percentage amount of the rural adjustment. During the simulation, the outlier payment is maintained at the target of 2 percent of total PPS payments.

Each of the following changes is added incrementally to this baseline model in order for us to isolate the effects of each change:

- The increase to the outlier fixed dollar loss threshold amount.
- The FY 2009 pre-floor, pre-reclassified hospital wage index and RY 2010 final labor-related share. Our final comparison illustrates the percent change in payments from RY 2009 (that is, July 1, 2008 to June 30, 2009) to RY 2010 (that is, July 1, 2009 to June 30, 2010) and includes a 2.1 percent market basket update to the IPF PPS base rates.

TABLE 13—PROJECTED IMPACTS

Facility by type (1)	Number of facilities (2)	Outlier (percent) (3)	CBSA wage index & labor share (percent) (4)	Total with 2.1 market basket (percent) (5)
All Facilities	1,706	-0.1	0.0	2.0
Total Urban	1,321	-0.1	0.0	1.9
Total Rural	385	-0.2	0.1	2.0
Urban DPU	924	-0.2	-0.1	1.8
Urban CAH Unit	14	-0.4	0.3	2.1
Urban hospital	383	0.0	0.1	2.2
Rural DPU	264	-0.2	0.1	2.0
Rural CAH Unit	53	-0.2	-0.1	1.8
Rural hospital	68	-0.1	0.3	2.3
Freestanding IPF by Type of Ownership:				
Urban Psychiatric Hospitals:				
Government	149	-0.1	0.2	2.2
Non-Profit	86	-0.1	-0.1	1.9
For-Profit	148	0.0	0.2	2.3
Rural Psychiatric Hospitals:				
Government	43	-0.1	0.2	2.2
Non-Profit	9	-0.1	0.5	2.5
For-Profit	16	-0.2	0.6	2.5

TABLE 13—PROJECTED IMPACTS—Continued

Facility by type (1)	Number of facilities (2)	Outlier (percent) (3)	CBSA wage index & labor share (percent) (4)	Total with 2.1 market basket (percent) (5)
IPF Units by Type of Ownership:				
Urban DPU:				
Government	158	-0.2	-0.1	1.8
Non-Profit	636	-0.2	-0.1	1.8
For-Profit	130	-0.1	0.0	1.9
Urban CAH:				
Government	7	-0.3	0.8	2.5
Non-Profit	6	-0.5	-0.1	1.5
For-Profit	1	0.0	-0.3	1.8
Rural DPU:				
Government	63	-0.3	0.0	1.8
Non-Profit	154	-0.1	0.0	1.9
For-Profit	47	-0.2	0.4	2.4
Rural CAH:				
Government	23	-0.2	0.0	1.9
Non-Profit	27	-0.2	-0.2	1.7
For-Profit	3	-0.1	-0.2	1.9
By Teaching Status:				
Non-teaching	1,458	-0.1	0.1	2.0
Less than 10 interns and residents to beds	140	-0.2	-0.3	1.6
10 to 30 interns and residents to beds	73	-0.2	-0.2	1.7
More than 30 interns and residents to beds	35	-0.1	0.2	2.2
By Region:				
New England	119	-0.2	0.2	2.1
Mid-Atlantic	287	-0.1	-0.6	1.4
South Atlantic	238	-0.1	-0.3	1.7
East North Central	289	-0.2	-0.5	1.4
East South Central	164	-0.1	-0.2	1.8
West North Central	151	-0.2	0.3	2.2
West South Central	236	-0.2	0.4	2.3
Mountain	85	-0.2	0.1	2.0
Pacific	130	-0.2	1.5	3.4
By Bed Size:				
Psychiatric Hospitals:				
Less than 12 beds	25	-0.2	0.2	2.1
12 to 25 beds	67	-0.1	0.5	2.4
25 to 50 beds	98	0.0	0.0	2.1
50 to 75 beds	83	0.0	0.5	2.6
More than 75 beds	178	0.0	0.0	2.1
Psychiatric Units:				
Less than 12 beds	487	-0.3	0.1	1.9
12 to 25 beds	438	-0.2	0.1	2.0
25 to 50 beds	219	-0.2	-0.1	1.8
50 to 75 beds	59	-0.2	-0.2	1.7
More than 75 beds	52	-0.1	-0.5	1.5

3. Results

Table 13 above displays the results of our analysis. The table groups IPFs into the categories listed below based on characteristics provided in the Provider of Services (POS) file, the IPF provider specific file, and cost report data from HCRIS:

- Facility Type.
- Location.
- Teaching Status Adjustment.
- Census Region.
- Size.

The top row of the table shows the overall impact on the 1,706 IPFs included in the analysis.

In column 3, we present the effects of the increase in the fixed dollar loss threshold amount. The overall aggregate effect, across all hospital groups, is projected to be a 0.1 percent decrease in payments to IPFs. All categories of IPFs are projected to receive either a decrease or no change in payments. There are distributional effects of this change among different categories of IPFs. Urban, for-profit freestanding psychiatric hospitals; urban, for-profit IPF units located in CAHs; and psychiatric hospitals with 25 beds or more will experience no changes in their payments. Alternatively, urban, non-profit psychiatric units in CAHs

will receive the largest decrease of 0.5 percent.

In column 4, we present the effects of the budget-neutral update to the labor-related share and the wage index adjustment under the CBSA geographic area definitions announced by OMB in June 2003. This is a comparison of the simulated RY 2010 payments under the FY 2009 hospital wage index under CBSA classification and associated labor-related share to the simulated RY 2009 payments under the FY 2008 hospital wage index under CBSA classifications and associated labor-related share. We note that there is no projected change in aggregate payments

to IPFs, as indicated in the first row of column 4. However, there would be small distributional effects among different categories of IPFs. For example, IPFs located in the Mid-Atlantic region will experience a 0.6 percent decrease in payments. IPFs located in the Pacific region will receive the largest increase of 1.5 percent.

Column 5 compares our estimates of the changes reflected in this notice for RY 2010, to our estimates of payments for RY 2009 (without these changes). This column reflects all RY 2010 changes relative to RY 2009 (as shown in columns 3 and 4). The average increase for all IPFs is approximately 2.0 percent. This increase includes the effects of the market basket update resulting in a 2.1 percent increase in total RY 2010 payments, and an approximate 0.1 percent decrease in RY 2009 payments for the fixed dollar loss threshold amount.

Overall, the largest payment increase is projected to be among IPFs located in the Pacific region, which will receive a 3.4 percent increase. IPFs located in the East North Central and Mid-Atlantic regions will receive the smallest increase of 1.4 percent.

4. Effect on the Medicare Program

Based on actuarial projections resulting from our experience with other PPSs, we estimate that Medicare spending (total Medicare program payments) for IPF services over the next 5 years would be as shown in Table 14 below.

TABLE 14—ESTIMATED PAYMENTS

Rate year	Dollars in millions
July 1, 2009 to June 30, 2010	4,531
July 1, 2010 to June 30, 2011	4,745
July 1, 2011 to June 30, 2012	5,005
July 1, 2012 to June 30, 2013	5,320
July 1, 2013 to June 30, 2014	5,656

These estimates are based on the current estimate of increases in the RPL market basket as follows:

- 2.1 percent for RY 2010.
- 2.8 percent for RY 2011.
- 2.9 percent for RY 2012.
- 3.1 percent for RY 2013.
- 3.2 percent for RY 2014.

We estimate that there would be a change in fee-for-service Medicare beneficiary enrollment as follows:

- 0.1 percent in RY 2010.
- 1.8 percent in RY 2011.
- 2.9 percent in RY 2012.
- 3.1 percent in RY 2013.
- 3.0 percent in RY 2014.

5. Effect on Beneficiaries

Under the IPF PPS, IPFs will receive payment based on the average resources consumed by patients for each day. We do not expect changes in the quality of care or access to services for Medicare beneficiaries under the RY 2010 IPF PPS. In fact, we believe that access to IPF services will be enhanced due to the patient- and facility-level adjustment factors, all of which are intended to adequately reimburse IPFs for expensive cases. Finally, the outlier policy is intended to assist IPFs that experience high-cost cases.

C. Alternatives Considered

The statute does not specify an update strategy for the IPF PPS and is broadly written to give the Secretary discretion in establishing an update methodology. Therefore, we are updating the IPF PPS using the methodology published in the November 2004 IPF PPS final rule.

We note that this notice does not initiate any policy changes with regard to the IPF PPS; rather, it simply provides an update to the rates for RY 2010. Therefore, no options were considered.

D. Accounting Statement

As required by OMB Circular A-4 (available at [http://](http://www.whitehouse.gov/omb/circulars/a004/a-4.pdf)

www.whitehouse.gov/omb/circulars/a004/a-4.pdf), in Table 15 below, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of this notice. This table provides our best estimate of the increase in Medicare payments under the IPF PPS notice, as a result of the changes presented in this notice, and based on the data for 1,706 IPFs in our database. All expenditures are classified as transfers to Medicare providers (that is, IPFs).

TABLE 15—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES, FROM THE 2009 IPF PPS RY TO THE 2010 IPF PPS RY [In millions]

Category	Transfers
Annualized Monetized Transfers.	\$87.
From Whom To Whom?	Federal Government To IPF Medicare Providers.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by OMB.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: March 6, 2009.

Charlene Frizzera,

Acting Administrator, Centers for Medicare & Medicaid Services.

Approved: March 20, 2009.

Charles E. Johnson,

Acting Secretary.

BILLING CODE P

Variable Per Diem Adjustments:

	Adjustment Factor
Day 1 -- Facility Without a Qualifying Emergency Department	1.19
Day 1 -- Facility With a Qualifying Emergency Department	1.31
Day 2	1.12
Day 3	1.08
Day 4	1.05
Day 5	1.04
Day 6	1.02
Day 7	1.01
Day 8	1.01
Day 9	1.00
Day 10	1.00
Day 11	0.99
Day 12	0.99
Day 13	0.99
Day 14	0.99
Day 15	0.98
Day 16	0.97
Day 17	0.97
Day 18	0.96
Day 19	0.95
Day 20	0.95
Day 21	0.95
After Day 21	0.92

Age Adjustments:

Age (in years)	Adjustment Factor
Under 45	1.00
45 and under 50	1.01
50 and under 55	1.02
55 and under 60	1.04
60 and under 65	1.07
65 and under 70	1.10
70 and under 75	1.13
75 and under 80	1.15
80 and over	1.17

Addendum A--Rate and Adjustment Factors

Per Diem Rate:

Federal Per Diem Base Rate	\$651.76
Labor Share (0.75889)	\$494.61
Non-Labor Share (0.24111)	\$157.15

Fixed Dollar Loss Threshold Amount:

\$6,565

Wage Index Budget Neutrality Factor:

1.0009

Facility Adjustments:

Rural Adjustment Factor	1.17
Teaching Adjustment Factor	0.5150
Wage Index	Pre-reclass Hospital Wage Index (FY2009)

Cost of Living Adjustments (COLAs):

Alaska	
Anchorage	1.23
Fairbanks	1.23
Juneau	1.23
Rest of Alaska	1.25
Hawaii	
Honolulu County	1.25
Hawaii County	1.18
Kauai County	1.25
Maui County	1.25
Kalawao County	1.25

Patient Adjustments:

ECT -- Per Treatment	\$280.60
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DRG Adjustments:

MS-DRG	MS-DRG Descriptions	Adjustment Factor
056	Degenerative nervous system disorders w MCC	1.05
057	Degenerative nervous system disorders w/o MCC	1.07
060	Nontraumatic stupor & coma w MCC	1.22
061	Nontraumatic stupor & coma w/o MCC	1.05
876	O.R. procedure w principal diagnoses of mental illness	0.99
880	Acute adjustment reaction & psychosocial dysfunction	1.02
881	Depressive neuroses	1.03
882	Neuroses except depressive	1.00
883	Disorders of personality & impulse control	0.99
884	Organic disturbances & mental retardation	0.92
885	Psychoses	0.97
886	Behavioral & developmental disorders	1.02
887	Other mental disorder diagnoses	0.88
894	Alcohol/drug abuse or dependence, left AMA	1.02
895	Alcohol/drug abuse or dependence w rehabilitation therapy	0.88
896	Alcohol/drug abuse or dependence w/o rehabilitation therapy w MCC	
897	Alcohol/drug abuse or dependence w/o rehabilitation therapy w/o MCC	

Comorbidity Adjustments:

Comorbidity	Adjustment Factor
Developmental Disabilities	1.04
Coagulation Factor Deficit	1.13
Tracheostomy	1.06
Eating and Conduct Disorders	1.12
Infectious Diseases	1.07
Renal Failure, Acute	1.11
Renal Failure, Chronic	1.11
Oncology Treatment	1.07
Uncontrolled Diabetes Mellitus	1.05
Severe Protein Malnutrition	1.13
Drug/Alcohol Induced Mental Disorders	1.03
Cardiac Conditions	1.11
Gangrene	1.10
Chronic Obstructive Pulmonary Disease	1.12
Artificial Openings – Digestive & Urinary	1.08
Severe Musculoskeletal & Connective Tissue Diseases	1.09
Poisoning	1.11

Addendum B - RY 2010 CBSA Wage Index Tables

In this addendum, we provide Tables 1 and 2 which indicate the CBSA-based wage index values for urban and rural providers.

Table 1 RY 2010 Wage Index For Urban Areas Based On CBSA Labor Market Areas

CBSA Code	Urban Area (Constituent Counties)	Wage Index
10180	Abilene, TX Callahan County, TX Jones County, TX Taylor County, TX	0.8097
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	0.3399
10420	Akron, OH Portage County, OH Summit County, OH	0.8917
10500	Albany, GA Baker County, GA Dougherty County, GA Lee County, GA Terrell County, GA Worth County, GA	0.8703
10580	Albany-Schenectady-Troy, NY Albany County, NY Rensselaer County, NY Saratoga County, NY Schenectady County, NY Schoharie County, NY	0.8707
10740	Albuquerque, NM Bernalillo County, NM Sandoval County, NM Torrance County, NM Valencia County, NM	0.8210
10780	Alexandria, LA Grant Parish, LA Rapides Parish, LA	0.8130

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 Mentoweth County, GA Newton County, GA Paulding County, GA Pickens County, GA Pike County, GA Rockdale County, GA Spalding County, GA Walton County, GA	0.9754
12100	Atlantic City-Hammonton, NJ Atlantic County, NJ	1.1973
12220	Auburn-Opelika, AL Lee County, AL	0.7544
12260	Augusta-Richmond County, GA-SC Burke County, GA Columbia County, GA McDuffie County, GA Richmond County, GA Aiken County, SC Edgefield County, SC	0.9615
12420	Austin-Round Rock, TX Bastrop County, TX Caldwell County, TX Hays County, TX Travis County, TX Williamson County, TX Kern County, CA	0.9536
12540	Bakersfield, CA Kern County, CA	1.1189

CBSA Code	Urban Area (Constituent Counties)	Wage Index
10900	Allentown-Bethlehem-Easton, PA-NJ Warren County, NJ Carbon County, PA Lehigh County, PA Northampton County, PA	0.9499
11020	Altoona, PA Blair County, PA	0.8521
11100	Amarillo, TX Armstrong County, TX Carson County, TX Potter County, TX Randall County, TX	0.8927
11180	Ames, IA Story County, IA	0.9487
11260	Anchorage, AK Anchorage Municipality, AK Matanuska-Susitna Borough, AK	1.1931
11300	Anderson, IN Madison County, IN	0.8760
11340	Anderson, SC Anderson County, SC	0.9570
11460	Ann Arbor, MI Washtenaw County, MI	1.0445
11500	Anniston-Oxford, AL Calhoun County, AL	0.7927
11540	Appleton, WI Calumet County, WI Outagamie County, WI	0.9440
11700	Ashville, NC Burcombe County, NC Haywood County, NC Henderson County, NC Madison County, NC	0.9142
12020	Athens-Clarke County, GA Clarke County, GA Madison County, GA Oconee County, GA Oglethorpe County, GA	0.9591

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	0.8792
13900	Bismarck, ND Bunleigh County, ND Morton County, ND	0.7148
13980	Blacksburg-Christiansburg-Radford, VA Giles County, VA Montgomery County, VA Pulaski County, VA Radford City, VA	0.8155
14020	Bloomington, IN Greene County, IN Monroe County, IN Owen County, IN	0.8979
14060	Bloomington-Normal, IL McLean County, IL	0.9323
14260	Boise City-Nampa, ID Ada County, ID Boise County, ID Canyon County, ID Gem County, ID Owyhee County, ID	0.9268
14484	Boston-Quincy, MA Norfolk County, MA Plymouth County, MA Suffolk County, MA	1.1897
14500	Boulder, CO Boulder County, CO	1.0302
14540	Bowling Green, KY Edmonson County, KY Warren County, KY	0.8388
14600	Bradenton-Sarasota-Venice, FL Manatee County, FL Sarasota County, FL	0.9900
14740	Bremerton-Silverdale, WA Kitsap County, WA	1.0770
14860	Bridgeport-Stamford-Norwalk, CT Fairfield County, CT	1.2868
15180	Brownsville-Harlingen, TX Cameron County, TX	0.8916
15260	Brunswick, GA Brantley County, GA Glynn County, GA McIntosh County, GA	0.9567

CBSA Code	Urban Area (Constituent Counties)	Wage Index
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	1.0055
12620	Bangor, ME Penobscot County, ME	1.0174
12700	Barnstable Town, MA Barnstable County, MA	1.2643
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	0.8163
12980	Battle Creek, MI Calthoun County, MI	1.0120
13020	Bay City, MI Bay County, MI	0.9248
13140	Beaumont-Port Arthur, TX Hardin County, TX Jefferson County, TX Orange County, TX	0.8479
13380	Bellingham, WA Whatcom County, WA	1.1640
13460	Bend, OR Deschutes County, OR	1.1375
13644	Bethesda-Frederick-Gaithersburg, MD Frederick County, MD Montgomery County, MD	1.0548
13740	Billings, MT Carbon County, MT Yellowstone County, MT	0.8805
13780	Binghamton, NY Broome County, NY Tioga County, NY	0.8574

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	0.9816
16860	Chattanooga, TN-GA Catoosa County, GA Dade County, GA Walker County, GA Hamilton County, TN Marion County, TN Sequatchie County, TN	0.8878
16940	Cheyenne, WY	0.9276
16974	Chicago-Naperville-Joliet, IL Laramie County, WY Cook County, IL DeKalb County, IL DuPage County, IL Grundy County, IL Kane County, IL Kendall County, IL McHenry County, IL Will County, IL	1.0399
17020	Chico, CA Butte County, CA	1.0897
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	0.9687
17300	Clarksville, TN-KY Christian County, KY Tigg County, KY Montgomery County, TN Stewart County, TN	0.8298
17420	Cleveland, TN Bradley County, TN Polk County, TN	0.8010

CBSA Code	Urban Area (Constituent Counties)	Wage Index
15380	Buffalo-Niagara Falls, NY Erie County, NY Niagara County, NY	0.9537
15500	Burlington, NC Alamance County, NC	0.8736
15540	Burlington-South Burlington, VT Chittenden County, VT Franklin County, VT Grand Isle County, VT	0.9254
15764	Cambridge-Newton-Frammingham, MA Middlesex County, MA	1.1086
15804	Camden, NJ Burlington County, NJ Camden County, NJ Gloucester County, NJ	1.0346
15940	Canton-Massillon, OH Carroll County, OH Stark County, OH	0.8841
15980	Cape Coral-Fort Myers, FL Lee County, FL	0.9396
16180	Carson City, NV Carson City, NV	1.0128
16220	Casper, WY Natrona County, WY	0.9579
16300	Cedar Rapids, IA Benton County, IA Jones County, IA Linn County, IA	0.8919
16580	Champaign-Urbana, IL Ford County, IL Piatt County, IL	0.9461
16620	Charleston, WV Boone County, WV Clay County, WV Kanawha County, WV Lincoln County, WV Putnam County, WV	0.8275
16700	Charleston-North Charleston-Summerville, SC Berkeley County, SC Charleston County, SC Dorchester County, SC	0.9209
16740	Charlotte-Gastonia-Concord, NC-SC Anson County, NC Cabarrus County, NC Gaston County, NC Mecklenburg County, NC Union County, NC York County, SC	0.9595

CBSA Code	Urban Area (Constituent Counties)	Wage Index
19060	Cumberland, MD-WV Allegany County, MD Mineral County, WV	0.7816
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	0.9945
19140	Dalton, GA Murray County, GA Whitfield County, GA	0.8705
19180	Danville, IL Vermillion County, IL	0.9374
19260	Danville, VA Pittsylvania County, VA Danville City, VA	0.8395
19340	Davenport-Moline-Rock Island, IA-IL Henry County, IL Mercer County, IL Rock Island County, IL Scott County, IA	0.8435
19380	Dayton, OH Greene County, OH Miami County, OH Montgomery County, OH Preble County, OH	0.9203
19460	Decatur, AL Lawrence County, AL Morgan County, AL	0.7803
19500	Decatur, IL Macon County, IL	0.8145
19660	Deltona-Daytona Beach-Ormond Beach, FL Volusia County, FL	0.8890
19740	Denver-Aurora, 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	1.0818

CBSA Code	Urban Area (Constituent Counties)	Wage Index
17460	Cleveland-Elyria-Mentor, OH Cuyahoga County, OH Geauga County, OH Lake County, OH Lorain County, OH Medina County, OH	0.9241
17660	Coeur d'Alene, ID Kootenai County, ID	0.9322
17780	College Station-Bryan, TX Brazos County, TX Burleson County, TX Robertson County, TX	0.9346
17820	Colorado Springs, CO El Paso County, CO Teller County, CO	0.9977
17860	Columbia, MO Boone County, MO Howard County, MO	0.8540
17900	Columbia, SC Cathoun County, SC Fairfield County, SC Kershaw County, SC Lexington County, SC Richland County, SC Saluda County, SC	0.8933
17980	Columbus, GA-AL Russell County, AL Chattahoochee County, GA Harris County, GA Marion County, GA Muscookee County, GA	0.8739
18020	Columbus, IN Bartholomew County, IN	0.9739
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	0.9943
18580	Corpus Christi, TX Aransas County, TX Nueces County, TX San Patricio County, TX	0.8598
18700	Corvallis, OR Benton County, OR	1.1304

CBSA Code	Urban Area (Constituent Counties)	Wage Index
21780	Evansville, IN-KY Gibson County, IN Posey County, IN Vanderburgh County, IN Warren County, IN Henderson County, KY Webster County, KY	0.8690
21820	Fairbanks, AK Fairbanks North Star Borough, AK	1.1297
21940	Fajardo, PR Ceiba Municipio, PR Fajardo Municipio, PR Luquillo Municipio, PR	0.4061
22020	Fargo, ND-MN Clay County, MN Cass County, ND	0.8166
22140	Farmington, NM San Juan County, NM	0.8051
22180	Fayetteville, NC Cumberland County, NC Hoke County, NC	0.9340
22220	Fayetteville-Springdale-Rogers, AR-MO Benton County, AR Madison County, AR Washington County, AR McDonald County, MO	0.8970
22380	Flagstaff, AZ Cocconino County, AZ	1.1743
22420	Flint, MI Genesee County, MI	1.1425
22500	Florence, SC Darlington County, SC Florence County, SC	0.8130
22520	Florence-Muscle Shoals, AL Colbert County, AL Lauderdale County, AL	0.7871
22540	Fond du Lac, WI Fond du Lac County, WI	0.9293
22660	Fort Collins-Loveland, CO Larimer County, CO	0.9867
22744	Fort Lauderdale-Pompano Beach-Deerfield Beach, FL Broward County, FL	0.9946
22900	Fort Smith, AR-OK Crawford County, AR Franklin County, AR Sebastian County, AR Le Flore County, OK Sequoyah County, OK	0.7697
23020	Fort Walton Beach-Crestview-Destin, FL Okaloosa County, FL	0.8769

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	0.9535
19804	Detroit-Livonia-Dearborn, MI Wayne County, MI	0.9958
20020	Dofhan, AL Geneva County, AL Henry County, AL Houston County, AL	0.7613
20100	Dover, DE Kent County, DE	1.0325
20220	Dubuque, IA Dubuque County, IA	0.8380
20260	Duluth, MN-WI Carlton County, MN St. Louis County, MN Douglas County, WI	1.0363
20500	Durham, NC Chatham County, NC Durham County, NC Orange County, NC Person County, NC	0.9732
20740	Eau Claire, WI Chippewa County, WI Eau Claire County, WI	0.9668
20764	Edison-New Brunswick, NJ Middlesex County, NJ Monmouth County, NJ Ocean County, NJ Somerset County, NJ	1.1283
20840	El Centro, CA Imperial County, CA	0.8746
21060	Elizabethtown, KY Hardin County, KY Larue County, KY	0.8525
21140	Elkhart-Goshen, IN Elkhart County, IN	0.9568
21300	Elmira, NY Chemung County, NY	0.8247
21340	El Paso, TX El Paso County, TX	0.8694
21500	Erie, PA Erie County, PA	0.8713
21660	Eugene-Springfield, OR Lane County, OR	1.1061

CBSA Code	Urban Area (Constituent Counties)	Wage Index
24780	Greenville, NC Greene County, NC Pitt County, NC	0.9448
24860	Greenville-Mauldin-Easley, SC Greenville County, SC Laurens County, SC Pickens County, SC	0.9961
25020	Guayama, PR Arroyo Municipio, PR Guayama Municipio, PR Patillas Municipio, PR	0.3249
25060	Gulfport-Blox, MS Hancock County, MS Harrison County, MS Stone County, MS	0.9029
25180	Hagerstown-Martinsburg, MD-WV Washington County, MD Berkeley County, WV Morgan County, WV	0.8997
25260	Hanford-Corcoran, CA Kings County, CA	1.0870
25420	Harrisburg-Carlisle, PA Cumberland County, PA Dauphin County, PA Perry County, PA	0.9153
25500	Harrisonburg, VA Rockingham County, VA Harrisonburg City, VA	0.8894
25540	Hartford-West Hartford-East Hartford, CT Hartford County, CT Middlesex County, CT Tolland County, CT	1.1069
25620	Hattiesburg, MS Forest County, MS Lamar County, MS Perry County, MS	0.7337
25860	Hickory-Lenoir-Morganton, NC Alexander County, NC Burke County, NC Catawba County, NC Catawba County, NC	0.8976
25980	Hinesville-Fort Stewart, GA Liberty County, GA Long County, GA	0.9110
26100	Holland-Grand Haven, MI Ottawa County, MI	0.9008
26180	Honolulu, HI Honolulu County, HI	1.1811
26300	Hot Springs, AR Garland County, AR	0.9113

CBSA Code	Urban Area (Constituent Counties)	Wage Index
23060	Fort Wayne, IN Allen County, IN Wells County, IN Whitley County, IN	0.9176
23104	Fort Worth-Arlington, TX Johnson County, TX Parker County, TX Tarrant County, TX Wise County, TX	0.9709
23420	Fresno, CA Fresno County, CA	1.1009
23460	Gadsden, AL Etowah County, AL	0.7983
23540	Gainesville, FL Alachua County, FL Gilchrist County, FL	0.9312
23580	Gainesville, GA Hall County, GA	0.9109
23844	Gary, IN Jasper County, IN Lake County, IN Newton County, IN Porter County, IN	0.9250
24020	Glens Falls, NY Warren County, NY	0.8473
24140	Goldensboro, NC Washington County, NC	0.9143
24220	Grand Forks, ND-MN Polk County, MN Grand Forks County, ND	0.7565
24300	Grand Junction, CO Mesa County, CO	0.9812
24340	Grand Rapids-Wyoming, MI Barry County, MI Ionia County, MI Kent County, MI Newaygo County, MI	0.9184
24500	Great Falls, MT Cascade County, MT	0.8784
24540	Greeley, CO Weld County, CO	0.9684
24580	Green Bay, WI Brown County, WI Kewaunee County, WI Oconto County, WI	0.9709
24660	Greensboro-High Point, NC Guilford County, NC Randolph County, NC Rockingham County, NC	0.9011

CBSA Code	Urban Area (Constituent Counties)	Wage Index
27180	Jackson, TN Chester County, TN Madison County, TN	0.8523
27260	Jacksonville, FL Baker County, FL Clay County, FL Duval County, FL Nassau County, FL St. Johns County, FL	0.8999
27340	Jacksonville, NC Onslow County, NC	0.8177
27500	Janesville, WI Rock County, WI	0.9662
27620	Jefferson City, MO Callaway County, MO Cole County, MO Monteau County, MO Osage County, MO	0.8775
27740	Johnson City, TN Carter County, TN Union County, TN Washington County, TN	0.7971
27780	Johnstown, PA Cambria County, PA	0.7920
27860	Jonesboro, AR Craighead County, AR Poinsett County, AR	0.7916
27900	Joplin, MO Jasper County, MO Newton County, MO	0.9406
28020	Kalamazoo-Portage, MI Kalamazoo County, MI Van Buren County, MI	1.0801
28100	Kankakee-Bradley, IL Kankakee County, IL	1.0485

CBSA Code	Urban Area (Constituent Counties)	Wage Index
26380	Houma-Bayou Cane-Thibodaux, LA Lafourche Parish, LA Terrebonne Parish, LA	0.7758
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	0.9838
26580	Huntington-Ashland, WV-KY-OH Boyd County, KY Greenup County, KY Lawrence County, OH Cabell County, WV Wayne County, WV	0.9254
26620	Huntsville, AL Limestone County, AL Madison County, AL	0.9082
26820	Idaho Falls, ID Bonneville County, ID Jefferson County, ID	0.9280
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	0.9008
26980	Iowa City, IA Johnson County, IA Washington County, IA	0.9483
27060	Ithaca, NY Tompkins County, NY	0.9614
27100	Jackson, MI Jackson County, MI	0.9309
27140	Jackson, MS Copiah County, MS Hinds County, MS Madison County, MS Rankin County, MS Simpson County, MS	0.8067

CBSA Code	Urban Area (Constituent Counties)	Wage Index
29340	Lake Charles, LA Calcasieu Parish, LA Cameron Parish, LA	0.7556
29404	Lake County-Kenosha County, IL-WI Lake County, IL Kenosha County, WI	1.0389
29420	Lake Havasu City-Kingman, AZ Mohave County, AZ	0.9797
29460	Lakeland-Winter Haven, FL Polk County, FL Winter Haven County, FL	0.8530
29540	Lancaster, PA Lancaster County, PA	0.9363
29620	Lansing-East Lansing, MI Clinton County, MI Eaton County, MI Ingham County, MI	0.9931
29700	Laredo, TX Webb County, TX	0.8366
29740	Las Cruces, NM Doña Ana County, NM	0.8929
29820	Las Vegas-Paradise, NV Clark County, NV	1.1971
29940	Lawrence, KS Douglas County, KS	0.8343
30020	Lawton, OK Comanche County, OK	0.8211
30140	Lebanon, PA Lebanon County, PA	0.8954
30300	Lewiston, ID-WA Nez Perce County, ID Asotin County, WA	0.9465
30340	Lewiston-Auburn, ME Androscoggin County, ME	0.9200
30460	Lexington-Fayette, KY Bourbon County, KY Clark County, KY Fayette County, KY Jessamine County, KY Scott County, KY Woodford County, KY	0.9110
30620	Lima, OH Allen County, OH	0.9427
30700	Lincoln, NE Lancaster County, NE Seward County, NE	0.8758

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 Plaatte County, MO Ray County, MO	0.9610
28420	Kennewick-Pasco-Richland, WA Benton County, WA Franklin County, WA	0.9911
28660	Killeen-Temple-Fort Hood, TX Bell County, TX Coryell County, TX Lampasas County, TX	0.8765
28700	Kingsport-Bristol-Bristol, TN-VA Hawkins County, TN Sullivan County, TN Bristol City, VA Scott County, VA Washington County, VA	0.7743
28740	Kingston, NY Ulster County, NY	0.9375
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	0.8349
29100	La Crosse, WI-MN Houston County, MN La Crosse County, WI	0.9758
29140	Lafayette, IN Benton County, IN Carroll County, IN Tippecanoe County, IN	0.9221
29180	Lafayette, LA Lafayette Parish, LA St. Martin Parish, LA	0.8374

CBSA Code	Urban Area (Constituent Counties)	Wage Index
31540	Madison, WI Columbia County, WI Dane County, WI Iowa County, WI	1.0967
31700	Manchester-Nashua, NH Hillsborough County, NH	1.0359
31900	Mansfield, OH Richland County, OH	0.9330
32420	Mayaguez, PR Hormigueros Municipio, PR Mayaguez Municipio, PR	0.3940
32580	McAllen-Edinburg-Mission, TX Hidalgo County, TX	0.9009
32780	Medford, OR Jackson County, OR	1.0244
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	0.9232
32900	Merced, CA Merced County, CA	1.2243
33124	Miami-Miami Beach-Kendall, FL Miami-Dade County, FL	0.9830
33140	Michigan City-La Porte, IN LaPorte County, IN	0.9159
33260	Midland, TX Midland County, TX	0.9827
33340	Milwaukee-Waukesha-West Allis, WI Milwaukee County, WI Ozaukee County, WI Washington County, WI Waukesha County, WI	1.0080

CBSA Code	Urban Area (Constituent Counties)	Wage Index
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	0.8672
30860	Logan, UT-ID Franklin County, ID Cache County, UT	0.8765
30980	Longview, TX Gregg County, TX Rusk County, TX Upshur County, TX	0.8370
31020	Longview, WA Cowlitz County, WA	1.1207
31084	Los Angeles-Long Beach-Glendale, CA Los Angeles County, CA	1.2208
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	0.9249
31180	Lubbock, TX Crosby County, TX Lubbock County, TX	0.8731
31340	Lynchburg, VA Amherst County, VA Appomattox County, VA Bedford County, VA Campbell County, VA Bedford City, VA Lynchburg City, VA	0.8774
31420	Macon, GA Bibb County, GA Crawford County, GA Jones County, GA Monroe County, GA Twiggs County, GA	0.9570
31460	Madera, CA Madera County, CA	0.7939

CBSA Code	Urban Area (Constituent Counties)	Wage Index
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	0.9504
35004	Nassau-Suffolk, NY Nassau County, NY Suffolk County, NY	1.2453
35084	Newark-Union, NJ-PA Essex County, NJ Hunterdon County, NJ Morris County, NJ Sussex County, NJ Union County, NJ Pike County, PA	1.1731
35300	New Haven-Milford, CT New Haven County, CT	1.1742
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	0.9103
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	1.2885
35660	Niles-Benton Harbor, MI Berrien County, MI	0.9066
35980	Norwich-New London, CT New London County, CT	1.1398

CBSA Code	Urban Area (Constituent Counties)	Wage Index
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, WI Pierce County, WI St. Croix County, WI	1.1150
33540	Missoula, MT Missoula County, MT	0.8973
33660	Mobile, AL Mobile County, AL	0.7908
33700	Modesto, CA Stanislaus County, CA	1.2194
33740	Monroe, LA Ouachita Parish, LA Union Parish, LA	0.7900
33780	Monroe, MI Monroe County, MI	0.8941
33860	Montgomery, AL Autauga County, AL Elmore County, AL Lowndes County, AL Montgomery County, AL	0.8283
34060	Morgantown, WV Monongalia County, WV Preston County, WV	0.8528
34100	Morristown, TN Grainger County, TN Hamblen County, TN Jefferson County, TN	0.7254
34580	Mount Vernon-Anacortes, WA Skagit County, WA	1.0292
34620	Muncie, IN Delaware County, IN	0.8489
34740	Muskegon-Norton Shores, MI Muskegon County, MI	1.0055
34820	Myrtle Beach-North Myrtle Beach-Conway, SC Horry County, SC	0.8652
34900	Napa, CA Napa County, CA	1.1520
34940	Naples-Marco Island, FL Collier County, FL	0.9672

CBSA Code	Urban Area (Constituent Counties)	Wage Index
37460	Panama City-Lynn Haven, FL	0.8360
37620	Bay County, FL Parkersburg-Marietta-Vienna, WV-OH Washington County, OH Pleasants County, WV Wirt County, WV Wood County, WV	0.7867
37700	Pascagoula, MS George County, MS Jackson County, MS	0.8102
37764	Peabody, MA	1.0747
37860	Essex County, MA Pensacola-Ferry Pass-Brent, FL Escambia County, FL Santa Rosa County, FL	0.8242
37900	Peoria, IL Marshall County, IL Peoria County, IL Stark County, IL Tazewell County, IL Woodford County, IL	0.9038
37964	Philadelphia, PA Bucks County, PA Chester County, PA Delaware County, PA Montgomery County, PA Philadelphia County, PA	1.0979
38060	Phoenix-Mesa-Scottsdale, AZ Maricopa County, AZ Pinal County, AZ	1.0379
38220	Pine Bluff, AR Cleveland County, AR Jefferson County, AR Lincoln County, AR	0.7926
38300	Pittsburgh, PA Allegheny County, PA Armstrong County, PA Beaver County, PA Butler County, PA Fayette County, PA Washington County, PA Westmoreland County, PA	0.8678
38340	Pittsfield, MA	1.0445
38540	Berkshire County, MA Pocatello, ID Barnock County, ID Power County, ID	0.9343

CBSA Code	Urban Area (Constituent Counties)	Wage Index
36084	Oakland-Fremont-Hayward, CA Alameda County, CA Contra Costa County, CA	1.6092
36100	Ocala, FL Marion County, FL	0.8512
36140	Ocean City, NJ Cape May County, NJ	1.1496
36220	Odessa, TX Ector County, TX	0.9475
36260	Ogden-Clearfield, UT Davis County, UT Morgan County, UT Weber County, UT	0.9153
36420	Oklahoma City, OK Canadian County, OK Cleveland County, OK Grady County, OK Lincoln County, OK Logan County, OK McCain County, OK Oklahoma County, OK	0.8724
36500	Olympia, WA Thurston County, WA	1.1537
36540	Omaha-Council Bluffs, NE-IA Harrison County, IA Mills County, IA Pottawattamie County, IA Cass County, NE Douglas County, NE Sарy County, NE Saunders County, NE Washington County, NE	0.9441
36740	Orlando-Kissimmee, FL Lake County, FL Orange County, FL Osceola County, FL Seminole County, FL	0.9111
36780	Oshkosh-Neenah, WI Winnebago County, WI	0.9474
36980	Owensboro, KY Daviess County, KY Hancock County, KY McLean County, KY	0.8685
37100	Oxnard-Thousand Oaks-Ventura, CA Ventura County, CA	1.1951
37340	Palm Bay-Melbourne-Titusville, FL Brevard County, FL	0.9332
37380	Palm Coast, FL Flagler County, FL	0.8963

CBSA Code	Urban Area (Constituent Counties)	Wage Index
39820	Reading, CA Shasta County, CA	1.3781
39900	Reno-Sparks, NV Storey County, NV Washoe County, NV	1.0317
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	0.9363
40140	Riverside-San Bernardino-Ontario, CA Riverside County, CA San Bernardino County, CA	1.1468
40220	Roanoke, VA Botetourt County, VA Craig County, VA Franklin County, VA Roanoke County, VA Roanoke City, VA Salem City, VA	0.8660
40340	Rochester, MN Dodge County, MN Olmsted County, MN Wabasha County, MN	1.1214
40380	Rochester, NY Livingston County, NY Monroe County, NY Ontario County, NY Orleans County, NY Wayne County, NY	0.8811
40420	Rockford, IL Boone County, IL Winnebago County, IL	0.9835

CBSA Code	Urban Area (Constituent Counties)	Wage Index
38660	Ponce, PR Juana Diaz Municipio, PR Ponce Municipio, PR Villalba Municipio, PR	0.4289
38860	Portland-South Portland-Biddeford, ME Cumberland County, ME Sagadahoc County, ME York County, ME	0.9942
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	1.1456
38940	Port St. Lucie, FL Martin County, FL St. Lucie County, FL	0.9870
39100	Poughkeepsie-Newburgh-Middletown, NY Dutchess County, NY Orange County, NY	1.0920
39140	Prescott, AZ Yavapai County, AZ	1.0221
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	1.0696
39340	Provo-Orem, UT Juab County, UT Utah County, UT	0.9381
39380	Pueblo, CO Pueblo County, CO	0.8713
39460	Punta Gorda, FL Charlotte County, FL	0.8976
39540	Racine, WI Racine County, WI	0.9054
39580	Raleigh-Cary, NC Franklin County, NC Johnston County, NC Wake County, NC	0.9817
39660	Rapid City, SD Meade County, SD Pennington County, SD	0.9598
39740	Reading, PA Berks County, PA	0.9242

CBSA Code	Urban Area (Constituent Counties)	Wage Index
41540	Salisbury, MD Somerset County, MD Wicomico County, MD	0.9246
41620	Salt Lake City, UT Salt Lake County, UT Summit County, UT Tooele County, UT	0.9158
41660	San Angelo, TX Iron County, TX Tom Green County, TX	0.8424
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	0.8856
41740	San Diego-Carlsbad-San Marcos, CA San Diego County, CA	1.1538
41780	Sandusky, OH Erie County, OH	0.8870
41884	San Francisco-San Mateo-Redwood City, CA Marin County, CA San Francisco County, CA San Mateo County, CA	1.5529
41900	San Germán-Cabo Rojo, PR Cabo Rojo Municipio, PR Lajas Municipio, PR Sabana Grande Municipio, PR San Germán Municipio, PR	0.4756
41940	San Jose-Sunnyvale-Santa Clara, CA San Benito County, CA Santa Clara County, CA	1.6141

CBSA Code	Urban Area (Constituent Counties)	Wage Index
40484	Rockingham County-Stratford County, NH Rockingham County, NH Stratford County, NH	0.9926
40580	Rocky Mount, NC Edgecombe County, NC Nash County, NC	0.9031
40660	Rome, GA Floyd County, GA	0.9134
40900	Sacramento-Arden-Arcade--Roseville, CA El Dorado County, CA Placer County, CA Sacramento County, CA Yolo County, CA	1.3572
40980	Saginaw-Saginaw Township North, MI Saginaw County, MI	0.8702
41060	St. Cloud, MN Benton County, MN Stearns County, MN	1.0976
41100	St. George, UT Washington County, UT	0.9021
41140	St. Joseph, MO-KS Doniphan County, KS Andrew County, MO Buchanan County, MO DeKalb County, MO	1.0380
41180	St. Louis, MO-IL Bond County, IL Cathoun 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	0.9006
41420	Salem, OR Marion County, OR Polk County, OR	1.0884
41500	Salinas, CA Monterey County, CA	1.4987

CBSA Code	Urban Area (Constituent Counties)	Wage Index
42140	Santa Fe, NM	1.0610
42220	Santa Fe County, NM Santa Rosa-Petaluma, CA Sonoma County, CA	1.5528
42340	Savannah, GA Bryan County, GA Chatham County, GA Effingham County, GA	0.9152
42540	Scranton--Wilkes-Barre, PA Lackawanna County, PA Luzerne County, PA Wyoming County, PA	0.8333
42644	Seattle-Bellevue-Everett, WA King County, WA	1.1755
42680	Sebastian-Vero Beach, FL St. Johns County, FL	0.9217
43100	Sheboygan, WI Sheboygan County, WI	0.8920
43300	Sherman-Denison, TX Grayson County, TX	0.9024
43340	Shreveport-Bossier City, LA Bossier Parish, LA Caddo Parish, LA De Soto Parish, LA	0.8442
43580	Sioux City, IA-NE-SD Woodbury County, IA Dakota County, NE Dixon County, NE Union County, SD	0.8915
43620	Sioux Falls, SD Lincoln County, SD McCook County, SD Minnehaha County, SD Turner County, SD	0.9354
43780	South Bend-Mishawaka, IN-MI St. Joseph County, IN Cass County, MI	0.9761
43900	Spartanburg, SC Spartanburg County, SC	0.9025
44060	Spokane, WA Spokane County, WA	1.0559
44100	Springfield, IL Menard County, IL Sangamon County, IL	0.9102
44140	Springfield, MA Franklin County, MA Hampden County, MA Hampshire County, MA	1.0405

CBSA Code	Urban Area (Constituent Counties)	Wage Index
41980	San Juan-Caguas-Guaynabo, PR 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 Comerio Municipio, PR Corozal Municipio, PR Dorado Municipio, PR Florida Municipio, PR Guaynabo Municipio, PR Gurabo Municipio, PR Hatillo Municipio, PR Humacao Municipio, PR Juncos Municipio, PR Las Piedras Municipio, PR Loíza Municipio, PR Manatí Municipio, PR Maunabo Municipio, PR Morovis Municipio, PR Naguabo Municipio, PR Naranjito Municipio, PR Orocovis Municipio, PR Quebradillas Municipio, PR Río Grande Municipio, PR San Juan Municipio, PR San Lorenzo Municipio, PR Toa Alta Municipio, PR Toa Baja Municipio, PR Trujillo Alto Municipio, PR Vega Alta Municipio, PR Vega Baja Municipio, PR Yabucoa Municipio, PR	0.4393
42020	San Luis Obispo-Paso Robles, CA San Luis Obispo County, CA	1.2441
42044	Santa Ana-Anaheim-Irvine, CA Orange County, CA	1.1983
42060	Santa Barbara-Santa Maria-Goleta, CA Santa Barbara County, CA	1.1909
42100	Santa Cruz-Watsonville, CA Santa Cruz County, CA	1.6429

CBSA Code	Urban Area (Constituent Counties)	Wage Index
45940	Trenton-Ewing, NJ Mercer County, NJ	1.0604
46060	Tucson, AZ Pima County, AZ	0.9229
46140	Tulsa, OK Creek County, OK Okmulgee County, OK Osage County, OK Pawnee County, OK Rogers County, OK Tulsa County, OK Wagoner County, OK	0.8445
46220	Tuscaloosa, AL Greene County, AL Hale County, AL Tuscaloosa County, AL	0.8496
46340	Tyler, TX Smith County, TX	0.8804
46540	Utica-Rome, NY Herkimer County, NY Oneida County, NY	0.8404
46660	Valdosta, GA Brooks County, GA Echols County, GA Lanier County, GA Lowndes County, GA	0.8027
46700	Vallejo-Fairfield, CA Solano County, CA	1.4359
47020	Victoria, TX Calhoun County, TX Goliad County, TX Victoria County, TX	0.8124
47220	Vineland-Milville-Bridgeton, NJ Cumberland County, NJ	1.0366

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	0.8424
44220	Springfield, OH Clark County, OH	0.8876
44300	State College, PA Centre County, PA	0.8937
44700	Stockton, CA San Joaquin County, CA	1.2015
44940	Sumter, SC Sumter County, SC	0.8257
45060	Syracuse, NY Madison County, NY Onondaga County, NY Oswego County, NY	0.9787
45104	Tacoma, WA Pierce County, WA	1.1241
45220	Tallahassee, FL Gadsden County, FL Jefferson County, FL Leon County, FL Wakulla County, FL	0.8964
45300	Tampa-St. Petersburg-Clearwater, FL Hernando County, FL Hillsborough County, FL Pasco County, FL Pinellas County, FL	0.8852
45460	Terre Haute, IN Clay County, IN Sullivan County, IN Vermillion County, IN Vigo County, IN	0.9085
45500	Texarkana, TX-Texarkana, AR Miller County, AR Bowie County, TX	0.8144
45780	Toledo, OH Fulton County, OH Lucas County, OH Ottawa County, OH Wood County, OH	0.9407
45820	Topeka, KS Jackson County, KS Jefferson County, KS Osage County, KS Shawnee County, KS Wabaunsee County, KS	0.8756

CBSA Code	Urban Area (Constituent Counties)	Wage Index
47940	Waterloo-Cedar Falls, IA Black Hawk County, IA Bremer County, IA Grundy County, IA	0.8490
48140	Wausau, WI Marathon County, WI	0.9615
48260	Weirton-Steubenville, WV-OH Jefferson County, OH Brooke County, WV Hancock County, WV	0.8079
48300	Wenatchee, WA Chelan County, WA Douglas County, WA	0.9544
48424	West Palm Beach-Boca Raton-Boynton Beach, FL Palm Beach County, FL	0.9757
48540	Wheeling, WV-OH Belmont County, OH Marshall County, WV Ohio County, WV	0.8955
48620	Wichita, KS Butler County, KS Harvey County, KS Sedgewick County, KS Sumner County, KS	0.9069
48660	Wichita Falls, TX Archer County, TX Clay County, TX Wichita County, TX	0.8832
48700	Williamsport, PA Lycoming County, PA	0.8096
48864	Wilmington, DE-MD-NJ New Castle County, DE Cecil County, MD Salem County, NJ	1.0696
48900	Wilmington, NC Brunswick County, NC New Hanover County, NC Pender County, NC	0.9089
49020	Winchester, VA-WV Frederick County, VA Winchester City, VA Hampshire County, WV	0.9801
49180	Winston-Salem, NC Davie County, NC Forsyth County, NC Stokes County, NC Yadkin County, NC	0.9016
49340	Worcester, MA Worcester County, MA	1.0896

CBSA Code	Urban Area (Constituent Counties)	Wage Index
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	0.8884
47300	Suffolk City, VA Virginia Beach City, VA Williamsburg City, VA	1.0144
47380	Visalia-Porterville, CA Tulare County, CA	0.8596
47580	Waco, TX McLennan County, TX	0.8989
47644	Warner Robins, GA Houston County, GA	0.9904
47894	Warren-Troy-Farmington Hills, MI Lapeer County, MI Livingston County, MI Macomb County, MI Oakland County, MI St. Clair County, MI	1.0827
	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	

CBSA Code	Nonurban Area	Wage Index
23	Michigan	0.8887
24	Minnesota	0.9059
25	Mississippi	0.7584
26	Missouri	0.7982
27	Montana	0.8658
28	Nebraska	0.8730
29	Nevada	0.9382
30	New Hampshire	1.0219
31	New Jersey	-----
32	New Mexico	0.8812
33	New York	0.8145
34	North Carolina	0.8576
35	North Dakota	0.7205
36	Ohio	0.8588
37	Oklahoma	0.7732
38	Oregon	1.0218
39	Pennsylvania	0.8585
40	Puerto Rico	0.4047
41	Rhode Island	-----
42	South Carolina	0.8538
43	South Dakota	0.8603
44	Tennessee	0.7789
45	Texas	0.7884
46	Utah	0.8267
47	Vermont	1.0079
48	Virgin Islands	0.6971
49	Virginia	0.7861
50	Washington	1.0181
51	West Virginia	0.7503
52	Wisconsin	0.9373
53	Wyoming	0.9315
65	Guam	0.9611

CBSA Code	Urban Area (Constituent Counties)	Wage Index
49420	Yakima, WA Yakima County, WA	0.5948
49500	Yauco, PR Guánica Municipio, PR Guayanilla Municipio, PR Peñuelas Municipio, PR Yauco Municipio, PR	0.9432
49620	York-Hanover, PA York County, PA	0.9518
49660	Youngstown-Warren-Boardman, OH-PA Mahoning County, OH Trumbull County, OH Mercer County, PA	0.8915
49700	Yuba City, CA Sutter County, CA Yuba County, CA	1.1137
49740	Yuma, AZ Yuma County, AZ	0.9281

1 At this time, there are no hospitals located in this urban area on which to base a wage index. Therefore, the urban wage index value is based on the average wage index for all urban areas within the state.

Table 2 - RY 2010 WAGE INDEX BASED ON CBSA LABOR MARKET AREAS FOR RURAL AREAS

CBSA Code	Nonurban Area	Wage Index
1	Alabama	0.7587
2	Alaska	1.1898
3	Arizona	0.8453
4	Arkansas	0.7473
5	California	1.2275
6	Colorado	0.9570
7	Connecticut	1.1016
8	Delaware	0.9962
10	Florida	0.8504
11	Georgia	0.7612
12	Hawaii	1.0999
13	Idaho	0.7651
14	Illinois	0.8386
15	Indiana	0.8473
16	Iowa	0.8804
17	Kansas	0.8052
18	Kentucky	0.7803
19	Louisiana	0.7447
20	Maine	0.8644
21	Maryland	0.8883
22	Massachusetts	1.1670



Federal Register

**Friday,
May 1, 2009**

Part III

The President

**Proclamation 8366—National Equal Pay
Day, 2009**

Presidential Documents

Title 3—

Proclamation 8366 of April 28, 2009

The President

National Equal Pay Day, 2009

By the President of the United States of America**A Proclamation**

Harriet Beecher Stowe helped galvanize the abolitionist movement with her groundbreaking literature. Frances Perkins advised President Franklin Delano Roosevelt and led the Department of Labor during one of its most challenging periods in history. Barbara McClintock helped unlock the mysteries of genetics and earned a Nobel Prize. These and countless other women have broken barriers and changed the course of our history, allowing women and men who followed them the opportunity to reach greater heights.

Despite these achievements, 46 years since the passage of the Equal Pay Act and 233 years since our Nation was established with the principle of equal justice under law, women across America continue to experience discrimination in the form of pay inequity every day. Women in the United States earn only 78 cents for every dollar a man earns, and today marks the inauspicious occasion when a woman's earnings finally catch up with a man's from the previous year. On National Equal Pay Day, we underscore the importance of this issue to all Americans.

If we wish to honor our Nation's highest ideals, we must end wage discrimination. The Founders established a timeless framework of rights for the American people. Generation after generation has worked and sacrificed so that this framework might be applied equally to all Americans. To honor these Americans and stay true to our founding ideals, we must carry forward this tradition and breathe life into these principles by supporting equal pay for men and women.

Wage discrimination has a tangible and negative impact on women and families. When women receive less than their deserved compensation, they take home less for themselves and their loved ones. Utilities and groceries are more difficult to afford. Mortgages and rent bills are harder to pay. Children's higher education is less financially feasible. In later years of life, the retirement that many women have worked so hard for—and have earned—is not possible. This problem is particularly dire for women who are single and the sole supporters of their families. Women should not and need not endure these consequences.

My Administration is working to advance pay equity in the United States. The first bill I signed into law as President, the Lilly Ledbetter Fair Pay Act of 2009, allows more women to challenge pay discrimination by extending the timeline within which complaints can be filed. This law advances the struggle for equal pay, but it is only an initial step. To continue this progress, I issued an Executive Order establishing the White House Council on Women and Girls. This high-level body, composed of Cabinet members and heads of sub-Cabinet agencies, is charged with advancing the rights and needs of women, including equal pay.

Still, Government can only advance this issue so far. The collective action of businesses, community organizations, and individuals is necessary to ensure that every woman receives just treatment and compensation. We Americans must come together to ensure equal pay for both women and men by reminding ourselves of the basic principles that underlie our Nation's

strength and unity, understanding the unnecessary sacrifices that pay inequity causes, and recalling the countless women leaders who have proven what women can achieve.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim April 28, 2009, as National Equal Pay Day. I call upon American men and women, and all employers, to acknowledge the injustice of wage discrimination and to commit themselves to equal pay for equal work.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of April, in the year of our Lord two thousand nine, and of the Independence of the United States of America the two hundred and thirty-third.

A handwritten signature in black ink, appearing to be "Barack Obama", written in a cursive style. The signature is positioned to the right of the text above it.

Reader Aids

Federal Register

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S. 383/P.L. 111-15
Special Inspector General for the Troubled Asset Relief Program Act of 2009 (Apr. 24, 2009; 123 Stat. 1603)
Last List April 27, 2009

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dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION	30 DAYS AFTER PUBLICATION	45 DAYS AFTER PUBLICATION	60 DAYS AFTER PUBLICATION	90 DAYS AFTER PUBLICATION
May 1	May 18	Jun 1	Jun 15	Jun 30	Jul 30
May 4	May 19	Jun 3	Jun 18	Jul 6	Aug 3
May 5	May 20	Jun 4	Jun 19	Jul 6	Aug 3
May 6	May 21	Jun 5	Jun 22	Jul 6	Aug 4
May 7	May 22	Jun 8	Jun 22	Jul 6	Aug 5
May 8	May 26	Jun 8	Jun 22	Jul 7	Aug 6
May 11	May 26	Jun 10	Jun 25	Jul 10	Aug 10
May 12	May 27	Jun 11	Jun 26	Jul 13	Aug 10
May 13	May 28	Jun 12	Jun 29	Jul 13	Aug 11
May 14	May 29	Jun 15	Jun 29	Jul 13	Aug 12
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May 18	Jun 2	Jun 17	Jul 2	Jul 17	Aug 17
May 19	Jun 3	Jun 18	Jul 6	Jul 20	Aug 17
May 20	Jun 4	Jun 19	Jul 6	Jul 20	Aug 18
May 21	Jun 5	Jun 22	Jul 6	Jul 20	Aug 19
May 22	Jun 8	Jun 22	Jul 6	Jul 21	Aug 20
May 26	Jun 10	Jun 25	Jul 10	Jul 27	Aug 24
May 27	Jun 11	Jun 26	Jul 13	Jul 27	Aug 25
May 28	Jun 12	Jun 29	Jul 13	Jul 27	Aug 26
May 29	Jun 15	Jun 29	Jul 13	Jul 28	Aug 27